

REGULAR SESSION

**REVISED
AGENDA**

**MILWAUKIE CITY COUNCIL
AUGUST 17, 2010**

MILWAUKIE CITY HALL
10722 SE Main Street

2084th MEETING

REGULAR SESSION – 7:00 p.m.

- 1. CALL TO ORDER**
Pledge of Allegiance
- 2. PROCLAMATIONS, COMMENDATIONS, SPECIAL REPORTS, AND AWARDS**
- 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 of April 20, 2010 Regular Session** **2**
 - B. City Council Minutes of May 4, 2010 Regular Session** **19**
 - C. Contract Amendment for Riverfront Design and Permitting Services – Resolution** **30**
 - D. Reappoint Margaret Anderson to the Public Safety Advisory Committee as the Lewelling Neighborhood District Association Representative – Resolution** **36**
 - E. OLCC Application for Pizano’s Pizza, 10843 SE Oak Street Change of Ownership** **37**
 - F. Intergovernmental Agreement for Match Commitment for TIGER II Application to Fund Kellogg Lake Bicycle/Pedestrian Crossing – Resolution** **38**
- 4. AUDIENCE PARTICIPATION** *(The Presiding Officer will call for statements from citizens regarding issues relating to the City. Pursuant to Section 2.04.140, Milwaukie Municipal Code, only issues that are “not on the agenda” may be raised. In addition, issues that await a Council decision and for which the record is closed may not be discussed. Persons wishing to address the Council shall first complete a comment card and return it to the City Recorder. Pursuant to Section 2.04.360, Milwaukie Municipal Code, “all remarks shall be directed to the whole Council, and the Presiding Officer may limit comments or refuse recognition if the remarks become irrelevant, repetitious, personal, impertinent, or slanderous.” The Presiding Officer may limit the time permitted for presentations and may request that a spokesperson be selected for a group of persons wishing to speak.)*

- 5. **PUBLIC HEARING** *(Public Comment will be allowed on items appearing on this portion of the agenda following a brief staff report presenting the item and action requested. The Mayor may limit testimony.)*
 - A. **Continue Milwaukie Municipal Code Amendments 19.321.7 and 19.321.3 – Ordinance**
Staff: Bill Monahan, City Attorney

- 6. **OTHER BUSINESS** *(These items will be presented individually by staff or other appropriate individuals. A synopsis of each item together with a brief statement of the action being requested shall be made by those appearing on behalf of an agenda item.)* **46**
 - A. **Approve the 2010 – 2013 Collective Bargaining Agreement between the City of Milwaukie and the American Federation of State, County, and Municipal Employees (AFSCME) Local 350-5, Council 75** **47**
Staff: Cynthia Trosino, Human Resources Director
 - B. **Bertman House Lease Agreement** **49**
Staff: Paul Shirey, Operations Director
 - C. **Budget Actual Report 4th Quarter FY 2010**
Staff: Andy Parks, Interim Finance Director
 - D. **Council Reports**

- 7. **INFORMATION**

- 8. **ADJOURNMENT**

Public Information

- Executive Session: The Milwaukie City Council will meet in executive pursuant to ORS 192.660(2)(a) to consider the employment of public officers, employees and agents and ORS 192.660(2)(h) to consult with counsel concerning legal rights and duties regarding current litigation or litigation likely to be filed and.
- 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

**CITY OF MILWAUKIE
CITY COUNCIL MEETING
APRIL 20, 2010**

3 . A .

CALL TO ORDER

Mayor Ferguson called the 2076th meeting of the Milwaukie City Council to order at 7:15 p.m. in the City Hall Council Chambers.

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

Staff present: City Manager Pro Tem Pat DuVal, City Attorney Bill Monahan, Operations Director Paul Shirey, Community Services Director JoAnn Herrigel, Community Development and Public Works Director Kenny Asher, Light Rail Design Coordinator Wendy Hemmen, Engineering Director Gary Parkin

PLEDGE OF ALLEGIANCE

PROCLAMATIONS, COMMENDATION, SPECIAL REPORTS AND AWARDS

A. Earth Day Proclamation

Mayor Ferguson read a proclamation naming April 22, 2010 as *Earth Day* in the City of Milwaukie and urged all residents to be environmentally aware.

B. Status Report on Sustainable City Plan

Mr. Shirey and **Ms. Herrigel** provided an update to the City Council on implementation results from the first year of the City of Milwaukie Sustainability Plan that focused on energy and fossil fuel consumption, waste reduction, procurement, as well as outreach and education.

Staff had identified and budgeted for one building efficiency upgrade for the HVAC system at the Public Safety Building (PSB). The Energy Trust of Oregon agreed to reimburse 50% of the costs for installing a new “brain” to control the system and achieve a reduction in energy use at the facility. A feasibility analysis of solar facilities had been conducted; more information would be available in the near future.

A City Bike Fleet was established at Johnson Creek and City Hall for use by staff. Staff continued to examine fleet needs and opportunities to become ‘greener’ by increasing mpg, reducing greenhouse gases, and incorporating improvements to vehicles to enhance longevity. A grant was recently obtained through the State to retrofit 10 City-owned diesel vehicles with clean emission devices. The estimated conversion completion date is the end of 2010.

In the waste reduction arena, the goal was to reduce the amount of solid waste produced in City facilities and at events. Staff had used best efforts to distribute the information on appropriate recycling practices since last fall. Staff ascertained the general public had not paid enough attention and were not following proper recycling protocol.

Waste audits of all facilities determined no service level changes were needed; sizes of containers are adequate, but Mr. Shirey hoped sometime in the future the size could be

decreased. Recycling would be incorporated in future new employee orientation to help them understand the importance of the sustainability goals.

Staff purchased 100% post-consumer recycled content paper and initially received complaints. After further examination and adjustments the process was working efficiently. The goal is to devise a green purchasing system, and produce a guide to be distributed to all purchasers throughout the City by the end of this fiscal year.

A monthly lunchtime and brown bag film series that covers home solar power, rain barrels and so forth is underway. April 1st is the launch date of an intranet site which describes the themes and activities; a Sustainability webpage should be up and running by June 2010.

Ms. Herrigel noted the City had made great progress in the past 2 years. Although the City did not have the staff to make larger commitments, a lot could be done on a day-to-day basis. She discussed the feasibility of hiring an AmeriCorps volunteer or a part-time employee to further assist with future activities to achieve the City's goals. She asked for the City Council's thoughts on going to the next level.

Councilor Barnes suggested contacting Clackamas Community College (CCC) via the Green Program.

Councilor Chaimov asked how much would the program cost and how much would be saved.

Ms. Herrigel stated AmeriCorps would probably cost approximately \$10,000 for a one-year position, with the intent of saving the City some money through energy saving devices. She emphasized her obligation to the City would be to demonstrate how much money had been saved through this implementation.

Councilor Stone liked Councilor Barnes suggestion and the AmeriCorps option. She suggested contacting the Master Recycling Program through the extension service. She preferred exploring those types of cost effective options first, before creating a staff position. She recommended adding links about the Brown Bag Series films to the City's website for members of the public to access.

Councilor Loomis recommended finding a way to keep the costs neutral. He suggested contacting Clackamas County regarding grants and sources of labor.

Mayor Ferguson stated he would support this next phase of the project as long as it was as close to budget neutral as possible. He acknowledged that Ms. Herrigel would focus on finding beneficial solutions for the City and that the expenditure of money was not so much the issue as the return on investment.

CONSENT AGENDA

It was moved by Councilor Chaimov and seconded by Councilor Barnes to approve the consent agenda as presented.

- A. **Resolution 33-2010: A Resolution of the City Council of the City of Milwaukie, Oregon, Authorizing the City Manager to Execute a Contract for the Reconstruction of Roswell Street in the Amount of \$302,093.60;**
- B. **City Council Minutes of the January 19, 2010 Work Session;**
- C. **City Council Minutes of the January 19, 2010 Regular Session;**
- D. **City Council Minutes of the February 2, 2010 Regular Session;**

- E. **Resolution 34-2010**: A Resolution of the City Council of the City of Milwaukie, Oregon, Appointing Joanne Bird to the Public Safety Advisory Committee as the Island Station Neighborhood Association Representative; and
- F. **Resolution 35-2010**: A Resolution of the City Council of the City of Milwaukie, Oregon, Re-appointing Becky Ives to the Design and Landmarks Committee.

Motion passed with the following vote: Councilors Barnes, Chaimov, Stone, and Loomis and Mayor Ferguson voting “aye.” [5:0]

AUDIENCE PARTICIPATION

None.

PUBLIC HEARING

Amendments to Milwaukie Municipal Code for Stormwater Illicit Discharge Regulations – Ordinance

Mayor Ferguson called the public hearing to order at 7:30 p.m.

The purpose of the hearing was to consider public comments on the proposed amendments to MMC Chapter 13.14, Stormwater Management.

Mr. Shirey presented the staff report, noting that two weeks ago, staff brought changes to the Stormwater Code for the City Council’s consideration that were appropriately sound in terms of protecting lakes, rivers, and streams from bad stormwater pollution. The current language lacks specificity to enforce penalties, but the recommended ordinance changes would give an opportunity to enforce illicit discharges into the storm system providing the necessary tools to prosecute illegal dumping.

The Clean Water Act was approved 40 years ago and the National Pollution Discharge Elimination System (NPDES) focused at that point on industrial and municipal entities. A great deal of progress had been made; typically no one dumps raw sewage illegally into streams and rivers, but the focus on stormwater has taken on a new intensity. The problem is that the runoff from streets goes through the pipes and erosion contributed to a great deal of pollution to rivers, lakes, and streams affecting natural habitat, as well as the quality of water for human use.

The City’s stormwater permit required a permit holder’s mandatory obligation to control pollutants contributed by industrial activity, illicit discharges to the municipal storm system, spills dumping or disposal of materials to the system other than stormwater.

The City has had a stormwater permit since the mid-1990s and is negotiating along with other local jurisdictions a permit for the next five years. The proposed language gives the City authority to ensure and enforce compliance in many ways. He discussed the prohibited and 20 permissible discharges, which included residential car washing, firefighting water flows, and washing driveways, as well as the increased penalties for violations from \$25 to \$500 per occurrence per day to \$1,000 per occurrence per day. The staff’s position in terms of compliance with the new Code language was to educate and work with the community and use good professional judgment in seeking compliance. The new Code treats anything on private property that might contribute to polluted runoff as an enforceable act. Staff intends to help address the most serious pollution sources, and to use enforcement and issue citations as a last resort. The new regulations are comparable to the rest of the region.

Correspondence: None.

Mayor Ferguson called for public testimony in favor of, opposed, or neutral to the amendments. Seeing none, he closed the public testimony portion of the hearing at 7:36 p.m.

It was moved by Councilor Stone and seconded by Councilor Barnes for the first and second readings by title only and adoption of the ordinance amending Milwaukie Municipal Code Chapter 13.14, Stormwater Management. Motion passed with the following vote: Councilors Barnes, Chaimov, Stone, and Loomis and Mayor Ferguson voting “aye.” [5:0]

City Attorney Monahan read the ordinance two times by title only.

Ms. DuVal polled the City Council: Councilors Barnes, Chaimov, Stone, and Loomis and Mayor Ferguson voting “aye.” [5:0]

ORDINANCE 2013:

AN ORDINANCE OF THE CITY OF MILWAUKIE APPROVING PROPOSED CODE MODIFICATIONS TO SECTION MMC 13.14.025 (REGULATIONS AND REQUIREMENTS), ADOPT NEW DEFINITIONS TO EXISTING MMC 13.14.020 (DEFINITIONS), ADOPT AMENDMENTS TO EXISTING MMC 13.14.100 (TAMPERING WITH THE SYSTEM), ADOPT NEW PROPOSED CODE SECTION MMC 13.14.105 (DISCHARGE REGULATIONS), ADOPT NEW PROPOSED CODE SECTION MMC 13.14.115 (INSPECTION AND ENFORCEMENT), ADOPT AMENDMENTS TO EXISTING MMC 13.14.120 (VIOLATION - PENALTY), ADOPT NEW PROPOSED CODE SECTION MMC13.14.130 (DISCLAIMER OF LIABILITY), TO ENHANCE ENFORCEMENT OF ILLICIT STORMWATER DISCHARGES.

OTHER BUSINESS

A. Johnson Creek Boulevard Mitigation at 42nd Avenue

Mr. Asher stated that staff heard and understood through public testimony, letters, and in person repeatedly, that the neighbors want less traffic on Johnson Creek Boulevard (JCB) but did not want traffic lights; the existing stop signs were adequate traffic control devices. The neighbors believed the harder it is for traffic to get through JCB, the less likely people will be to use the street. Many neighbors already experienced great difficulty in exiting their driveways, and residents already have to contend with a lot of noise and emissions along their street. The residents questioned why staff would be asking City Council to affirm a recommendation to signalize the intersection at 42nd Avenue and JCB, when it appears to clearly contradict the neighborhood’s position. He said that Ms. Hemmen would present the staff report and list six reasons that support the recommendation. It was staff’s job to give the City Council the best possible information about decisions that came before Council, and in this case the information had to include the implications of not signalizing that intersection with the construction of light rail. Especially in regard to light rail, staff recognized its responsibility to ensure that City Council understood the project’s impacts, the mitigations available to the City, and to make recommendations. Staff found in favor of the decision.

Ms. Hemmen presented the staff report, noting the reasons for recommending the signalization of the 42nd Avenue and JCB intersection. First, signalization will reduce cut through traffic on the streets; two streets have elementary schools; Roswell and Logus. Second, the signal will shorten queues on JCB and decrease delays on the intersections. Third, it will enable residents on JCB to access their driveways even in 5 p.m. rush hour traffic. In combination with approaching traffic and strategic signal timing, the low crash rate can be retained and signalized pedestrian crossings can be created

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DRAFT MINUTES

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at that intersection. Fourth, it retains existing crash rate with traffic calming and strategic signal timing, would meet the goals of the 2007 Transportation System Plan (TSP), and maintain functionality of the east-west street.

During her presentation she discussed the current conditions, history of JCB, technical concerns as to why a light was recommended at that 42nd Avenue intersection, as well as the process staff took to make its decision. Also reviewed were the jurisdictional requirements of the City's fiscal impact and what alternatives were available to the City Council. Alan Snook of DKS Associates and Leah Robbins, TriMet, were available to answer any questions.

Councilor Loomis asked whether the doghouse light included a left-turn lane or would it be a signalization with a green arrow?

Ms. Hemmen replied that it would be similar to the 13th Avenue and Tacoma Street intersection in Sellwood and would operate during the day. A doghouse signal would reduce the westbound queuing. JCB would only be two lanes in each direction.

Leah Robbins, TriMet, advised the intent was not to acquire property for turn lanes. TriMet had not designed the signal therefore she could not be positive that there would be no easements necessary. She emphasized the intent would be to design with no impact to adjacent properties.

Councilor Stone knew of another signaled intersection at 60th and Division Street which seemed to work well since it operated as two lanes in both directions. She saw a problem in this kind of signalization at the 42nd Avenue intersection because a significant amount of cars turned left when heading westbound on JCB and turned left on 42nd Avenue. She believed cars turning left would add to the queuing problem. She asked for a more in-depth explanation as to how that would work.

Alan Snook, DKS Associates, responded a green arrow could come up first for the westbound traffic and hold the eastbound traffic. The intent was to demonstrate a worst case scenario without a green arrow and what would it be like for queuing? It could operate as a 'leading' left turn; for westbound traffic the green arrow would come up for left turning vehicles at the start of the signal holding eastbound traffic, the green arrow would phase out and it would be just a green ball. A person further back in the queue would have to wait for an appropriate gap in the eastbound traffic once it is released. It could also be set up to be a 'lagging' left turn; a green ball to start with, without a green arrow, and then again the person waiting at the end of the cycle for the westbound traffic, would get the green arrow and it would stop eastbound traffic from coming forward and the westbound vehicle could turn left.

Councilor Stone replied she still saw a problem without having a dedicated left turn lane that would allow traffic to continue to move westbound.

Mr. Snook explained the system would hold vehicles similar to a left-turn but without a lane, just a green ball. A green arrow would also allow them to go without impeding the westbound traffic. He used the map to indicate where worst case queuing would be located.

Councilor Stone clarified that with a lot of queuing a green arrow would allow traffic to still go left, but also straight at the same time because eastbound traffic would be stopped. She noted average daily trips (ADT) on JCB was 13,700, but had been more in the past. In 2030, it would increase by 3%, returning to the 1970's volume of traffic. She also heard that congestion in Milwaukie in 2030 would more than double, but that did not bear out to what was said about it going to 14,130, which was not more than double the ADT. If that was all the traffic was expected to increase by, why was the City implementing this proposal? The City was able to handle 14,000 vehicles per day in

1970's, probably without the signs. Now, with the working stop signs JCB is a low crash, safe street. She could not see the logic in spending funds to build the infrastructure to accommodate 130 more cars than were in the 1970s.

Ms. Hemmen replied there were 14,000 vehicles on the road because no stop signs existed on JCB in 1970's; it was a convenient, through-way route to Tacoma. At that point in time, JCB it was reaching capacity, which is close to that 14,000 ADT mark. The reduction in the 1970s occurred due to people avoiding the construction at the interchange in the 1980's. Again, in the 1990s, there was further construction along the whole roadway resulting in a little dip in the volume of traffic. Now that construction is completed, the volumes have increased close to what it was, but there is still a maximum capacity of vehicles that this two-lane road can service, with or without signals. The 14,150 was projected based on the roadway uses and development in the area, which is built out so not much more development is expected in the next 20 years. Congestion did not mean a 20% or 30% increase in traffic or more ADT, but that congestion would be seen for a longer time period. Congestion on JCB will increase for a few hours of the day. The main reason JCB is not projected to have any more traffic is because it cannot handle additional traffic.

Mr. Asher noted the reason a problem exists at 42nd Avenue was not the increased volumes, but because the pattern of traffic flow changes at 32nd Avenue, not because of 3% more volume.

Councilor Stone replied 32nd Avenue was the issue. The neighborhood had asked for a roundabout and not a signal. After attending the special meetings, she understood the City would have to rebuild a bridge to accommodate a roundabout, but there was insufficient room. She strongly believed traffic signals in neighborhoods were less than aesthetic. She recommended looking for more creative solutions to accommodate what the neighborhood has been asking for all along, which could be the roundabout idea. If that was the reason the signal at 32nd Avenue was forcing a signal at 42nd Avenue, then the City would need to go back to the drawing board.

Mr. Asher replied it was a nice idea that had been considered and seemed more compatible, but a roundabout was not feasible. There would not be more study on the issue because the light rail project was at 30% design completion.

Ms Robbins explained that TriMet had developed a concept and extensively examined estimated construction costs for a roundabout alternative. There were significant costs, property impacts, and impacts to businesses. Building the roundabout large enough to be functional for trucks and emergency vehicles grew the design in such a way to lead to possibly removing the load restrictions. If the structure over the Spring Water Corridor is modified, it had to be brought up to loading that would allow for even larger trucks on JCB. This was not a driving factor, but more of an unintended consequence of building the roundabout design.

Mr. Snook explained that operationally, the traffic functionality of a roundabout was more efficient than a signal and put more vehicles through at an intersection than a signal. It would actually put more vehicles on JCB at that peak hour. A signal at 32nd Avenue provided more control of traffic flow entering into JCB.

Councilor Barnes asked where that amount of traffic on JCB be traveling to in 2030.

Mr. Snook replied vehicles going to neighborhoods and travelling further out to Clackamas County. Studies showed that one of the biggest increases in traffic, approximately 7% or 110-120 vehicles in the peak hours, came from the park and ride that were traveling out to Clackamas County.

Councilor Barnes replied this scenario felt like déjà vue, it seemed very similar to all the concerns discussed on Harmony Road, putting more traffic through Milwaukie. Unfortunately, it was not the County stating they would have to put more traffic through Milwaukie, it was TriMet. This saddened her because she was a great supporter of light rail. She was incredibly concerned that this neighborhood was no different than Cedarcrest and Linwood, who made it extremely clear that additional traffic was causing serious problems for Harmony Road; and now JCB was being asked to deal with additional traffic. Again, it seemed to be County people who wanted to travel through Milwaukie and clog the streets and neighborhoods. She voted no, to Harmony and could not see any reason why she would vote yes to another neighborhood with the exact same problem.

This was not an appropriate solution. Milwaukie should not always be the place where Clackamas County residents travel through without consequences. She pointed out that Hwy 224 was built to deal with this type of congestion. The City needed to send a clear message to those wanting to use Milwaukie neighborhoods that it was not going to work anymore. They must be directed to use Hwy 224. The County had to send this message and back up our community. This proposal will not work and neither will Harmony Road.

Councilor Loomis asked could this money be used for any other mitigation.

Ms. Robbins explained the project came through the Final Environmental Impact Statement (FEIS). It was very important to set the project budget which included enough funds to cover the mitigation being proposed tonight. Eliminating the signal at 42nd Avenue and JCB would just put less pressure on the overall project budget.

Councilor Loomis inquired if the City could put in the electrical infrastructure as part of this process.

Ms. Robbins responded it was up to the City of Milwaukie how to mitigate for the future impacts. If it was not included in the project, it would not be a part of the project budget. It was important for the City of Milwaukie to describe to TriMet the level that should be included in the project.

Councilor Loomis inquired about the reasoning behind the signal at 32nd Avenue.

Ms. Robbins replied it was a safety reason due to the queuing occurring along Tacoma going back to the interchange at Hwy 99. ODOT stated that mitigation would have to take place at 32nd Avenue if there was a safety implication where queuing went back onto the mainline of Hwy 99E. Queuing going west from 32nd Avenue was affecting southbound through traffic on McLoughlin Blvd. The project identified mitigation through multiple iterations of different solutions.

Councilor Stone said she had experienced some queuing with cars travelling up to Tacoma Street going eastbound to get to JCB and 32nd Avenue. She had never seen it queue down to the ramp. It takes about 4 minutes at the very most on a bad day for a period of one hour per day on the heaviest traffic days. She wondered how much that signal on the overpass at McLoughlin and Tacoma was affecting that queuing, because cars were stopping when traffic was coming northbound on McLoughlin and up the ramp to go either east/west to JCB and Tacoma. She asked if that had been addressed and if that could assist with preventing the queuing going westbound. The queuing occurring on the northbound ramp to get onto McLoughlin was horrible in the mornings. To her knowledge, ODOT had never fixed the problem because it was still a safety issue. She had seen multiple rear end crashes there. Why was ODOT so concerned now about a safety issue when this problem had been occurring since that overpass was constructed?

Councilor Stone believed the City needed to get very creative and find a way to put the roundabout in on 32nd Avenue to move traffic faster. The neighbors did not want a signal in the neighborhood; it was absolutely the wrong idea and would negatively impact lives and property values. A better solution had to be found, a good deal of money had been spent on this light rail project and particularly on the new bridge. She wanted the same kind of money to be spent in Milwaukie on mitigating issues. She was hearing feedback that it was too expensive. However, the expense was not the priority, but the well being of the residents who would be impacted. The City needed to do what was right for the people of Milwaukie who were already detrimentally impacted to the tune of almost 15,000 cars per day travelling through their neighborhood. She did not want the neighborhood impacted further with a traffic light they did not want. There would be no need for the light if the roundabout was installed.

Councilor Barnes commented that people were creatures of habit, and when stuck in a long line of traffic on a regular basis, they eventually find an alternative route. She suggested erecting large signs directing travelers to Hwy 224. It was important to inform drivers of alternative routes as part of the educational process with light rail. JCB did not have to be the only route drivers took. Members of the public would be informed to access the easiest and quickest route to get home. The City needed to focus on being more proactive in getting that message out.

Ms. Robbins noted that ODOT had found a way to improve the existing connection between the Tacoma Street overpass and southbound McLoughlin Boulevard that would help speed traffic onto the higher density highway and also help re-enforce it as the quicker route. Over 50% of the traffic coming into and leaving the park and ride would be coming to and from the south along Hwy 99E and Hwy 224.

Mr. Snook added that of that 50%, 20% was actually going to Hwy 224 and approximately 7% was going out to Clackamas County, so about three times as much traffic was already utilizing Hwy 224 from what was projected.

Ms. Robbins noted the signal was necessary because few routes are available for people living in east Milwaukie to circumvent bad traffic on JCB.

Councilor Barnes responded that taking an alternative route via McLoughlin Boulevard and Hwy 224 would still be quicker than sitting in traffic.

Ms. Robbins noted residents in the Lewelling neighborhood had fewer choices.

Mayor Ferguson noted new language from the revised resolution before City Council for consideration and requested that public comment consider the new language. He called for a recess at 8:35 p.m. and reconvened at 8:48 p.m.

Mayor Ferguson asked how far the project could go without a negative visual impact to the community in the event a signal was needed in 20 years.

Ms. Robbins replied the project budget included \$250,000 for that intersection to be signalized and included two mast arm poles with mast arms, traffic control cabinetry, and underground conduit work. If the City chose to ultimately have that system in place when needed, the mast arms could be installed with only blinking red lights, or eliminate the mast arms and poles, but include the project foundations in the appropriate location for the future mast arms with all the underground conduit and electrical features installed for a future operation while keeping the stop signs. Installing everything but the poles, mast arms and signal heads would probably reduce the cost by about \$125,000. The City would still be building foundations, doing conduit work and installing the electrical and traffic control equipment. With this option, the process would be the same; the intersection would still be designed and built in the precise location for that

ultimate system in the future. Easements and temporary construction easements would still have to be included in this initial phase.

Mayor Ferguson opened the public comment period, noting time for testimony would be limited to five minutes.

Tom Bowman, Milwaukie, stated this was his first time addressing the Council, but it was an important issue. He goes to work every day and waters his plants at night. He has lived on JCB for 15 years and had seen it go through a couple of phases. He had been disappointed in the process of traffic mitigation which was promised but never materialized. Now, he was faced again with another project. He believed a light at 32nd Avenue did not make any sense with a stop sign 1½ blocks to the east; traffic would just back up into the stop light being proposed. He travels that street daily including as part of his job, and has seen an increase in younger children waiting at bus stops. He was deeply concerned for their safety because existing speeds on JCB were already uncontrollable for the police department; currently the estimated speeds were 34 mph.

He would leave all the present stop signs in place. He saw a definite need for a stop sign at Brookside, just east of 42nd Avenue to accommodate people coming out of Brookside Apartments who could not get across the streets safely to the bus stop; not even a crosswalk existed. People on Brookside trying to get onto JCB have to wait for a Good Samaritan to let them out. He emphasized he could not comprehend the proposal to install more stop lights; the appropriate action would be the installation of more stop signs on the street.

Bryan Dorr, Ardenwald NDA, Milwaukie, noted that Councilors Loomis and Stone already addressed his points about the left turn on SE 42nd Avenue, with the doghouse signals. One other doghouse-type signal existed on JCB at SE Bell Avenue but that intersection has a dedicated turn lane, unlike the proposal for SE 42nd Avenue and JCB. Of course, widening the road would mean acquiring private property. Part of the reason JCB had experienced traffic issues was because other residents in southeast neighborhoods, such as Eastmoreland, Woodstock, and Brentwood/Darlington needed to use JCB because of a lack of northbound on and off ramps at SE Bybee on McLoughlin Blvd.

He named several concerns he had with the traffic light at 42nd Avenue as follows: First, when a light turns yellow, apparently not everyone comes to a complete stop or slows down. Some drivers interpret a yellow light to mean 'charge' and while still green may encourage drivers to speed up. This would contradict neighborhood traffic calming concerns. Secondly, the signal's cost would be paid for by taxpayers and was another reason he was against the proposal. Thirdly, there was no mention of the additional operating and maintenance costs for the signal. He also opposed installing the three-way flashing light.

At the Portland/Milwaukie light rail meeting last night, he read in Milwaukie's FEIS an interesting comment by the City of Milwaukie on Item 18 regarding air quality. Cars now have cleaner burning fuel, more fuel efficient engines, hybrid vehicles, so additional cars on JCB will not substantially impact pollutants. Also no large commercial trucks with more than two axles are permitted on JCB in the Milwaukie section. However, looking at that ordinance, he was concerned there was a possibility in the future that the ordinance could be repealed. Overall, he did not want a signal at 42nd Avenue and Johnson Creek Blvd.

Councilor Chaimov recalled a spirited discussion at their neighborhood meeting a couple months ago about testing tolling on JCB to discourage people from outside the neighborhood from driving through and asked for an update.

Mr. Dorr replied he had heard nothing more from Metro Councilor Collette, who had recommended the idea.

Roger Haas, a Portland resident, believed that signals on 42nd Avenue as well as 32nd Avenue would be best left as stop signs. He was concerned about the livability of his neighborhood. He lived just off of JCB, so it did not affect him directly except where he came out on 36th Avenue. He had previously mentioned speeding cars and drivers failing to stop. Drivers had a tendency to ignore signals and stop signs.

He noted comments made about traffic not increasing when JCB was upgraded, yet queuing was a big concern in many places. It did not make sense that they were so concerned about back up queuing, but not traffic volume. If the traffic is the same and the queuing was not there, then why worry?

He did not believe the figures related to a 3% increase were correct. Increasing the speed would encourage an increase in traffic volume coming through on JCB. The proposal would create a problem with speed, volume, and livability. He concluded that he wanted the City to please keep the stop signs where they were; the neighborhood did not want signals.

Matt Rinker, Ardenwald NDA Chair, Milwaukie, asked what vision Milwaukie has for JCB. Was it a 25 mph residential street meant primarily for residents and neighbors living in the immediate or adjacent areas, or a highway to allow people to travel at higher speeds through Milwaukie to get to and from other places outside Milwaukie or the immediate or surrounding neighborhood?

He had real fears that they were moving in a direction to turn JCB into just one more slice through Milwaukie to make it more convenient for drivers to find the nearest possible route. As mentioned, Milwaukie already has Hwy 224, which cut the City in half to make it easier for uncaring, non-Milwaukie residents to get through. Drivers needed to use the more responsible major routes. The proposal was just one more thing to exacerbate the situation and reduce the livability for the residents on the road. He read excerpts of a letter from his neighborhood as follows:

“The Ardenwald Johnson Creek Neighborhood Association stands united on the issue of keeping SE JCB in the area within our neighborhood boundary in its current state regarding traffic control. Traffic mitigation is currently being reviewed by TriMet and involves the Cities of Portland and Milwaukie, Clackamas and Multnomah Counties, the Oregon Department of Transportation and Metro. Mitigation outlined in the DKS Associates’ document includes replacing stop signs at SE 32nd Avenue, SE 42nd Avenue with signals at those two spots that are timed for maximum traffic volume on JCB between those two streets. In addition, the stop signs at SE 36th will be removed and not replaced by any other device, at least according to the document.

The primary goal of the Ardenwald Johnson Creek Neighborhood Association is to maintain and improve existing residential experiences by reducing speeds to the legal limit, 25 mph, in order to support legal and safe traffic speeds and volume limits along the impacted area of JCB and nearby streets.” He said he would not go through the series of recommendations point by point, but would make available a copy of the list, which was available online at their NDA website. He continued:

“It must be noted that slower traffic would be an incentive to use other routes, as well as making JCB safer for drivers, pedestrians and people exiting their houses along JCB as well as being a preventative measure against the current damage to fences, mailboxes and other property along that road.” He stated one neighbor was on his fifth or sixth mailbox, so even at the current speeds there was still some excitement taking place along that road.

“The expected goal of the area traffic planners, as well as many City, County, and State staff working on this project, is to implement and propose measures thus encouraging the increased volume of traffic through the neighborhood. He has noticed the fact that currently, as indicated by the study used by TriMet to calculate the park and ride traffic impact, JCB already has a speeding problem with the speed of the 80th percentile being 34 mph. The current posted speed is 25 mph. According to the study the traffic mitigations currently being reviewed would reduce the 80th percentile speed by 2 mph, this meant that even with the traffic mitigations, traffic safety on JCB will still be a major concern. The main reason for traffic mitigation involves the failures of intersections at 32nd Avenue and 42nd Avenue, primarily during rush hour traffic. Outside of the few hours of rush hour traffic per day, there is no failure at these intersections.” So once again, if the route that someone is trying to take to just through our neighborhood does not seem to be working, they should find something that is a major arterial and get on it and use it.

Adding to the current tensions, there is a long history of Ardenwald Johnson Creek Neighborhood residents being promised traffic calming measures on JCB that were not delivered despite having failing intersections, acknowledged speeding, emergency route designation, and overall unsafe conditions for JCB’s classifications.

From the perspective of the Ardenwald Johnson Creek Neighborhood why should they allow their neighborhood to be degraded by increasing traffic that is the result of people who have chosen the lifestyle that requires more time in the car and longer commute time? If the community was a destination or a business center, it would make sense to invite this traffic but, we are primarily a neighborhood, and if the goal of the light rail is to get people out of their cars, why are we encouraging them to spend more time in them?”

Paul Sylvester, said he lives on 42nd Avenue and JCB and spends a lot of time in the yard and heard traffic go by on a daily basis. The traffic is too much and too intense. He was against the traffic light. He reiterated ideas shared previously, including that 32nd Avenue would be a good place for either a roundabout or a light. When the area was redone, the sidewalk was made to come out into the street, so a limited right-turn lane could be installed. So, there actually could be a limited right-turn lane on 32nd Avenue would allow people to go right without being held up by people going left on JCB.

A light at 42nd Avenue would not work; the stop sign works very well. Another good idea would be to have a right-turn lane at 45th Avenue, where it turns right at the bridge, where the Springwater Corridor Trail also crosses. It is a very dangerous intersection. Many bikes and pedestrians use that trail and there is no flashing light to warn drivers there are pedestrians. He had seen a lot of near misses with bikes and pedestrians. Installing a right-turn lane to control the flow of traffic would relieve the pressure from 42nd Avenue and 32nd Avenue.

He never returned home via McLoughlin Blvd onto Tacoma Street and JCB; he found it detestable having to sit in traffic in his own neighborhood to get home. He heard earlier people saying queuing was a 3 or 4 minute duration, but he had personally timed it on several occasions and had sat in traffic for 10 minutes easily. He emphasized he always used an alternative route through someone’s neighborhood to return home. He no longer wanted to do that, he preferred to use the existing streets because he lived there. This was an opportunity for the City and neighborhood residents to be different. Milwaukie wants to be livable place. He knew there was pressure at this time on Milwaukie because of limited funds and if the City did not accept this proposal, then the money would become unavailable. At some time in the future, if this change is needed the City would have to come up with the funding themselves. He preferred the City and residents take charge of their community and do it themselves. He thanked Councilors

Barnes and Stone for their comments. He concluded by saying, "Let's hold onto Milwaukie it is ours."

Renee Moog, Milwaukie, said she appreciated all the Councilors' time and efforts with this issue, along with all the neighbor participation. She was very concerned about how she would get out of her driveway if the traffic light was installed. Although she has raised this issue at every neighborhood meeting with TriMet and other parties, she still had not received a response to that question. Her question had been acknowledged as received at the TriMet website and forwarded to other people. She would appreciate an answer tonight on the logistics of how residents would be getting in and out of their driveways.

Another general concern was that critical information seemed to be left out of the report. Councilor Barnes raised one piece about why Hwy 224 was not proposed as an alternative. Ms. Hemmen said she was going to present alternatives, but she did not hear any alternatives, or mention of the Hwy 224 idea, or getting TriMet buses to alleviate some of the traffic, or any other creative alternatives such as that described by her husband, or other things that professionals would come up with that neighbors had not. This was a great concern. There also seemed to be some skirting around the issue of real numbers as to who was using the road. When someone asked who the yellow dots represented, there was no specific answer. She understood a large amount of cut through traffic was being served on her road, but they do not necessarily need to be there. That was being left out of the 44 page PDF attached to the announcement of this meeting.

The other issues that were raised that were left out. It said 7 of the 9 goals were met by this design. The one not being met was quality design, but she did not hear mention of the second one. There was mention of providing for traffic calming possibilities but no specifics on that. She does not want a flashing red light in front of her house and certainly did not want one 24-hours a day when the impact it was addressing was only for a short period of time. She wanted answers specifically to the design of the light if it ever went in and how the safety of her and her neighbors was impacted. She was not in favor of the light and certainly not red and flashing.

Linda Hatlelid, Milwaukie, noted that Mr. Haas lived on 36th Avenue in Portland. The citizens of Milwaukie were mailed *The Pilot* newsletter monthly which contained a calendar of meetings and events to help keep residents informed of future and current events. Anyone living in the Milwaukie area can attend and share their ideas and points of view at the neighborhood meetings. The number of tax lots in the Ardenwald-Johnson Creek neighborhood was approximately 1,350. This number included businesses and empty lots, so she estimated about 1,000 residences. In effect the neighborhood association was representing the residents of the neighborhood of about 1,000 assuming 1 resident per lot. Residents of the neighborhood represent lots of streets and not just Johnson Creek Boulevard. Many of the neighborhood residents do not reply individually when the Neighborhood Association writes a response. As of today's date, how many letters, notes, and emails have Milwaukie staff and Mayor and City Council received collectively that say something to the effect that the 3-way stop signs at Johnson Creek Boulevard and 42nd Avenue should be kept and no traffic lights. She was also against a 3-way flashing light. The Neighborhood Association has written at least 2 letters to the Mayor and Council – one on January 7, 2010, and most recently April 13 expressing its support for keeping the signage at 42nd Avenue and Johnson Creek Boulevard as is. Ms. Hatlelid hoped that all would read her April 19 paper before voting. It contained contrasting information to what Ms. Hemmen presented.

Russ Stoll, Milwaukie, agreed with the earlier comments from his neighbors. He added when he drove Johnson Creek Boulevard during rush hours there was queuing at

McLoughlin Boulevard, the Sellwood Bridge, 82nd Avenue, and the lights at 45th Avenue. He did not understand why it was necessary to have a light at 42nd Avenue to speed people into the next queue. It seemed to be working just fine right now.

Michole Jensen, Portland. He referred to portions of a letter. Johnson Creek Boulevard had a personality. There was a lot of talk about queuing, but the DKS report actually indicates there is a speeding issue on Johnson Creek Boulevard. Even with the signalization the speeding issue will not be addressed. If the City Council did approve the signalization he would put in there specific traffic mitigation for speeding. There has been a lot of talk and a lot of promises but no specifics. We were sacrificing livability for a few hours of inconvenience not necessarily living in the neighborhood.

Councilor Chaimov asked Mr. Jensen what traffic calming he thought would be effective.

Mr. Jensen replied that was an issue because Clackamas County used it as a safety route. Portland does not use it as such and has not put forth any ideas. The only option identified to date was speed cushions. He described speed cushions.

Councilor Barnes noted no one from the Police Department was present. She kept hearing people talk about speeding and suggested installing photo radar on a permanent pole. The City Council would talk to the Police Department.

Donna Nyberg, Milwaukie. Ms. Hatlelid represented her feelings on the issue to the secretary. She did not enjoy coming to these things in the evening to say over and over what the City Council should be saying. They brought the speeding issue to TriMet, and Milwaukie Police do not ticket until 40 mph. On 2 occasions she saw an officer sitting in the industrial area in a “quasi” speed trap. She did not see any tickets getting written. Traffic calming would be wonderful. A signal that took a photo would be great. She was a resident of Johnson Creek Boulevard and was opposed to the installation of traffic signals at either 42nd Avenue or 32nd Avenue. The number of vehicles and speeds were already dangerous and threatened the quality of life. She attended TriMet meetings and had not been convinced that the installation of signals will alleviate any of the traffic problems let alone manage the slight addition of traffic anticipated by the new light rail.

Ian Falconer, Milwaukie, supported the traffic signals. He heard people talk intelligently about why these were a good idea. Change was uncomfortable, and some people in the neighborhood were not comfortable with the bigger picture with TriMet of putting light rail along McLoughlin Boulevard. He understood many of those things were already done. He understood there were serious safety issues related to backing up on McLoughlin Boulevard. It was in his nature to back those actually paid to do this. We live in one of the better towns with TriMet and Portland and urban planning. These people were likely trying to do the best job they can given the situation. His was probably an unpopular opinion in this room, but it seemed like the best choice possible should be made.

Angel Carpenter, Milwaukie. She lived near 32nd Avenue where the light was proposed. She also disagreed that the light would degrade the neighborhood. A parking lot certainly would if that was what Johnson Creek Boulevard became. Her main concern with not having a light was the cut through traffic having to do with those already using Johnson Creek Boulevard, not those going toward Clackamas County. The 3-way stop was not solving the speeding problem that already existed. She was concerned about cut through traffic where children walk to school. Talking about the light also gave people the opportunity to address speeding and calming measures. People were talking about things that were important to them. She would support the light if it resulted in conversation about speeding. The ideas of the cushions, feedback

signs that gave people a visual of how fast they were driving, and photographing speeders were great.

Mayor Ferguson asked for City Council discussion.

Councilor Loomis had read in the staff report that the Milwaukie Police Department in 2009 performed radar survey in the area and concluded Johnson Creek Boulevard was relatively safe. It was found that almost all speed offenders lived in the neighborhood. He appreciated staff work to anticipate a potential problem and recommend a possible solution. Although he did not agree, he felt the intent was well-meaning because they believed that was what was going to happen. Councilor Loomis had some suggestions in terms of mitigation. The problem really started when the landscape islands were put in that restricted traffic. Most of the traffic was turning right. He would like to see the money used for a pedestrian/bike bridge and to take out the islands. Not having a left-turn lane at Johnson Creek Boulevard and 42nd Avenue would exacerbate the problem. He disagreed with some in that Johnson Creek Boulevard was an east/west corridor. The region made the decision not to build infrastructure and invested in mass transit in the hopes it would become so congested that people would get on the bus. Councilor Loomis personally drove all the time. He did not see the proposed light helping.

Councilor Stone thanked everyone for the testimony and points raised. She was particularly concerned about the inability of motorists to turn right at the bottom of the hill at 45th Avenue because of the landscaping. At the meeting it was said to DKS and the TriMet staff when looking at the queuing data was that the design structure and not having a right-turn lane at Johnson Creek Boulevard and 45th Avenue really contributed to the queuing problem. The same went for Johnson Creek Boulevard and 32nd Avenue where there was no free right turn. It was asked at one of the meetings for Portland and TriMet to revisit their traffic engineering which she and others believed helped to contribute to and create the queuing. If that were fixed, she was not sure the figures would be there. Ms. Hemmen stated they were only expecting a 3% increase in traffic and only 130 cars more in 2030 than in the 1970s even with the park-and-ride and light rail. Councilor Stone could not justify spending taxpayer money on a traffic signal when the street was working fine. She felt the stop signs had made the street safer than it was in the 1970s. Everyone wants safety, but she felt there were more solutions than a traffic light. She wanted to see a roundabout at 32nd Avenue and felt that should be reconsidered. The light rail project was very expensive, and some of that money needed to be spent in Milwaukie. People's livability needed to be protected. This was only a problem at peak times during the work week. The people living there had to deal with the impacts 24/7. That was not right. She was not convinced a traffic signal was the answer, although it was the easiest answer. The City Council needed to stand up for its citizens and hold firm about protecting livability and doing the right thing by going back to the drawing board to figure out what could be done. A couple of the suggestions earlier about putting back the turn lane at 45th Avenue and Johnson Creek Boulevard and the right turn lane at 32nd Avenue could help. She did not understand why the bridge at 32nd Avenue would have to be rebuilt when the citizens of Milwaukie had voted to not allow more than two axles on Johnson Creek Boulevard. We would not be rebuilding the bridge to accommodate heavier vehicles although they might consider it to build a roundabout. She was also concerned about the street classifications. Johnson Creek Boulevard was shared by 2 jurisdictions. In Portland she believed it was classified as a collector, and in Milwaukie it was an arterial. It was an emergency response route. She understood Clackamas Fire District #1 supported the signal but was not sure about traffic calming. Portland did not want to do traffic calming on an emergency route, so that might just be an empty promise. She was not sure if the District understood the signal was married to traffic calming. Operation and maintenance of a signal was expensive because funds would come from the citizens to

keep it working correctly. Citizens were concerned about their daily lives and being able to get in and out of their driveways. They felt the stop signs worked well. In her opinion a toll road did not keep the neighborhood feel. She noted testimony about queuing all over the City, and unless people abandon their cars or more roads were built that was what was going to happen. She felt the residents' needs should be scrutinized and how the neighborhood would be impacted. She would vote against signaling 42nd and 32nd Avenues and support putting in a roundabout. Her direction was to go back to the drawing board.

Councilor Barnes thought if speed was a major issue than the City Council needed to sit down with the Police Department so that speeds were reduced to 25 mph. People should not speed, and the Department needed to deal with the situation more effectively. She reiterated that Hwy 224 needed to be used in order to keep people out of the neighborhoods. She appreciated those who attended to provide input.

Councilor Chaimov was concerned people on Johnson Creek Boulevard or in the neighborhood would wake up in the future and find that Mr. Snook was right. He felt it was prudent to put in as much infrastructure for the light as possible without actually impacting the neighborhood. He was not in favor of a blinking light or even poles or arms. He would support spending money so that a light could be installed in the future if that was what the neighborhood wanted. He was concerned about taking it off the table completely and the City's not being able to afford a signal in the future if it was found to be necessary.

Councilor Loomis replied Councilor Chaimov had an interesting thought that he might support if that money could not be used elsewhere. He would rather use the money to remove the islands at 45th Avenue and return the right-turn lane. He would support any infrastructure at 42nd Avenue that was not visible such as conduit.

Mr. Asher explained the money was for mitigating the problem at that intersection. He asked if removing the islands at 45th Avenue and adding right-turn lanes at 32nd and 45th Avenues would mitigate the issues related to light rail and the park-and-ride.

Mr. Snook described they had looked at a small right-turn pocket, but it was not expected to solve the queuing problem which was an ODOT issue. That retained the all-way stop control. There were also issues with the sidewalk and bike lanes just constructed in the past few years. Drivers were already going into the bike lane illegally to go south on 32nd Avenue. At 45th Avenue the project was looking at queuing. One of the problems today was the westbound traffic comes to a "T" at that intersection. He discussed the signal timing and that the loop was broken that controls the signal. Unless there was a pedestrian overpass, he had serious safety concerns for bike and pedestrians if the island was removed. Two lanes of traffic may make visibility difficult and could result in injury accidents. The only way to solve that was a pedestrian overpass which was very expensive. As far as the project was concerned, the islands and right-turn lanes were not an impact.

Mr. Asher asked if some of the suggestions could substitute for the mitigation at 42nd Avenue.

Mr. Snook replied the short answer was "no" because 45th Avenue, which is in Portland, can be addressed with simple timing adjustments.

Mr. Asher added these were good ideas but did not really address the problem.

Ms. Robbins explained the budget was based on mitigation concepts that alleviated a specific documented problem. The issue under consideration at this time was the queuing back to 32nd Avenue. The signal at 42nd Avenue was identified as mitigation for

that problem. Mitigation funds had to address the actual impact. They would have to look further into only doing the infrastructure portion.

Councilor Stone discussed the roundabout and asked if there was an idea of the cost of a roundabout at 32nd Avenue and if that would eliminate the need for signals at 42nd Avenue. She asked further about ongoing operations and maintenance costs.

Ms. Robbins replied ongoing costs reverted to the jurisdictions in which they were located. The cost of the roundabout was over \$2 million that included property impacts and improvements. The signal was budgeted at \$550,000.

Councilor Stone suggested but by 2030 the City may be able to recoup those costs by making the investment now.

Mr. Asher clarified a roundabout at 32nd Avenue would not eliminate the need for a signal at 42nd Avenue.

Councilor Stone thought a roundabout might take care of both issues.

Ms. Robbins understood Mr. Snook to have said a roundabout pushed more traffic through more constantly.

Councilor Stone understood the roundabout would solve the queuing issue at Tacoma.

Mr. Asher spoke with the City Engineering Director that the cost of maintaining the signals was \$2,000 annually per signal though an intergovernmental agreement with Clackamas County.

Councilor Stone asked if some of the \$5 million Milwaukie contributed to the light rail project could be used for the roundabout.

Mr. Asher did not believe Milwaukie could determine what the mitigations would be unilaterally. The first hurdle would be the FTA, and the \$5 million would not cover all the mitigation.

Mayor Ferguson had read an article that the City of Portland was losing money on photo red light because drivers were changing their habits. He wanted to make sure Milwaukie fully considered its options. Further he was concerned about impacts to properties if the City Council approved moving forward with the infrastructure though he did have concerns about meeting future needs. He added that he was taking Jeff Davis's concerns into consideration. He would like staff to continue to look at options for the 45th Avenue and Johnson Creek Boulevard intersection although he did not know how changes would be funded.

It was moved by Mayor Ferguson and seconded by Councilor Stone to reject the staff recommendation. Motion passed with the following vote: Councilors Barnes, Stone, and Loomis and Mayor Ferguson voting "aye" and Councilor Chaimov voting "no." [4:1]

B. Truancy Ordinance

City Attorney Monahan provided the staff report. He briefly reviewed the presentation provided to the City Council at its April 6, 2010 work session by Chief Jordan, School District Officials, and District Attorney Office staff. He described the program at the County level that had run out of funds, and the City Council was being asked to continue and fund the effort.

It was moved by Councilor Barnes and seconded by Councilor Stone for the first and second readings by title only and adoption of the ordinance regarding compulsory school attendance, penalties for violation, and affirmative defenses

and declaring an emergency. Motion passed with the following vote: Councilors Barnes, Chaimov, Stone, and Loomis and Mayor Ferguson voting “aye.” [5:0]

City Attorney Monahan read the ordinance two times by title only.

Ms. DuVal polled the City Council: Councilors Barnes, Chaimov, Stone, and Loomis and Mayor Ferguson voting “aye.” [5:0]

ORDINANCE 2014:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, REGARDING COMPULSORY SCHOOL ATTENDANCE, PENALTIES FOR VIOLATION, AND AFFIRMATIVE DEFENSES AND DECLARING AN EMERGENCY.

C. Council Reports

Councilor Barnes commented on the wastewater open house.

Mayor Ferguson also attended the wastewater open house. He read a number of community announcements. He asked staff to add the Walk Safely Milwaukie Program proposal to the May 4, 2010 agenda.

Mayor Ferguson announced the City Council would meet in executive session pursuant to ORS 192.660(2)(h) to consult with counsel concerning legal rights and duties regarding current litigation or litigation likely to be filed. The City Council would not be returning to regular session.

ADJOURNMENT

It was moved by Councilor Stone and seconded by Councilor Barnes to adjourn the regular session. Motion passed unanimously with the following vote: Councilors Barnes, Chaimov, Stone, and Loomis and Mayor Ferguson voting “aye.” [5:0]

Mayor Ferguson adjourned the regular session at 10:14 p.m.

Pat DuVal, Recorder

**CITY OF MILWAUKIE
CITY COUNCIL MEETING
MAY 4, 2010**

3 . B .

CALL TO ORDER

Mayor Ferguson called the 2077th meeting of the Milwaukie City Council to order at 7:00 p.m. in the City Hall Council Chambers.

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

Staff present: City Manager Pro Tem Pat DuVal, City Attorney Bill Monahan, Operations Director Paul Shirey, Planning Director Katie Mangle, Associate Planner Brett Kelder, Associate Planner Ryan Marquardt, and Resource and Economic Development Specialist Alex Campbell

PLEDGE OF ALLEGIANCE

PROCLAMATIONS, COMMENDATION, SPECIAL REPORTS AND AWARDS

A. Milwaukie High School Student of the Month

The Mayor and City Council recognized Erin McLaughlin as the Milwaukie High School Student of the Month for April 2010.

B. Workplace Safety Awareness Day Proclamation

Mayor Ferguson read a proclamation naming May 12, 2010 as *Workplace Safety Awareness Day* in the City of Milwaukie.

C. Facilities Condition Assessment and Space Needs

Mr. Shirey explained this work session item was moved to the regular session but not for action. Last year the City hired the services of a firm to provide an asset inventory and grade the condition of all the major City-owned and operated buildings. The report documented the City's buildings to be in relatively good shape, having been well-tended over the years; however, future repairs and maintenance of the buildings would require more money than previously invested on capital repairs and replacement. As demonstrated in the past with street infrastructure, once left unattended long enough, a repair is no longer possible, but replacement at a significantly higher cost became mandatory. He reviewed the assessment report. Staff believed it would be a mistake to address the deferred maintenance needs of their existing buildings in the absence of some clearer direction on how to plan for future capacity and operation efficiency, including updating to the latest technology and security considerations and improvements to the City's service delivery.

Councilor Barnes understood the current needs as outlined, but was very concerned about how to find the funds in the current economy. Perhaps, staff should hire a company to provide the building blocks of where the City should go next with the understanding that the City did not have the money to do anything. She wanted to see long-term planning and if possible creating one centralized location. She asked if a structure existed now that could house all City of Milwaukie departments with the exception of police.

Mr. Shirey suggested Public Works would also be an exception because of the amount of property required to house equipment and meet the daily functional needs of that department. He did not know of an existing structure, but the matters needed to be addressed. At this time, he suggested doing a 'scoping study,' which would cost less than \$25,000.

Councilor Barnes reiterated that because of such difficult financial times right now, it was hard to decide to invest \$25,000 on a study when no funding was available long-term. She emphasized that the City Councilors wanted to ensure that all members of staff remained employed. She wanted to make it clear that if she voted 'no' today it was not because she did not support it, but because the timing was just too difficult right now.

Councilor Chaimov asked how the scoping document fit into the upcoming strategic plans being made for the City for the next 5-10 years.

Mr. Shirey replied that not having the scoping analysis of the City's building infrastructure would frankly cripple efforts to think strategically about that future. The City had a good document about its current physical assets, prompting questions about how much should be invested in something that may be obsolete and not serve the community's needs. The scoping study would provide solid information when Council began the strategic planning process.

Councilor Stone agreed with Councilor Barnes in terms of the economic times. She noticed an inventory study was carried out in July of last year, indicating that staff had been thinking about this problem. She recalled a previous request to do some remodeling at Johnson Creek. She asked if staff had taken any creative steps to figure out how things might be more workable in that environment. She acknowledged the cubicles were tight, but they were tight in a lot of places.

Mr. Shirey emphasized the problems were not only at Johnson Creek, but all the City's buildings. The focus should be not just on Johnson Creek being tight but on how well the buildings work. Staff is grouped in the way that makes the most sense with the services being provided. For instance, the billing clerk has to be amidst the chaos of court, but the clerk finds it very challenging to do his job at City Hall. He had no answer to that. Frankly, the Johnson Creek space was utilized to the very best of staff's ability to provide the bare minimum in terms of office or cubicle space so people could function adequately. No more room existed to address the crowded conditions.

Councilor Stone understood the issue was Citywide but had asked specifically about Johnson Creek because Mr. Shirey was familiar with that area. She asked how the Finance Director felt about the document since he had provided input into the report.

Mr. Shirey replied that he and the Finance Director had discussed the problem at great length, and he supported the expenditure which is in the facilities budget this year. No additional monies were being requested. The Finance Director supported the use of the funds provided it was the direction City Council wanted to take.

Mr. Parks believed the report gave a good indication of the assessment of current facilities but did not examine the needs of the organization in terms of whether spacing and location were appropriate for efficient work functions. There was clearly a need for a larger library facility and discussion about how that might look should get started. Other facilities might also be examined before making a commitment to some of the repairs and the other significant costs outlined in the completed report.

Mr. Parks confirmed that \$20,000 to \$25,000 was a reasonable range to lay out the space needs of each of the City's major functions.

Mayor Ferguson preferred the broader approach to address all the needs. He asked if it was possible to include other properties the City owned, such as the Cash Spot and the Harvey Street facility.

Mr. Shirey discussed maximizing the real estate the City owned, as well as taking into consideration parking, land use, owning versus leasing, quality standards, space allocation, geographic location, and relationships, and at least the Council would know a lot more than what was known at this moment. He agreed to compile a list of all the properties owned by the City to provide a better picture and confirmed he would move forward to get proposals for a space study costing less than \$25,000. He would report back in July.

D. Natural Resources Overlay Project Update

Ms. Mangle and **Mr. Kelder** provided a PowerPoint update. Ms. Mangle reviewed the steps being implemented by the City to protect Milwaukie's natural resources, why the project was occurring, and some changes within the process. The next phase of the project entailed crafting the proposal, so getting feedback and guidance from Council was important, especially with regard to several concepts revealed during a review with the Planning Commission and Advisory Group. The presentation was intended to be more of a work session, so staff welcomed hearing any suggestions or concerns from the Council.

Councilor Stone thanked staff for its good work that helped to protect valuable and irreplaceable natural resources. She had a concern with the wording of Key Concept #4. She recognized the need to make the Code changes to discourage disturbance of the resource areas, but noted it could be interpreted that the City was encouraging development by allowing some flexible setbacks. She asked for a scenario where changing this would allow development without disturbing the natural resource.

Ms. Mangle replied that one property owner working very closely with staff has a fairly large parcel in the middle of the City that is mostly wetlands with one house and a little bit of developable property. He is primarily interested in protecting the wetlands, but with that large lot, he could and has the right to do some development and sell it at some point. Staff is discussing how much the City can work with him as he works to protect the wetlands and subdivide that property to build a house or two. Perhaps the City could allow three houses as long as they were kept clear up on the lot and did not touch or go near that wetland. If such limitations were required without any change to the density or any underlying requirements, the property owner would just lose value on his property. She believed the general idea with Metro's Title 13 was that the City could try to use all the tools in the tool box, such as transferring development rights or allowing a little flexibility to further protect resources rather than just using the regulations and having only one solution. The idea is to allow property owners to make some smart choices by giving them incentives to do so.

Councilor Stone asked if the 700 property owners referred to in the report involved private or commercial properties. She also understood 25 people participated and asked if they were mostly businesses.

Ms. Mangle replied that the 700 property owners comprised a mix of private and commercial. Johnson Creek impacts a lot of the properties in the north industrial area. Minthorn Creek affects much of the International Way area and runs behind Bob's Red Mill. The wetlands in Llewellyn and Kellogg and Spring Creeks were mostly residential. While 700 properties are directly affected, natural resource advocates would say the whole community is really affected. She agreed the resources are for everyone, but staff is making an effort to reach out to those property owners. Staff was really pleased when the representative from Blount attended. She clarified the 25 people that participated

on the Advisory Board consisted of a healthy mix of people from all points of view: one industrial and several single-family residential property owners, and people from the Johnson and Kellogg Creek Watershed Councils, Conservation District, North Clackamas School District, North Clackamas Parks and Recreation, as well as just generally concerned citizens.

Councilor Stone asked how people felt about the changes Staff was proposing, especially to the new regulations.

Ms. Mangle responded that Mr. Kelter put it well last week at the Planning Commission meeting when he said “If we make everybody equally unhappy we probably have done our job”. Some natural resource advocates were saying the City should buy all of the property and there should be no development near these corridors if the City is serious about protecting habitat. Staff had to remind them that was not one of the key concepts. Generally however, people asked for the goals to be clear, make sense, allow landscaping, encourage restoration, facilitate restoration projects, and make the process reasonable and with no fees. There was still work to do, but with the feedback provided she hoped the natural resource advocates group would see the next round and, if interested, staff would accommodate meeting with them again. Staff now hoped to shift some of the work over to Planning Commission and invite them to the Commission’s meetings.

Councilor Barnes thanked Ms. Mangle and staff for their continued commitment to seeking input from the community and efforts to ensure the Code worked long-term. She asked that Staff be sure to communicate that the next step in the process was the open house event in order to receive final input from them.

Councilor Loomis appreciated the outreach and asked if staff recorded participants’ comments.

Mr. Kelter reported that all background information, feedback, Code drafts, agendas and minutes from meetings were posted on the City website. Staff also continued to mail information to the names of those invited to the meetings based on their interest.

Councilor Stone asked about comments under Alternatives in the Staff report saying, “if we did not wish to continue pursuing the project outlined in the report, Staff would work to identify alternative approaches to comply with Title 13.”

Ms. Mangle explained one reason it took a while to get this project going was because staff was pursuing alternatives. The City already had regulations established in these stream corridors, and the Title 13 area seemed like a small addition. An option had been considered to assert with Metro that the City was already compliant and already regulating 80% of the land the City is required to regulate. Staff determined that was not the responsible thing to do for the local interest because so much of that land was developable and sub-dividable. Because alternatives are available, staff tried to be very clear with the Advisory Group, Planning Commission, and Council that this was staff’s recommended approach. Asserting substantial compliance would not serve Milwaukie well locally. Another alternative was to deal more directly with the more problematic area, which were the maps. Some cities had done so and produced local mapping using LIDAR and local wetland inventories, which was quite expensive. Milwaukie had not completed such local inventories, but she strongly recommended doing so upon completing the Comprehensive Plan update. At that point, the City would be eligible to receive large grants to assist in the process. Her recommendation was to continue pursuing the current course and do better once the Comprehensive Plan is updated; the Metro maps are the right alternative at this time.

E. Parking Chapter Amendments

Mr. Marquardt reminded a work session on the off-street Parking Chapter amendments was held with City Council in June 2009. The amendments were scheduled for public hearing at the next Council meeting, so he wanted to brief the Councilors about the scope and extent of the changes. The Planning Commission recommended approval of the amendments that would be forwarded to City Council. The Parking Chapter amendments was a staff initiated project. Page 2 of the Staff report listed problems with the current regulations that have been experienced by staff and applicants. These problems spanned the spectrum of uses, from residential to commercial to schools, which led staff to revise the entire chapter rather than making small amendments to the existing chapter. He reviewed the broad policy decisions regarding the proposed amendments, as listed in Attachment 1 of the staff report.

Councilor Stone confirmed that narrow drive-aisle dimension referred to the pathway that cars used in the parking lot. She asked if any distinctions were between how wide each parking stall is now, and whether the stall width would change or remain the same.

Mr. Marquardt replied that currently two standard stall dimensions exist, one for larger cars and a compact stall, which is a bit narrower. Feedback received from developers and consultants working on the project was that having two sets of standards did not work well; therefore, the new standard would be a combination of the current standard and compact dimensions. The parking stall would shrink a bit, but not a great deal. He was not sure of the exact dimensions.

Councilor Stone appreciated a generous space to avoid damage to her small compact car from other drivers. In terms of size, downtown parking garages were the worst. She hoped staff would be able to maintain a reasonable parking stall dimension that would easily accommodate large and small vehicles.

Mr. Marquardt briefly explained proposed changes concerning residential standards which were based on comments heard from homeowners, residents, and contractors. One key proposal set restrictions about the amount of parking allowed on certain parts of a property. The proposed amendments would restrict a homeowner from paving and using their entire front yard for parking, which is currently allowed. Existing Code required that a certain percentage of a lot, usually 30%, have vegetation, like grass or bark dust; so someone could not pave their entire lot but nothing prevented the 30% landscaping from being in a rear or side yard.

Councilor Stone noted that a fairly large front yard would be needed to accommodate one or two cars parking in front and also have some front yard left.

Mr. Marquardt replied the yard would not have to be all that big. For example, a 50-ft wide lot, which is standard for most of Milwaukie, would be able to fit in a slightly wider than two-car wide driveway and still meet the standard limiting parking in front of a house to no more than 50%.

Ms. Mangle commented that part of the proposal came from the parking lot that was proposed in front of the Balfour Street Care Facility. Staff investigated seven to ten full alternatives with the Planning Commission to figure out how to set limits, but still allow most property owners to do something reasonable. This was the best balance deemed by the Planning Commission. Comments submitted from the Hector Campbell NDA really helped refine this proposal, although they believed the standard should be stricter.

Councilor Barnes said she was a bit disappointed about the removal of the rooster proposal because her neighborhood actually had a problem with a rooster. Staff could receive a lot of calls from residents in her neighborhood asking why they could not include some kind of regulation.

Mr. Marquardt explained that the Planning Commission was not necessarily opposed to the regulation but were uncomfortable about when it was added in the process and the limited amount of time people had to comment.

Councilor Loomis also believed the rooster problem needed to be addressed but agreed slipping the regulation into these amendments was odd. He had also received complaints that deserved a better answer than he was able to give, so he favored restricting roosters in the City.

Councilor Stone said she liked the rooster crowing in the morning; it was a good thing. She asked for clarification about the last bullet point regarding replacement coverings for carports, which stated "Prohibits gate within 20 feet of right-of-way on arterial and collector streets."

Mr. Marquardt explained the rationale for the prohibition was safety-related which is why it would apply on collector and arterial streets. Basically, the City did not want to have a gate across a driveway where somebody would have to stop, get out, open a gate and then drive out of the travel lane on busier streets. It was not as much of a concern on local streets and neighborhood routes because such streets generally have less traffic and lower speeds.

Councilor Stone recalled a home on Johnson Creek with a gate in the driveway and other homes on busier streets that had these gates. Did it pose a safety problem?

Mr. Marquardt replied it was something the City wanted to prohibit on collector or arterial streets. Many of the regulations within the Parking Chapter would apply when staff reviews new development, or at the time of redevelopment. An existing gate on a site that is not being redeveloped would essentially be an allowed non-conformity on the site. As such properties redevelop, the owners might have to come into conformance with the regulation if it is in place.

Councilor Stone disagreed with that restriction. People appeared to gate their driveway to enclose their properties as a security measure. It seemed a little discriminatory for people living on those streets. If the gate opened into their property, she could not see why the City should limit that.

Ms. Mangle agreed it was a fair comment, adding that conversation had arisen many times during the amending of this chapter. Fundamentally, the concern was about ensuring that any parking created by any land use does not spill out and affect the public and negatively impact the streets or the functionality of the streets. The idea was to keep the parking related impacts or needs on the property. Getting out to open the gate could affect the function of the street. Although, there is a private need for gates, the Engineer Department noted that a homeowner should not be permitted to bring a whole community facility to a halt while pursuing that private need. That was the balance staff was trying to find.

Mr. Marquardt added that the driveway did not necessarily need to be entirely fenced off; other options were available to be able to fence off a yard or house, while leaving the driveway open. The City was not saying the front yard could not be fenced off or have some reasonable type of security measures, it was the degree to which it might impact the street that was they were trying to regulate.

Councilor Stone reiterated that she still did not agree. It was restrictive, and she believed people should be allowed to do that if they did not have to physically get out of their cars. She noted a vehicle waiting to turn left into their driveway also held up traffic.

Councilor Chaimov thanked staff for its hard work, and asked that the rooster regulation come before Council.

Ms. Mangle reiterated the Planning Commission was not opposed to the policy change but were a little uncomfortable with the procedure. That next day, she spoke to Tim Salyers who was carrying the proposal forward at Council's direction, and assured that the proposal would return and support him. It would probably be a one line amendment; the proposal would just take a little longer.

The Council recessed at 8:25 p.m.

CONSENT AGENDA

It was moved by Councilor Barnes and seconded by Councilor Chaimov to approve the consent agenda as presented.

- A. City Council Minutes of the February 16, 2010 regular Session;
- B. City Council Minutes of the February 18, 2010 Emergency Meeting;
- C. City Council Minutes of the February 23, 2010 Special Meeting;
- D. OLCC Application for Canby Asparagus Farm, 10605 SE Main Street, New Outlet; and
- E. Resolution No. 36-2010: A Resolution of the City Council of the City of Milwaukie, Oregon, Appointing Lynn Kelland to the Milwaukie Arts Committee.

Motion passed with the following vote: Councilors Chaimov, Stone, Loomis, and Barnes and Mayor Ferguson voting "aye." [5:0]

AUDIENCE PARTICIPATION

None.

PUBLIC HEARING

None scheduled.

OTHER BUSINESS

A. NE Sewer Extension Project: Installment Payment, Annexation Assistance, and Connection Discount Programs – Resolutions

Mr. Campbell briefly reviewed the proposed resolutions, which reflected changes made per Council's direction from the worksession. Council had also asked staff to look at resolving any possible inequity between properties within the North Clackamas Renewal Area and those already in the City, and to also look at reducing/minimizing the pass through of the ARRA benefit.

As far as resolving the inequity between the properties, staff proposed that the City provide the same discount amount to those properties annexed when the Johnson Creek Public Works facility was annexed into the City in the early 1990s. Because that group of 10 properties was already in the City, they were not put in the Urban Renewal Area and were therefore ineligible for an Urban Renewal contribution to their sewer costs, so the City would now make that available. In order to leave the utility whole, the City would take the value to allow that discount out of the ARRA grant money. Staff sought Council's guidance on the best method and rate at which to reduce the ARRA grant money pass through. It was a political decision. Finding a resolution was a challenge due to its sensitive nature. He had discussions with the City Attorney and Interim Finance Director to determine the best method. The Finance Director recommended being more aggressive and making it steeper. He submitted to Council a

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DRAFT MINUTES

Page 7 of 11

draft of a similar resolution that would step down the grant benefit 25% at the end of the two year period, as being used for other incentive programs and then cut it back to 50% of the original amount at five years and then 25% of the original in ten years. He welcomed a Council discussion on this question. The City Attorney suggested some minor changes to some of the language for further clarification that the discount is being made available to those who connect and annex into the City. He distributed a version of the resolution with tracked changes to Council.

Another item for the Council's consideration was the Finance Director's idea of linking this ARRA grant discount schedule to the time that somebody annexes to the City, rather than the time that they actually connect to sewer. The category level of discount one fit into would be locked in by the time one annexed, rather than when one connected. The Finance Director noted there may be people who were not necessarily ready to connect, and this would help them to make a decision about annexation. From a policy standpoint, staff believed it was clear and most consistent with the City's position that this project was really about sewer connections and extending sewer connections. The City Attorney confirmed he saw no legal problem with the approach suggested by the Finance Director. Mr. Campbell distributed a copy of the language the City Attorney suggested.

Councilor Chaimov asked if people in affected areas had an opportunity to weigh in on any of these options discussed.

Mr. Campbell responded that the installment program and annexation assistance ideas were developed from discussions with people in the area. The inequity issue was not raised in any way, so no discussions had occurred with people in the area; similarly, the reducing/minimizing had not been discussed yet. Staff was preparing for an open house in the area and assumed that it was pretty clear what the preference would be for people in the area, but staff wanted to present a statement of the City's position.

Councilor Loomis said he liked the Finance Director's idea for annexation to the City. It would be a tough choice for a household that just put in a new septic.

Councilor Chaimov asked if all the options were before City Council in the form of Resolution No. 1, No. 2, and a revised Resolution No. 3, or were other things to be considered.

Mr. Campbell believed Resolutions No. 1 and No. 2 were clear that the options were the installment plan and annexation assistance. Resolution No. 3 as presented in the staff report was the slower schedule and the version just distributed with the tracked changes was the more aggressive schedule. He presumed whichever direction the Council chose, they would still want to incorporate the City Attorney's language changes which clarified that the program is for those who annex. The substantive questions are at what rate to reduce the discount and whether the discount is set based on the time of connection or annexation.

Councilor Chaimov asked if Council decided to proceed with the option Councilor Loomis liked, how they would change the resolution.

Mr. Campbell recommended that perhaps Council could proceed with Resolutions No. 1 and 2, and allow him time to prepare the appropriate text for submission tonight.

Mayor Ferguson asked if there was an issue with holding Resolution No. 3 over to the next meeting.

Mr. Campbell replied whatever Council preferred, the important point was for staff to understand the sense of Council before they spoke to the people in the neighborhoods. He did not think the passage of the resolution now was critical.

Councilor Loomis wanted to know if other Councilors agreed before going through the trouble of rewording the resolution. He explained that he was concerned about other homeowners who had invested a great amount of money in their septic systems. He believed it appropriate to give them time to get some use out of that money. After spending \$10,000 on a new septic system, it would be an uncomfortable dilemma to have to make a decision about annexing to save 25% in the future. Instead, he would like to see those properties annex but not be required to connect to the system immediately to get the discount.

Councilor Barnes understood the concerns but reminded this had been an ongoing discussion for almost two years and people were aware. Right now, she was more concerned about the City's financial health and how important it was that the City recoup the money through the grant as quickly as possible. She preferred something more aggressive and to use this window of opportunity to prompt people to make decisions and also protect the City's financial welfare.

Councilor Stone understood both points. If people just invested in a septic system, they would not be inclined to connect to the sewer, regardless of a discount. She liked the idea of tying it to annexation but asked if it could be prefaced that if one installed a septic system within the last 5 years the discount could be extended to them to be fair.

Mr. Campbell answered yes, if the individual could show records as proof of the installation or repair. That would be another class that could be exempted from the step down. He clarified that the Finance Director's position was not based on the finances of the City, but to motivate people to annex.

Councilor Loomis suggested that the timeline not be open-ended between annexing into the City and connecting to City services.

Mr. Campbell responded one way that he might phrase it would be for those properties that annex within that first two-year period, they would be eligible for the full discount, which would fulfill the spirit of what was being requested.

Mayor Ferguson recommended that since there was no time constraints, Mr. Campbell could continue to work on the wording and return for the City Council's approval at the next meeting.

It was moved by Councilor Chaimov and seconded by Councilor Stone to adopt the resolution enacting an installment payment plan related to reimbursement district cost shares for properties that connect to the NE Sewer Extension Project within two years of project completion. Motion passed with the following vote: Councilors Chaimov, Stone, Loomis, and Barnes and Mayor Ferguson voting "aye." [5:0]

RESOLUTION NO. 37-2010:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, TO ENACT AN INSTALLMENT PAYMENT PLAN RELATED TO REIMBURSEMENT DISTRICT COST SHARES FOR THOSE PROPERTIES THAT CONNECT TO THE NE SEWER EXTENSION PROJECT WITHIN TWO YEARS OF PROJECT COMPLETION.

It was moved by Councilor Chaimov and seconded by Councilor Stone to adopt the resolution to administer a time-limited annexation assistance program to facilitate annexations that meet certain eligibility requirements. Motion passed with the following vote: Councilors Chaimov, Stone, Loomis, and Barnes and Mayor Ferguson voting "aye." [5:0]

RESOLUTION NO. 38-2010:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, TO ADMINISTER A TIME-LIMITED ANNEXATION ASSISTANCE PROGRAM TO FACILITATE ANNEXATIONS THAT MEET CERTAIN ELIGIBILITY REQUIREMENTS.

B. Walk Safely Milwaukie Program

Mayor Ferguson stated he had received very positive feedback on the Program and there was a lot of support from the community. He asked for a brief program update, and then Council could discuss how to direct staff in proceeding with the project.

Mr. Asher briefly described the Walk Safely Program, which would be funded through HB 2001. He noted that while the numbers being used in the State Gas Tax fund need to be re-examined, staff would do so if Council directed creating and implementing the Walk Safely Program. The neighborhood would be able to spend some money on education and small capital projects or save it for a match on larger pedestrian projects. City Council has heard over the years this was a crying need in the neighborhood. This program would empower the neighborhood and give them a chance to compete annually for funds in a grant-like program. He discussed options for other uses of the money including putting it in the State Gas Tax fund generally or to reduce the street surface maintenance fee. Staff recommended this program as a good use of funds.

Mr. Campbell added the street maintenance utility fee could be reduced next year by about 30-cents per month next year and max of 80- to 90-cents in future years.

Mr. Asher explained staff had not taken any action while City Council talked with the neighborhoods and while the budget situation became clearer. The assumption needed to hold that there were some dollars available if the Council wished to make something happen.

Councilor Chaimov stated the neighborhood associations he attended were just short of wildly enthusiastic about the program. Being able to have some input about improvements to their neighborhoods was very well received. If the money is available, he believed the City should go forward with the program as promptly as possible. However it would be a very bad idea to go forward if no money was available because they would just be raising and then dashing the neighborhoods' expectations. The most important step is to ascertain what could be bought with the program. If it turns out to be just a couple of crosswalk strips for all the neighborhoods in the City, that probably would not go over very well. But if the program actually offered a neighborhood and in time others, some substantial project of their choosing, it would be an excellent idea well worth pursuing.

Councilor Stone was most concerned about what the dollar amount would be and felt that needed to be clearly determined before going forward.

Councilor Barnes said there were a lot of unanswered variables, but Council had made a promise to the community regarding the street surface maintenance fee, and even if it was just 30 cents she did not want to break their trust as a Council. She discussed something tied to light rail that would offer traffic and pedestrian safety rather than a grant program.

Councilor Loomis thought it was a good idea but wanted to know how much money was involved.

Mayor Ferguson attended 3 neighborhood meetings and got positive feedback on the proposal. People were concerned about equitable sharing among the neighborhoods.

Mr. Asher understood staff would review the budget and report back if and when this could be done. He would ask the City Council to take a hard look at the equity issue.

C. Council Reports

The Mayor and Councilors reported on current community events.

Mayor Ferguson announced the City Council would meet in executive session pursuant to ORS 192.660(2)(h) to consult with counsel concerning legal rights and duties regarding current litigation or litigation likely to be filed. The City Council would not be returning to regular session.

ADJOURNMENT

It was moved by Mayor Ferguson and seconded by Councilor Chaimov to adjourn the meeting. Motion passed unanimously with the following vote: Councilors Chaimov, Stone, Loomis, and Barnes and Mayor Ferguson voting “aye.” [5:0]

Mayor Ferguson adjourned the regular session at 9:07 p.m.

Pat DuVal, Recorder



To: Mayor and City Council

Through: Pat DuVal, City Manager Pro Tem

From: JoAnn Herrigel, Community Services Director

Subject: Contract Amendment for Riverfront Design and Permitting Services

Date: August 5, 2010

Action Requested

Adopt a resolution amending a contract with David Evans and Associates to extend the term to September 2011 and increase the compensation by an additional \$100,000, for use in the Riverfront design and permitting.

History of Prior Actions and Discussions

September 2006: Council approved a resolution awarding a contract to David Evans and Associates Inc. for landscape design and engineering services for Milwaukie Riverfront Park, authorizing the City Manager to sign a Personal Services contract for these services and appropriating a \$100,000 payment from the North Clackamas Parks and Recreation District.

August 2007: Council amended a contract with David Evans and Associates to extend the term to September 2008, increasing the compensation to \$300,000, adding two additional tasks and appropriating \$100,000 in the Fiscal year 07-08 budget for use in the Riverfront design and permitting.

August 2008: Council adopted a resolution amending a contract with David Evans and Associates to extend the term to September 2009 and increase the compensation by an additional \$200,000 for use in the Riverfront design and permitting.

August 2009: Council adopted a resolution amending a contract with David Evans and Associates to extend the term to September 2010 and increase the compensation by an additional \$150,000, for use in the Riverfront design and permitting.

Background

In 2006, the Riverfront Board delivered to City Council a concept plan for Milwaukie Riverfront Park. City Council endorsed this concept and requested that staff move forward with a design of the Park. In October of 2006, the City contracted with David Evans and Associates (DEA) for development of design and engineering plans for Milwaukie Riverfront Park.

Current activities related to the Milwaukie Riverfront Park Design can be separated into four main areas: 1) Design 2) Land use approvals/permitting 3) Site Preparation, and 4) Funding. As with any large project, all activities are taking place concurrently with significant overlap and interaction between tasks.

1) Design

DEA has completed 70% designs for the Park. Further detail of the design is pending input from local, state and federal permit reviewers. Once all permit conditions have been established the final design can be completed.

2) Land Use Approvals and Permitting

The original scope of work with David Evans for Milwaukie Riverfront Park design included developing final design and construction plans for the park. In 2007, staff and the design team determined that it was necessary to begin submitting permitting applications to various regulatory agencies in order to determine whether certain aspects of the plan were “approvable” before completing the final design. Thus, the project team put some elements of the final design “on hold” and began working on local land use and state and federal permit application preparation.

Status of approvals and permitting is as follows:

- Milwaukie Planning Commission approvals:
 - Planning Commission approved all land use applications for the project with conditions on May 25, 2010.
 - Project staff will return to the DLC and Planning Commission to provide additional details on the project design as conditioned by the approval.
- Joint Permit application to Corp of Engineers (COE) and Department of State Lands (DSL):
 - DSL permit was been approved in 2009 and an extension granted in 2010.

- The Corps of Engineers has referred the application to various federal agencies for review. Staff expects a COE decision in December of 2010.

3) Site Preparation

In 2009 -10 a water line, traversing the upper level of the Riverfront property, was relocated to allow future regrading of the site.

In 2010-11 staff will coordinate with PGE to relocate several of the power lines that run through the upper level of the park. Once this is completed, site regrading may begin.

4) Funding

Staff plans to apply for grants from the Oregon Marine Board and the Oregon Parks and Recreation Department in the spring of 2011. The Riverfront Board members and City staff will also begin outreach to other public and private funding sources, in earnest, over the next year.

Concurrence

The City Manager Pro Tem and the Community Development/Public Works Director support extension of the DEA contract.

Fiscal Impact

Funding has been allocated in the FY 2011 budget to support this contract extension.

Work Load Impacts

None.

Alternatives

Deny adoption of this resolution, ceasing work by DEA on the Riverfront Design.

Attachments

Resolution
Riverfront Flier

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, amending contract # 2006 097 with David Evans and Associates Inc. for landscape design and engineering services for Milwaukie Riverfront Park to extend the term to September 2011 and increase the compensation by \$100,000, resulting in a “not to exceed” amount of \$750,000.

WHEREAS, the City Council awarded a contract # 2006 097 to David Evans and Associates Inc. (DEA) in October, 2006 for design of Milwaukie Riverfront Park; and

WHEREAS, the design elements for the park have now been established and design is at 70% completion; and

WHEREAS, the City has requested that DEA complete land use and permitting applications for local, state and federal regulatory agencies on this project before completing the final design; and

WHEREAS, the permitting issues for this project have been complicated due to the site’s proximity to the Willamette River and Johnson and Kellogg Creeks; and

WHEREAS, in order to complete these additional tasks, the current agreement must be amended regarding term and compensation;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, THAT: contract # 2006 097 with David Evans and Associates Inc. for landscape design and engineering services for Milwaukie Riverfront Park shall be amended to extending the term to September 2011 and increase the maximum compensation to \$750,000.

Introduced and adopted by the City Council on August 17, 2010.

Jeremy Ferguson, Mayor

ATTEST:

APPROVED AS TO FORM:
Jordan Schrader Ramis PC

Pat DuVal, City Recorder

City Attorney

Background Story

Historically, "Milwaukie Bay" — the riverfront area between Johnson and Kellogg Creeks — has been home to many marine-related uses, including a pulp and paper mill, a shingle mill, sand and gravel mining operations, a marina, a flour mill and a log boom. It was the site of the 1850 launching of the Lot Whitcomb, the first steam-powered craft built on the Willamette River.

Where We Are Today

In 2006, the City took ownership of the last two parcels between Johnson and Kellogg Creeks. It now owns all parcels north of the Kellogg Treatment Plant and south of Johnson Creek between the Willamette River and McLoughlin Blvd.

The current waterfront design came from the Downtown and Riverfront Framework, adopted into the City's Comprehensive plan in 2000. Over the past 10 years, the Riverfront Board has refined the plan, coordinated public review of the park concept and guided the plan through permitting and land use approval.

Taking Steps toward Park's Completion

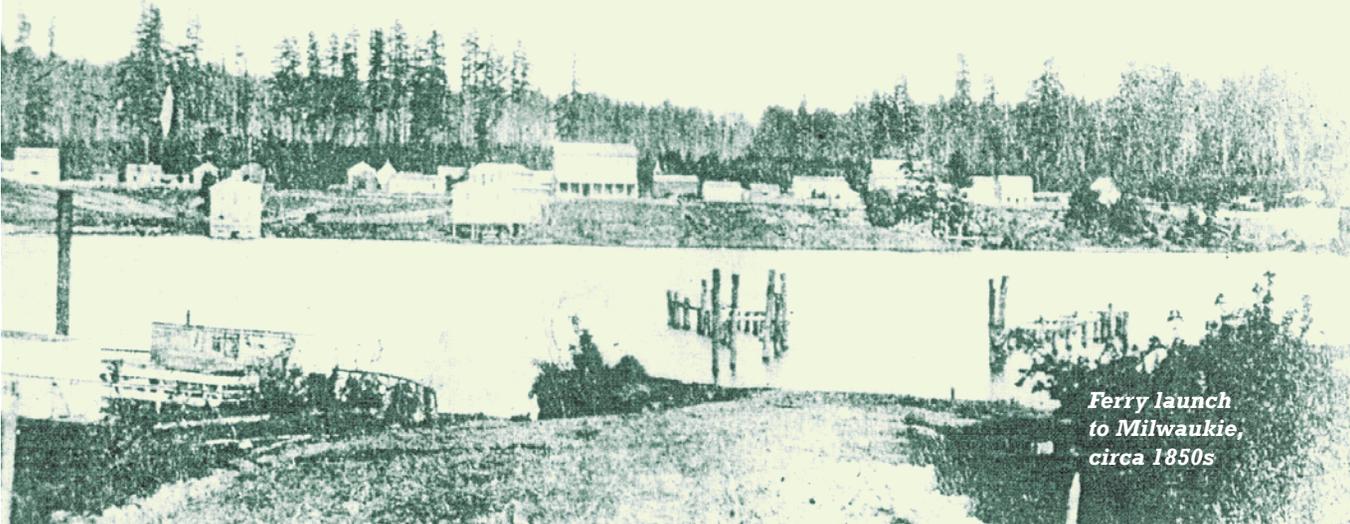
- A water line crossing the site was relocated in 2009.
- Power poles that bisect the upper portion of the park will be relocated in 2010.
- Federal, state and local approvals should be obtained by early 2011.
- Grants from state agencies will be pursued for a portion of the park but additional funds are required.



What We Still Need From You

The City is seeking sponsorships for the larger cost elements of the park. Sponsors would be acknowledged with signage at the park as well as in all promotional materials generated for the park in the future.

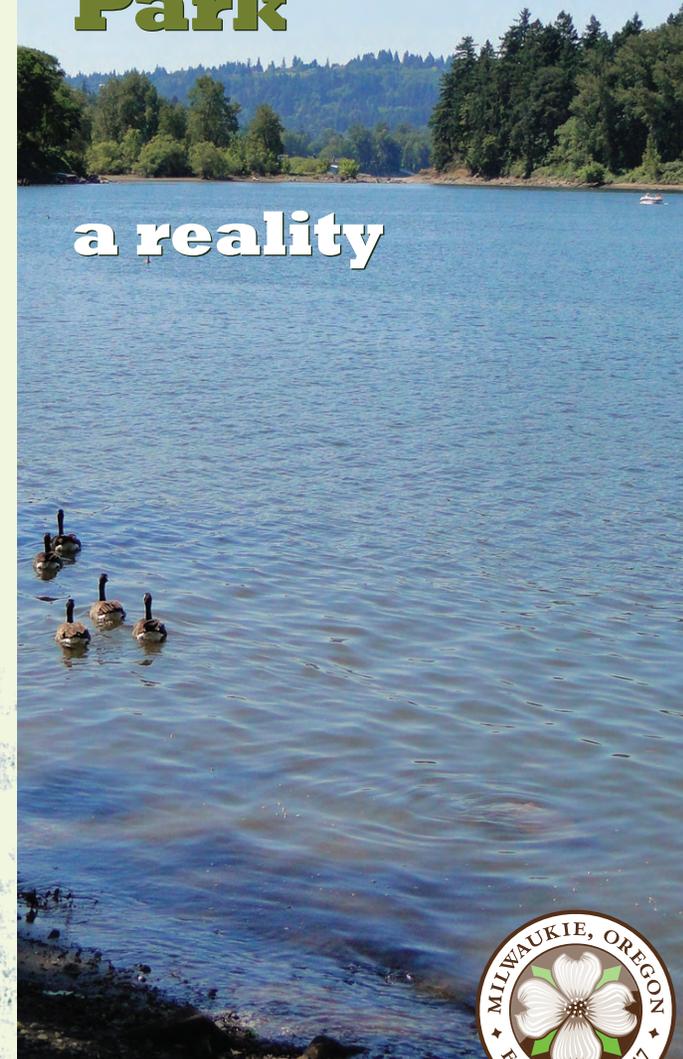
For more information about funding opportunities, contact JoAnn Herrigel at 503-786-7508 or herrigelj@ci.milwaukie.or.us, or visit the City's Web site at www.cityofmilwaukie.org and click on the Riverfront Project link.



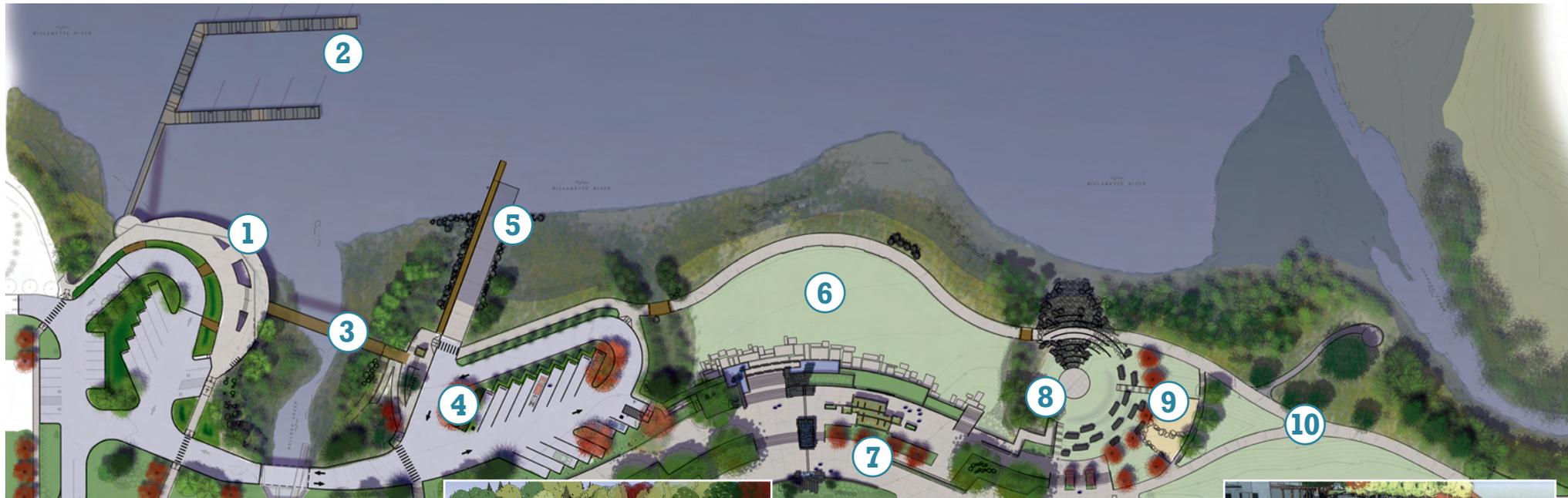
Ferry launch to Milwaukie, circa 1850s

Help make Milwaukie Riverfront Park

a reality

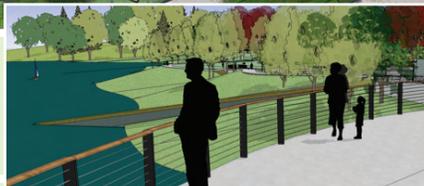


Together, we can make it happen.



1 Kellogg Overlook ▶

Enjoy the view of historic Milwaukie Bay, Kellogg Creek and Elk Rock Island.



6 Great Lawn ▶

Half an acre of open area for picnicking, games and river viewing.



3 Pedestrian Bridge ▶

A unique 120-foot span connects north and south park amenities and trails.

4 Temporary Moorage Dock

Transient Dock for temporary tie-up of boats.



7 Plaza and Fountain

Restrooms on upper level with fountain cascading into interactive pools below.

8 Amphitheater ▶

Enjoy music and theater from 180 seats built of contoured lawn and local basalt.



2 Parking

Parking for 20 trucks with boat trailers and 10 spaces for cars. Bike racks located north and south of Kellogg Creek.



9 Children's Play Area

Crafted from natural materials, playground reflects the surrounding environment.

5 Boat Launch ▶

Single lane boat launch with adjacent non-motorized boat launch.



10 Riverside Trail ▶

Punctuated with wall seating, the walkway offers a prime river view.



RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, REAPPOINTING MARGARET ANDERSON TO THE PUBLIC SAFETY ADVISORY COMMITTEE AS THE LEWELLING NEIGHBORHOOD DISTRICT ASSOCIATION REPRESENTATIVE.

WHEREAS, a vacancy exists on the Public Safety Advisory Committee for a Lewelling Neighborhood Association member; and

WHEREAS, Milwaukie Municipal Code Section 2.24.020(B) provides for appointment of members of the Milwaukie Public Safety Advisory Committee "by the council;" and

WHEREAS, Margaret Anderson possesses the necessary qualifications to continue serving on the Committee and has indicated her desire to serve.

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

SECTION 1: That Margaret Anderson is reappointed to the Milwaukie Public Safety Advisory Committee as the Lewelling Neighborhood District Association representative.

SECTION 2: That her term of appointment shall commence immediately and shall expire through March 31, 2012.

SECTION 3: This resolution takes effect immediately upon passage.

Introduced and adopted by the City Council on August 17, 2010.

Jeremy Ferguson, Mayor

ATTEST:

APPROVED AS TO FORM:
Jordan Schrader Ramis PC

Pat DuVal, City Recorder

City Attorney



3 . E .



To: Mayor Ferguson and Milwaukie City Council
Through: Pat DuVal, Acting City Manager
From: Dave Rash, Acting Chief of Police
Date: July 29, 2010
Subject: O.L.C.C. Application – Pizano’s Pizza – 10843 SE Oak Street

Action Requested:

It is respectfully requested the Council approve the O.L.C.C. Application To Obtain A Liquor License from Pizano’s Pizza – 10843 SE Oak Street.

Background:

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



To: Mayor and City Council

Through: Pat DuVal, Interim City Manager
Kenneth Asher, Community Development and Public Works Director

From: Alex Campbell, Resource and Economic Development Specialist

Subject: IGA for Match Commitment for TIGER II Application to fund Kellogg Lake Bicycle/Pedestrian Crossing

Date: August 12 for August 17, 2010 Regular Session

Action Requested

Authorize the Mayor to sign an IGA with TriMet, committing the City to provide \$100,000 in local funds to support construction of the Kellogg Lake bicycle and pedestrian bridge deck and related multi-use path, in support of TriMet's TIGER II grant application.

History of Prior Actions and Discussions

August 2010: Council expressed verbal support for the TIGER II application, including providing matching funds, and passed a Resolution in support of a planned Transportation Enhancement (TE) application for the same project.

Background

Staff identified the opportunity to use the planned light rail structure over Kellogg Lake to improve pedestrian and bicycle access to downtown and the light rail station from the south. The light rail bridge design assumes the use of "H" column supports for the Kellogg Lake Bridge, which allows for the construction of a lower deck for bicyclists and pedestrians. Additional funds are being sought to construct that lower deck and multi-use path connections to Lake Road, to the north, and to River Road/McLoughlin Boulevard, via Kronberg Park, to the south. TriMet's cost estimate for the lower deck and associated multi-use paths is \$1.55 million.

The Kellogg Lake pedestrian and bicycle bridge is one of five elements of a TIGER II grant application that TriMet will submit this month. (The other key elements of the application are: SE Water Ave. Relocation, Clinton to the River Multi-Use path, Rhine Pedestrian Bridge, and Oregon Pacific Railroad and Yard improvements.)

The attached resolution authorizes an Inter-governmental Agreement (IGA) with TriMet committing the City to provide \$100,000 in matching funds for the project, were the grant application to be successful. As described by staff on August 3, 2010, the most likely source of funds would be Fee In Lieu of Construction (FILOC) collections. FILOC is paid by private development rather than constructing frontage or sidewalk improvements in cases where City staff determines that an isolated improvement adjacent to the property has relatively low value and the developer prefers to make a FILOC payment. Approximately \$108,000 has been collected from development projects in Historic Milwaukie and Island Station, the neighborhoods most directly served by the project. FILOC funds can only be expended on capital projects that serve the neighborhood in which they are collected.

Concurrence

Staff received concurrence from the Finance Director on the use of FILOC funds.

Fiscal Impact

Action does commit the use of City funds. As described above, the City has funds available that are dedicated to this type of activity.

Work Load Impacts

TriMet will manage project construction. City staff would handle the local land use process, which is within regular workloads.

Alternatives

Current sources and uses estimates for the TIGER II grant application as a whole include just enough local match to meet the minimum requirement (20%).

Attachments

1. Resolution

ATTACHMENT 1

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, AUTHORIZING THE MAYOR TO SIGN AN INTER-GOVERNMENTAL AGREEMENT (IGA) WITH TRIMET COMMITTING CITY FUNDS TO CONTRIBUTE TO THE LOCAL MATCH FOR A TIGER II APPLICATION TO CONSTRUCT A KELLOGG LAKE PEDESTRIAN AND BICYCLE BRIDGE AND RELATED MULTI-USE PATH.

WHEREAS, Improving accessibility to downtown from the City’s residential neighborhoods is a critical element in the City’s efforts to revitalize downtown as the heart of the community; and

WHEREAS, The downtown Milwaukie light rail station will serve walk-up and bicyclist traffic, but access to the station from the south is difficult and circuitous; and

WHEREAS, The City is committed to the development of Kronberg Park, but access to the area is essentially non-existent; and

WHEREAS, The proposed pedestrian and bike bridge and related paths will dramatically improve access to the downtown, station area, and Kronberg Park; and

WHEREAS, The project addresses a clear danger to public safety—residents do currently illegally trespass and use the existing freight rail trestle to cross the lake; and

WHEREAS, TriMet needs to demonstrate local commitments to fund a local match of at least 20% of the project cost;

NOW, THEREFORE, BE IT RESOLVED that the Mayor is authorized to sign an Inter-governmental Agreement with TriMet, attached hereto as Exhibit A, committing \$100,000 to support construction of a Kellogg Lake Pedestrian and Bicycle bridge.

Introduced and adopted by the City Council on August 17, 2010.

This resolution is effective on August 17, 2010.

Jeremy Ferguson, Mayor

ATTEST:

APPROVED AS TO FORM:
Jordan Schrader Ramis PC

Pat DuVal, City Recorder

City Attorney

Exhibit A

**INTERGOVERNMENTAL FUNDING AGREEMENT
BETWEEN TRIMET AND THE CITY OF MILWAUKIE FOR THE SOUTHEAST
CORRIDOR: CONNECTING COMMUNITIES PROJECT**

This intergovernmental agreement (“Agreement”), dated _____, 2010, is made and entered into by and between the City of Milwaukie (“Milwaukie”) and the Tri-County Metropolitan Transportation District of Oregon (“TriMet”) (collectively the “Parties”).

RECITALS

1. TriMet and Milwaukie are authorized to enter into this Agreement with each other pursuant to the provisions of ORS 190.
2. TriMet owns and operates the public mass transit system serving the Portland, Oregon metropolitan region, which includes an existing light rail system composed of segments commonly known as the Eastside/Banfield, Westside/Hillsboro, Airport, Interstate and I-205/Portland Mall lines.
3. TriMet and Milwaukie have a joint interest in serving Milwaukie, north Clackamas County and the Portland Metro region with high quality, convenient public transit.
4. TriMet plans and proposes to construct the South Corridor Phase II Portland to Milwaukie Light Rail Project (“Light Rail Project”). The Light Rail Project will provide a reliable, high frequency transportation option for Milwaukie and Clackamas County commuters, and will benefit north Clackamas County and City of Milwaukie residents and workers by providing car-free linkages to multiple destinations in the TriMet system. The Light Rail Project also offers Milwaukie a transportation investment that can help catalyze Milwaukie’s downtown revitalization as described in local and regional land use plans.
5. The effectiveness of the Light Rail Project will be enhanced and the safety of the public accessing the Light Rail Project will be improved by providing a pedestrian and bicycle bridge over Kellogg Lake. This bridge will also improve the safety and accessibility of downtown Milwaukie from areas south of downtown whether or not transit is part of the trip.
6. TriMet is seeking a TIGER II Discretionary Grant to provide funding for the Southeast Corridor: Connecting Communities Project (“Project”) an important element of which is the Kellogg Lake Pedestrian and Bicycle Bridge.
7. Milwaukie agrees to help fund the Project by contributing \$100,000 toward the Project.

NOW, therefore, in consideration of the mutual promises set forth below and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

AGREEMENT

MILWAUKIE OBLIGATIONS

1. Milwaukie agrees to contribute \$100,000 to TriMet for the Project. The contribution shall represent the total obligation that Milwaukie has toward the financing of the Project.
2. Milwaukie's contribution of \$100,000 shall be paid to TriMet within 90 days of receipt of notice of the start of construction of the Kellogg Lake bike and pedestrian bridge.

TRIMET OBLIGATIONS

1. TriMet agrees that it is fully committed to constructing the Project if it is awarded a TIGER II Discretionary Grant by the U.S. Department of Transportation for the full amount of its application and it enters into a Full Funding Grant Agreement with FTA for the Light Rail Project.
2. TriMet agrees to provide Milwaukie with written notice once bridge construction has started.
3. TriMet agrees to apply Milwaukie's \$100,000 in contributed funds to the Project, to be expended for the Kellogg Lake Pedestrian and Bicycle Bridge.
4. TriMet agrees to comply with all federal, state, and local laws, regulations, executive orders and ordinances applicable to the work under this Agreement.

GENERAL PROVISIONS

1. Each of the Parties hereto shall be deemed an independent contractor for purposes of this Agreement. No representative, agent, employee or contractor of one Party shall be deemed to be a representative, agent, employee or contractor of the other Party for any purpose, except to the extent specifically provided herein. Nothing herein is intended, nor shall it be construed, to create between the Parties any relationship of principal and agent, partnership, joint venture or any similar relationship, and each Party hereby specifically disclaims any such relationship.
2. This Agreement may be terminated at any time by mutual written consent of both Parties.
3. The Parties acknowledge and agree that each Party, the federal government, and their duly authorized representatives shall have access to each Party's books, documents, papers, and records which are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts, and transcripts for a period of three years after final payment. Copies of applicable records shall be made available upon request. The cost of such inspection shall be borne by the inspecting Party.
4. Milwaukie and TriMet are the only Parties to this Agreement and are the only Parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to

third persons unless such third persons are expressly described as intended beneficiaries of the terms of this Agreement.

5. This Agreement constitutes the entire agreement between the Parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind either Party unless in writing and signed by both Parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of either Party to enforce any provision of this Agreement shall not constitute a waiver by such Party of that or any other provision.
6. The benefits conferred by this Agreement, and the obligations assumed hereunder, shall inure to the benefit of and bind the successors of the Parties. The rights and obligations of each Party under this Agreement may not be assigned in whole or in part without the prior written consent of the other Party.
7. This Agreement shall be construed according to the laws of the State of Oregon. TriMet and Milwaukie shall negotiate in good faith to resolve any dispute arising under this Agreement. Should any dispute arise between the parties concerning this agreement that is not resolved by mutual agreement, it is agreed that it will be submitted to mediated negotiation prior to any party commencing litigation. In such an event, the parties to this agreement agree to participate in good faith in a non-binding mediation process. The mediation shall take place in Portland, Oregon. The mediator shall be selected by mutual agreement of the parties, but in the absence of such agreement each party shall select a temporary mediator and those mediators shall jointly select the permanent mediator. The mediator's fees and costs shall be borne equally by the parties. In the event mediation is unsuccessful, the Parties are free to pursue any legal remedies that may be available. Any litigation between Milwaukie and TriMet arising under this Agreement or out of work performed pursuant to this Agreement shall occur, if in the state courts, in the Multnomah County Circuit Court, and if in the federal courts, in the United States District Court for the District of Oregon located in Portland, Oregon.
8. If any clause, sentence, or portion of the terms and conditions of this Agreement becomes illegal, null, or void for any reason, the remaining portions will remain in full force and effect to the fullest extent permitted by law. All provisions concerning indemnity survive the termination of this Agreement for any cause.
9. Any titles of the sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.
10. Except as otherwise expressly provided herein, the rights and remedies expressly afforded under the provisions of this Agreement shall not be deemed exclusive, and shall be in addition to and cumulative with any and all rights and remedies otherwise available at law or in equity. The exercise by either Party of any one or more of such remedies shall not

preclude the exercise by it, at the same or different times, of any other remedies for the same default or breach, or for any other default or breach, by the other Party.

11. Within the limits of the Oregon Constitution and the Oregon Tort Claims Act, codified at ORS 30.260 through 30.300, each of the Parties shall hold harmless, indemnify and defend the other and its directors, officers, employees and agents from and against all claims, demands, penalties, and causes of action of any kind or character relating to or arising from this Agreement (including the cost of defense thereof, including attorney fees) in favor of any person on account of personal injury, death, damage to property, or violation of law, which arises out of, or results from, the negligent acts or omissions of the indemnitor, its officers, employees, or agents.
12. All routine correspondence and communication regarding this Agreement shall be between the following representatives of the Parties:

TriMet: David Unsworth
TriMet Project Planning
710 NE Holladay Street
Portland, OR 97232
Telephone: (503) 962-2147
Facsimile: (503) 962-2281

With copy to: TriMet Legal Department
710 NE Holladay Street
Portland, OR 97232
Attn: Lance Erz
Telephone: (503) 962-2108
Facsimile: (503) 962-2299

City of Milwaukie: Kenny Asher
Director of Community Development and Public Works
City of Milwaukie
6101 SE Johnson Creek Boulevard
Milwaukie, OR 97206
Tel 503-786-7654
Fax 503-774-8236

14. Either Party may change the foregoing notice address by giving prior written notice thereof to the other Party at its notice address.

15. Each party represents that it has the authority to enter into this Agreement on its behalf and the individual signatory for a party represents that it has been authorized by that party to execute and deliver this Agreement.

**TRI-COUNTY METROPOLITAN
TRANSPORTATION DISTRICT OF**

CITY OF MILWAUKIE

OREGON

By _____
Daniel W. Blocher, P.E., Executive Director

Date _____

APPROVED AS FORM

By _____
Lance Erz, TriMet Legal Department

Date _____

By _____
Jeremy Ferguson, Mayor

Date _____

APPROVED AS FORM

By _____
Milwaukie City Attorney

Date _____

6.
OTHER BUSINESS



To: Mayor and City Council
Through: Pat DuVal, City Manager Pro-Tem
From: Cynthia Trosino, Human Resources Director
Subject: Labor Contract Negotiations
Date: August 17, 2010

Action Requested

To pass a motion authorizing the Mayor and City Manager to enter into an agreement with AFSCME for a 3 year collective bargaining agreement.

Background

The City has two unions that represent employees. One is the Milwaukie Police Employees Association (MPEA) which represents sworn officers and the other is American Federation of State County and Municipal employees (AFSCME) which represents other non supervisory personnel. The current contract with AFSCME expired on June 30, 2010. The City began negotiations with AFSCME in March 2010. At this time a tentative agreement has been reached.

Concurrence

The proposed terms of the agreement were previously discussed in Executive session with City Council. The City manager has also reviewed the proposed terms of the collective bargaining agreement.

Fiscal Impact

The additional terms of the contract over the current language regarding wages and benefits would result in a zero percent cost of living wage increase for the first year of the contract. The increase in cost to the health and welfare benefits resulted in 1.5% total compensation increase which is included in the adopted budget. In addition there was an additional increase in deferred compensation of approximately \$25,000 and it is anticipated on a city wide basis that departments will absorb that increase within their existing budgets.

Work Load Impacts

None at this time.

Alternatives

Decline to ratify the contract and continue to negotiate. This would cause ill will with the union and potentially make it difficult to achieve an agreement.



To: Mayor and City Council

**Through: Pat DuVal, Interim City Manager
Kenneth Asher, Community Development and Public Works Director**

From: Paul Shirey, Operations Director

Subject: Bertman House Lease Agreement

Date: July 28 for August 17, 2010 City Council Regular Session

Action Requested

Modify the terms of the lease with New Century Players for City to share cost of replacing the building roof.

History of Prior Actions and Discussions

April 2007: Council adopts Resolution 2007-023 for a 5-year Lease with New Century Players.

April 2007: HR-07-01 (Historic Resource Review) – removal of Bertman House from City's historic resources properties list, where it had been listed as "Unrankable." Approved by City Council on April 3, 2007.

Background

The City acquired the Bertman House located at 11022 SE 37th Avenue in 1971 to house Fire Department offices. The lot the house occupies is immediately adjacent to City of Milwaukie Water Well #7 and the Milwaukie Museum to the east. The building was constructed in 1930 as a single family residence. In April 2007 Council approved removing the house from the historic resources properties list. The property was converted to office use in the early 70's, but no official record of the change of use can

be located. The underlying zoning is residential and the office use is conditional. For many years the house was leased to N. Clackamas Parks District for administration and office uses.

In 2007 the City executed a five year lease with new Century Players (NCP) in exchange for renovation of the property over the lease term in lieu of rent payments. This reflected the City's interest in helping to support a community based organization as well as trying to reverse the decline and deferred maintenance of the property. NCP is a community based non-profit theater company that produces plays with volunteer supporters and actors. The lease terms stipulate that the tenant repair, renovate or replace various components of the building each year, including assumption of utility payments in the fourth year. NCP is required to submit an annual report to the City documenting progress made toward completion of required items.

Upgrades and improvements required of the tenant include replacing the roof and repairing the chimney in the third year of the lease. The need for these improvements was based on a condition assessment by the City's building official in 2007. NCP has to date invested in the following upgrades in accordance with the lease terms:

- Repaired of the entry way handrails and handicap ramp
- Upgraded electrical and HVAC systems
- Removed and replace insect damaged wood
- Refurbished the basement and first/second floors of the building
- Replaced the oil furnace with a energy efficient gas furnace

NCP has met all but one of its obligations under the lease terms to date. Roof and chimney repair/replacement is required to be completed within the third year of the lease which ended in May of this year. NCP has obtained proposals from contractors to complete the work on the roof and the chimney, but is not able to raise the capital needed to contract for the work. The quotes range from \$7500 to \$11,000.

NCP has requested assistance from the City in the cost of these improvements. Based on the downturn in the economy and resulting lower ticket sales, NCP's revenues are less than anticipated when the lease was signed in 2007. NCP wants to remain in the house and intends to invest as much as it can in the required building improvements.

Staff proposes to share in the cost of the roof/chimney work with NCP on 50/50 basis. Maintaining a responsible tenant in the building is in the City's best interest. Lease terms for year four (current) and five include installation of energy efficient windows throughout the house as well as negotiation for additional rent. Replacing the roof as soon as practical is an immediate priority for the City and NCP given the assessment of

its failing condition by the firms that provided cost quotes. Staff will keep Council informed on the status of the lease and will return if necessary to discuss any further proposed modifications to the lease terms.

Concurrence

Finance and Community Services directors

Fiscal Impact

City cost share is expected not to exceed \$6,000. This amount is available in the Material and Services budget of the Facilities Department.

Work Load Impacts

Limited involvement by the City's Facility Coordinator in the contracting and inspection of roof/chimney improvements

Alternatives

- Without modification of the terms of the lease the tenant would be in default and the City could act to remedy the default by terminating the lease and repossessing the property.
- The City could contribute a higher percentage of the cost of replacing the roof and defer the chimney repair
- The City could work with NCP to obtain additional cost proposals
- The lease could be renegotiated to remove, reduce and/or defer some of the tenant's obligations
- The City could lease the building for residential use or seek a conditional use approval to lease to another community service tenant.

Attachment

1. Lease between City and NCP dated May 2007

COMMERCIAL LEASE

Date: May 1, 2007

Between: THE CITY OF MILWAUKIE ("Landlord")
10722 SE Main Street
Milwaukie, OR 97222

And: NEW CENTURY PLAYERS, Inc. ("Tenant")
7740 SE Harmony Road
Milwaukie, OR 97222

Landlord leases to Tenant and Tenant leases from Landlord the following described property (the "Premises") on the terms and conditions stated below:

The building area leases to tenant is the second floor of the property at 11022 SE 37th Ave, Milwaukie, Oregon, tax lot 1S1E36ADO2500. The total square footage leased to Tenant is 940 square feet (the second floor of the building). Although the remaining area of the building is not leased to Tenant, Tenant shall also be entitled to periodically utilize other areas of the building. Such use of additional space shall be subject to scheduling use through the Landlord, for the purpose of making repairs consistent with Section 2 of this lease. It is the intent of the parties that Tenant eventually will lease additional space up to the entire building. Landlord retains control over the water system facilities that are within a separate building co-located on the property. The water system facilities will not be part of a future lease to Tenant.

Section 1. Occupancy

1.1 Original Term. The term of this lease shall be for five years, commence May 1, 2007, and continuing through May 1, 2012, unless sooner terminated as hereinafter provided.

1.2 Possession. Tenant's right to possession and obligations under the lease shall commence on May 1, 2007.

1.3 Renewal Option. If the lease is not in default, Tenant shall have the right to renew this lease for one (1) five year term as follows:

(1) The renewal term shall commence on the day following expiration of the preceding term.

(2) The option may be exercised by written notice to Landlord given not less than 6 months prior to the last day of the expiring term. The giving of such notice shall be sufficient to make the lease binding for the renewal term without further act of the parties, other than the Landlord and Tenant shall then be bound to negotiate the rent. The rent will be negotiated once the notice of election to renew is received by Landlord. The terms and conditions of the lease for the renewal term shall be identical with the original term except for rent and except that Tenant will no longer have an option to renew this lease.

(3) If the parties do not agree on the rent within 60 days after notice of election to renew, the rent shall be determined by arbitration as provided in Section 14.

Section 2. Rent

2.1 Tenant shall secure any required permits or approvals, complete the following improvements to the property, and complete an annual report documenting the repairs and maintenance performed in lieu of rent payments to Landlord, in exchange for use of the property within the five year lease term:

- Year One:
- a. Repair the accessible entry ramp to a safe condition.
 - b. Install a code compliant handrail on at least one side of the front entry stair.
 - c. Install a code compliant handrail on at least one side of the stairs to the second floor and replace the window on the landing with tempered glazing.
 - d. Contract with a licensed electrical contractor to permit and repair all electrical deficiencies noted in the inspection report provided by Crawford Inspection Service dated July 13, 2004.
 - e. Engage a reputable HVAC contractor to service the existing furnace and verify its safety.
 - f. Refurbish the interior first and second floors to the satisfaction of the tenant.
 - g. Refurbish, clean or improve basement/cellar access to the satisfaction of the tenant. Structural alterations will require permits and prior approval from the landlord.
 - h. Maintain continual upkeep and landscaping maintenance on building grounds and exterior.
 - i. Make available office space, meeting space and wall space for other local artists, arts organizations or city-sponsored events. Availability shall be determined at the sole discretion of the Tenant. Tenant shall notify landlord of any arrangements that will result in an ongoing co-occupancy of the premises, subject to Section 9.
 - j. Prepare and submit to Landlord an annual report documenting

progress made toward the completion of items a. through i. noted above. The report shall include photo documentation of work performed and the results.

- Years Two & Three:
- a. Repair all damaged or blocked attic or under-floor vents.
 - b. Remove and replace all insect damaged wood noted in inspection report and treat the structure for the removal of carpenter ants and powder post beetles. Chemicals used to accomplish this must have prior approval of Landlord described in Section 3.3.
 - c. Abandon use of the existing oil furnace. This may be accomplished by converting to an alternative heating system or by utilizing a series of electric baseboards or cadet type heaters. A permit will be required for this work.
 - d. Replace the roof and repair any related dry rot or structural damage. Remove chimney or clean and implement additional chimney stabilization measures on the north side of the building. A licensed structural engineer must design any such measures. A permit will be required for this work.
 - e. Maintain continual upkeep and landscaping maintenance on building grounds and exterior.
 - f. Make available office space, meeting space and wall space for other local artists, arts organizations or city-sponsored events. Availability shall be determined at the sole discretion of the tenant. Tenant shall notify landlord of any arrangements that will result in an ongoing co-occupancy of the premises, subject to Section 9.
 - g. Prepare and submit to Landlord an annual report documenting progress made toward the completion of items a. through e. noted above. The report shall include photo documentation of work performed and the results.

- Years Four & Five:
- a. Permit and install energy efficient windows throughout the building. Permit and repair any related dry rot or structural damage.
 - b. Maintain continual upkeep and landscaping maintenance on building grounds and exterior.
 - c. Make available office space, meeting space and wall space for other local artists, arts organizations or city-sponsored events. Availability shall be determined at the sole discretion of the tenant. Tenant shall notify landlord of any arrangements that will result in an ongoing co-occupancy of the premises, subject to Section 9.
 - d. Prepare and submit to Landlord an annual report documenting

progress made toward the completion of items a. and b. noted above. The report shall include photo documentation of work performed and the results.

2.2 Additional Rent. Landlord and tenant shall negotiate payment of additional rent for years four and five during year three. If Landlord makes payments for real property taxes related to tenant's occupancy of the property, and such taxes will continue to be assessed in year four or five, during negotiation of additional rent the parties shall discuss and determine the allocation of tax payment obligation.

2.3 Utilities. Landlord shall be responsible for the cost of certain utilities in years one, two and three of the original term: water, sewer, storm drainage, routine weekly solid waste collection (not the cost of collection and disposal of materials by special request), security services and transportation fees. Tenant shall be responsible for the cost of telephone, cable, electrical, and heating expenses.

Section 3. Use of the Premises

3.1 Permitted Use. The Premises shall be used for office space and for no other purpose without the consent of Landlord, which consent shall not be withheld unreasonably. For the purposes of this lease, "office space" is intended to include use of the facility for meeting rooms and art display.

3.2 Restrictions on Use. In connection with the use of the Premises, Tenant shall:

(1) Conform to all applicable laws and regulations of any public authority affecting the premises and the use, and correct at Tenant's own expense any failure of compliance created through Tenant's fault or by reason of Tenant's use.

(2) Refrain from any activity that would make it impossible to insure the Premises against casualty, would increase the insurance rate, or would prevent Landlord from taking advantage of any ruling of the Oregon Insurance Rating Bureau, or its successor, allowing Landlord to obtain reduced premium rates for long-term fire insurance policies, unless Tenant pays the additional cost of the insurance.

(3) Refrain from any use that would be reasonably offensive to owners or users of neighboring premises or that would tend to create a nuisance or damage the reputation of the premises.

(4) Refrain from loading the electrical system or floors beyond the point considered safe by a competent engineer or architect selected by Landlord.

(5) Refrain from making any marks on or attaching any sign, insignia, antenna, aerial, or other device to the exterior or interior walls, windows, or roof of the premises without the written consent of Landlord. Tenant is permitted to hang artwork for display purposes on interior walls. Care should be taken to repair marks and nail holes on an ongoing basis to maintain a neat and clean appearance. Tenant is permitted to hang a temporary (e.g. “New Home of...”) banner or sign for up to 90 days from occupancy, provided the banner or sign is no larger than 16 square feet. Tenant is also permitted to display a permanent sign provided it is no larger than four square feet.

3.3 Protective Restrictions.

(1) Tenant shall not cause or permit use of herbicides or pesticides on the premises without permission of Landlord. A written request for such use must be presented to Landlord at least 45 days in advance and reviewed by the City’s Water Quality Control Coordinator and the Oregon Drinking Water Program Hydrologist. The request must contain the following information:

- a. Purpose of chemical use.
- b. Label name of product and copy of label and Material Safety Data Sheet (MSDS).
- c. Graphic depiction of area of use.
- d. Application rate and total use.

(2) Tenant may use only small amounts of low nitrate organic fertilizer in landscape areas and only with prior approval of the City’s Water Quality Control Coordinator.

(3) Storage of Hazardous Substances (other than routine household cleaners in less than one gallon containers) is prohibited. The term Hazardous Substance shall mean any hazardous, toxic, infectious or radioactive substance, waste, and material organic or synthetic as defined or listed by any Environmental Law and shall include, without limitation, petroleum oil and its fractions.

(4) Parking. Vehicle parking is limited to paved areas only. There is no parking allowed in the first position next to north side of well house located on the site. All tenant vehicles must be able to be moved on short notice to facilitate emergency repair to well site or emergency operations.

Section 4. Obligations

4.1 Landlord’s Obligations. Landlord shall be under no obligation to make or perform any repairs, maintenance, replacements, alterations, or improvements on the Premises.

4.2 Tenant’s Obligations. The following shall be the responsibility of Tenant:

(1) Repair of interior walls, ceilings, doors, windows, and related hardware, light fixtures, switches, and wiring and plumbing from the point of entry to the Premises.

(2) Any repairs necessitated by the negligence of Tenant, its agents, employees, and invitees, except as provided in Section 5.2 dealing with waiver of subrogation.

(3) Ordinary maintenance of the heating and air conditioning system and any repairs necessary because of improper maintenance.

(4) As set forth in Section 3.2, any repairs or alterations required under Tenant's obligation to comply with laws and regulations as set forth in Section 4.2.

(5) Prepare and provide annual reports documenting repairs and maintenance that are required in Section 2.

4.3 Landlord's Interference with Tenant. In performing any repairs, replacements, alterations, or other work performed on or around the Premises, Landlord shall not cause unreasonable interference with use of the Premises by Tenant.

4.4 Reimbursement for Repairs Assumed. If Tenant either fails or refuses to make repairs that are required by Section 3 or this Section 4, Landlord may make the repairs and charge the actual cost of repairs to Tenant. Such expenditures shall be reimbursed by Tenant on demand by Landlord.

4.5 Inspection of Premises. Landlord shall have the right to inspect the Premises at any reasonable time or times with 24 hour written notice to Tenant.

4.6 Limitation on Tenant Obligation to Make Repairs. If while performing repairs Tenant encounters unforeseen latent conditions in the building that cause it to be unable to complete the requirements of Section 2.1, Tenant shall inform Landlord to discuss the concern. Tenant and Landlord shall meet and discuss whether a modification of the improvement schedule in Section 2.1 is needed. Upon independent evaluation and verification of the conditions, Landlord will grant permission to a modification of the improvement schedule.

Section 5. Insurance

5.1 Insurance Required. Landlord shall keep the Premises insured at Landlord's expense against fire and other risks covered by a standard fire insurance policy with an endorsement for extended coverage. Tenant shall carry similar insurance insuring the property of Tenant on the Premises against such risks.

5.2 Waiver of Subrogation. Neither party shall be liable to the other (or to the other's

successors or assigns) for any loss or damage caused by fire or any of the risks enumerated in a standard fire insurance policy with an extended coverage endorsement, and in the event of insured loss, neither party's insurance company shall have a subrogated claim against the other. This waiver shall be valid only if the insurance policy in question expressly permits waiver of subrogation or if the insurance company agrees in writing that such a waiver will not affect coverage under the policies. Each party agrees to use best efforts to obtain such an agreement from its insurer if the policy does not expressly permit a waiver of subrogation.

Section 6. Taxes

6.1 Personal Property Taxes. Tenant shall pay as due all taxes on its personal property located on the Premises.

6.2 Real Property Taxes. Landlord is exempt from paying real property taxes levied against the Premises for property that is in public use. It is the intent of the parties that the entire property continue to be exempt from taxation, however, Tenant must establish and maintain tax-exempt status. The parties recognize that tax-exempt status will be determined by Clackamas County or the State of Oregon. Tenant shall be responsible for filing with Clackamas County an Application For Real and Personal Property Tax Exemption for the portion of the property under its control. If Tenant fails to qualify for tax exemption, Landlord shall take responsibility for paying the full tax obligation in those years that tenant does not qualify, but limited to years one, two and three. The obligation for Landlord to pay taxes only exists if 1) Tenant submits a written request explaining the status of Tenant's Real and Personal Property Tax Exemption application and organizational financial status, and, 2) Landlord finds that tenant has diligently attempted to attain exempt status. Any real or personal property tax obligation arising from Tenant's use of the property in years four and five shall be determined by the parties during year three as part of negotiations on Additional Rent, as described in Section 2.2 of this Lease. As used herein, real property taxes includes any fee or charge relating to the ownership, use, or rental of the Premises, other than taxes on the net income of Landlord or Tenant or personal property.

Section 7. Liability and Indemnity

7.1 Liens.

(1) Except with respect to activities for which Landlord is responsible, Tenant shall pay as due all claims for work done on and for services rendered or material furnished to the Premises, and shall keep the Premises free from any liens. If Tenant fails to pay any such claims or to discharge any lien, Landlord may do so and collect the cost as additional rent which shall be payable on demand. Such action by Landlord shall not constitute a waiver of any right or remedy that Landlord may have on account of Tenant's default.

(2) Tenant may withhold payment of any claim in connection with a good-faith dispute over the obligation to pay, as long as Landlord's property interests are not jeopardized. If a

lien is filed as a result of nonpayment, Tenant shall, within 10 days after knowledge of the filing, secure the discharge of the lien or deposit with Landlord cash or sufficient corporate surety bond or other surety satisfactory to Landlord in an amount sufficient to discharge the lien plus any costs, attorney fees, and other charges that could accrue as a result of a foreclosure or sale under the lien.

7.2 Indemnification. Tenant shall indemnify and defend Landlord from any claim, loss, or liability arising out of or related to any negligent activity of Tenant on the Premises or any condition of the Premises in the possession or under the control of Tenant including any such claim, loss, or liability that may be caused or contributed to in whole or in part by Landlord’s own negligence or failure to effect any repair or maintenance required by this lease. Landlord shall have

no liability to Tenant for any injury, loss, or damage caused by third parties, or by any condition of the Premises.

7.3 Liability Insurance. Before going into possession of the Premises, Tenant shall procure and thereafter during the term of the lease shall continue to carry the following insurance at Tenants cost: Comprehensive General Liability Insurance covering Bodily Injury and Property Damage on an “occurrence” form (1996 ISO or equivalent). This coverage shall include Contractual Liability insurance for the indemnity provided under this contract. The following insurance will be carried:

<u>Coverage</u>	<u>Limit</u>
General Aggregate	1,000,000
Products-Completed Operations Aggregate	1,000,000
Personal & Advertising Injury	1,000,000
Each Occurrence	1,000,000
Fire Damage (Any one fire)	50,000
Medical Expense (Any one person)	5,000

Such insurance shall cover all risks arising directly or indirectly out of Tenant’s activities on or any condition of the premises. Such insurance shall protect Tenant against the claims of Landlord on account of the obligations assumed by Tenant, and shall name Landlord as an additional insured. Certificates evidencing such insurance and bearing endorsements requiring a 10-day written notice to Landlord prior to any change or cancellation shall be furnished to Landlord prior to Tenant’s occupancy of the property.

Section 8. Quiet Enjoyment; Mortgage Priority

Landlord’s Warranty. Landlord warrants that it is the owner of the Premises and has the right to lease them free of all encumbrances. Landlord will defend Tenant’s right to quiet enjoyment of the Premises from the lawful claims of all persons during the lease term.

Section 9. Assignment and Subletting

No part of the Premises may be assigned, mortgaged, or subleased, nor may a right of use of any portion of the property be conferred on any third person by any other means, without the prior written consent of Landlord. This provision shall apply to all transfers by operation of law. Landlord may withhold or condition such consent in its sole and arbitrary discretion. "Assignment and subletting" shall not be construed to include those times when Tenant, consistent with the requirements stated in Section 2.1 of this Lease, makes space available to other local artists, arts organizations or city-sponsored events to utilize office space, meeting space and wall space for limited duration purposes.

Section 10. Default

The following shall be events of default:

10.1 Default in Rent. Failure of Tenant to perform its obligations as stated in Section 2.

10.2 Default in Other Covenants. Failure of Tenant to comply with any term or condition or fulfill any obligation of the lease (other than Section 2) within 15 days after written notice by Landlord specifying the nature of the default with reasonable particularity. If the default is of such a nature that it cannot be completely remedied within the 15 day period, this provision shall be complied with if Tenant begins correction of the default within the 15 day period and thereafter proceeds with reasonable diligence and in good faith to effect the remedy as soon as practicable.

10.3 Insolvency. Insolvency of Tenant; an assignment by Tenant for the benefit of creditors; the filing by Tenant of a voluntary petition in bankruptcy; an adjudication that Tenant is bankrupt or the appointment of a receiver of the properties of Tenant; the filing of any involuntary petition of bankruptcy and failure of Tenant to secure a dismissal of the petition within 30 days after filing; attachment of or the levying of execution on the leasehold interest and failure of Tenant to secure discharge of the attachment or release of the levy of execution within 10 days shall constitute a default. If Tenant consists of two or more individuals or business entities, the events of default specified in this Section 10.3 shall apply to each individual unless within 10 days after an event of default occurs, the remaining individuals produce evidence satisfactory to Landlord that they have unconditionally acquired the interest of the one causing the default. If the lease has been assigned, the events of default so specified shall apply only with respect to the one then exercising the rights of Tenant under the lease.

10.4 Abandonment. Failure of Tenant for 30 days or more to occupy the Premises for one or more of the purposes permitted under this lease, unless such failure is excused under other provisions of this lease.

Section 11. Remedies of Default

11.1 Termination. In the event of a default, the lease may be terminated at the option of Landlord by written notice to Tenant. Whether or not the lease is terminated by the election of Landlord or otherwise, Landlord shall be entitled to recover damages from Tenant of the default, and Landlord may reenter, take possession of the premises, and remove any persons or property by legal action or by self-help with the use of reasonable force and without liability for damages and without having accepted a surrender.

11.2 Reletting. Following reentry or abandonment, Landlord may relet the Premises and in that connection may make any suitable alterations or refurbish the Premises, or both, or change the character or use of the Premises, but Landlord shall not be required to relet for any use or purpose other than that specified in the lease or which Landlord may reasonably consider injurious to the Premises, or to any tenant that Landlord may reasonably consider objectionable. Landlord may relet all or part of the Premises, alone or in conjunction with other properties, for a term longer or shorter than the term of this lease, upon any reasonable terms and conditions, including the granting of some rent-free occupancy or other rent concession.

Section 12. Surrender at Expiration

12.1 Condition of Premises. Upon expiration of the lease term or earlier termination on account of default, Tenant shall deliver all keys to Landlord and surrender the Premises in first-class condition and broom clean. Alterations constructed by Tenant with permission from Landlord shall not be removed or restored to the original condition unless the terms of permission for the alteration so require. Depreciation and wear from ordinary use for the purpose for which the Premises are leased shall be excepted but repairs for which Tenant is responsible shall be completed to the latest practical date prior to such surrender.

12.2 Fixtures

(1) All fixtures placed upon the Premises during the term, other than Tenant's trade fixtures, shall, at Landlord's option, become the property of Landlord. If Landlord so elects, Tenant shall remove any or all fixtures that would otherwise remain the property of Landlord, and shall repair any physical damage resulting from the removal. If Tenant fails to remove such fixtures, Landlord may do so and charge the cost to Tenant with interest at the legal rate from the date of expenditure.

(2) Prior to expiration or other termination of the lease term Tenant shall remove all furnishings, furniture, and trade fixtures that remain its property. If Tenant fails to do so, this shall be an abandonment of the property, and Landlord may retain the property and all rights of Tenant with respect to it shall cease or, by notice in writing given to Tenant within 10 days after removal was required, Landlord may elect to hold Tenant to its obligation of removal. If Landlord elects to require Tenant to remove, Landlord may effect a removal and place the property in public storage for Tenant's account. Tenant shall be liable to Landlord for the cost of removal, transportation to storage, and storage, with interest at the legal rate on all such expenses from the

date of expenditure by Landlord.

12.3 Holdover

(1) If Tenant does not vacate the Premises at the time required, Landlord shall have the option to treat Tenant as a tenant from month to month, subject to all of the provisions of this lease except the provisions for term and renewal, or to eject Tenant from the Premises and recover damages caused by wrongful holdover. Failure of Tenant to remove fixtures, furniture, furnishings, or trade fixtures that Tenant is required to remove under this lease shall constitute a failure to vacate to which this section shall apply if the property not removed will substantially

interfere with occupancy of the Premises by another tenant or with occupancy by Landlord for any purpose including preparation for a new tenant.

(2) If a month-to-month tenancy results from a holdover by Tenant under this Section 12.3, the tenancy shall be terminable at the end of any monthly rental period on written notice from Landlord given not less than 60 days prior to the termination date that shall be specified in the notice. Tenant waives any notice that would otherwise be provided by law with respect to a month-to-month tenancy.

Section 13. Miscellaneous

13.1 Nonwaiver. Waiver by either party of strict performance of any provision of this lease shall not be a waiver of or prejudice the party's right to require strict performance of the same provision in the future or of any other provision.

13.2 Attorney Fees. If suit or action is instituted in connection with any controversy arising out of this lease, the prevailing party shall be entitled to recover in addition to costs such sum as the court may adjudge reasonable as attorney fees at trial, on petition for review, and on appeal.

13.3 Notices. Any notice required or permitted under this lease shall be given when actually delivered or 48 hours after deposited in United States mail as certified mail addressed to the address first given in this lease or to such other address as may be specified from time to time by either of the parties in writing.

13.4 Succession Subject to the above-stated limitations on transfer of Tenant's interest, this lease shall be binding on and inure to the benefit of the parties and their respective successors and assigns.

13.5 Recordation. This lease shall not be recorded without the written consent of Landlord.

13.6 Time of Essence. Time is of the essence of the performance of each of Tenants

obligations under this lease.

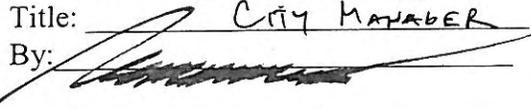
Section 14. Arbitration

14.1 Disputes to Be Arbitrated. If any dispute arises between the parties, either party may request arbitration and appointment as an arbitrator an independent real estate appraiser having knowledge of valuation of rental properties comparable to the premises. The other party shall also choose an arbitrator with such qualifications, and the two arbitrators shall choose a third. If the choice of the second or third arbitrator is not made within 10 days of choosing the prior arbitrator, then either party may apply to the presiding judge of the judicial district where the premises are located to appoint the required arbitrator.

14.2 Procedure for Arbitration. The arbitrator shall proceed according to the Oregon statutes governing arbitration, and the award of the arbitrators shall have the effect therein provided. The arbitration shall take place in the county where the leased premises are located. The parties shall share costs of the arbitration equally, but each party shall pay its own attorney fees incurred in connection with the arbitration.

THE CITY OF MILWAUKIE, an Oregon
municipal corporation

NEW CENTURY PLAYERS, Inc. an
Oregon non-profit corporation

Printed Name: MIKE SWANSON
Title: CITY MANAGER
By: 

Printed Name: KELLEY MARCHANT
Title: MANAGING DIRECTOR
By: Kelley Marchant

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