



**Regular Session**

**RS**

**Milwaukie City Council**



MILWAUKIE CITY COUNCIL  
REGULAR SESSION

City Hall Council Chambers  
10722 SE Main Street  
www.milwaukieoregon.gov

**REVISED AGENDA**

**SEPTEMBER 6, 2016**

(1<sup>st</sup> Revision September 2, 2016)

(2<sup>nd</sup> Revision September 6, 2016)

2,229<sup>th</sup> Meeting

- |  | Page #    |
|--|-----------|
| <b>1. CALL TO ORDER</b>  |           |
| Pledge of Allegiance   |           |
| <b>2. PROCLAMATIONS, COMMENDATIONS, SPECIAL REPORTS, AND AWARDS</b>  |           |
| <b>A. American Legion Day Proclamation</b>   | <b>2</b>  |
| Staff: Jerry Craig, Post 180 Vice Commander  |           |
| <b>3. CONSENT AGENDA</b>   |           |
| These items are considered routine, and therefore, will not be allotted discussion time on the agenda; these items may be passed by the Council in one blanket motion; any Councilor may remove an item from the "Consent" agenda for discussion by requesting such action prior to consideration of that part of the agenda.  |           |
| <b>A. City Council Meeting Minutes</b>   | <b>4</b>  |
| 1. July 19, 2016, Regular Session;   |           |
| 2. July 28, 2016, Study Session; and   |           |
| 3. August 2, 2016, Work Session.   |           |
| <b>B. Authorize the Purchase of 3 Police Vehicles – Resolution</b>   | <b>19</b> |
| <b>C. Authorize the Up-Fit of 3 Police Vehicles – Resolution</b>   | <b>28</b> |
| (Resolution Revised September 6, 2016)   |           |
| <b>D. Approve an Oregon Liquor Control Commission Application for J &amp; J</b>  | <b>63</b> |
| Little Store, 2936 SE Washington Street – Change of Ownership  |           |
| <b>4. AUDIENCE PARTICIPATION</b>   |           |
| The presiding officer will call for citizen statements regarding City business. Pursuant to Milwaukie Municipal Code (MMC) Section 2.04.140, 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 submit it to the City Recorder. Pursuant to MMC Section 2.04.360, "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. |           |
| <b>5. PUBLIC HEARING</b>   |           |
| Public Comment will be allowed on items under this part of the agenda following a brief staff report presenting the item and action requested. The presiding officer may limit testimony.  |           |
| <b>A. Code Amendments to Regulate Marijuana Businesses (File #ZA-2016-</b>   | <b>65</b> |
| <b>001) – Ordinance, Continued from August 16, 2016</b>  |           |
| Staff: Denny Egner, Planning Director  |           |

## 6. OTHER BUSINESS

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

- A. Utility Provider Code – Ordinance** **101**  
Staff: Reba Crocker, Right-of-Way (ROW) and Contract Coordinator
- B. Bike and Pedestrian Accessibility Program Fee – Resolution** **164**  
Staff: Charles Eaton, Engineering Director
- C. ~~Award of Contract for Project Management and Owner's Representative Services – Resolution~~**  
Staff: Katie Newell, Library Director  
(Removed from the Agenda on September 2, 2016)
- D. ~~Dedicate Wichita Site for Park Services – Resolution~~** **169**  
Staff: Bill Monahan, City Manager  
(Removed from the Agenda on September 2, 2016)
- E. Expedited Annexation of 9412 SE Stanley Avenue – Ordinance** **183**  
Staff: Brett Kolver, Associate Planner
- F. City Manager Contract Discussion and Approval**  
Staff: Gary Rebello, Human Resources Director  
(Added to the Agenda September 2, 2016)
- G. Council Reports**

## 7. INFORMATION

## 8. ADJOURNMENT

### Public Notice

Executive Sessions: The Milwaukie City Council may meet in Executive Session immediately following adjournment pursuant to ORS 192.660(2). All Executive Session discussions are confidential and those present may disclose nothing; representatives of the news media may attend as provided by ORS 192.660(3) but must not disclose any information discussed. Executive Sessions may not be held for the purpose of taking final actions or making final decisions and they are closed to the public.

The Council requests that mobile devices be set on silent or turned off during the meeting.

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**Regular Session  
Agenda Item No.**

**2**

**Proclamations,  
Commendations,  
Special Reports,  
& Awards**



**CITY OF MILWAUKIE**  
*"Dogwood City of the West"*

**PROCLAMATION**

**WHEREAS**, the American Legion was chartered by Congress on September 16<sup>th</sup>, 1919 as a wartime veterans organization based on the four pillars of Veterans Affairs & Rehabilitation, National Security, Americanism, and Children & Youth; and

**WHEREAS**, the American Legion has become a pre-eminent community service organization with more than 14,000 posts and 2.5 million members around the world working to support programs that benefit our nation's veterans, service members, their families; and

**WHEREAS**, Legionnaires uphold the ideals of freedom and democracy while working to make a difference in the lives of all Americans; and

**WHEREAS**, the City of Milwaukie enjoys a special partnership with the men and women of American Legion Post 180 and its affiliated units and organizations; and

**WHEREAS**, the 2016 observance of American Legion Day provides an opportunity to recognize Legionnaires in our community for their leadership and many contributions.

**NOW, THEREFORE, I, Mark Gamba, Mayor of the City of Milwaukie, a municipal corporation in the County of Clackamas, in the State of Oregon, do hereby proclaim SEPTEMBER 16, 2016, as AMERICAN LEGION DAY in the City of Milwaukie, and do hereby commend its observance to all citizens of "The Dogwood City of the West".**

**IN WITNESS WHEREOF**, and with the consent of the City Council of the City of Milwaukie, I have hereunto set my hand on this 6<sup>th</sup> day of **September, 2016**.

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Mark Gamba, Mayor

ATTEST:

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Pat DuVal, City Recorder





**Regular Session  
Agenda Item No.**

**3**

# **Consent Agenda**



**MINUTES**  
**MILWAUKIE CITY COUNCIL**  
www.milwaukieoregon.gov

**REGULAR SESSION**  
JULY 19, 2016  
City Hall Council Chambers

**Mayor Gamba called the 2,226<sup>th</sup> meeting of the City Council to order at 6:20 p.m.**

**Council Present:** Council President Lisa Batey and Councilors Scott Churchill, Wilda Parks, and Karin Power (by phone)

**Staff Present:** City Manager Bill Monahan, City Attorney Peter Watts, City Recorder Pat DuVal, Assistant to the City Manager Mitch Nieman, Human Resources Director Gary Rebello, Planning Director Denny Egner, Police Captain Mark Dye, Engineering Director Chuck Eaton, and Finance Director Casey Camors

**CALL TO ORDER**

Pledge of Allegiance.

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

**A. None Scheduled.**

**CONSENT AGENDA**

**It was moved by Council President Batey and seconded by Councilor Parks to approve the consent agenda as presented.**

- A. Resolution 88-2016: A Resolution of the City Council of the City of Milwaukie, Oregon, Authorizing the Mayor to Sign Agreements (Intergovernmental and Memorandum of Understanding) with Public, Educational and Governmental (PEG) Access Centers for Use of PEG Funds.**
- B. Resolution 89-2016: A Resolution of the City Council of the City of Milwaukie, Oregon, Appointing 15 Members to the Visioning Advisory Committee (VAC).**
- C. Resolution 90-2016: A Resolution of the City Council of the City of Milwaukie, Oregon, Creating the Library Construction Task Force (LCTF).**
- D. Resolution 91-2016: A Resolution of the City Council of the City of Milwaukie, Oregon, accepting the recommendation of the Kellogg Good Neighbor Committee (KGNC) to provide up to \$60,000 from the Good Neighbor Fund for the installation of new lights along the path in the Kellogg Treatment Plant open space along the Willamette River and for the repair of the path for the purpose of facilitating use of the area.**

**Motion passed with the following vote: Councilors Churchill, Batey, Parks, and Power and Mayor Gamba voting "aye." [5:0]**

**AUDIENCE PARTICIPATION**

**Mayor Gamba reviewed the audience participation procedures.**

**Mr. Monahan said there was no follow up on the July 5, 2016, audience participation comments.**

**Jerry Craig** introduced Mike Wilson, the new commander of American Legion Post 180. Mr. Craig showed the City Council the Department Unity Award, one of the top honors that any Legion Post can receive. He thanked the Council for its support of the traveling Vietnam Wall. He also reported the Legion won the Department of Oregon Boys State Governor Award and discussed the program.

## **PUBLIC HEARING**

### **A. Adopt Criteria for Selection of City Manager – Resolution**

**Mr. Monahan** provided background on the process.

**Mayor Gamba** called the public hearing on the adoption of the criteria for selection of the City Manager to order at 6:37 p.m.

The purpose of the hearing was to consider public comment on the standards, criteria, and policy directives to be used to hire the City Manager. Once the comments were received then the City Council would vote on a Resolution in accordance with ORS 192.660(7)(a) and (b).

#### Staff Presentation:

**Mr. Monahan** provided the staff report and reviewed the brochure used for the recruitment process which the Council could choose to add to or modify.

Correspondence: None

Public Comment: None.

Questions from Council to Staff: None.

### **Mayor Gamba closed the public hearing.**

**Councilor Parks** noted that the City Council, department heads, members of the neighborhood district associations (NDAs) and community leaders all had the opportunity to provide input. She was pleased with the criteria.

**Council President Batey** agreed the document was a result of significant input.

**Councilor Churchill** agreed the criteria cast a wide net.

**Mr. Monahan** further clarified the resolution.

#### Decision by Council:

**It was moved by Council President Batey and seconded by Councilor Parks to approve the Resolution Adopting Standards, Criteria, and Policy Directives for the Hiring of the City Manager. Motion passed with the following vote: Councilors Churchill, Batey, Parks, and Power and Mayor Gamba voting “aye.” [5:0]**

#### **RESOLUTION No. 92-2016:**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, ADOPTING STANDARDS, CRITERIA, AND POLICY DIRECTIVES FOR THE HIRING OF THE CITY MANAGER.**

### **B. Bike / Pedestrian Accessibility – Ordinance [Moved Up the Agenda]**

**Mr. Eaton** and Public Safety Advisory Committee (PSAC) Chair Angel Falconer provided the staff report. Mr. Eaton explained the minor revisions to the Ordinance.

**Ms. Falconer** discussed the work done by PSAC and its community outreach. The number one issue heard was concern about children’s safety and senior accessibility. In addition to multiple surveys and research, PSAC members took maps to Neighborhood District Association (NDA) meetings to identify recommended routes to connect Priority 1 facilities.

**Mr. Eaton** presented the staff report on page 95. He noted the key goals and policies used throughout the process that the City Council had identified. He clarified that while Priority 1 and Priority 2 often were discussed, there were actually three priority levels, with Priority 3 being the rest of the City. He noted the description of public involvement in the staff report, as well as the discussion about funding related to the Citizens Utility Advisory Board (CUAB). The staff report also contained an action plan of how to proceed, and he addressed match levels. He pointed out an error on page 116 under the recommended match levels; the match funds should be \$3.6 million. He added that on page 116 there was additional information included by the CUAB, and he noted the Board's unanimous approval for a funding level of \$4.60 per household for a 25 year plan. Page 118 showed the results of the completed survey of Priorities 1 and 2. Out of the 947 ramps in the City, only 202 were compliant with current Americans with Disabilities Act (ADA) standards. An additional 298 ramps were needed to complete the corridor. As part of ADA transition plan, there was a service request procedure. The comment period on the ADA transition plan was still open for another month.

**Council President Batey** asked about the trip generation in relation to the fee. **Mr. Eaton** discussed the trip generation that included residential. He referenced Table 10-2 on page 117 and reviewed the charts and Institute of Transportation Engineers (ITE) codes. The plan had automatic indexing and a base amount that was calculated on the amount of money needed.

**Mayor Gamba** called for public comment. **Jesse Boumann** asked if the economic plan took into account all three priority levels. **Mayor Gamba** believed it supported Priorities 1 and 2.

**Ane Roth**, Linwood Parent Teacher Association (PTA), and **Trey Niggerman** spoke in support of Vision Zero and Safe Routes to School. They encouraged City Council to support the plan immediately so that all Milwaukie residents could walk and bike safely.

**Nicole Perry**, Linwood resident, supported the bike and pedestrian plan and asked Council to fund it immediately. She wanted getting around the City to be a good experience for everyone and urged Council to commit to Vision Zero.

**Mr. Boumann** assumed previous plans had not been successful because of funding. He asked if the plan could be adopted in two sections with Priority 1 funded first. **Council President Batey** said Priority 1 was the major portion of the plan. **Mayor Gamba** added it was not much of a lift to included Priority 2. **Mr. Boumann** was concerned about the safety of children, cyclists, and the elderly. He noted that many people considered sidewalks as basic infrastructure. **Mayor Gamba** asked Mr. Boumann, as a member of the Budget Committee, if he saw the plan as fiscally responsible. **Mr. Boumann** replied that safety could not be quantified and that he would knock on doors to support the plan.

**Greg Hemer**, Linwood resident, believed the main role of government was to protect and serve its citizens. Building sidewalk and bike lanes one mile around schools was the least that could be done and should be a Council priority. Stanley Ave between Railroad Ave and Monroe St was his main concern. He discussed the importance of the impact on future Milwaukie families and their children attending schools.

**Ms. Falconer** believed the Priority List did clarify that Priority 1 would be funded first, and she discussed the importance of the Safe Routes to School elements. **Mr. Eaton** said the community outreach was focused on new infrastructure, but that was not always possible with existing rules and regulations. He discussed funding levels for Priorities 1 and 2 and the existence of some seed money for Priority 3. He believed Priority 2 only added about 20-cents per month to a Single Family Residence (SFR). Less than 5% of the customers were commercial, but they paid a lot more based on trip generation. He noted 17 commercial customers currently paid the maximum Street Surface Maintenance Program (SSMP) rates, which would increase if this plan passed.

**Mayor Gamba** referred to the email from Matt Menely asking about the 29<sup>th</sup> Avenue Greenway and why it was not included in the plan.

**Mr. Eaton** clarified other projects in the Transportation System Plan (TSP) were not eliminated, and the City would continue to try and fund them. However, projects such as the 29<sup>th</sup> Avenue Greenway did not serve any of the essential facilities via ADA or Safe Routes to Schools. **Ms. Falconer** noted 32<sup>nd</sup> Avenue met more criteria for Priority 1.

**Mr. Eaton** said following Council's desire, the intent of the program would then be to fund the sidewalk portions of the projects in the SSMP, so the SSMP no longer had to fund them. He referenced page 119 that explained the upgrade of pedestrian signals and ADA ramp upgrades. As a result, more SSMP funds would be available to pave streets.

**Mr. Eaton** said the program itself was ready, and the fee would have to be adopted by Resolution. The group discussed when the Resolution could be brought before Council.

The group discussed the effect on larger businesses and low income residential. **Council President Batey** noted the redline version was mostly grammatical changes, and she did not see any reason it would affect adopting the program. **Councilor Churchill** was concerned about the funding that had not yet been identified. **Mayor Gamba** noted the importance of safety. **Councilor Power** had reviewed the redline version and thought it seemed reasonable. She was in favor of moving forward. **Councilor Churchill** was uncomfortable passing something without a cost and funding source tied to it. **Mayor Gamba** noted CUAB's suggestion for funding. **Councilor Churchill** said although he would prefer passing the fee and the program together, he would support the Ordinance.

**It was moved by Councilor Parks and seconded by Council President Batey to approve the first and second readings by title only and adoption of the Ordinance amending the municipal Code by adding a new Chapter 3.26 – Bicycle and Pedestrian Accessibility Program, adopting a Bicycle and Pedestrian Accessibility Program and allowing payment of a street maintenance fee dedicated to bicycle and pedestrian improvements. Motion passed with the following vote: Councilors Churchill, Batey, Parks, and Power and Mayor Gamba voting “aye.” [5:0]**

**Mr. Monahan** read the Ordinance two times by title only.

**Ms. DuVal** polled the Council with **Councilors Churchill, Batey, Parks, and Power and Mayor Gamba voting “aye.” [5:0]**

**ORDINANCE No. 2123:**

**AN ORDINANCE OF THE CITY OF MILWAUKIE, OREGON, AMENDING THE MUNICIPAL CODE BY ADDING A NEW CHAPTER 3.26 – BICYCLE AND PEDESTRIAN ACCESSIBILITY PROGRAM, ADOPTING A BICYCLE AND PEDESTRIAN ACCESSIBILITY PROGRAM AND ALLOWING PAYMENT OF A STREET MAINTENANCE FEE DEDICATED TO BICYCLE AND PEDESTRIAN IMPROVEMENTS.**

**C. C800 Radio Group Intergovernmental Agreement (IGA) – Ordinance [Moved Up the Agenda]**

**Capt. Dye** provided the staff report in which the City Council was requested to adopt an Ordinance that would allow the City of Milwaukie to become a party to an IGA authorizing the Clackamas 800 Radio Group and authorizing the City Manager to sign the IGA on behalf of the City.

It was moved by Council President Batey and seconded by Councilor Parks to approve the first and second readings by title only and adoption of the Ordinance Ratifying the Formation of Clackamas 800 Radio Group and Authorizing the City Manager to Execute the Intergovernmental Agreement on behalf of the City of Milwaukie. Motion passed with the following vote: Councilors Churchill, Batey, Parks, and Power and Mayor Gamba voting “aye.” [5:0]

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

Ms. DuVal polled the Council with Councilors Churchill, Batey, Parks, and Power and Mayor Gamba voting “aye.” [5:0]

**ORDINANCE No. 2124:**

**AN ORDINANCE OF THE CITY OF MILWAUKIE, OREGON, RATIFYING THE FORMATION OF CLACKAMAS 800 RADIO GROUP AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE INTERGOVERNMENTAL AGREEMENT ON BEHALF OF THE CITY OF MILWAUKIE.**

**B. Code Amendments to Regulate Marijuana Businesses (File #ZA-2016-001) – Ordinance [Moved up the Agenda]**

**Mayor Gamba** called the public hearing on the legislative Zoning Ordinance Amendment File ZA-2016-001 initiated by the City to order at 7:48 p.m.

The purpose of the hearing was to consider an Ordinance to adopt proposed amendments to the Zoning Ordinance that included the regulation of marijuana businesses in Milwaukie.

This was a legislative decision by the Council and would be based on the following standards: the Statewide planning goals, applicable federal or state laws or rules; any applicable plans and rules adopted by Metro; applicable Comprehensive Plan polices; and applicable provisions of implementing Ordinances. Mayor Gamba reviewed the order of business.

Conflicts of Interest: None.

Challenges: None.

Staff Presentation:

**Mr. Egner** provided the staff report. The proposal added marijuana business regulations based on the approval of Measure 91 and changes in state law. He reviewed the elements of the proposal. The retail sales proposal was basically the same as those for medical marijuana dispensaries and also followed the same locational standards, such as a 1,000 feet buffer around schools. He showed a map of medical marijuana potentially eligible area. The group discussed eligible areas. **Mr. Egner** explained dispensaries were generally allowed where pharmacies were allowed.

**Council President Batey** asked if there was a proposed square footage limitation on retail, and **Mr. Egner** noted there were not additional ones to what was already in place.

**Mr. Egner** explained where testing and research labs, as well as processing and warehousing, were allowed. For both types of buildings, security and odor control were required. He explained the requirement of negative air pressure and activated carbon filters. He was aware of odor detectors on the market that seemed to measure pre and post condition readings, but he was not sure which odors they were sensitive to and if they could be adopted as a standard.

**Councilor Churchill** met with a colleague from Denver who might have some information available about odor control standards. He would share any information he received.

**Mr. Egner** noted odor control standards could be done outside of land use and would be easy to add later. He understood different types of marijuana businesses could co-locate under one roof as long as all appropriate licenses were obtained. Under the current code, the production/growing of marijuana was allowed as an agricultural use but was limited to residential and commercial zones. He also explained the possibility of grow operations in residential zones as a home occupation.

**Councilor Churchill** asked about odor control regulation for residential grow operations. **Mr. Watts** said as long as there were clear standards that could be measured, the City would be within its rights to enforce odor control regulation. The City could still initiate an Ordinance that would apply to previously existing operations.

**Mr. Egner** noted there may be a way to clarify the Code relating to residential zones by adding home occupation. He explained the proposal did not allow grow sites in commercial mixed use zones. He reviewed the different industrial zone permissions. The Planning Commission had recommended that grow sites be a conditional use in the North Milwaukie Industrial Area (NMIA). He noted the potential to add standards and additional controls to the conditional use process. Retail outlets were allowed in industrial zones but needed to be associated with a permitted use, such as a grow or production site. Key issues were energy use standards and the NMIA. People were waiting to see what the State came up with in terms of energy use standards. Then, the energy use standards could be written into the business licensing regulations instead of the land use side. He explained the question about the NMIA and noted one option could be to wait until the NMIA study was completed. The group discussed the amount of warehouse space that could be utilized. **Mr. Egner** provided the staff recommendation to approve the proposed text amendment and to adopt of the findings. It was also proposed that staff return to Council with potential energy use standards.

Correspondence: None.

Testimony in Support:

**Ron Buel**, Dank Bros. LLC, spoke in support of the code amendment and noted the recommendation of the Planning Commission. The Planning Commission did not vote to make this a conditional use in the NMIA nor set a limitation of a 5,000 square feet growing area. The Oregon Liquor Control Commission (OLCC) law allowed business to apply for a 5,000 square feet growing area, also known as a canopy, or apply for Tier 2 which was a 10,000 square foot canopy. He also noted the possibility of having multiple Tier 2 units in the same building, separated by a wall. The Planning Commission decided on Tier 2 grows in the NMIA. He understood the concerns about employment and said his company would provide 60 jobs per acre. He would do everything possible to comply with all OLCC regulations. He also noted his company would scrub the air and operate sustainably with solar panels. He discussed the number of plants in the regulated growing canopy. He discussed how his company would only operate if Tier 2 was allowed.

**Jacob Sytsma**, Vibrant Futures Coalition, Northwest Family Services (NWFS). He noted NWFS did not support the growing operation in the NMIA because it did not bring enough jobs or vibrancy to the area. He discussed City and County planning efforts for better uses of the area. The City could benefit from organizations such as Clackamas Community College (CCC) or even mixed industrial-residential ventures. If marijuana grow sites were allowed, he noted they would likely fill up quickly without restrictions. He believed the NMIA was an important asset and would create the most jobs possible and help Milwaukie be a safe and healthy City.

**Matt Haslett**, one of the owners of the building on Mailwell Drive. The building had been empty for last 2-1/2 years and if leased it would be for warehousing. He noted there would be more jobs in the cannabis industry than in other warehousing businesses. He urged that the marijuana grow business be allowed. In his building there was one tenant that was a marijuana processor and likely a non-cannabis businesses would not want to share a building with a cannabis tenant.

**Council President Batey** heard that people looking for space had been priced out by cannabis businesses.

**Mr. Haselett** noted he did not have any offers from non-cannabis businesses. He added that he did not believe there would be a lot of grow operations in the area due to building type limitations.

**Council President Batey** asked how long the processor had been there, and **Mr. Haslett** replied about 6 months. He briefly discussed potential ways to divide the 63,000 square foot building.

Neutral Testimony: none.

Staff Response:

**Mr. Egner** referred to his Planning Commission notes and said it has recommended a Conditional Use. **Council President Batey** had the impression it was a Conditional Use as well. **Mr. Egner** would re-watch the meeting to confirm the Planning Commission recommendation. He discussed grow sites and processing were listed as Conditional Uses in the Business Industrial (BI) Zone but noted it was not really discussed during the Planning Commission hearing.

Questions from Council to Staff:

The group discussed the types of uses in different zones, including the BI Zone and the NMIA. **Mayor Gamba** observed the Council had many questions that likely would not be resolved during this meeting.

**Council President Batey** asked about the impact on commercial leasing of nearby properties. She noted one commercial leasing agent was talking about how much space was being taken up. She wondered if Council could get an assessment.

**Councilor Churchill** suggested looking at Colorado as a model for general trends.

**Council President Batey** she said for her there were two unanswered questions: the potential impact on other commercial uses in the zone and crime issues. She a crime snapshot from the grow and processing sites around the Portland region.

**Councilor Churchill** wanted a second look at the Planning Commission video to correctly understand the language

**Councilor Power** was not in a particular rush and thought it was a good idea to take the time to do more research and look at the experience in Denver.

**Mr. Egner** clarified the proposal did not allow marijuana retail in BI zone. **Mayor Gamba** wanted a map of what was allowed in various zones.

**Councilor Churchill** would also like to know if there was a reasonable metric for odor control and what was done in Colorado.

**Mr. Watts** thought it would be beneficial to highlight the options for people relying on the land use code for other enforcement actions.

The group discussed leaving the public hearing open to allow for additional public comments, and their desire for more information.

**It was moved by Council President Batey and seconded by Councilor Churchill to continue the Public Hearing on Code Amendments to Regulate Marijuana Businesses (File #ZA-2016-001) to a date certain of August 16, 2016. Motion passed with the following vote: Councilors Churchill, Batey, Parks, and Power and Mayor Gamba voting “aye.” [5:0]**

## **OTHER BUSINESS**

### **C. Riverfront Park Beach Repair – Resolution**

**Mr. Eaton** provided the staff report in which the City Council was requested to adopt a Resolution authorizing the City Manager or his designee to negotiate and execute a contract with Environmental Science Associates (ESA) for design and construction management services for the Riverfront Park Beach Repair work. The City was currently estimating repairs to the area would be around \$173,000. Assuming the Federal Emergency Management Agency (FEMA) approved the estimates, FEMA would pay all but \$43,000 and then the City would look to the Infrastructure Finance Authority (IFA) of Oregon to help match FEMA funds.

**Mr. Eaton** noted the estimate included mitigation efforts to help ensure the problem would not happen again. He clarified that the City would be responsible for any improvements, like adding a walkway, that had not been previously built. He explained the three factors that resulted in the damage, the natural loss of part of the sand, the surface water flow that added to erosion, and the sewer manhole which had built up pressure. He explained the timeline of repairs and the need to get started.

**It was moved by Councilor Parks and seconded by Councilor Churchill to approve the Resolution Authorizing the City Manager to Execute a Contract for Engineering Services for the Riverfront Park Beach Repair. Motion passed with the following vote: Councilors Churchill, Batey, Parks, and Power and Mayor Gamba voting “aye.” [5:0]**

#### **RESOLUTION No. 93-2016:**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT FOR ENGINEERING SERVICES FOR THE RIVERFRONT PARK BEACH REPAIR.**

### **D. Adopt Art in Public Places Ordinance – Ordinance, 2<sup>nd</sup> Reading**

**Mr. Nieman** provided the staff report and requested that the City Council approve the second reading and adoption of the Ordinance adopting an Art in Public Places Program. He noted the minor changes and explained the first reading was on July 5, 2016, with an amendment that added language related to approval of a bond measure. The group noted a minor spelling error that needed to be corrected.

**It was moved by Council President Batey and seconded by Councilor Parks to approve the second reading by title only and adoption of the Ordinance Amending the Municipal Code by Adding a New Chapter 20.06 Adopting an Art in Public Places Program. Motion passed with the following vote: Councilors Churchill, Batey, Parks, and Power and Mayor Gamba voting “aye.” [5:0]**

**Mr. Monahan** read the ordinance one time by title only.

**Ms. DuVal** polled the Council **Councilors Churchill, Batey, Parks, and Power and Mayor Gamba voting “aye.” [5:0]**

#### **ORDINANCE No. 2125:**

**AN ORDINANCE OF THE CITY OF MILWAUKIE, OREGON, AMENDING THE MUNICIPAL CODE BY ADDING A NEW CHAPTER 20.06 ADOPTING AN ART IN PUBLIC PLACES PROGRAM.**

### **E. Milwaukie Museum Lease**

**Mr. Nieman** provided the staff report and noted the historical background and previous actions. He explained the added provisions to the lease.

**Council President Batey** wanted to see some commitment to the number of hours open to the public in exchange for the lease agreement.

**David Aschenbrenner**, President of the Milwaukie Historical Society, noted the Museum strived to be consistently open 16 hours a month and was staffed by volunteers. He discussed activities at the Museum and its partnership with the City.

**It was moved by Councilor Parks and seconded by Council President Batey to approve the proposed new lease agreement with the Milwaukie Museum. Motion on passed with the following vote: Councilors Churchill, Batey, Parks, and Power and Mayor Gamba voting “aye.” [5:0]**

#### **F. Recreational Marijuana Tax – Ordinance and Resolution**

**Ms. Camors** provided the staff report. She reviewed the details of the Ordinance and noted it was specific to retail sales. Staff recommended City Council approve the Ordinance and make a referral to voters at the November 8, 2016, General Election, which upon approval would become effective. The Ordinance would impose a 3% tax of recreational retail marijuana products, and she further explained the specifics.

**Mayor Gamba** had asked the City Attorney about the language and the possibility that the State might be addressing this portion of the bill. He asked if the Ordinance could be written in such a way that referred to the maximum allowable by State.

**Mr. Watts** noted that language was developed by an attorney in his law firm, but he had some concerns. He explained how the language would result in delegating local taxing authority to the State Legislature and any changes would automatically happen, regardless of City approval. He had called the Secretary of State’s Office but had not gotten a response yet. He explained his other concern was the ability to accurately describe the ballot measure. He would like to contact the Department of Revenue and Secretary of State’s Office due to his concerns about the legal risks. The group discussed the pros and cons of the language and possible outcomes. **Mr. Monahan** noted there was still time for additional information and discussion.

**It was moved by Councilor Churchill and seconded by Councilor Parks to continue the discussion of the Recreational Marijuana Tax Ordinance and Resolution to the August 2, 2016, Regular Session. Motion passed with the following vote: Councilors Churchill, Batey, Parks, and Power and Mayor Gamba voting “aye.” [5:0]**

#### **G. Council Reports**

**Councilor Parks** reported she was named Chair of the North Clackamas Parks and Recreation (NCPRD) District Advisory Board (DAB).

**Council President Batey** noted the Poetry Picnic and Sunday Parkways events.

**Mayor Gamba** noted the water quality report was available online. He announced multiple Board and Commission vacancies. He also noted upcoming events such as the free summer concerts, a Willamette River tour, urban renewal meetings, and free movies in the park hosted by NCPRD.

#### **ADJOURNMENT**

**It was moved by Councilor Parks and seconded by Councilor Churchill to adjourn the regular session. Motion passed with the following vote: Councilors Churchill, Batey, Parks, and Power and Mayor Gamba voting “aye.” [5:0]**

**Mayor Gamba adjourned the regular session at 10:03 p.m.**

Respectfully submitted,

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Amy Aschenbrenner, Administrative Specialist II



**MINUTES**  
MILWAUKIE CITY COUNCIL  
www.milwaukieoregon.gov

**STUDY SESSION**  
JULY 28, 2016  
City Hall Conference Room

**Mayor Gamba called the Study Session to order at 6:00 p.m.**

Council Present: Council President Lisa Batey and Councilors Scott Churchill, Wilda Parks, and Karin Power

Staff Present: City Manager Bill Monahan, City Recorder Pat DuVal, Assistant to the City Manager Mitch Nieman, Public Affairs Specialist Jordan Imlah, Program Services Specialist Jason Wachs, Sustainability Director Clare Fuchs, and Community Development Director Alma Flores

**Community Engagement and Involvement**

**Mr. Nieman** provided an overview of the City's community involvement and engagement program, **Mr. Wachs** explained the engagement spectrum developed by the International Association of Public Participation (IAP2), and **Mr. Imlah** discussed the City's local and regional advertising efforts.

**Councilor Parks** and **Mr. Nieman** discussed the City's advertisements in the answer and culture guides regularly featured in the *Clackamas Review* newspaper.

**Mr. Nieman**, **Mr. Wachs**, and **Councilor Churchill** talked about the recruitment process for the City's board, committee, and commission (BCC), Neighborhood District Association (NDA), and project advisory committees (PACs).

**Mr. Wachs** reported that attendance at the quarterly NDA Leadership meetings has been consistent and provided a review of the City's NDA program.

The group noted which NDAs maintain their own websites and which NDAs are active on social media. **Mr. Nieman** reported that the logos for the Historic Milwaukie and Linwood NDAs had recently been updated.

**Mr. Wachs** continued his review of the City's NDA program noting his weekly outreach effort to NDA leaders and value of the NDAs in the community. He confirmed that the NDAs periodically receive updated mailing lists.

The group noted how some NDAs have used their address and email mailing lists to announce events and reach out to residential and commercial neighbors.

**Mr. Nieman** and **Mr. Wachs** reviewed the current PACs, explained how the Adopt-A-Road program is administered, and noted that 9 groups had adopted roads to-date. They reported that the Drive Less Save More program was in the wrap-up phase and would issue a final report in the fall of 2016. They provided an overview of the temporary event permit process for City and non-City events.

The group discussed groups and events that receive blanket temporary event permits for recurring or ongoing activities. It was noted that NDAs have not been required to request permits for annual picnics since most don't require sidewalk or street closures.

**Mr. Nieman**, **Mr. Wachs**, and **Mr. Imlah** explained how the City's social media outlets are used to promote City and non-City events. They remarked on the possibility that the new City website would feature a more robust community calendar.

**Mr. Nieman** and **Council President Batey** noted the use of the City Hall information kiosk calendar and bike repair station and the possibility of adding a kiosk and bike

repair station near the Triangle Site Food Cart Pod. **Councilor Parks** remarked on the possibility of including a kiosk and bike repair station in the City's Wayfinding Plan.

**Mr. Imlah** and **Mr. Nieman** discussed trends in social media and the City's approach to different emerging platforms noting the recent photo contest. **Mr. Nieman** reported that several BCCs were looking at ways to use social media. **Mayor Gamba** and **Mr. Nieman** discussed potential City use of the social media website Reddit.

**Mr. Nieman** reviewed a recent staff analysis of the City's comprehensive engagement and involvement program which noted strengths, weaknesses, opportunities, and threats. **Mayor Gamba** and **Mr. Nieman** commented on a new mobile phone application he saw demonstrated at a smart growth seminar.

**Mr. Nieman, Mayor Gamba, Mr. Monahan** discussed the need to improve the City's BCC and NDA leadership succession planning and recruitment processes. **Mr. Nieman** commented on the challenges of staff being in separate buildings and noted the need to improve the City's volunteer tracking software.

The group commented on the possibility of having a tablet device and business cards available for Council and staff to use at events to recruit BCC and NDA volunteers.

**Mr. Nieman** and **Mayor Gamba** remarked on the need to budget additional funding to enhance the City's BCC, special events, and advertising capabilities.

**Mr. Nieman** and **Mr. Imlah** discussed the City's identity and brand in relation to the ongoing visioning process and reported that loss of institutional memory is a threat to the City's community involvement and engagement program.

**Council President Batey, Mr. Nieman, and Mayor Gamba** discussed doing more to promote proclamation causes and issues through the City's social media outlets.

**Mr. Nieman** continued the overview of the analysis of the City's comprehensive engagement and involvement program noting weaknesses including the lack of a social services portal, community trust issues, and the Council goal setting process.

The group discussed the importance of Council goal setting, the status of the goals identified in 2015, and the need to engage community goal champions to hold the City accountable. They remarked on the value of community surveys.

**Mr. Nieman** and **Mr. Imlah** reported that there was ongoing community support for the City's newsletter, *The Pilot*, and noted recent changes to the newsletter.

**Mr. Nieman** and **Mr. Wachs** discussed the success of the last volunteer appreciation dinner and the upcoming effort to recruit new volunteers.

The group discussed the need to amend the BCC bylaws to align when terms expire and the possibility of acquiring software to streamline the volunteer tracking system.

**Mr. Nieman** reported that the engagement and involvement program analysis recommended initiating a Youth Council, identifying the needs of the development opportunity sites, strengthening internal communications, and conducting audits of the City's BCCs and NDAs. **Mr. Wachs** remarked on the challenges of neighborhood associations and suggested that the City define its expectations for NDA success.

The group noted that the Milwaukie Police Department (MPD) monitors the Next Door mobile phone application and they discussed the increased activity in Downtown Milwaukie due to the popularity of the Pokémon mobile phone application.

**Mr. Nieman** remarked on the role of Mr. Wachs to nurture NDA and community programs and the possibility of Council supporting a future staff augmentation for the community engagement and involvement program.

**Councilor Churchill** expressed support for auditing the NDA program. **Mr. Nieman** and **Mayor Gamba** discussed when to schedule a Council and NDA Leadership meeting.

## **Web Refresh Update**

**Mr. Nieman** provided an update on the City website refresh project and reported that staff was working to launch the new website soon with some sort of an unveiling event.

The group commented on the City logo used on the polos worn by staff.

## **Establishment of a Construction Excise Tax (CET) to Fund Affordable Housing Initiatives**

**Ms. Flores** and **Mayor Gamba** introduced Mary Kyle McCurdy, Deputy Director of 1,000 Friends of Oregon, and **Ms. McCurdy** noted the participation of Mayor Gamba in the legislative process that resulted in the passage of Senate Bill 1533B (SB1533B).

**Ms. Flores** reviewed recent local and state legislation regarding inclusionary housing and reviewed definitions outlined in SB1533B. **Ms. Flores, Mayor Gamba, and Council President Batey** noted differences in affordable housing laws in different states.

The group discussed how median income is established and if the median income for Clackamas County is representative of the median income in Milwaukie.

**Ms. Flores, Mayor Gamba, and Ms. McCurdy** discussed the impact of the City allowing developers to pay a fee in-lieu of building affordable housing.

**Ms. Flores** and **Ms. McCurdy** noted possible inclusionary zoning incentives the City could offer and cited cities in Oregon that utilize property tax benefits to encourage multi-unit developments. **Ms. Flores** noted that the City does not have a property tax exemption program and that the City of Portland has established a task force to investigate possible developer incentive programs.

**Ms. Flores** provided an overview of SB1533B noting that the legislation clarifies, modifies, and adds language to Oregon Revised Statute (ORS) 320.170 and allows cities and counties to levy CETs.

**Council President Batey, Ms. McCurdy, and Mayor Gamba** discussed how the City could use CETs to encourage inclusionary housing and noted the uncertain consensus regarding whether a CET could be adopted without inclusionary housing zoning.

**Ms. Flores** reported that SB1533B established CET parameters primarily on residential construction and noted how the City of Portland has applied a CET on residential, commercial, and industrial development. **Ms. McCurdy** and **Ms. Flores** confirmed that there was no State-mandated tax cap for commercial or industrial developments, but there is a cap for residential development.

**Ms. Flores** and **Ms. McCurdy** explained that CET revenues would be allocated for administrative costs, affordable housing projects, and developer incentives.

**Ms. Flores** discussed examples of developer incentives, how the CET could be distributed for commercial and industrial uses, and noted that the City is required to observe certain State exemptions.

The group discussed exempted additional dwelling units (ADUs) and how a developer may choose to parcel multiple permit applications to avoid paying the CET.

**Ms. Flores** presented and discussed city maps showing zone capacity for cottage clusters and residential capacity by number of units, and a handout with fictional revenue projections based on a Portland-style CET program established 10 years ago.

The group noted projects over the last 10 years that would have impacted CET revenues and discussed how other Oregon cities and counties may apply a CET.

**Ms. Flores** asked for Council direction on whether or not staff should pursue a CET program and whether or not inclusionary housing should be included.

**Mayor Gamba** suggested that inclusionary housing should be included in a City program and expressed support for pursuing a CET. **Ms. McCurdy, Mayor Gamba,**

and **Council President Batey** discussed whether or not the intent of SB1533B was to tie CETs with incentives for inclusionary zoning and how the City could apply an inclusionary housing program.

**Ms. McCurdy** suggested that an upside of adopting an inclusionary housing policy was that builders could include it in the price of the land. She noted that an inclusionary housing policy could be tailored to fit the community.

**Ms. Flores** and **Ms. McCurdy** discussed the recent work of the economics and planning firm ECONorthwest in examining the importance of developer incentives in inclusionary zoning programs. **Mayor Gamba** remarked that it would make sense to adopt a CET and wait to set-up an inclusionary zoning program. **Ms. McCurdy** noted that the City would have to offer an in-lieu of fee with a CET and **Ms. Flores** reported that the City of Portland had preferred to not offer the in-lieu of fee.

**Ms. Flores** reported that another question for Council to consider was whether CET revenues would go into the General Fund or a dedicated housing fund. **Council President Batey** expressed support for setting-up a dedicated housing fund.

**Mayor Gamba** expressed support in pursuing a CET and an inclusionary zoning program after a CET had been in place for a while.

**Councilor Churchill** asked for more economic modeling and noted that he had questions regarding scalability and incentives of a CET program. **Ms. Flores** remarked that the City of Portland had barely discussed inclusionary zoning criteria.

**Council President Batey** reported that she was in favor of creating a CET and noted concern about other taxes and suppressing development. **Councilor Churchill** noted concerns about bringing down property values and the lack of interest in existing development opportunity sites. **Council President Batey** agreed that it made sense to put an inclusionary zoning program on a slower track.

**Councilor Parks** stated her support for a 2 phase approach of adopting a CET and then considering an inclusionary zoning program.

**Mayor Gamba** summarized that Council was supportive of moving forward on a CET, and **Ms. Flores** noted that a draft CET ordinance could be prepared in the fall of 2016.

The group noted that considering a CET ordinance in late fall would allow time to collect information on other CET programs being considered by other jurisdictions.

**Mayor Gamba** and **Councilor Parks** expressed support for setting-up a dedicated housing fund to track CET revenue.

**Mayor Gamba** asked about the type of bank account a housing fund could be deposited, and **Ms. Flores** and **Mr. Monahan** noted that the type of bank account would be a City policy decision for Council to consider.

**Mayor Gamba** and **Ms. McCurdy** remarked on the probability that the State Legislature would revisit inclusionary housing during the 2017 session.

**Mayor Gamba adjourned the Study Session at 8:47 p.m.**

Respectfully submitted,

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Scott S. Stauffer, City Recorder



**MINUTES**  
MILWAUKIE CITY COUNCIL  
www.milwaukieoregon.gov

**WORK SESSION**  
AUGUST 2, 2016  
City Hall Conference Room

**Mayor Gamba called the Work Session to order at 4:51 p.m.**

Council Present: Council President Lisa Batey and Councilors Scott Churchill, Wilda Parks, and Karin Power (by phone)

Staff Present: Assistant to the City Manager Mitch Nieman, City Recorder Pat DuVal, Engineering Director Chuck Eaton, Community Development Director Alma Flores, Finance Directors Casey Camors and Haley Fish

**City Manager's Report**

**Mr. Nieman** announced upcoming neighborhood summer concerts and events.

**Clackamas County Fuel Tax Measure**

**Ms. Flores** was joined by **Mike Bezner**, Clackamas County. **Mr. Bezner** showed a map of proposed County projects. He provided background and explained that the advisory vote was in favor of the County pursuing a vehicle registration fee for a limited amount of years to pay for deferred road maintenance. The Board of County Commissioners recommended a 6-cent per gallon gas tax, which was estimated to raise \$63 million over seven years. The funds would be split with participating cities in the County, with 40% going to the cities. He provided some details of the County / Cities partnership. Cities would need to adopt a resolution and sign an intergovernmental agreement (IGA) with the County.

The Council discussed participation and support from the cities for the County measure.

**Ms. Flores** noted if Council agreed, staff planned on bringing an IGA and resolution to the August 16 Council Meeting.

**Mr. Bezner** discussed the proposed County paving packages and noted the city funds could be used as deemed needed by each city for transportation projects. **Councilor Parks** said it had been discussed as beneficial if the cities identified specific projects, as it was easier for citizens to understand what would happen. The group discussed that possibility of providing a projects list and noted it was not a requirement in the IGA.

**Ms. Flores** said the question before City Council was whether or not the City moves forward with an IGA and Resolution supporting the measure. The group discussed the program in relation to the Street Surface Maintenance Program (SSMP).

**Mayor Gamba** explained why many mayors wanted to strike the word "participate" from the IGA. Council discussed the concept of cities not receiving funds if they did not sign an IGA in support. **Mr. Bezner** thought the Commissioners would hold firm on the stance that if cities did not support the measure they would not get any funds.

The group discussed what the term "support" meant and to what degree of involvement was required by the cities. **Mr. Bezner** would double check what the Commissioners meant by the term. **Ms. Flores** believed it meant signing the IGA. **Councilor Parks** understood that signing the IGA indicated support and informing people about the benefits to the community. The group wanted to move on and discuss the SSMP before making a decision.

## **Street Surface Maintenance Program (SSMP) Review**

**Mr. Eaton** provided background and explained the City was unable to keep up with street surface needs. Due to the financial limitations, the original 10 year program would take 15 years to complete at current funding levels. He noted the City's existing financial status and provided graphs illustrating what would happen if nothing additional was done in the future. Reconstruction projects would need to be abandoned, and deferred maintenance costs would increase dramatically.

**Mr. Eaton** discussed the funds and rates needed to achieve desired Pavement Condition Indexes (PCIs). He noted this funding source was just to pave the roads. If Americans with Disabilities Act (ADA) improvements had to be financed out of this fund as well, it would take more time and money to get to desired PCIs. He discussed funding options to raise additional funds. The group discussed the rates and the idea of having different caps for different types of organizations.

The group discussed cities that had a gas tax. **Ms. Fish** introduced herself and explained the City of Canby had a 3-cent per gallon local gas tax in addition to the State Shared Revenue Gas Tax. She also discussed Canby's street maintenance fee program.

**Mr. Eaton** explained the opportunities and limitations of the current program. The group discussed revisions to the Milwaukie Municipal Code (MMC) in relation to a gas tax.

**Mayor Gamba** suggested moving forward with the Safe Routes to School / ADA program; sign the IGA and support the County; wait and see what happens in November; and then make a decision. In the meantime, he suggested exploring a way to tweak the system to take into account road damage. **Mr. Eaton** and **Ms. Camors** noted administrative changes that would have to occur in order to update the billing procedure; the process would take about 3 months.

**Mr. Eaton** summarized the possibilities for how to proceed. **Mayor Gamba** did not like the idea of increasing the deferred maintenance level. He was also interested in protecting the schools from paying high street fees and was interested to see the numbers if schools were not included or were capped at a lower level.

**Mayor Gamba** asked staff to proceed with code revisions and explore the feasibility of lowering the cap for schools. **Councilor Parks** agreed and added that the existing industrial rates should be maintained.

The group discussed the possibility of establishing the Safe Routes to School Program and bumping the SSMP up to what it would have been if it had been tied to inflation. **Mr. Eaton** said he could run it before the Citizens Utility Advisory Board (CUAB). The group discussed additional options and various funding calculations involved.

The City Council directed Ms. Flores to bring forward the IGA and Resolution.

**Mayor Gamba adjourned the Work Session at 6:01 p.m.**

Respectfully submitted,

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Amy Aschenbrenner, Administrative Specialist II



MILWAUKIE CITY COUNCIL  
STAFF REPORT

Agenda Item: **RS 3. B.**  
Meeting Date: Sept. 6, 2016

To: Mayor and City Council  
Through: Bill Monahan, City Manager

Subject: **Authorization to purchase three police vehicles**

From: Captain Dye

Date: 8/24/16

### **ACTION REQUESTED**

Authorize the City Manager to approve purchase orders in the amount of \$96,991.52 for the purchase of three vehicles. Those vehicles include a 2017 Ford Explorer patrol vehicle, 2017 Chevrolet Tahoe patrol vehicle and a 2017 Dodge Durango staff vehicle.

### **HISTORY OF PRIOR ACTIONS AND DISCUSSIONS**

On May 12<sup>th</sup>, 2016, Chief Bartol spoke with the City Council during the FY 17-18 budgeting process about the condition of our aging fleet. He requested that in addition to the previous \$100,000 per biennium from FY 15-16, that the Council authorize an additional \$50,000 to each year of the Biennium in order to replace three vehicles in two consecutive years. This was later approved and adopted in the FY 17-18 Budget by the City Council.

### **BACKGROUND**

Police and Public Works Fleet Services are recommending replacing the Chief's vehicle, a 2007 Ford Expedition with approximately 98,000 miles on it. This vehicle would be then converted to a staff car, which would be used for traveling to training, various errands and can be used in surveillance missions. The vehicle we have identified to replace this vehicle is a 2017 Dodge Durango.

We are also recommending that we purchase a 2017 Chevrolet Tahoe, to replace Vehicle #3247, a 2009 Chevrolet Tahoe with 81,000 miles on it. The Chevrolet Tahoe is used as Sergeant Vehicles as they carry a lot of extra equipment and used for incident command in major events. Vehicle #3247 is showing signs of wear, faster than the other Sergeant vehicle and is and over Fleet's recommended mileage for a patrol vehicle.

We are also recommending that we purchase a 2017 Ford Explorer to replace Vehicle #3206, a 2008 Dodge Charger that was totaled approximately 3 months ago. The last couple of years we have purchased Ford Explorers for our patrol vehicles and have been pleased with them.

We will also surplus two other vehicles in addition to Vehicle #3206. Vehicle #3218 a 2004 Chevrolet Trail Blazer with over 116,000 miles and Vehicle #3216 a 2003 Dodge Durango with over 113,000 miles.

### **CONCURRENCE**

The City's fleet mechanics concur with the need to replace the listed vehicles.

**FISCAL IMPACTS**

The vehicles are listed in the approved Biennial Budget FY 17-18.

**WORK LOAD IMPACTS**

None

**ALTERNATIVES**

No other alternatives were explored, as the Police Department is already behind in our replacement schedule.

**ATTACHMENTS**

1. Resolution
2. ORPIN Contracts
3. Vehicle quote



**CITY OF MILWAUKIE**  
*"Dogwood City of the West"*

**Resolution No.**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, authorizing the City Manager to approve purchase orders in the amount of \$96,991.52 for the purchase of three vehicles. A 2017 Dodge Durango for \$29,979 from Ron Tonkin Dodge, a 2017 Ford Explorer for \$28,665.60 from Northside Ford and a 2017 Chevrolet Tahoe for \$38,346.92 through Hubbard Chevrolet.**

**WHEREAS**, the Police Department requires safe and reliable vehicles for law enforcement purposes;

**WHEREAS**, the existing fleet of police vehicles includes three vehicles that are no longer capable of performing the required duties in a safe, reliable, and cost efficient way;

**WHEREAS**, Council has previously adopted the FY 17-18 budget were it was requested to purchase three vehicles in this first biennium.

**WHEREAS**, Police Department staff have followed the City's purchasing policy and have utilized state bid pricing and recommend that the City purchase A 2017 Dodge Durango for \$29,979, a 2017 Ford Explorer for \$28,665.60 and a 2017 Chevrolet Tahoe.

**Now, Therefore, be it Resolved** that the City Council of the City of Milwaukie, authorizing the City Manager to approve purchase orders in the amount of \$96,991.52 for the purchase of three vehicles. A 2017 Dodge Durango for \$29,979 from Ron Tonkin Dodge, a 2017 Ford Explorer for \$28,665.60 from Northside Ford and a 2017 Chevrolet Tahoe for \$38,346.92 through Hubbard Chevrolet.

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

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

\_\_\_\_\_  
Mark Gamba, Mayor

ATTEST:

APPROVED AS TO FORM:  
Jordan Ramis PC

\_\_\_\_\_  
Scott Stauffer, City Recorder

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

**Awards/Agreements**

Ron Tonkin Dodge, Inc  
Automotive Vehicles



Attachments Exist  
Secondary Suppliers Do Not Exist

**Supplier Address**

Ron Tonkin Dodge, Inc  
19300 SE McLoughlin Blvd  
Gladstone, OR 97027

**Contact:** Chuck Baggs  
**Phone:** 1 (503) 258-5704  
**Fax:** 1 (503) 258-5803  
**Email:** cbaggs@tonkin.com

<p><b>Contract #</b> <b>5552</b></p> <p><b>Revision #</b> 0.3 <b>Revision Date</b> 06/29/2016</p>
<p><b>Opportunity #</b> DASPS-2052-14 Vers 1.7</p> <p><b>Contract Start Date</b> 04/06/2015</p> <p><b>Expiration Date</b> 04/06/2020</p> <p><b>Supplier Number</b> 4497</p>

All dates are mm/dd/yyyy

**Contract Administrator**

DAS Procurement Services  
1225 Ferry Street SE  
Salem, OR 97301

**Contact:** David Reynolds  
**Phone:** 1 (503) 378-4643  
**Fax:** 1 (503) 373-1626  
**Email:** david.reynolds@oregon.gov

**Receiving Address**

See purchase order

**Contract Filed At**

DAS PS

Revision #3 adding price list and updating buyers guide.

Revision # 2 adds Buyers Guide. RS 4/24/2015

Revision # 1: To make contract statewide

<b>Delivery Requirements</b>			
See Price Agreement			
<b>Payment Terms</b>			
Net 30			
<b>FOB</b>			
FOB Destination			
Item #	Quantity / Unit	Description	Unit Cost
1	1 EACH	Commodity No. 996-94 Vehicles, Including Automobiles, Trucks, Vans,	\$0.00

<p><b>Mandatory or Convenience</b> Mandatory</p> <p><b>Minimum Order</b> see price agreement</p> <p><b>Return Policy</b> see price agreement</p> <p><b>Warranty</b> see price agreement</p> <p><b>Best Value Analysis</b></p> <p><b>Freight/Surcharge</b></p>	<p><b>Renewal Option</b></p>	<p><b>Current Amendment Value</b> \$0.00</p> <p><b>Previous Contract Value</b> \$75,000,000.00</p> <p><b>Current Amended Value</b> \$75,000,000.00</p>
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**RS22**

# Awards/Agreements

Northside Ford Truck Sales, Inc.  
Automotive Vehicles



Attachments Exist  
Secondary Suppliers Do Not Exist

### Supplier Address

Northside Ford Truck Sales, Inc.  
6309 NE COLUMBIA BLVD  
P.O. BOX 55010  
Portland, OR 97238

**Contact:** Sharon Tucker  
**Phone:** 1 (503) 282-7777  
**Fax:**  
**Email:** stucker@northsidetrucks.com

<b>Contract #</b> <b>5549</b> <b>Revision # 0.3</b> <b>Revision Date</b> 06/29/2016
<b>Opportunity #</b> DASPS-2052-14 Vers 1.7 <b>Contract Start Date</b> 04/06/2015 <b>Expiration Date</b> 04/06/2020 <b>Supplier Number</b> 4442

All dates are mm/dd/yyyy

### Contract Administrator

DAS Procurement Services  
1225 Ferry Street SE  
Salem, OR 97301

### Receiving Address

See purchase order

### Contract Filed At

DAS PS

**Contact:** David Reynolds  
**Phone:** 1 (503) 378-4643  
**Fax:** 1 (503) 373-1626  
**Email:** david.reynolds@oregon.gov

Revision #3 adding price list and updating buyers guide.

Revision # 2 adds Buyers Guide. RS 4/24/2015

Revision # 1: To make contract statewide

<b>Delivery Requirements</b>			
See Price Agreement			
<b>Payment Terms</b>			
Net 30			
<b>FOB</b>			
FOB Destination			
Item #	Quantity / Unit	Description	Unit Cost
1	1 EACH	Commodity No. 998-94 Vehicles, Including Trucks, Vans,	\$0.00

<b>Mandatory or Convenience</b> Mandatory <b>Minimum Order</b> See Price Agreement <b>Return Policy</b> See Price Agreement <b>Warranty</b> See Price Agreement <b>Best Value Analysis</b>  <b>Freight/Surcharge</b>	<b>Renewal Option</b>	<b>Current Amendment Value</b> \$0.00 <b>Previous Contract Value</b> \$75,000,000.00 <b>Current Amended Value</b> \$75,000,000.00
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# Awards/Agreements

Hubbard Chevrolet / GMAC  
Automotive Vehicles



Attachments Exist  
Secondary Suppliers Do Not Exist

### Supplier Address

Hubbard Chevrolet / GMAC  
2937 G Street  
P.O. Box 100  
Hubbard, OR 97032

**Contact:** John Boyer  
**Phone:** 1 (800) 2474336  
**Fax:**  
**Email:** johnboy@hubbardchevrolet.com

<b>Contract #</b> <b>5555</b> <b>Revision # 0.3</b> <b>Revision Date</b> 06/29/2016
<b>Opportunity #</b> DASPS-2052-14 Vers 1.7 <b>Contract Start Date</b> 04/06/2015 <b>Expiration Date</b> 04/06/2020 <b>Supplier Number</b> 24666

All dates are mm/dd/yyyy

### Contract Administrator

DAS Procurement Services  
1225 Ferry Street SE  
Salem, OR 97301

### Receiving Address

See purchase order

### Contract Filed At

DAS PS

**Contact:** David Reynolds  
**Phone:** 1 (503) 378-4643  
**Fax:** 1 (503) 373-1626  
**Email:** david.reynolds@oregon.gov

Revision #3: Update certificate of liability insurance expirations. 3/17/2016 ns  
adding price list and updating buyers guide. 6/29/2016 RS  
Revision # 2 adds Buyers Guide. RS 4/24/2015  
Revision # 1: to make document statewide

<b>Delivery Requirements</b>			
See Price Agreement			
<b>Payment Terms</b>			
Net 30			
<b>FOB</b>			
FOB Destination			
Item #	Quantity / Unit	Description	Unit Cost
1	1 EACH	Commodity No. 055-06 Automobile, Car, Truck, SUV, POLICE	\$0.00

<b>Mandatory or Convenience</b> Mandatory <b>Minimum Order</b> See Price Agreement <b>Return Policy</b> See Price Agreement <b>Warranty</b> See Price Agreement <b>Best Value Analysis</b>  <b>Freight/Surcharge</b>	<b>Renewal Option</b>	<b>Current Amendment Value</b> \$0.00 <b>Previous Contract Value</b> \$75,000,000.00 <b>Current Amended Value</b> \$75,000,000.00
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RS24

*IN-BOWND & DUE IN APPROX. 3 WEEKS*

**RON TONKIN CJDRF**  
**16800 S E MCLOUGHLIN BLVD**  
**MILWAUKIE, OR 972674956**

Priced Order Confirmation (POC)

**Date Printed:** 2016-07-20 6:47 PM **VIN:** 1C4RDJAG0GC419956 **Quantity:** 01  
**Estimated Ship Date:** 2016-07-21 12:59 AM **VON:** 36105588 **Status:** F - Paint  
**Date Ordered:** 2016-02-16 4:27 PM **Ordered By:** S52445D

**Sold to:** RON TONKIN CJDRF (43231)  
 16800 S E MCLOUGHLIN BLVD  
 MILWAUKIE, OR 972674956

**Ship to:** RON TONKIN CJDRF (43231)  
 16800 S E MCLOUGHLIN BLVD  
 MILWAUKIE, OR 972674956

**Vehicle:** 2016 DURANGO SXT AWD (WDEL75)

	Sales Code	Description	MSRP(USD)	FWP(USD)
<b>Model:</b>	WDEL75	DURANGO SXT AWD	33,095	32,855
<b>Package:</b>	23B	Customer Preferred Package 23B	2,100	1,271
	ERC	3.6L V6 24V VVT Engine Upg I w/ESS	0	0
	DFL	8-Spd Auto 845RE Trans (Make)	0	0
<b>Paint/Seat/Trim:</b>	PW7	Bright White Clear Coat	0	0
	APA	Monotone Paint	0	0
	*K7	Cloth Low-Back Bucket Seats	0	0
	-X9	Black	0	0
<b>Options:</b>	NAS	50 State Emissions	0	0
	AJY	Popular Equipment Group	1,250	1,113
	YG1	7.5 Additional Gallons of Gas	0	18
	5N7	Saved Favorites	0	0
	4EX	Sales Tracking	0	0
<b>Group Funds:</b>	T50	PORTLAND - DAA	0	0
	A50	PORTLAND - PPA	0	0
<b>Destination Fees:</b>			995	995
<b>Total Price:</b>			<b>37,440</b>	<b>36,252</b>

**Order Type:** Retail  
**Scheduling Priority:** 4-Dealer Order  
**Customer Name:**  
**Customer Address:**

**Instructions:**

\$29,979<sup>00</sup> - THROUGH STATE CONTRACT #5552

DURANGO A.W.D.

**Note:** This is not an invoice. The prices and equipment shown on this priced order confirmation are tentative and subject to change or correction without prior notice. No claims against the content listed or prices quoted will be accepted. Refer to the vehicle invoice for final vehicle content and pricing. Orders are accepted only when the vehicle is shipped by the factory.

# NORTH SIDE FORD.

CITY OF MILWAUKIE 2017 K8A POLICE INTERCEPTOR.txt

07/20/16 19:44:07

## 2017 EXPLORER 4-DOOR

Ord Code: 500A Cust/Flt Name: MILWAUKIE

	RETAIL	DLR INV		RETAIL	DLR INV
K8A 4DR AWD POLICE	\$31510	\$26940.60	86P FRT LMP HOUSING	\$125	\$119.00
.112.6" WB			86T RR TAILLAMP HSG	NC	NC
G1 SHADOW BLACK			153 FRT LICENSE BKT	NC	NC
9 CLTH BKTS/VNL R					
W EBONY BLACK					
500A EQUIP GRP					
.PREM SINGLE CD			TOTAL BASE AND OPTIONS	34260	28665.60
99R .3.7L V6 TIVCT	NC	NC	INCLUDES E-PLATES		
44C .6-SPD AUTO TRAN	NC	NC			
53M SYNC SYSTEM	295	280.00			
422 CALIF EMISSIONS	NC	NC			
43D COURTESY DISABL	20	19.00			
51V SPTLMP LED DUAL	665	632.00			
66B TAIL LAMP PKG	425	404.00			
76R REVERSE SENSING	275	261.00			

2017 FORD EXPLORER PPV

4AWD

28,665.<sup>60</sup>

Sheet F2670

\$38,346.72  
delivered

To  
Sales

GM Excl

GM Exchange Reports Mailbox

2016 TAHOE  
GBA BLAC  
HOU JET  
ORDER NO.  
VIN 1GN S  
\*\*\*\*\*  
MODEL & F.  
\*\* CONTIN

2016 TAHOE 4WD POLICE VEHICLE

GBA BLACK /V8G  
HOU JET BLACK  
ORDER NO. SXWRQZ/FBC STOCK NO.  
VIN 1GN SKDE C9 GR250718

\*\*\*\*\*

MODEL & FACTORY OPTIONS	MSRP
CK15706 TAHOE 4WD POLICE VEHICLE	50000.00
AMF REMOTE KEYLESS ENTRY FLT PKG	75.00
C5Y GVW RATING - 7100 LBS	N/C
JF4 POWER ADJUSTABLE PEDALS	150.00
L83 ENGINE, 5.3L V8 ECOTEC3	N/C
MYC TRANSMISSION, 6 SPD AUTOMATIC	N/C
NE1 50-STATE EMISSIONS	N/C
R6D FLT-BID ASSISTANCE/CE	0.00
R9Y FLEET MAINTENANCE CREDIT	67.50-
UTQ CONTENT THEFT ALARM DISABLE	10.00
UT7 TRUNK MOUNTED TRUNK STUD	88.00
VQ2 FLEET ORDERING AND ASSISTANCE	0.00
VV4 4G LTE WI-FI (R) HOTSPOT WITH LIMITED DATA TRIAL AND MORE. (SUBJECT TO TERMS SEE ONSTAR.COM)	0.00
V76 RECOVERY HOOKS, FRONT	50.00
WX7 WIRING AUXILIARY SPEAKER	60.00
5HP KEY SINGLE KEY SYSTEM, 6 SPARE KEYS	40.00
5T5 SEAT OVERRIDE (SEO)	N/C
6C7 FRONT AUXILIARY DOME LAMP	170.00
6E2 SINGLE KEY SYSTEM	25.00
6J3 WIRING, GRILLE LAMPS/SPEAKERS	92.00
6J4 WIRING, HORN/SIRENS CIRCUIT	41.00
6J7 FLASHER SYSTEM - HEADLAMP & TAILLAMP	495.00
6N5 REAR WINDOW SWITCH INOPERATIVE	57.00
6N6 REAR DOOR LOCK INOPERATIVE REAR DOORS INOPERATIVE (DOORS CAN ONLY BE OPENED FROM OUTSIDE)	59.00
7X6 LEFT HAND HALOGEN SPOTLAMP	490.00
9C1 POLICE PACKAGE	4985.00-
9G8 DAYTIME RUNNING LAMPS/AUTO HEADLAMP DELETE	10.00
9U3 SEO-SEATS INDIVIDUAL CLOTH (DELETES CENTER SECTION)	N/C

TOTAL MODEL  
DESTINATION

\*\* CONTINUED ON PAGE 2 \*\*

TOTAL  
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INVOICE DC  
REBATES, &  
DEALER OF  
\*\*\*\*\*

HUBBARD CF

HUBBARD CHEVROLET

~~TAHOE 4x4 48,054~~



MILWAUKIE CITY COUNCIL  
STAFF REPORT

Agenda Item: **RS 3. C.**  
Meeting Date: Sept. 6<sup>th</sup>, 2016

To: Mayor and City Council  
Through: Bill Monahan, City Manager

Subject: **Authorization to have Auto Additions up fit three police vehicles.**

From: Captain Dye

Date: 8/24/16

**ACTION REQUESTED**

Authorize the City Manager to approve purchase orders in the amount of \$31,723.66 for Auto Additions to up fit a 2017 Ford Explorer patrol vehicle, 2017 Dodge Durango staff vehicle and a 2017 Chevrolet Tahoe patrol vehicle that we are in the process of acquiring.

**HISTORY OF PRIOR ACTIONS AND DISCUSSIONS**

On May 12<sup>th</sup>, 2016, Chief Bartol spoke with the City Council during the FY 17-18 budgeting process about the condition of our aging fleet. He requested that in addition to the previous \$100,000 per biennium from FY 15-16, that the Council authorize an additional \$50,000 to each year of the Biennium in order to replace three vehicles in two consecutive years. This was later approved and adopted in the FY 17-18 Budget by the City Council. Part of this vehicle purchase is the up fitting of safety equipment for these vehicle.

**BACKGROUND**

The Fleet Division and Police Department discovered that there are no current up fitting vendors on State Bid. We did a competitive bid process and evaluated other companies who specialize in this field. Our goal was to identify best price, best product and best service in making our final decision.

The business of up fitting emergency vehicles is a limited field. It is important that our vehicles are consistent in their operation and looks. With vehicles set up in a consistent manner, officers can operate most any of the vehicles by memory which promotes safe vehicle operation. This also maintains a consistent professional look while serving our community.

The Fleet Division and Police Department identified Auto Additions, Safety Vehicle Services (SVS) and Wire Works as vendors who specialize in this field and are somewhat local. All three companies were sent the same list of items that the Milwaukie Police Department requests being installed in/on our vehicles. All three companies are reputable local businesses out of Salem, Oregon. The cumulative price to up fit all three vehicles are as follows:

<b>Auto Additions .....</b>	<b>\$31,723.66</b>
<b>Service Vehicle Services.....</b>	<b>\$37,272.37</b>
<b>Wire Works.....</b>	<b>\$38,269.04</b>

**CONCURRENCE**

The City's fleet mechanics agree with using Auto Additions as our up fit vendor.

**FISCAL IMPACTS**

Using Auto Additions will save \$6,545.38 over the most expensive bid by Wireworks, who was the winning bid last year.

The up fitting of these vehicles are listed in the approved Biennial Budget FY 17-18 and come in under what was budgeted.

**WORK LOAD IMPACTS**

Fleet and Police delivering and picking up finished vehicles in Salem.

**ALTERNATIVES**

This is a limited field of expertise. No other alternatives available.

**ATTACHMENTS**

1. Resolution
2. Up fit quotes



**CITY OF MILWAUKIE**  
*"Dogwood City of the West"*

**Resolution No.**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, authorizing the City Manager to approve the purchase orders in the amount of \$31,723.66 from Auto Additions to up fit a 2017 Ford Explorer patrol vehicle, 2017 Dodge Durango staff vehicle and a 2017 Chevrolet Tahoe patrol vehicle.**

**WHEREAS**, the Police Department requires patrol vehicles to be set up in a consistent manner to promote safe vehicle operations;

**WHEREAS**, the Police Department requires that patrol vehicle maintain a consistent professional look;

**WHEREAS**, the Police Department staff have followed the City's purchasing policy and have utilized a competitive bid process and recommend that the City award the bid from Auto Additions to up fit a 2017 Ford Explorers, 2017 Dodge Durango and a 2017 Chevrolet Tahoe;

**Now, Therefore, be it Resolved** that the City Council of the City of Milwaukie, authorizes the City Manager to approve the purchase order to up fit the three vehicles for the Police Department for \$31,723.66 from Auto Additions.

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

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

\_\_\_\_\_  
Mark Gamba, Mayor

ATTEST:

APPROVED AS TO FORM:  
Jordan Ramis PC

\_\_\_\_\_  
Scott Stauffer, City Recorder

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



3925 Fairview Industrial Dr SE  
Suite 150  
Salem, OR 97302  
Phone. 503-393-3910  
Fax 503-393-7265

\*\* QUOTATION \*\*  
\*\*\* DUPLICATE \*\*\*  
Ord # 05 01148  
P/O # **DURANGO**

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3200 SE HARRISON STREET  
MILWAUKIE OR 97222

8/04/16  
15:58:23  
Expires  
11/08/2016

Lin	Qty	Part Number	S Description	Wt.Each	Net	Value
001	1	PP 02-0613	UTIL HRNS DURAN		499.0000	499.00
FRONT MOUNTED EQUIPMENT						
002	1	WH SA315P	F SIREN SPEAKER		139.5000	139.50
003	1	WH SAK54	F WHELEN ENG.			
004	1	WH IX44UF5P	WHELEN ENG.		380.0000	380.00
005	2	WH VTX609C	F VERTEX CLR		59.5000	119.00
006	1	WH IONR	F ION LED RED		81.5000	81.50
007	1	WH IONB	F ION LED BLUE		81.5000	81.50
008	1	LE IONBRKT	F ION BRACKET		10.6500	10.65
REAR MOUNTED EQUIPMENT						
009	2	WH VTX609B	F VERTEX BLUE		59.5000	119.00
010	2	WH VTX609R	F VERTEX RED		59.5000	119.00
011	2	WH LINZ6J	LINZ6 BLUE/RED		97.9000	195.80
012	2	LE IONBRKT	F ION BRACKET		10.6500	21.30
013	2	WH IONJ	F ION LED REB/BLU		81.5000	163.00
014	2	WH IONGROM	F ION GROMMET MNT		6.0800	12.16
ROOF MOUNTED EQUIPMENT						
015	1	ST CCA-DB-7-800/PCS	CONCEALED INT A		95.0000	95.00
INSTALLS ABOVE HEADLINER						
INSTALL FRONT MOUNTED RADIO ON PASSINGER SIDE OF FACTORY CONSOLE SUPPLIED BY MPD						
SIDE MOUNTED EQUIPMENT						
016	2	WH IONJ	F ION LED REB/BLU		81.5000	163.00
MOUNTED ON SIDE CARGO WINDOWS						
OFFICER AREA						

TOTAL UNITS	PART TOTAL	CORE TOTAL	FREIGHT	HANDLING	OTHER	TAX
RCVD. BY: _____					PAY THIS AMOUNT	\$

# AUTO ADDITIONS

3925 Fairview Industrial Dr SE  
 Suite 150  
 Salem, OR 97302  
 Phone. 503-393-3910  
 Fax 503-393-7265

\*\* QUOTATION \*\*  
 \*\*\* DUPLICATE \*\*\*  
 Ord # 05 01148  
 P/O # DURANGO

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Lin	Qty	Part Number	S Description	Wt.Each	Net	Value
017	2	MS 6404	F RED LED ROCKER		4.9500	9.90
018	1	A2 30.2109	F UNDECOVER SIREN		136.5000	136.50
019	2	MS E-123	F 40 AMP RELAY		4.5000	9.00
020	1	MS TINT	WINDOW TINT		236.0000	236.00
CARGO AREA						
021	1	SE TKO244DUR11-BSC	CARGO BOX COMBO		623.0400	623.04
LABOR/INSTALLATION						
025	1	SE TF0237DUR11	FREESTANDING KT		51.2500	51.25
LABOR / INSTALLATION						
026	1	LA L	LABOR CHARGE		1775.0000	1775.00
SHOP SUPPLIES						
027	1	MS SHOP SUPPLIES	SHOP SUPPLIES		70.0000	70.00

34	5110.10		105.00			
TOTAL UNITS	PART TOTAL	CORE TOTAL	FREIGHT	HANDLING	OTHER	TAX
					PAY THIS AMOUNT	\$ 5215.10
RCVD. BY: _____						

# AUTO ADDITIONS

3925 Fairview Industrial Dr SE  
 Suite 150  
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 Fax: 503-393-7265

\*\* QUOTATION \*\*  
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 Ord # 05 01153  
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Lin	Qty	Part Number	S	Description	Wt.Each	Net	Value
001	1	PP 03-0211		UTIL HRNS FRONT		499.0000	499.00
002	1	OD 65-PC1750		ODYSSEY BATTERY		297.0000	297.00
006	1	SI STC-922-25/ET		BOOSTER CABLE W		17.7500	17.75
007	1	SI STC-903-4	F	CONNECTOR		4.0000	4.00
008	1	SI STC905	F	DUST PLUG		2.0000	2.00
.							
009	1	WH IW8RRBB	F	LIBERTY II		2591.0000	2591.00
LIGHTBAR PER SPEC WITH OPTICOM EMMITTER							
.							
010	1	WH STPKT83	F	STRAP KIT			
011	2	WH VTX609C	F	VERTEX CLR		59.5000	119.00
012	2	WH IONSMJ	F	SUR MNT ION R/B		87.5000	175.00
013	2	WH IONJ	F	ION LED REB/BLU		81.5000	163.00
REAR MOUNTED EQUIPMENT							
.							
014	2	WH VTX609B	F	VERTEX BLUE		59.5000	119.00
015	1	A2 11.1005SF	F	FLASHER		19.8500	19.85
016	2	MS VF4-45F11		40/30A RELAY		8.4800	16.96
017	2	WH IONJ	F	ION LED REB/BLU		81.5000	163.00
018	1	WH IONBKT4		WHELEN ENG.		16.0000	16.00
019	2	WH IONJ	F	ION LED REB/BLU		81.5000	163.00
020	2	WH IONGROM	F	ION GROMMET MNT		6.0800	12.16
EXTERIOR EQUIPMENT							
.							
021	1	GR 5342		PUSH BUMPER		252.5000	252.50
022	1	GR 5342WHD		HD WRAP GORHINO		248.9800	248.98
023	1	WH SA315P	F	SIREN SPEAKER		132.0000	132.00
024	1	WH SAK44	F	SPEAKER BRACKET			
PRISONER EQUIPMENT							
.							
025	1	SE PK0419ITU12		10VSC COATED RP		629.2500	629.25
026	1	SE WK0514ITU12		WINDOW GUARDS		156.7500	156.75
027	1	SE DK0100ITU12	F	TPO DR PNL COVR		167.2500	167.25

TOTAL UNITS	PART TOTAL	CORE TOTAL	FREIGHT	HANDLING	OTHER	TAX
RCVD. BY: _____					PAY THIS AMOUNT	\$

# AUTO ADDITIONS

3925 Fairview Industrial Dr SE  
 Suite 150  
 Salem, OR 97302  
 Phone: 503-393-3910  
 Fax: 503-393-7265

\*\* QUOTATION \*\*  
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 Ord # 05 01153  
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Lin	Qty	Part Number	S	Description	Wt.Each	Net	Value
028	1	AD SUVIC1311	F	SEAT/SCREEN C/B		776.0000	776.00
029	1	AD MLP01-017	F	WINDOW UPGRADE		37.8000	37.80
030	1	WH 3SC0CDCR		COMPARTMENT LGT		50.2500	50.25

CARGO AREA

031	1	WH PELCB	F	WHELEN ENG.		140.7000	140.70
032	1	SE TK0231ITU12		CARGO DRAWER		553.9600	553.96
033	1	SE TF0237ITU12	F	LEG KIT UTILITY		47.7500	47.75

OFFICER AREA

034	1	HS C-VS-1308-INUT	F	CON, VS, 21TMS,		251.2500	251.25
035	1	HS C-CUP2-I	F	CON, ACSY, CUPHLD		27.4100	27.41
036	1	HS C-ARM-103	F	ARM REST		78.9800	78.98
037	1	HS C-EB40-CCS-1P	F	FACE PLATE 1 PC			
038	1	HS C-EB25-XTL-1P	F	FACE PLATE 1 PC			
039	1	HS C-EB25-MMT-1P	F	FACE PLATE 1 PC			
040	1	HS C-EB30-MMT-1P-A	F	FACE PLATE 3"			
041	1	HS C-HDM-304	F	FXDADP, HDM, 90F,		28.4700	28.47
042	1	HS C-MD-202	F	MOTION DEVICE		47.8600	47.86
043	1	HS C-HDM-204		POLE, TELE, HDM, S		113.0700	113.07
044	1	HS DS-PAN-111-1		CF31 DOCK SGL		630.6500	630.65
045	1	LD PA1580-1745	F	CF31 POWER SPLY		122.6700	122.67
046	1	JD 425-5071		POWER OUTLET	1.00	11.1500	11.15
047	2	MS AA-RDIO-MIC-BRKT		MIC BRKT		9.0000	18.00
048	1	MS B001TH7GUU		10FT USB EXT		9.9500	9.95
049	1	AU AA-ZEBRARW-420	F	PRINTER MOUNT		27.9500	27.95
061	1	MS MH3X	F	HVY DTY MIC CLP		3.5000	3.50

ANTENNAS

062	1	RD NMOKHFUD	F	ANTENNA MOUNT		9.2500	9.25
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MODEM

063	1	RD 512336	F	CL/WF/GPS ANTNA		66.2000	66.20
064	1	MS B001TH7GUU		10FT USB EXT		9.9500	9.95

TOTAL UNITS	PART TOTAL	CORE TOTAL	FREIGHT	HANDLING	OTHER	TAX
					RCVD. BY: _____	PAY THIS AMOUNT \$

# AUTO ADDITIONS

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 Suite 150  
 Salem, OR 97302  
 Phone: 503-393-3910  
 Fax: 503-393-7265

\*\* QUOTATION \*\*  
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 Ord # 05 01153  
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 11/08/2016

Lin	Qty	Part Number	S Description	Wt.Each	Net	Value
WEAPON MOUNT						
065	1	SE GK10342UHKSVSAXL	D-T-RAIL 2UNXL		321.7500	321.75
CONTROLLS						
066	1	WH CCSRN3	F CENCOM SAPHIRE		550.0000	550.00
067	1	WH WPKM1	F PARK-KILL MODUL		39.9500	39.95
068	7	MS E-123	F 40 AMP RELAY		4.5000	31.50
RADAR						
069	1	MS 155-2055-20	20' STLK CABLE		132.1500	132.15
PAINT 4 DOORS WHITE ONLY						
070	1	MS PAINT	PAINT BLK STRIP		900.0000	900.00
071	1	MS GRAPHICS	GRAPHICS		265.5000	265.50
072	1	MS FREIGHT	FREIGHT CHARGE		200.0000	200.00

73	11468.07					
TOTAL UNITS	PART TOTAL	CORE TOTAL	FREIGHT	HANDLING	OTHER	TAX
					PAY THIS AMOUNT	\$ 11468.07
RCVD. BY: _____						

RS35

# AUTO ADDITIONS

3925 Fairview Industrial Dr SE  
Suite 150  
Salem, OR 97302  
Phone: 503-393-3910  
Fax: 503-393-7265

\*\* QUOTATION \*\*  
\*\*\* DUPLICATE \*\*\*  
Ord # 05 01160  
P/O # TAHOE

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11/08/2016

Lin	Qty	Part Number	S Description	Wt.Each	Net	Value
001	1	PP 01-0215	TAHOE HARNESS		499.0000	499.00
002	2	OD 65-PC1750	ODYSSEY BATTERY		297.0000	594.00
ISOLATE BATTERIES						
003	1	PP AA-SUPER-RELAY	F 300AMP RELAY		53.3300	53.33
Part Ordered: ## AASUPER RELAY						
004	1	PP AA-SUPER-RELAY-PLG	F RELAY PIG TAIL		3.6500	3.65
005	1	SI STC-922-25	CABLE SET		14.5000	14.50
006	1	SI STC-903-4	F CONNECTOR		4.5000	4.50
007	1	SI STC905	F DUST PLUG		2.5000	2.50
FORWARD FACING LIGHTING						
008	1	WH IW8RRBB	F LIBERTY II		2591.0000	2591.00
LIGHTBAR PER SPEC WITH OPTICOM EMMITER						
009	2	WH VTX609C	F VERTEX CLR		59.5000	119.00
010	2	WH IONSMJ	F SUR MNT ION R/B		87.5000	175.00
011	2	WH IONJ	F ION LED REB/BLU		81.5000	163.00
SIDE FACING LIGHTING						
012	2	WH IONSMC	F SUR MNT ION CLE		87.5000	175.00
013	2	WH IONJ	F ION LED REB/BLU		81.5000	163.00
014	1	WH MBCT15JJ	15 TAH MIR BEAM		246.1000	246.10
015	1	WH LSVBKT45	MOUNTING BRKTS		15.2700	15.27
016	1	WH LINSV2B	WHELEN ENG.		152.6500	152.65
017	1	WH LINSV2R	F LINZ V RED		152.6500	152.65
REAR FACING LIGHTING						
019	2	MS H-22009BW	CANNON 120DEGRE		79.0000	158.00
020	1	A2 11.1005SF	F FLASHER		25.5700	25.57
021	2	MS E-123	F 40 AMP RELAY		4.5000	9.00
022	1	WH RP45	OUTER EDGE		660.4200	660.42
023	2	WH IONJ	F ION LED REB/BLU		81.5000	163.00

TOTAL UNITS	PART TOTAL	CORE TOTAL	FREIGHT	HANDLING	OTHER	TAX
RCVD. BY: _____					PAY THIS AMOUNT	\$

# AUTO ADDITIONS

3925 Fairview Industrial Dr SE  
 Suite 150  
 Salem, OR 97302  
 Phone: 503-393-3910  
 Fax: 503-393-7265

\*\* QUOTATION \*\*  
 \*\*\* DUPLICATE \*\*\*  
 Ord # 05 01160  
 P/O # TAHOE

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 MILWAUKIE POLICE DEPARTMENT  
 3200 SE HARRISON STREET  
 MILWAUKIE OR 97222

8/04/16  
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 Expires  
 11/08/2016

Lin	Qty	Part Number	S	Description	Wt.Each	Net	Value
024	2	WH IONGROM	F	ION GROMMET MNT		6.0800	12.16
EXTERIOR MOUNTED EQUIPMENT							
025	1	GR 5165		PUSH BUMPER		260.0600	260.06
026	1	GR 5167WHD		HD WRAPAROUND		255.8800	255.88
027	1	WH SA315P	F	SIREN SPEAKER		132.0000	132.00
029	1	WH SAK1	F	SPEAKER BRACKET			
PRISONER AREA							
030	1	SE PK0419TAH15SCA		SETINA MFG		589.0600	589.06
031	1	SE WK0514TAH15		WINDOW BARRIERS		146.9600	146.96
032	1	SE DK0100TAH15	F	TPO DR PNL COVR		164.9800	164.98
033	1	AD SUVTH1311		TAHOE C/B SCR N		902.7000	902.70
034	1	AD MLP01-017	F	WINDOW UPGRADE		33.0400	33.04
035	1	WH 3SC0CDRC		COMPARTMENT LGT		46.7300	46.73
CARGO AREA							
036	1	WH PELCB	F	WHELEN ENG.		130.8300	130.83
INSTALL USED COMMAND BOX SUPPLIED BY MPD							
LABOR TO CONNECT INVERTER TO RUN POWER STRIP, TWO PORTABLE RADIO CHARGERS, SECOND FRONT MOUNTED RADIO, DOCKING STATION, FLASHLIGHT CHARGER & THREE PORT ACCESSORY BOX							
OFFICER AREA							
037	1	JD 425-6010	F	CONSOLE	13.00	136.0000	136.00
038	1	JD 425-6204		FLOOR PLATE 00-	12.50	115.6000	115.60
039	1	JD 425-6033	F	DUAL CUP HOLDER	4.00	44.6300	44.63
040	1	JD 425-6034		ARM REST		66.9400	66.94
041	1	JD 425-6101	F	4" CENCOM FP		28.4800	28.48
042	1	HS C-HDM-304	F	FXDADP,HDM,9OF,		28.4700	28.47
043	1	HS C-MD-202	F	MOTION DEVICE		47.8600	47.86
044	1	HS C-HDM-204		POLE,TELE,HDM,S		113.0700	113.07
045	1	HS DS-PAN-111-1		CF31 DOCK SGL		630.6500	630.65
046	1	LD PA1580-1745	F	CF31 POWER SPLY		122.6700	122.67

TOTAL UNITS	PART TOTAL	CORE TOTAL	FREIGHT	HANDLING	OTHER	TAX
					RCVD. BY: _____	PAY THIS AMOUNT \$

# AUTO ADDITIONS

3925 Fairview Industrial Dr SE  
 Suite 150  
 Salem, OR 97302  
 Phone. 503-393-3910  
 Fax 503-393-7265

\*\* QUOTATION \*\*  
 \*\*\* DUPLICATE \*\*\*  
 Ord # 05 01160  
 P/O # TAHOE

CASH

INSTALLED

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 3200 SE HARRISON STREET  
 MILWAUKIE, OR  
 97222

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 MILWAUKIE POLICE DEPARTMENT  
 3200 SE HARRISON STREET  
 MILWAUKIE OR 97222

8/04/16  
 16:01:16  
 Expires  
 11/08/2016

Lin	Qty	Part Number	S Description	Wt.Each	Net	Value
047	2	MS AA-RDIO-MIC-BRKT	MIC BRKT		9.0000	18.00
048	1	MS MH3X	F HVY DTY MIC CLP		3.5000	3.50
049	1	MS B001TH7GUU	10FT USB EXT		9.9500	9.95
050	1	AU AA-ZEBRARW-420	F PRINTER MOUNT		27.9500	27.95
. ANTENNAS						
051	1	RD NMOKHFUD	F ANTENNA MOUNT		9.2500	9.25
. INSTALL RADIO SUPPLIED BY MPD						
. MODEM						
052	1	RD 512336	F CL/WE/GPS ANTNA		66.2000	66.20
. WEAPON MOUNT						
053	1	SE GK10342UHKSVCAXL	D-T-RAIL 2UNXL		321.7500	321.75
. CONTROLS						
054	1	WH CCSR3	F CENCOM SAPHIRE		550.0000	550.00
055	1	WH WPKM1	F PARK-KILL MODUL		39.9500	39.95
056	7	MS E-123	F 40 AMP RELAY		4.5000	31.50
. PAINT 4 DOORS WHITE ONLY						
057	1	MS PAINT	PAINT BLK STRIP		850.0000	850.00
058	1	MS GRAPHICS	GRAPHICS		265.5000	265.50
. LABOR						
059	1	LA L	LABOR CHARGE		2698.0000	2698.00

74	15040.46					
TOTAL UNITS	PART TOTAL	CORE TOTAL	FREIGHT	HANDLING	OTHER	TAX
					PAY THIS AMOUNT	\$ 15040.46
RCVD. BY: _____						



DAY WIRELESS SYSTEMS {03}  
 2240 Judson Street SE  
 Salem, OR 97302  
 (503) 581-2932

## QUOTATION

QUOTE NO.:189429 - 00 RPT  
 DATE: 8/01/16  
 TERMS: NET 30

5198

TO: Milwaukie, City of  
 Police Dept  
 3200 SE Harrison St  
 Milwaukie, OR 97222

Please reference Quote No. on  
 Correspondence & purchase orders.  
 Prices firm for 30 days.

WE ARE PLEASED TO QUOTE YOU THE FOLLOWING:

QTY	ITEM	DESCRIPTION	UNIT PRICE	TOTAL
		2017 Dodge Durango - Power -		
1	SVS-MINI-PNL-A	SVS-Mini_PNL-A Kit - Siren and Controller -	395.00	395.00
1	ETSS100N	100N Series Composite Spkr w/ Universal Bail Bracket - 100W	125.00	125.00
1	ETSA200R	Siren Amp 200 series compact siren - Front Facing Lights -	145.00	145.00
2	ELUC2S010W	LED undercover 2 insert 10' (white)	69.79	139.58
1	EMPS2STS2R	Mpower red grill	78.75	78.75
1	EMPS2STS2B	mPower blue grill	78.50	78.50
2	PMP2BKDGAJ	90 degree bracket	7.00	14.00
1	ENFWBSD02	Interior Visor Lights - Side Lighting -	655.55	655.55
2	ENFSGS3J	NFORCE GRILL MOUNT R/B	106.25	212.50
	Continued on following page			

QTY	DESCRIPTION	UNIT PRICE	TOTAL
	- Rear Facing Lights -		
2	ELUC2S010R LED Inserts (RED)	69.79	139.58
2	ELUC2S010B LED Inserts (BLUE)	69.79	139.58
2	ENFSGS3J NFORCE GRILL MOUNT R/B	106.25	212.50
2	EMPS2SMS4J mPower red/blue - Officer Area -	91.25	182.50
2	6404 Switch/Rnd Rock Red on/off	10.00	20.00
2	E-123 12V 20/30 amp Spdt Relay Mount radio on passenger side factory console (PD Supplied) - Antenna -	5.00	10.00
1	CCAS-SB-7-800 COVERT ANT SYS, 760-896 MHZ Concealed Internal Antenna - Misc -	80.00	80.00
1	TK0244DUR11 Cargo Box TFN-Tray, fixed no/lk BSC-base slide w/combo lk	700.15	700.15
1	SHOP SUPPLIES Connecters, tape, zip ties, wire	75.00	75.00
1	TECH_LABOR Tech Labor	1,800.00	1,800.00
		Item Summary	5,203.19
		Subtotal	5,203.19
		Inbound Frt	50.00
		Sales Tax	.00
		Grand Total	5,253.19
Continued on following page			

QTY	DESCRIPTION	UNIT PRICE	TOTAL

ORDERS SUBJECT TO SHIPPING & HANDLING AND SALES TAX IF APPLICABLE

TERMS SUBJECT TO CREDIT REVIEW

Quoted rate for maintenance is for service during normal business hours at Day Wireless System locations within designated service area and require a signed contract.

Maintenance contract coverage invoiced separately. Please contact our Sales or Service Representative for a quote on Preferred Customer 24/7 On Site maintenance.

BY **Todd Simmons** (503)581-2932 Ext **TSIMMONS@DAYWIRELESS.COM**

THIS QUOTE IS SUBJECT TO REVIEW BY MANAGEMENT FOR COMPLETENESS AND ACCURACY.

Accepted

by

LEGAL NAME OF PURCHASER

AUTHORIZED SIGNATURE

P.O. No.

Date



DAY WIRELESS SYSTEMS {03}  
 2240 Judson Street SE  
 Salem, OR 97302  
 (503) 581-2932

## QUOTATION

QUOTE NO.: 189457 - 00 RPT  
 DATE: 8/02/16  
 TERMS: NET 30

5198  
 TO: Milwaukie, City of  
 Police Dept  
 3200 SE Harrison St  
 Milwaukie, OR 97222

Please reference Quote No. on  
 Correspondence & purchase orders.  
 Prices firm for 30 days.

WE ARE PLEASED TO QUOTE YOU THE FOLLOWING:

QTY	ITEM	DESCRIPTION	UNIT PRICE	TOTAL
		2017 Ford PI SUV		
		-		
		Power		
		-		
1	DAY-16INTR-SUV-PNL-A	DAY-16INTR-SUV-PNL-A KIT	500.00	500.00
1	BATTERY	X2 Battery for Ford PI	215.00	215.00
1	STC922-25	Booster Cable- 4AWG	100.00	100.00
		-		
		Forward Facing Lights		
		-		
1	ENFLBS1248	48" 12V nForce LED Lightbar (MUST ATTACH CONFIG. FORM)	2,480.26	2,480.26
2	ELUC2S010W	LED undercover 2 insert 10' (white)	69.79	139.58
2	ENFSGS3J	NFORCE GRILL MOUNT R/B	106.25	212.50
2	EMPS2SMS4J	mPower surface red/blue	91.25	182.50
		-		
		Side Lighting		
		-		
2	EMPS2SMS2W	mPower surface White (side bumper)	78.75	157.50
2	EMPS2SMS4J	mPower red/blue (side cargo)	91.25	182.50
1	MBFX11JJ	Whelen Mirror Lights Split RB for Inter SUV	296.25	296.25
		Continued on following page		

QTY	DESCRIPTION	UNIT PRICE	TOTAL
1	ENT2B3R Red Intersector Light	130.15	130.15
1	ENT2B3B Blue Intersector Light - Rear facing lights -	130.15	130.15
2	ELUC2S010B LED Inserts (BLUE)	69.79	139.58
1	11.1005SF Led flasher w/programmable flash patterns	24.90	24.90
2	E-123 12V 20/30 amp Spdt Relay	5.00	10.00
2	ENFSSS3J Nforce 12 LED r/b Surface linght Push Bumper	106.25	212.50
2	EMPS2SMS4J mPower surface red/blue (flush in hatch) - Exterior Equipment -	91.25	182.50
1	GR5342 Go Rhino Push Bumper	275.50	275.50
1	GR5342WHD Go Rhino Heavy Duty Wraps	265.25	265.25
1	ETSS100N 100N Series Composite Spkr w/ Universal Bail Bracket - 100W - Prisoner Area -	135.15	135.15
1	PK0419ITU12SCA #10VS C RP Coated POLY part 12+ w/SCA	652.50	652.50
1	DK0100ITU12 DOOR PANEL S TPO PLASTIC BACK 12-15 INTERCEPTOR UTILITY	186.25	186.25
1	WK0514TU12 Setina Window Guards	165.00	165.00
1	SUVIC1311 2013 PI SUV C/Belt	899.00	899.00
1	ECVDMLTST4G cargo light white Continued on following page	25.25	25.25

QTY	DESCRIPTION	UNIT PRICE	TOTAL
1	MLP01-017 Lexan Panel - Cargo Area -	47.50	47.50
1	TK0321ITU12 Setina Cargo Box TFN-tray, fix n/lock BSN-base slide w/no lck	625.00	625.00
1	TF0237ITU12 FREE STANDING BRACKET KIT	58.75	58.75
1	PELCB4 Whelen Perimeter Enhancement Light (black housing) - Officer Area -	141.25	141.25
1	SVS-INTER-SUV-CONSOL SVS-Inter-SUV-Console	250.00	250.00
1	SVS-6038 Dual Cup Holder	51.50	51.50
1	SVS-6260 1PC Armrest w/Padad	55.00	55.00
1	C-EB40-CCS-1P XTL2500 Plate - Included acces	10.00	10.00
1	C-EB25-XTL-1P Mounting Bracket	8.00	8.00
1	C-EB25-MMT-1P 1 PC. Equip. Brkt. 2.5"	10.00	10.00
1	C-EB30-MMT-1P-A Angled Mount xtl 1500	20.00	20.00
1	C-HDM-304 OFF SET PLATFORM	32.50	32.50
1	C-MD-202 Tilt Swivel Device	60.00	60.00
1	C-HDM-204 HAVIS CONSOLE MT TELESCOPING POLE	135.00	135.00
1	DS-PAN-111-1 Havis docking station for cf31 toughbook w/single ant passthr	770.00	770.00
1	14.0553 3 Accessory outlet box 12V	22.95	22.95
1	PA1580-1745 Lind 120 watt power supply for CF31,51,52,53,74 toughbooks	128.56	128.56
Continued on following page			

QTY	DESCRIPTION	UNIT PRICE	TOTAL
1	C-MC MIC CLIP	10.00	10.00
1	C-MCB MIC CLIP BRACKET	12.25	12.25
1	SVS-ZEBRA-CAGE-BRKT2 SVS-Zebra-Cage-Brkt2	35.56	35.56
1	GK10342UHKSUSCA Dual Universal Gun Stand PARTITIONED	340.15	340.15
1	CCSRN3 Controller Emergency Lighting Cencom Sapphire No TA	720.89	720.89
1	WPKM1 Park-kill Module	42.12	42.12
7	E-123 12V 20/30 amp Spdt Relay - Misc -	5.00	35.00
1	503384 30ft Line Kits No Connectors	15.00	15.00
1	512336 GPS/LTE/Cellular/PCS/2.4GHz Quad Band Omni Install Stalker Radar provided by MPD	79.25	79.25
1	155-2055-16 16 ft. Antenna Cable	100.00	100.00
1	GRAPHICS Install graphics (provided by MPD)	200.00	200.00
1	TECH_LABOR Tech Labor	2,600.00	2,600.00
1	SHOP SUPPLIES connectors, zip ties, tape, wire	150.00	150.00
1	PAINT Paint 4 doors white	1,050.00	1,050.00
		Item Summary	15,716.00
		Subtotal	15,716.00
		Inbound Frt	125.00
		Sales Tax	.00
		Grand Total	15,841.00
Continued on following page			

QTY	DESCRIPTION	UNIT PRICE	TOTAL

ORDERS SUBJECT TO SHIPPING & HANDLING AND SALES TAX IF APPLICABLE

TERMS SUBJECT TO CREDIT REVIEW

Quoted rate for maintenance is for service during normal business hours at Day Wireless System locations within designated service area and require a signed contract.

Maintenance contract coverage invoiced separately. Please contact our Sales or Service Representative for a quote on Preferred Customer 24/7 On Site maintenance.

BY **Todd Simmons** (503)581-2932 Ext **TSIMMONS@DAYWIRELESS.COM**

THIS QUOTE IS SUBJECT TO REVIEW BY MANAGEMENT FOR COMPLETENESS AND ACCURACY.

Accepted

by \_\_\_\_\_ P.O. No. \_\_\_\_\_  
LEGAL NAME OF PURCHASER

\_\_\_\_\_ Date \_\_\_\_\_  
AUTHORIZED SIGNATURE



DAY WIRELESS SYSTEMS {03}  
 2240 Judson Street SE  
 Salem, OR 97302  
 (503) 581-2932

## QUOTATION

QUOTE NO.:189533 - 00 RPT  
 DATE: 8/03/16  
 TERMS: NET 30

5198  
 TO: Milwaukie, City of  
 Police Dept  
 3200 SE Harrison St  
 Milwaukie, OR 97222

Please reference Quote No. on  
 Correspondence & purchase orders.  
 Prices firm for 30 days.

WE ARE PLEASED TO QUOTE YOU THE FOLLOWING:

QTY	ITEM	DESCRIPTION	UNIT PRICE	TOTAL
		2017 Chevy Tahoe -		
1	SVS-15TAHOE-PANEL-A	SVS 15 Tahoe Panel A	500.00	500.00
2	BATTERY	X2 battery for tahoe	230.00	460.00
1	STC922-25	Booster Cable- 4AWG - Front Facing Lights -	100.00	100.00
1	ENFLBS1254	54"/137CM 12 NFORCE LED LIGHTBAR (ATTACH BUILD SHEET)	2,767.50	2,767.50
2	ELUC2S010W	LED undercover 2 insert 10' (white)	69.79	139.58
2	ENFSGS3J	NFORCE GRILL MOUNT R/B	106.25	212.50
2	EMPS2SMS4J	mPower red/blue - Side Lighting -	91.25	182.50
2	EMPS2SMS2W	mPower white	78.75	157.50
2	EMPS2SMS4J	mPower red/blue	91.25	182.50
1	MBFX11JJ	Whelen Mirror Lights Split RB for Inter SUV	296.25	296.25
1	ENT2B3B	Blue Intersector Light	130.15	130.15
1	ENT2B3R	Red Intersector Light	130.15	130.15
	Continued on following page			

QTY		DESCRIPTION	UNIT PRICE	TOTAL
		- Rear Facing Lights -		
2	4ND0010B	Hideaway LED lights Blue	78.75	157.50
1	11.1005SF	Led flasher w/programmable flash patterns	24.90	24.90
1	RP45	REAR PILLAR LED KIT	795.00	795.00
2	ENFSGS3J	NFORCE GRILL MOUNT R/B - Push Bumper -	106.25	212.50
1	GR5160	Push bumper (Tahoe)	267.50	267.50
1	GR5162WHD	Heavy Duty Wraprounds (Tahoe)	260.63	260.63
1	ETSS100N	100N Series Composite Spkr w/ Universal Bail Bracket - 100W - Prisoner Area -	154.25	154.25
1	PK0419TAH15	#10 recessed Panel Coated Poly w/expanded metal window screen	660.00	660.00
1	WK0514TAH15	Window Barrier VS Steel Vert	163.75	163.75
1	DK0100TAH15	Door Panel VS TPO Plastic	172.25	172.25
1	SUVTH1311	Prisoner Transport Seat/Rear Partition	875.15	875.15
1	MLP01-017	Lexan Panel	47.50	47.50
1	ECVDMLTAL00	Dome Light - Cargo area -	25.25	25.25
1	ECVDMLTST4G	cargo light white	25.25	25.25

Continued on following page

QTY	DESCRIPTION	UNIT PRICE	TOTAL
	Install cargo box provided by MPD - Officer Area -		
1	SVS-6025 Arvis Style Console	105.00	105.00
1	SVS-15TAHOE-FLRPLT 2015 Tahoe Floor Plate	78.50	78.50
1	SVS-6038 Dual Cup Holder	51.50	51.50
1	SVS-6260 1PC Armrest w/Padad	55.00	55.00
1	SVS-6101 Face Plate	20.00	20.00
1	C-HDM-304 OFF SET PLATFORM	32.50	32.50
1	C-MD-202 Tilt Swivel Device	60.00	60.00
1	C-HDM-204 HAVIS CONSOLE MT TELESCOPING POLE	132.50	132.50
1	DS-PAN-111-1 Havis docking station for cf31 toughbook w/single ant passthr	770.00	770.00
1	PA1580-1921 DC Power Adapter 12V	129.95	129.95
1	14.0553 3 Accessory outlet box 12V	22.95	22.95
1	C-MC MIC CLIP	10.00	10.00
1	C-MCB MIC CLIP BRACKET	12.25	12.25
1	SVS-ZEBRA-CAGE-BRKT2 SVS-Zebra-Cage-Brkt2	35.56	35.56
1	GK10342UHKSVSACA Dual Universal Gun Stand PARTITIONED	340.15	340.15
1	CCSRN3 Controller Emergency Lighting Cencom Sapphire No TA	720.89	720.89
1	WPKM1 Park-kill Module -	42.12	42.12
	Continued on following page		

QTY		DESCRIPTION	UNIT PRICE	TOTAL
		Misc -		
1	503384	30ft Line Kits No Connectors	15.00	15.00
1	512336	GPS/LTE/Cellular/PCS/2.4GHz Quad Band Omni Install two way radio and ant supplies by MPD	79.25	79.25
7	E-123	12V 20/30 amp Spdt Relay	5.00	35.00
1	PAINT	Paint 4 Doors White	1,050.00	1,050.00
1	GRAPHICS	install graphics provided by MPD	200.00	200.00
1	TECH_LABOR	Tech Labor	2,730.00	2,730.00
1	SHOP SUPPLIES	wires,connectors,zip ties,tape	150.00	150.00
		Item Summary		15,978.18
		Subtotal		15,978.18
		Inbound Frt		200.00
		Sales Tax		.00
		Grand Total		16,178.18

ORDERS SUBJECT TO SHIPPING & HANDLING AND SALES TAX IF APPLICABLE

TERMS SUBJECT TO CREDIT REVIEW

Quoted rate for maintenance is for service during normal business hours at Day Wireless System locations within designated service area and require a signed contract.

Maintenance contract coverage invoiced separately. Please contact our Sales or Service Representative for a quote on Preferred Customer 24/7 On Site maintenance.

BY **Todd Simmons** (503)581-2932 Ext **TSIMMONS@DAYWIRELESS.COM**

THIS QUOTE IS SUBJECT TO REVIEW BY MANAGEMENT FOR COMPLETENESS AND ACCURACY.

Accepted

by \_\_\_\_\_ P.O. No. \_\_\_\_\_  
LEGAL NAME OF PURCHASER

\_\_\_\_\_ Date \_\_\_\_\_  
AUTHORIZED SIGNATURE



Wire Works LLC  
 4775 Portland Rd  
 Suite 200  
 Salem, Or 97305

# Estimate

Date	Estimate #
7/22/2016	5629

Milwaukie Police Department  
 3200 SE Harrison Street  
 Milwaukie Or 97222

Job	P.O. No.	Rep
		TM

Item	Description	Qty	Rate	Total
	<b>2017 DODGE DURANGO</b>			
WWPD-002	ELECTRICAL SYSTEM Wire Works Custom basic power distribution system. Includes fuse block and 75 amp relay. No timer. Ignition or switch power.	1	129.95	129.95T
C3100X	SIREN SPEAKER Code 3 100 watt siren speaker. Bracket not Included.	1	126.10	126.10T
S71687	Code 3 universal mounting bracket for the C3100 speaker.	1	30.00	30.00T
IONR	FORWARD FACING LIGHTS Whelen ION Series Super-LED Light Red (Grill Lights)	1	79.20	79.20T
IONB	Whelen ION Series Super-LED Light Blue (Grill Light)	1	79.20	79.20T
WWLB-022	Wireworks light bracket for Whelen ION. 90 degree.	2	14.95	29.90T
VTX609C	Whelen Vertex Super LED lighthouse. White. (Head Light Area)	2	70.00	140.00T
IX44UF5P	Whelen Inner Edge light that fits 2013 and up Dodge Durango, 5 led modules with no take downs.	1	422.29	422.29T
IONJ	SIDE FACING VEHICLE LIGHTING: Whelen ION series LED light head. Split Red/Blue. (Side Cargo Windows)	2	79.20	158.40T
VTX609B	REAR FACING VEHICLE LIGHTS: Whelen Vertex Super LED lighthouse. Blue. (Reverse Light Housing)	2	70.00	140.00T
VTX609R	Whelen Vertex Super LED lighthouse. Red. (Brake Light Housing)	2	70.00	140.00T
LINZ6J	Whelen surface mount LINZ6 LED. Split Colors. Red/Blue. (Rear Window)(Attach to Hatch not headliner)	2	84.90	169.80T
			<b>Subtotal</b>	
			<b>Sales Tax (0.0%)</b>	
			<b>Total</b>	



Wire Works LLC  
 4775 Portland Rd  
 Suite 200  
 Salem, Or 97305

# Estimate

Date	Estimate #
7/22/2016	5629

Milwaukie Police Department  
 3200 SE Harrison Street  
 Milwaukie Or 97222

Job	P.O. No.	Rep
		TM

Item	Description	Qty	Rate	Total
WWLB-003	Wire Works 90 degree bracket for the LINZ6 light head. Aluminum.	2	12.00	24.00T
IONJ	Whelen ION series LED light head. Split Red/Blue. (Flush into Hatch Bottom)	2	79.20	158.40T
IONGROM	Whelen ION series light head flush mount grommet kit.	2	5.50	11.00T
CCAS-DB-7-800/...	ANTENNA Sti-Co concealed internal antenna system. 760-896/1850-1950 frequency range. Installs above headliner. Install Front Mounted Radio on Passenger side of Factory Console. (Supplied by MPD)	1	96.32	96.32T
6404	OFFICER AREA Round LED rocker switch. Red	2	9.95	19.90T
30.2109	Able 2 Hide-a-Way remote mount siren amplifier. Wail, Yelp and Air Horn tones.	1	139.99	139.99T
VF4	40/60AMP relay	2	4.95	9.90T
Misc	CARGO AREA: TK0244DUR11 (Setina rear storage box for the Dodge Durango. Includes TFN top tray and BSN base drawer with combo lock.	1	672.08	672.08
Misc	Setina free standing mounting bracket for Dodge Durango trunk box.	1	60.00	60.00
Labor	Labor required to complete the build of a vehicle	18	72.00	1,296.00T
Shop Supplies	Shop supplies to complete job. Includes zip ties, connectors, loom, etc.	1	50.00	50.00T
Shipping in	Shipping Charges in to WW.	1	100.00	100.00
Window Tint	Window tinting all windows of the SUV Legal Limit	1	312.00	312.00T

**Subtotal** \$4,594.43

**Sales Tax (0.0%)** \$0.00

**Total** \$4,594.43



Wire Works LLC  
 4775 Portland Rd  
 Suite 200  
 Salem, Or 97305

# Estimate

Date	Estimate #
7/15/2016	5603

Milwaukie Police Department  
 3200 SE Harrison Street  
 Milwaukie Or 97222

Job	P.O. No.	Rep
	Scott Huteson	TM

Item	Description	Qty	Rate	Total
	<b>2017 FORD EXPLORER</b>			
	<b>ELECTRICAL SYSTEM</b>			
Ch27.1.7	911 Circuits power distribution panel. 27 circuits, single stage timer, 7 foot.	1	577.50	577.50T
	<b>SPECIFY MOUNTING BRACKET</b>			
MPFISUVGB	911 Circuits mounting bracket for the Ford Utility SUV. Mounts in glove box.	1	22.50	22.50T
Misc	Odyssey 65-PC1750 battery	1	315.15	315.15
STC-254	BOOSTER ASSEMBLY - 4 AWG - 25 FT CABLE - 4 FT HARNESS - - WITH POLARITY INDICATOR	1	190.96	190.96T
	<b>FORWARD FACING LIGHTING</b>			
Misc	Whelen Liberty II 50" LED lightbar. Includes LED takedowns, rear DUO T/A, and LED Opticom	1	2,718.10	2,718.10
	Includes MKEZ83 lightbar bracket			
VTX609C	Whelen Vertex Super LED lighthouse. White.	2	70.00	140.00T
IONSMJ	Whelen ION surface mount LED lighthouse. Red/Blue split.	2	84.00	168.00T
IONJ	Whelen ION series LED light head. Split Red/Blue.	2	79.20	158.40T
	<b>SIDE FACING LIGHTING</b>			
IONSMC	Whelen ION series surface mount LED. White with black housing. ( Side Bumper )	2	84.00	168.00T
IONJ	Whelen ION series LED light head. Split Red/Blue. ( Side Cargo )	2	79.20	158.40T
MBFX11JJ	Whelen LED mirror beams for the 2013+ Ford Interceptor Utility. R/B-R/B	1	251.01	251.01T
LSVBKT34	Whelen LINSV mirror mount kit for the Ford SUV.	1	16.25	16.25T
LINSV2B	Whelen LINSV2 V-Series 2-IN-1 Surface Mount Light. Blue in color	1	162.43	162.43T
LINSV2R	Whelen LINSV2 V-Series 2-IN-1 Surface Mount Light. Red in color	1	162.43	162.43T
			<b>Subtotal</b>	
			<b>Sales Tax (0.0%)</b>	
			<b>Total</b>	



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# Estimate

Date	Estimate #
7/15/2016	5603

Milwaukie Police Department  
 3200 SE Harrison Street  
 Milwaukie Or 97222

Job	P.O. No.	Rep
	Scott Huteson	TM

Item	Description	Qty	Rate	Total
<b>REAR FACING LIGHTING</b>				
VTX609B	Whelen Vertex Super LED lighthouse. Blue.	2	70.00	140.00T
11.1005SF	Able 2 LED flasher (Flash Factory Red Ring)	1	28.95	28.95T
VF4	40/60AMP relay (For Red Ring Flash)	2	4.95	9.90T
IONJ	Whelen ION series LED light head. Split Red/Blue. ( Outside Hatch )	2	79.20	158.40T
IONBKT4	Whelen ION Rear Hatch Mounting Bracket. (Pair)	1	16.92	16.92T
IONJ	Whelen ION series LED light head. Split Red/Blue. ( Flushed in Hatch )	2	79.20	158.40T
IONGROM	Whelen ION series light head flush mount grommet kit.	2	5.50	11.00T
<b>EXTERIOR MOUNTED EQUIPMENT</b>				
5342	Go Rhino push bumper for the 2016 Ford SUV Interceptor. EcoBoost.	1	256.80	256.80T
5342WHD	Go Rhino heavy duty wraps for 2016 Ford SUV Interceptor.	1	253.20	253.20T
WWSS-002	Wire Works siren speaker and universal bracket. 100 watt	1	110.88	110.88T
<b>PRISONER AREA</b>				
PK0419ITU12	Setina 10CRP prisoner cage for the 2012-Current Ford Interceptor SUV. Includes recess panel and 2 pc. lower extension panels.	1	641.63	641.63T
WK0514ITU12	Setina steel window bars for the 2013 Ford Interceptor SUV.	1	159.84	159.84T
DK0100ITU12	Setina TPO door panels for the 2013 Ford Interceptor Utility.	1	179.71	179.71T
SUVIC1311	Aedec prisoner seat system for the Ford SUV. Includes seat, rear partition and center pull seat belts.	1	803.51	803.51T
Misc	Aedec MLP01-017 poly window upgrade	1	37.38	37.38
3SC0CDRCR	Whelen 3" white LED dome light.	1	51.75	51.75T
<b>CARGO AREA</b>				

<b>Subtotal</b>			
<b>Sales Tax (0.0%)</b>			
<b>Total</b>			



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# Estimate

Date	Estimate #
7/15/2016	5603

Milwaukie Police Department  
 3200 SE Harrison Street  
 Milwaukie Or 97222

Job	P.O. No.	Rep
	Scott Huteson	TM

Item	Description	Qty	Rate	Total
PELCB	Whelen perimeter enhancement lights. Black housing	1	142.13	142.13T
Misc	Setina CARGO BOX - TFN- Tray, Fixed with No Lock - BSN- Base Sliding with No Lock	1	635.15	635.15
Misc	Setina free standing bracket kit	1	58.77	58.77
OFFICER AREA				
C-VS-1308-INUT	Havis 2013 Ford Interceptor Utility Police Vehicle Specific 21" Console	1	283.50	283.50T
C-CUP2-I	Havis Cup holder, Internal mount, 4" Mounting space, Dual.	1	31.75	31.75T
C-ARM-103	Havis Armrest for top mount, console, large pad. Flip up armrest. Hinge allows quick flip up for access to essential equipment. Mounts in the rear of the enclosed console.	1	83.16	83.16T
C-EB40-CCS-1P	Havis 4" faceplate for the Whelen CENCOM	1	0.00	0.00T
C-EB25-XTL-1P	Havis 1-Piece Equipment Mounting Bracket, 2.5" Mounting Space, Fits Motorola XTL 2500, XTL5000-05, APX 7500	1	0.00	0.00T
Misc	Havis C-EB25-MMT-1P XTL2500 faceplate	1	0.00	0.00
Misc	Havis C-EB30-MMT-1P-1 3" faceplate with 30 degree angle	1	0.00	0.00
C-HDM-304	Havis Heavy Duty Fixed Top Offset Platform, 9" Offset	1	13.68	13.68T
C-MD-202	Havis tilt, swivel, motion device. Motion device that enables 180° horizontal rotation for laptops and docking stations	1	57.46	57.46T
C-HDM-204	Havis Pole only, Telescoping device mounting base, Heavy duty mount, Side mount, 8.5" High, With short handle	1	127.76	127.76T
DS-PAN-111-1	Havis docking station for CF31 toughbooks with single antenna pass thru.	1	712.60	712.60T
PA1580-1745	Lind 120 watt power supply for the CF31,51,52,53,74 toughbooks.	1	138.08	138.08T
425-5071	Jotto Desk 3 outlet cig power box.	1	16.80	16.80T

**Subtotal**

**Sales Tax (0.0%)**

**Total**



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Date	Estimate #
7/15/2016	5603

Milwaukie Police Department  
 3200 SE Harrison Street  
 Milwaukie Or 97222

Job	P.O. No.	Rep
	Scott Huteson	TM

Item	Description	Qty	Rate	Total
WWRA-004	Wire Works custom radio mic mounting bracket. Bent at 90 degrees.	2	9.00	18.00T
MH3X	Microphone mounting clip	1	3.00	3.00T
USB6	Wire Works 6 foot USB extension cable.	1	15.95	15.95T
WWCM-005	Wire Works universal bracket to mount Zebra printer to prisoner partition	1	45.00	45.00T
ANTENNAS				
LARNMOKHFU...	Larsen high frequency coax. RG58/U Dual Shield cable. 25 foot length. No connector.	1	22.50	22.50T
MODEM				
Misc	Terra Wave M3045020M13115618 antenna	1	112.49	112.49
USB15	Wire Works 15' USB extension cable.	1	24.95	24.95T
WEAPON MOUNT				
GK10342UHKS...	Setina dual weapon mount on t-rails. Dual handcuff locks with handcuff key override	1	345.35	345.35T
CONTROLS				
CCSRN3	Whelen Cencom remote mount controller.	1	585.00	585.00T
WPKM1	Whelen park kill module.	1	46.98	46.98T
VF4	40/60AMP relay	7	2.92286	20.46T
RADAR:				
155-2055-20	Install used Dual Antenna Radar (Supplied by MPD) Stalker Radar Antenna Cable. (20ft).	1	140.00	140.00T

**Subtotal**

**Sales Tax (0.0%)**

**Total**



Wire Works LLC  
 4775 Portland Rd  
 Suite 200  
 Salem, Or 97305

# Estimate

Date	Estimate #
7/15/2016	5603

Milwaukie Police Department  
 3200 SE Harrison Street  
 Milwaukie Or 97222

Job	P.O. No.	Rep
	Scott Huteson	TM

Item	Description	Qty	Rate	Total
Misc	PAINT Paint 4 doors white only	1	1,260.00	1,260.00
Graphics Installati...	GRAPHICS Graphics Installation Fee (Graphics Supplied by MPD)	1	180.00	180.00T
Labor	Labor required to complete the build of a vehicle	38	72.00	2,736.00T
Shop Supplies	Shop supplies to complete job. Includes zip ties, connectors, loom, etc.	1	150.00	150.00T
Freight out	Freight to customer.	1	300.00	300.00T

<b>Subtotal</b>		\$16,533.92
<b>Sales Tax (0.0%)</b>		\$0.00
<b>Total</b>		\$16,533.92



Wire Works LLC  
 4775 Portland Rd  
 Suite 200  
 Salem, Or 97305

# Estimate

Date	Estimate #
7/22/2016	5628

Milwaukie Police Department  
 3200 SE Harrison Street  
 Milwaukie Or 97222

Job	P.O. No.	Rep
	Scott Huteson	TM

Item	Description	Qty	Rate	Total
	<b>2017 CHEVY TAHOE</b>			
	<b>ELECTRICAL SYSTEM</b>			
Ch27.1.7	911 Circuits power distribution panel. 27 circuits, single stage timer, 7 foot.	1	577.50	577.50T
	<b>SPECIFY MOUNTING BRACKET</b>			
ML2 TAHOE-15	911 Circuits ABS Mounting Bracket for 2015+ Tahoe/Suburban in Rear Cargo Area, Rear Cupholder.	1	22.50	22.50T
Misc	Odyssey Battery for Tahoe	2	315.16	630.32T
Labor	Labor and parts required to Isolate Batteries	3	75.00	225.00T
STC-254	BOOSTER ASSEMBLY - 4 AWG - 25 FT CABLE - 4 FT HARNESS - - WITH POLARITY INDICATOR	1	190.96	190.96T
	<b>FORWARD FACING LIGHTING</b>			
Misc	Whelen Liberty II 55" LED lightbar. Includes LED takedown, rear DUO T/A, and LED Opticom Includes MKEZ83 lightbar bracket	1	2,718.10	2,718.10
VTX609C	Whelen Vertex Super LED lighthouse. White.	2	70.00	140.00T
IONSMJ	Whelen ION surface mount LED lighthouse. Red/Blue split.	2	84.00	168.00T
IONJ	Whelen ION series LED light head. Split Red/Blue.	2	79.20	158.40T
	<b>SIDE FACING LIGHTING</b>			
IONSMC	Whelen ION series surface mount LED. White with black housing. ( Side Bumper )	2	84.00	168.00T
IONJ	Whelen ION series LED light head. Split Red/Blue. ( Side Cargo )	2	79.20	158.40T
MBCT15JJ	Whelen mirror beams for 2015+ Chevy Tahoe. Red/Blue splits.	1	256.20	256.20T
LSVBKT45	Whelen Tahoe specific brackets for LINSV2 lights	1	16.57	16.57T
			<b>Subtotal</b>	
			<b>Sales Tax (0.0%)</b>	
			<b>Total</b>	



Wire Works LLC  
 4775 Portland Rd  
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 Salem, Or 97305

# Estimate

Date	Estimate #
7/22/2016	5628

Milwaukie Police Department  
 3200 SE Harrison Street  
 Milwaukie Or 97222

Job	P.O. No.	Rep
	Scott Huteson	TM

Item	Description	Qty	Rate	Total
LINSV2B	Whelen LINSV2 V-Series 2-IN-1 Surface Mount Light. Blue in color	1	162.43	162.43T
LINSV2R	Whelen LINSV2 V-Series 2-IN-1 Surface Mount Light. Red in color	1	162.43	162.43T
<b>REAR FACING LIGHTING</b>				
H-2209BW	Cannon 120 °: Blue/White (Sub out Reverse Light)	2	70.00	140.00T
11.1005SF	Able 2 LED flasher (Flash Factory Red Ring)	1	28.95	28.95T
VF4	40/60AMP relay (For Red Ring Flash)	2	4.95	9.90T
RP45	Whelen Outer Edge rear pillar mount exterior light assembly. Includes 6 Micron LED light heads. Fits 2015+ Tahoe	1	731.40	731.40T
IONJ	Whelen ION series LED light head. Split Red/Blue. ( Flushed in Hatch Bottom)	2	79.20	158.40T
IONGROM	Whelen ION series light head flush mount grommet kit.	2	5.50	11.00T
<b>EXTERIOR MOUNTED EQUIPMENT</b>				
Misc	GoRhino Push Bumper for the 2107 Chevy Tahoe.	1	256.80	256.80
Misc	GoRhino Heavy Duty Wraps for 2017 Chevy Tahoe	1	253.20	253.20
WWSS-002	Wire Works siren speaker and universal bracket. 100 watt (Install on Bumper, not behind)	1	110.88	110.88T
<b>PRISONER AREA</b>				
PK0419TAH15	Setina #10VS C Recessed Panel Coated Polycarbonate With Expanded Metal Window Security Screen. Fits 2015 Tahoe.	1	641.63	641.63T
WK0514TAH15	Setina Window Barrier VS Steel Vertical Fits 15' and up Tahoe's.	1	159.84	159.84T
			<b>Subtotal</b>	
			<b>Sales Tax (0.0%)</b>	
			<b>Total</b>	



Wire Works LLC  
 4775 Portland Rd  
 Suite 200  
 Salem, Or 97305

# Estimate

Date	Estimate #
7/22/2016	5628

Milwaukie Police Department  
 3200 SE Harrison Street  
 Milwaukie Or 97222

Job	P.O. No.	Rep
	Scott Huteson	TM

Item	Description	Qty	Rate	Total
DK0100TAH15	Setina Door Panel VS TPO Plastic Black Installs Over OEM Door Panels. Fits 15' Tahoe	1	179.71	179.71T
SUVTH1311	Aedec seat for Tahoe. Center out seat belts	1	803.51	803.51T
Misc	Aedec MLP01-017 poly window upgrade	1	37.38	37.38
3SC0CDCR	Whelen 3" white LED dome light.	1	51.75	51.75T
PELCB	CARGO AREA Whelen perimeter enhancement lights. Black housing	1	142.13	142.13T
Labor	INSTALL USED COMMAND BOX (Supplied by MPD) Labor required to connect Inverter to run power strip, two portable radio chargers, second front mounted radio, tough book docking station, flash light charger & three port accessory box.	4	72.00	288.00T
425-6010	OFFICER AREA Jotto Desk small standard console. 9" faceplate capacity ( standard faceplates included )	1	149.95	149.95T
WWCC-028	Wire Works custom floor plate for the 2015 Chevy Tahoe.	1	159.99	159.99T
425-6033	Jotto Desk dual cup holder.	1	48.72	48.72T
425-6034	Jotto Desk adjustable armrest.	1	68.88	68.88T
425-6101	Jotto Desk 4" faceplate for the Whelen Cencom controller. ADDITIONAL FACE PLATE NEEDED FOR RADIO INSTALL (No Charge)	1	0.00	0.00T
C-HDM-304	Havis Heavy Duty Fixed Top Offset Platform, 9" Offset	1	37.93	37.93T
C-MD-202	Havis tilt, swivel, motion device. Motion device that enables 180° horizontal rotation for laptops and docking stations	1	57.46	57.46T

**Subtotal**

**Sales Tax (0.0%)**

**Total**



Wire Works LLC  
 4775 Portland Rd  
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# Estimate

Date	Estimate #
7/22/2016	5628

Milwaukie Police Department  
 3200 SE Harrison Street  
 Milwaukie Or 97222

Job	P.O. No.	Rep
	Scott Hutson	TM

Item	Description	Qty	Rate	Total
C-HDM-204	Havis Pole only, Telescoping device mounting base, Heavy duty mount, Side mount, 8.5" High, With short handle	1	127.76	127.76T
DS-PAN-111-1	Havis docking station for CF31 toughbooks with single antenna pass thru.	1	712.60	712.60T
PA1580-1745	Lind 120 watt power supply for the CF31,51,52,53,74 toughbooks.	1	138.08	138.08T
425-5071	Jotto Desk 3 outlet cig power box.	1	16.80	16.80T
WWRA-004	Wire Works custom radio mic mounting bracket. Bent at 90 degrees.	2	9.00	18.00T
MH3X	Microphone mounting clip	1	3.00	3.00T
USB6	Wire Works 6 foot USB extension cable.	1	15.95	15.95T
WWCM-005	Wire Works universal bracket to mount Zebra printer to prisoner partition	1	45.00	45.00T
LARNMOKHFU...	ANTENNAS Larsen high frequency coax. RG58/U Dual Shield cable. 25 foot length. No connector. Two Radio and Antenna Supplied by MPD	2	22.50	45.00T
Misc	MODEM Terra Wave M3045020M13115618 antenna	1	112.49	112.49
GK10342UHKS...	WEAPON MOUNT Setina dual weapon mount on t-rails. Dual handcuff locks with handcuff key override	1	345.35	345.35T
CCSRN3	CONTROLS Whelen Cencom remote mount controller.	1	585.00	585.00T
WPKM1	Whelen park kill module.	1	46.98	46.98T

**Subtotal**

**Sales Tax (0.0%)**

**Total**



Wire Works LLC  
 4775 Portland Rd  
 Suite 200  
 Salem, Or 97305

# Estimate

Date	Estimate #
7/22/2016	5628

Milwaukie Police Department  
 3200 SE Harrison Street  
 Milwaukie Or 97222

Job	P.O. No.	Rep
	Scott Huteson	TM

Item	Description	Qty	Rate	Total
VF4	40/60AMP relay	7	2.92286	20.46T
Misc	PAINT Paint 4 doors white	1	1,260.00	1,260.00
Graphics Installati...	GRAPHICS Graphics Installation Fee	1	180.00	180.00T
Labor	Labor required to complete the build of a vehicle	38	72.00	2,736.00T
Shop Supplies	Shop supplies to complete job. Includes zip ties, connectors, loom, etc.	1	150.00	150.00T
Freight out	Freight to customer.	1	300.00	300.00T
			<b>Subtotal</b>	\$17,140.69
			<b>Sales Tax (0.0%)</b>	\$0.00
			<b>Total</b>	\$17,140.69



**To:** Mayor Gamba and Milwaukie City Council  
**Through:** **Bill Monahan, City Manager**  
**From:** Steve Bartol, Chief of Police   
**Date:** August 10, 2016  
**Subject:** **O.L.C.C. Application – J & J Little Store – 2936 SE Washington Street**

---

**Action Requested:**

It is respectfully requested the Council approve the O.L.C.C. Application To Obtain A Liquor License from Mrinal Tamrakar and Rajani Tamrakar – 2936 SE Washington Street.

**Background:**

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



**Regular Session  
Agenda Item No.**

**5**

# **Public Hearing**



MILWAUKIE CITY COUNCIL  
**STAFF REPORT**

Agenda Item: **RS 5. A.**  
Meeting Date: Sept. 6, 2016

To: Mayor and City Council

Through: Bill Monahan, City Manager

Subject: **Code Amendments to Regulate Marijuana  
Businesses**

From: Dennis Egnor, Planning Director

Date: August 19, 2016

**ACTION REQUESTED**

Approve application ZA-2016-001 and Findings of Approval found in Attachment 1 Exhibit A.

**BACKGROUND**

On August 16, 2016, the Council voted to direct staff to prepare a final draft ordinance regulating marijuana businesses in Milwaukie and to incorporate the Council's proposal for regulations related to the operation and location of marijuana production facilities in the North Milwaukie Industrial Area. The attached ordinance and exhibits include the proposed changes and additional findings.

The following changes have been incorporated:

**Ordinance** – The Whereas statements now cite the dates of the Council meetings.

**Exhibit A - Findings** – The findings include minor changes to Finding 5.b.(1) to more accurately describe the proposed code changes. A new Finding 6 has been included describing the Council's discussion related to the proposed standards for production facilities in the North Milwaukie Industrial Area.

**Exhibits B and C – Clean and Strike-out Versions of Zoning Ordinance Amendments** – New changes have been made to the following sections:

**Subsection 19.309.7** – This section establishes special development standards for uses in the M-Manufacturing zone. The proposed change adds a new subsection 3. which states that production facilities located in Manufacturing (M) zone areas to the west of 32<sup>nd</sup> Ave are subject to the North Milwaukie Industrial Area Marijuana Production Limitations set forth in subsection 19.509.3 (see below).

**Table 19.312.2 and Subsection 19.312.5.C.1** – This table and subsection set forth the procedural requirements and standards for uses in the Tacoma Station Area Manufacturing (M-TSA) zone. The proposed change states that marijuana production is subject to subsection 19.509.3 (see below).

**Subsection 19.509.3** - This subsection sets forth special standards for marijuana production in the North Milwaukie Industrial Area. The new changes state:

- A. *Within a building utilized for production, multiple producers may operate but no single producer shall operate in a manner where the mature marijuana plant grow canopy associated with that producer's operation exceeds 10,000 square feet.*
- B. *A marijuana producer shall not be located in a building that is within 1,500 feet of another building that is utilized for marijuana production.*

## **CONCLUSION/RECOMMENDATION**

Staff recommends that Council adopt the attached ordinance.

## **CODE AUTHORITY AND DECISION-MAKING PROCESS**

The proposal is subject to the following provisions of the Milwaukie Municipal Code (MMC).

MMC Section 19.902 Amendments to Maps and Ordinances

MMC Section 19.1008 Type V Review

This application is subject to Type V review, which requires the Council to consider whether the proposal complies with the code sections shown above. The criteria are addressed in the Findings for Approval (Exhibit A of Attachment 1). The application is a legislative action and is not subject to the 120-day clock.

## **CONCURRENCE**

The recommendations reflect the Council direction at the August 16<sup>th</sup> meeting. No concurrence from other departments or agencies has been sought.

## **FISCAL AND WORK LOAD IMPACTS**

No major fiscal or work load impacts are anticipated from the proposed code changes.

## **ALTERNATIVES**

- A. Approve the proposed amendments.
- B. Approve the proposed amendments with modifications to the materials in Attachment 1.
- C. Do not approve the proposed amendments.
- D. Continue the hearing.

## **ATTACHMENTS**

- 1. Ordinance
  - Exhibit A: Recommended Findings in Support of Approval
  - Exhibit B: Proposed Zoning Ordinance Amendments (Underline/Strikeout)
  - Exhibit C: Proposed Zoning Ordinance Amendments (Clean)



**CITY OF MILWAUKIE**

*"Dogwood City of the West"*

**Ordinance No.**

**An ordinance of the City Council of the City of Milwaukie, Oregon to amend Title 19 Zoning to regulate marijuana businesses. (File #ZA-2016-001).**

**WHEREAS**, during the 2015 legislative session, the Oregon State Legislature passed a series of bills addressing marijuana businesses, including House Bill 3400, which expands upon the framework of Measure 91 (the voter-approved act legalizing recreational marijuana);

**WHEREAS**, the Oregon State Legislature has charged the Oregon Liquor Control Commission with regulating the recreational marijuana industry in Oregon and the OLCC is currently in the process of issuing licenses for marijuana businesses;

**WHEREAS**, the City of Milwaukie adopted regulations for medical marijuana dispensaries on April 7, 2015 but is in need of additional regulations to address recreational marijuana businesses and businesses supplying medical marijuana to dispensaries;

**WHEREAS**, on January 5, 2016 and January 19, 2016, the City Council discussed code concepts and provided general direction for development of a set of regulations for marijuana businesses;

**WHEREAS**, on January 26, 2016, the Planning Commission held a work session regarding code concepts and on April 26, 2016, the Planning Commission reviewed an initial set of draft zoning text amendments and provided suggested refinements;

**WHEREAS**, the Planning Commission held a duly-advertised public hearing on the zoning text amendments on May 24, 2016, with notice provided per the requirements of the Milwaukie Municipal Code and the Oregon Revised Statutes, and recommended approval; and

**WHEREAS**, the City Council held a duly-advertised public hearing with notice provided per the requirements of the Milwaukie Municipal Code and the Oregon Revised Statutes. The initial hearing was held on July 19, 2016 with continuations to meetings held on August 16, 2016, and September 6, 2016.

**Now, Therefore, the City of Milwaukie does ordain as follows:**

Section 1. Findings. Findings of fact in support of the proposed amendments to Title 19 are attached as Exhibit A.

Section 2. Amendments. Title 19 Zoning is amended as described in Exhibit B (underline/strikeout version) and Exhibit C (clean version).

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

Read the second time and adopted by the City Council on \_\_\_\_\_.

Signed by the Mayor on \_\_\_\_\_.

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Mark Gamba, Mayor

ATTEST:

APPROVED AS TO FORM:  
Jordan Ramis PC

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Pat DuVal, City Recorder

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City Attorney

**Findings in Support of Approval  
File ZA-2016-001, Zone Text Amendments to Regulate Marijuana Businesses**

Sections of the Milwaukie Municipal Code not addressed in these findings are found to be inapplicable to the decision regarding this application.

1. The applicant, the Milwaukie Planning Director, has applied for a zoning ordinance text amendment (File ZA-2016-001) to regulate marijuana businesses in the following zones:
  - Low Density Residential Zones: R-10, R-7, and R-5
  - Medium and High Density Residential Zones: R-3, R-2.5, R-2, R-1, and R-1-B
  - Limited and General Commercial Zones: C-L and C-G
  - Community Shopping Commercial Zone: C-CS
  - Mixed Use Zones: GMU, NMU, and DMU
  - Manufacturing Zone: M
  - Tacoma Station Area Manufacturing Zone: M-TSA
  - Business Industrial Zone: B-I
2. The proposal is subject to the following provisions of the Milwaukie Municipal Code (MMC):
  - MMC Section 19.902 Amendments to Maps and Ordinances
  - MMC Section 19.1000 Review Procedures
3. The application has been processed and public notice provided in accordance with MMC Section 19.1008 Type V Review. A public hearing before the Planning Commission was held on May 24, 2016 as required by law. The initial public hearing before the City Council was held on July 19, 2016. The hearing was continued to August 16, 2016 and again to September 6, 2016 for a final vote.
4. MMC Chapter 19.1000 establishes the initiation and review requirements for land use applications. The City finds that these requirements have been met as follows.
  - a. MMC Subsection 19.1001.6 requires that Type V applications be initiated by the Milwaukie City Council, Planning Commission, Planning Director, or any individual.

The amendment is proposed by the City of Milwaukie and was initiated by the City Planning Director on April 19, 2016.
  - b. MMC Section 19.1008 establishes requirements for Type V review.
    - (1) MMC Subsection 19.1008.3.A.1 requires opportunity for public comment and review. Opportunity for public comment and review has been provided. Public notice in the form of email to the Neighborhood District Associations, posted notices, and information on the City website have publicized the Planning Commission's hearing on the proposed amendment to encourage comment by any interested party. In addition, an article was placed in the Pilot providing notice of the hearing.
    - (2) MMC Subsection 19.1008.3.A.2 requires notice of public hearing on a Type V Review to be posted on the City website and at City facilities that are open to the public. A notice of the Planning Commission's May 24, 2016, hearing was posted at City Hall, the Ledding Library, the Public Service Building, and the City's Johnson Creek Building Offices.

- (3) MMC Subsection 19.1008.3.A.2 requires notice be sent to individual property owners if the proposal affects a discrete geographic area. The Planning Director has determined that the proposal affects a large geographic area. Notice to individual property owners was provided only to owners and businesses in the City's industrial zones. Notice to residential, commercial, and mixed-use property owners was not provided.
  - (4) MMC Subsection 19.1008.3.B and C require notice of a Type V application to be sent to Metro and to the Department of Land Conservation and Development prior to the first evidentiary hearing. This notice was sent April 19, 2016.
  - (5) MMC Subsection 19.1008.3.D requires notice to property owners if, in the Planning Director's opinion, the application would affect the permissible uses of land for those property owners. Given that the proposal will expand the range of uses permitted within each of the zones rather than place limits on existing permitted uses, no Measure 56 notices were sent.
  - (6) MMC Subsection 19.1008.4 and 5 establish the review authority and process for review of a Type V application. The Planning Commission held a public hearing on May 24, 2016, and passed a motion recommending that the City Council approve the zoning ordinance text amendment. The City Council held a public hearing on July 19, 2016, and approved the text amendment.
5. MMC Section 19.902 Amendments to Maps and Ordinances
- a. MMC 19.902.5.A establishes the review process for zoning text amendments.  
The code states that changes to Title 19 shall be subject to Type V review per MMC 19.1008.
  - b. MMC 19.902.5.B establishes five criteria (listed below) for approval of changes to the zoning ordinance text. The City Council finds that the approval criteria have been met for the reasons listed below each of the criterion.
    - (1) The proposed amendment is consistent with other provisions of the Milwaukie Municipal Code.  
*The proposed code amendments allow recreational marijuana stores to locate under the same standards that currently apply to medical marijuana dispensaries. With the exception of processing sites in the BI-Business Industrial Zone, the amendments allow marijuana warehousing and processing uses to locate in the industrial areas subject to the same standards as other similar industrial uses except that these marijuana-related businesses must also meet additional security and odor control standards. Processing use in the BI zone would be subject to the conditional use process. The amendments allow marijuana testing and research facilities in commercial, mixed-use, and industrial zones that currently allow offices uses. The testing and research uses will be required to provide a higher level of security and odor control than other general use offices. The amendments allow medical grow sites indoors in residential areas provided security and odor control standards are met. The amendments allow medical and recreational production/grow sites in the M-Manufacturing zone and by conditional use in the B-I zone and the M-TSA zone. All production/grow sites will be subject to specific security and odor control standards to manage impacts. In addition, the production sites in the North Milwaukie Industrial Area will be subject to separation buffers.*

*No conflicts with other City code provisions are anticipated. All other code provisions can operate and be enforced with these amendments.*

- (2) The proposed amendment is consistent with the goals and policies of the Comprehensive Plan.

*Only the goals, objectives, and policies of Comprehensive Plan that are listed below are found to be relevant to the proposed text amendment.*

Relevant goals, objectives, and policies include:

- The Goal Statement of the Economic Base and Industrial/Commercial Land Use Element reads as follows:

*To continue to support and encourage the development of a broad industrial base in the City, and to encourage the expansion of service facilities in the community.*

- Objective #2 - Employment Opportunity states:

*To continue to support a wide range of employment opportunities for Milwaukie citizens.*

- Policy 4 of Objective #2 - Employment Opportunity states:

*The City will support home occupations (income-producing activities in the home) as long as these activities do not detract from the residential character of the area.*

- Objective #4 – Industrial Land Use states:

*To encourage new industries to locate within the three major industrial areas of the City, in order to take maximum advantage of existing access and public facilities serving industry.*

- Policy 3 of Objective #4 – Industrial Land Use states:

*Lands designated for industrial use as shown on Map 7, Land Use, should be reserved for industrial, manufacturing, distribution, and supporting land uses, except where otherwise indicated in the Tacoma Station Area Plan.*

- Objective #5 – Industrial Impacts states:

*To minimize the adverse impacts of industrial and employment center development and operation on surrounding areas.*

- Objective #6 – Commercial Land Use states:

*To encourage new commercial uses to locate within designated commercial areas of the City, in order to take maximum advantage of existing access and public facilities serving these areas.*

- Objective #8 – Commercial Land Use – Community Center states:

*To provide the weekly and comparison goods shopping needs of the City's and surrounding areas' residents.*

- Policy 4 under Objective #8 Commercial Land Use – Community Center reads:

*The Center will increase comparative and one-stop shopping services, thereby reducing vehicle trips outside the City, and providing better shopping services to the area.*

- Objective #10 – Commercial Land Use – Convenience Centers states:  
*To limit intrusion of commercial uses into neighborhood areas, while providing easy accessibility to residents.*
- Policy 3 under Objective #10 Commercial Land Use – Convenience Centers reads:  
*Local convenience centers will be designed to minimize the impacts on adjacent properties through visual screening, lighting controls, etc.*
- Policy 1 under Objective #12 Town Center reads:  
*Downtown Milwaukie, and specifically those lands designated as Town Center on Map 7, will be considered a Town Center, serving area-wide needs as well as the needs of local residents.*

The relevant goals, objectives, and policies are satisfied for the following reasons:

There are no specific Comprehensive Plan policies or objectives that provide clear guidance regarding whether the list of permitted uses for a given zone should be expanded to include a use that is not listed elsewhere in the code. Rather, the policies and objectives speak generally about broad objectives for economic development and the protection of zone districts for their intended uses.

The proposed text amendments provides a community benefit by allowing marijuana businesses to locate in commercial and industrial zones within the City, thereby increasing economic activity and enhancing convenience and accessibility for Milwaukie residents. For this reason, the following goals, policies, and objectives are satisfied by the proposal:

- Goal Statement of the Economic Base and Industrial/Commercial Land Use Element
- Objective #2 – Employment Opportunity
- Objective #4 – Industrial Land Use
- Objective #6 – Commercial Land Use
- Objective #8 – Commercial Land Use – Community Center
- Policy 4 of Objective #8 Commercial Land Use – Community Center
- Objective #10 – Commercial Land Use – Convenience Centers
- Policy 1 of Objective #12 Town Center

Policy 4 of Objective#2 – The amendments allow medical grow operations as home occupations within residential districts. The proposal limits impacts by requiring that grow operations be indoors and utilize odor control equipment.

Policy 3 of Objective #4 – Industrial Land Use appears to present a conflict with the proposal that marijuana retail facilities be allowed in the M-Zone given that the policy states “industrial lands should be reserved for industrial purposes.” The M-zone currently allows a wide range of retail uses provided that at least 25% of the development site is developed for manufacturing or industrial purposes. Because a portion of any development site is reserved for manufacturing or industrial use and because similar non-industrial (office and limited retail) uses are currently allowed in the zone, the proposed amendment does not conflict with Policy 3.

Policy 3 under Objective #10 Commercial Land Use – Convenience Centers addresses neighborhood compatibility. The proposed amendments manage impacts on neighborhoods by limiting the hours of operation and by regulating the display of products for retail marijuana sales.

Objective #5 – Industrial Impacts – The amendments satisfy the objective through the incorporation of new development standards that require processing, production, warehousing, research and testing facilities to utilize odor control equipment.

*In conclusion, all relevant goals, objectives and policies are satisfied by the proposed amendments for the reasons stated above.*

- (3) The proposed amendment is consistent with the Metro Urban Growth Management Functional Plan and relevant regional policies.

*The proposed amendments were sent to Metro for comment. Metro did not identify any inconsistencies with the Metro Urban Growth Management Functional Plan or relevant regional policies.*

- (4) The proposed amendment is consistent with relevant State statutes and administrative rules, including the Statewide Planning Goals and Transportation Planning Rule.

*The proposed amendments were sent to the Department of Land Conservation and Development (DLCD) for comment. DLCD did not identify any inconsistencies with relevant State statutes or administrative rules.*

*The proposed amendments are found to be consistent with the Transportation Planning Rule for the following reason. The proposed text amendment does not impact the transportation system given that it does not create the opportunity for any more vehicle trips than are currently allowed by other similar uses in each respective zone: i.e., retail stores and offices in commercial zones and warehousing, processing, offices, and production facilities in industrial zones.*

- (5) The proposed amendment is consistent with relevant federal regulations.

*Relevant federal regulations are those that address land use, the environment, or development in the context of local government planning. Typically, regulations such as those set forth under the following acts may be relevant to a local government land use process: the Americans with Disabilities Act, the Clean Air Act, the Clean Water Act, the Endangered Species Act, the Fair Housing Act, the National Environmental Policy Act, the Religious Land Use and Institutionalized Persons Act, and the Resource Conservation and Recovery Act. None of these acts include regulations that impact the subject proposal or that cannot be met through normal permitting procedures. Therefore the proposal is found to be consistent with federal regulations that are relevant to local government planning.*

6. In response to the Planning Commission's recommendation and testimony provided at the July 19, 2016 and August 16, 2016 public hearings, the City Council added special code provisions related to the operation and location of production facilities in the North Milwaukie Industrial Area (NMIA). The City, in partnership with Clackamas County and Metro, has recently initiated a year-long study of the North Milwaukie Industrial Area with

the intent of adopting a new ancillary plan document that outlines a redevelopment strategy for the area. The Council discussed the option of prohibiting marijuana production in the NMIA but concluded that operational and locational limits could be employed to manage the use. In addition to requiring production facilities in the M-TSA zone to be subject to the conditional use process, the Council added the following regulations for production facilities within the NMIA:

- 1) Limit the mature marijuana grow canopy size of any production operation to the 10,000 sq ft, Tier 2, size limitation set forth in state administrative rules.
- 2) Limit the number of buildings used for marijuana production in the North Milwaukie industrial area with a required 1,500 ft separation buffer between buildings used for production.

These limitations were established with the recognition that the North Milwaukie Industrial Area planning process had just begun and there was concern that a high level of investment in marijuana production may negatively impact future redevelopment of the area. The buffer is intended to put some limitation on the number of buildings that could be used for production.

## Underline/Strikeout Amendments

### Zoning Ordinance

#### CHAPTER 19.200 DEFINITIONS AND MEASUREMENTS

##### 19.201 DEFINITIONS

“Agriculture” means the tilling of the soil, the raising of crops, dairying, or animal husbandry; but not including the keeping or raising of fowl, pigs, or furbearing animals unless the keeping of animals is clearly incidental to the principal use of the property for the raising of crops.

“Production-related office” means offices that are characterized by activities that, while conducted in an office-like setting, involve less face-to-face customer contact and do not tend to generate foot traffic. Their operations are less service-oriented than traditional office uses and focus on the development, testing, research, production, processing, packaging, or assembly of goods and products. Examples include: software and internet content development and publishing; telecommunication service providers; data processing; television, video, radio, and internet studios and broadcasting; scientific and technical services; call centers; and medical and dental labs.

“Medical marijuana facility” means a business that dispenses medical marijuana in accordance with the regulations set forth by ORS Chapter 475B and related Oregon Administrative Rules. State-registered grow sites are not considered to be medical marijuana facilities and are instead classified as "marijuana production" for purposed of this Code not permitted under the City of Milwaukie's medical marijuana facility regulations.

"Marijuana business" means a state-licensed business involved in the production, processing, warehousing, testing, research, or sale of marijuana or marijuana-derived products.

"Marijuana processor" means a state-licensed business that processes, compounds, transforms, or converts marijuana into other marijuana products including concentrates, extracts, or edible products.

"Marijuana production" means planting, cultivating, growing, or harvesting of marijuana for sale or processing as a legal, state-licensed business.

"Marijuana retailer" means a state-licensed business that sells or distributes marijuana and marijuana-derived products to consumers. A marijuana retailer may sell or distribute recreational or medical marijuana.

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#### CHAPTER 19.300 BASE ZONES

##### 19.301 LOW DENSITY RESIDENTIAL ZONES

###### 19.301.3 Use Limitations and Restrictions

A. Agricultural or horticultural uses are permitted, provided that the following conditions are met.

- A1. Retail or wholesale sales associated with an agricultural or horticultural use are limited to the allowances for a home occupation per Section 19.507.

## Proposed Code Amendment

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- B2. Livestock, other than usual household pets, are not housed or kept within 100 ft of any dwelling not on the same lot, nor on a lot less than one acre, nor having less than 10,000 sq ft per head of livestock.
- C3. Poultry kept for the production of meat or for commercial sale of eggs are not housed or kept within 100 ft of any dwelling not on the same lot, nor on a lot less than 1 acre. Poultry kept for other purposes are not subject to these limitations and are allowed per Subsection 19.503.1.C.

B. Marijuana production is not permitted in low density residential zones except as follows:

- 1. State-licensed production for medical marijuana patients is permitted provided the operation is entirely indoors and meets the security and odor control standards set forth in Subsection 19.509.2.
  - 2. Growing marijuana indoors or outdoors for personal use is permitted consistent with state laws.
- 

### 19.302 MEDIUM AND HIGH DENSITY RESIDENTIAL ZONES

#### 19.302.3 Use Limitations and Restrictions

- A. Agricultural or horticultural uses are permitted, provided that the following conditions are met.
    - 1. Retail or wholesale sales associated with an agricultural or horticultural use are limited to the allowances for a home occupation per Section 19.507.
    - 2. Livestock, other than usual household pets, are not housed or kept within 100 ft of any dwelling not on the same lot, nor on a lot less than 1 acre, nor having less than 10,000 sq ft per head of livestock.
    - 3. Poultry kept for the production of meat or for commercial sale of eggs are not housed or kept within 100 ft of any dwelling not on the same lot, nor on a lot less than 1 acre. Poultry kept for other purposes are not subject to these limitations and are allowed per Subsection 19.503.1.C.
  - B. Office uses allowed in the medium and high density zones are offices, studios, clinics, and others similar professional offices. Corporate offices for marijuana businesses are permitted provided that no marijuana or marijuana products associated with the business are onsite. Marijuana testing labs and research facilities are not permitted office uses in these zones.
  - C. Marijuana production is not permitted in medium and high density residential zones except as follows:
    - 1. State-licensed production for medical marijuana patients is permitted provided the operation is entirely indoors and meets the security and odor control standards set for in Subsection 19.509.2.
    - 2. Growing marijuana indoors or outdoors for personal use is permitted consistent with state laws.
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19.303 COMMERCIAL MIXED-USE ZONES

19.303.2 Uses

Table 19.303.2 Uses Allowed in Commercial Mixed-Use Zones			
Uses and Use Categories	GMU	NMU	Standards/Additional Provisions
<b>Commercial</b> <sup>3, 4</sup>			
<p>General Office</p> <p>General office means professional, executive, management, or administrative or administrative offices of firms or organizations.</p> <p>Examples include professional services such as lawyers, architects, or accountants; financial businesses such as lenders, credit unions, or real estate agents; sales offices; <u>offices for testing and research-related businesses (including marijuana testing and research), and medical and dental <del>clinics</del>clinics.</u></p>	P	P	<u>Subsection 19.303.6.C Marijuana testing and research facilities</u>
<p>Retail-oriented sales</p> <p>Sales-oriented retail firms are involved in the sale, leasing, and rental of new or used products to the general public. Examples include stores selling, leasing, or renting consumer, home, and business goods including art, art supplies, bicycles, clothing, dry goods, electronics, fabric, gifts, groceries, hardware, household products, jewelry, pets and pet products, pharmaceuticals, plants, printed materials, stationery, and printed and electronic media.</p>	P	P	
<p><del>Marijuana retailer</del> <u>Medical marijuana facility</u></p> <p><del>Marijuana retailer means a state-licensed business that sells or distributes marijuana and marijuana-derived products to consumers. A marijuana retailer may sell or distribute recreational or medical marijuana.</del></p> <p><del>Medical marijuana facility means a business that dispenses medical marijuana in accordance with the regulations set forth by ORS Chapter 475 and related Oregon Administrative Rules. State-registered grow sites are not considered to be medical marijuana facilities and are not permitted under the City of Milwaukie's medical marijuana facility regulations.</del></p>	P	P	<u>Subsection 19.303.6.A Standards for Marijuana retailers</u> <u>Medical Marijuana Facilities</u>

**Proposed Code Amendment**

<b>Manufacturing and Production</b>			
<p>Manufacturing and production.<sup>8</sup></p> <p>Manufacturing and production uses are involved in the manufacturing, processing, fabrication, packaging, or assembly of goods. Natural, man-made, raw, secondary, or partially completed materials may be used.</p> <p>Examples include processing of food and related products; catering establishments; breweries, distilleries, and wineries; <u>marijuana processors</u>; weaving or production of textiles or apparel; woodworking, including cabinet makers; manufacture or assembly of machinery, equipment, instruments, including musical instruments, vehicles, appliances, precision items, and other electrical items; and production of artwork and toys.</p> <p><u>Marijuana production is prohibited.</u></p>	P	P	<p><b><u>Subsection 19.509.2 Security and odor control for certain marijuana businesses</u></b></p>

P = Permitted.

3. In the NMU Zone, unless otherwise specified in this section, all nonresidential uses listed in Table 19.303.2 shall be no greater than 10,000 sq ft in area per use. A nonresidential use greater than 10,000 sq ft in area may be approved through a conditional use review pursuant to Section 19.905.
4. The 10,000 sq ft size limitation in Footnote 3 of Table 19.303.2 does not apply to "retail-oriented sales" uses established within the existing lot and building situated at 4320 SE King Rd, within the lot's boundaries that exist on February 13, 2016, the effective date of Ordinance #2112. Redevelopment of the site is subject to all standards of Table 19.303.2.
8. Manufacturing and production uses are limited to 5,000 sq ft in floor area per use on the ground floor and are only permitted when associated with, and accessory to, a related retail-oriented sales or eating/drinking establishment use. For purposes of this subsection, manufacturing and production involve goods that are sold or distributed beyond or outside of the associated on-site eating or drinking establishment or retail trade use. For example, a brewing facility that distributes or sells its products elsewhere would be considered a manufacturing and production use, while a restaurant kitchen that prepares food that is purchased on the site would not be considered manufacturing or production.

**~~19.303.6 Standards for Medical Marijuana Facilities~~**

~~In the commercial mixed-use zones, medical marijuana facilities shall meet the following standards:~~

- ~~A. As set forth by Oregon Administrative Rules, a medical marijuana facility shall not be located within 1,000 ft of the real property comprising a public or private elementary, secondary, or career school attended primarily by minors or within 1,000 ft of another medical marijuana facility. In addition, a medical marijuana facility shall not be located within 1,000 ft of the Wichita and Hector Campbell school sites.~~
- ~~B. A medical marijuana facility shall not be colocated with another business.~~
- ~~C. Display of marijuana or marijuana products that are visible from outside of the facility is prohibited.~~
- ~~D. The hours of operation for medical marijuana facilities shall be limited to the hours between 8:00 a.m. and 10:00 p.m.~~

**19.303.76 Additional Provision**

Depending on the type and use of development proposed, the following sections of the Milwaukie Municipal Code may apply. These sections are references for convenience, and do not limit or determine the applicability of other sections within the Milwaukie Municipal Code.

**19.304 DOWNTOWN ZONES**

**19.304.2 Uses**

<b>Table 19.304.2 Downtown Zones—Uses</b>			
<b>Uses and Use Categories</b>	<b>DMU</b>	<b>OS</b>	<b>Standards/ Additional Provisions</b>
<b>Commercial</b>			
<p>Production-related office</p> <p>Production-related office uses are characterized by activities that, while conducted in an office-like setting, involve less face-to-face customer contact and do not tend to generate foot traffic. Their operations are less service-oriented than traditional office uses and focus on the development, testing, <u>research, production, processing, packaging, or assembly of goods and products.</u></p> <p>Examples include: software and internet content development and publishing; telecommunication service providers; data processing; television, video, radio, and internet studios and broadcasting; scientific and technical services; call centers, <u>marijuana testing and research facilities,</u> and medical and dental labs.</p>	P/CU	N	<p><b>Subsection 19.304.3.A.2</b> Main St limitations</p> <p><b>Subsection 19.304.3.A.3</b> Commercial use limitations</p> <p><b>Subsection 19.509.2</b> <u>Security and odor control for certain marijuana business</u></p> <p><b>Section 19.905</b> Conditional Uses</p> <p><u>Note: Production, processing, packaging, and assembly uses must meet the standards listed below under Manufacturing.</u></p>
<p><u>Marijuana retailer</u></p> <p><u>Marijuana retailer means a state-licensed business that sells or distributes marijuana and marijuana-derived products to consumers. A marijuana retailer may sell or distribute recreational or medical marijuana.</u></p> <p><u>Medical marijuana facility</u></p> <p><u>Medical marijuana facility means a business that dispenses medical marijuana in accordance with the regulations set forth by ORS Chapter 475 and related Oregon Administrative Rules. State registered grow sites are not considered to be medical marijuana facilities and are not permitted under the</u></p>	P/CU	N	<p><b>Subsection 19.509.1</b> <b>19.304.3.A.7</b> Standards for Marijuana Retailers Medical Marijuana Facilities</p>

## Proposed Code Amendment

City of Milwaukie's medical marijuana facility regulations.			
<b>Manufacturing</b>			
<p>Manufacturing and production</p> <p>Uses are involved in the manufacturing, processing, fabrication, packaging, or assembly of goods. Natural, man-made, raw, secondary, or partially completed materials may be used.</p> <p>Examples include processing of food and related products; catering establishments; breweries, distilleries, and wineries; <u>marijuana processors</u>; weaving or production of textiles or apparel; woodworking, including cabinet makers; manufacture or assembly of machinery, equipment, instruments (including musical instruments), vehicles, appliances, precision items, and other electrical items; and production of artwork and toys.</p>	P	N	<p><b><u>Subsection 19.304.3.A.87</u></b>  Manufacturing and production limitations  <b><u>Subsection 19.509.2</u></b>  <u>Security and odor control for certain marijuana businesses</u></p>

P = Permitted.

N = Not permitted.

CSU = Permitted with community service use approval subject to provisions of Section 19.904. Type III review required to establish a new CSU or for major modification of an existing CSU. Type I review required for a minor modification of an existing CSU.

CU = Permitted with conditional use approval subject to the provisions of Section 19.905. Type III review required to establish a new CU or for major modification of an existing CU. Type I review required for a minor modification of an existing CU.

### 19.304.3 Use Limitations, Restrictions, and Provisions

#### A. Use Limitations and Restrictions

The following provisions describe the limitations for uses listed in Table 19.304.2.

~~7. Medical marijuana facilities shall meet the following standards:~~

- ~~a. As set forth by Oregon Administrative Rules, a medical marijuana facility shall not be located within 1,000 ft of the real property comprising a public or private elementary, secondary, or career school attended primarily by minors or within 1,000 ft of another medical marijuana facility.~~
- ~~b. A medical marijuana facility shall not be colocated with another business.~~
- ~~c. Display of marijuana or marijuana products that are visible from outside of the retail facility is prohibited.~~
- ~~d. The hours of operation for medical marijuana facilities shall be limited to the hours between 8:00 a.m. and 10:00 p.m.~~

87. Manufacturing and production uses are limited to 5,000 sq ft in floor area per use on the ground floor and are only permitted when associated with, and accessory to, a related retail-oriented sales or eating/drinking establishment use. For purposes of this subsection, manufacturing and production involve goods that are sold or distributed

beyond or outside of the associated on-site eating or drinking establishment or retail trade use. For example, a brewing facility that distributes or sells its products elsewhere would be considered a manufacturing and production use, while a restaurant kitchen that prepares food that is purchased on-site would not be considered manufacturing or production. Marijuana production is prohibited.

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### 19.306 LIMITED COMMERCIAL ZONE C-L

In a C-L Zone the following regulations shall apply:

#### 19.306.1 Uses Permitted Outright

In a C-L Zone the following uses and their accessory uses are permitted outright:

- B. ~~Offices of~~ for administrative, editorial, educational, executive, financial, governmental, philanthropic, insurance, real estate, religious, research, testing, scientific, or statistical businesses or organizations.
- C. Retail trade establishment such as a food store, drugstore, gift shop, hardware store, selling primarily from a shelf-goods inventory.
- F. Marijuana retailer ~~Medical marijuana facilities~~ subject to the standards of Subsection ~~19.306-3-L~~ 509.1.

#### 19.306.2 Conditional Uses Permitted

In a C-L Zone the following conditional uses and their accessory uses are permitted subject to the provisions of Section 19.905:

- H. Agricultural or horticultural use, provided that poultry or livestock other than usual household pets are not housed or kept within 100 ft of any dwelling not on the same lot, nor on a lot less than 1 acre, nor having less than 10,000 sq ft per head of livestock; marijuana production is not permitted as an agricultural use;

#### 19.306.3 Standards

In a C-L Zone the following standards shall apply:

- L. Offices for marijuana research or testing shall be subject to the security and odor control standards of Subsection 19.509.2. ~~Medical marijuana facilities shall meet the following standards:~~
  - 1. ~~As set forth by Oregon Administrative Rules, a medical marijuana facility shall not be located within 1,000 ft of the real property comprising a public or private elementary, secondary, or career school attended primarily by minors, or within 1,000 ft of another medical marijuana facility. In addition, a medical marijuana facility shall not be located within 1,000 ft of the Wichita and Hector Campbell school sites.~~
  - 2. ~~A medical marijuana facility shall not be colocated with another business.~~
  - 3. ~~Display of marijuana or marijuana products that are visible from outside of the facility is prohibited.~~
  - 4. ~~The hours of operation for medical marijuana facilities shall be limited to the hours between 8:00 a.m. and 10:00 p.m.~~

**19.307 GENERAL COMMERCIAL ZONE C-G**

In a C-G Zone the following regulations shall apply:

**19.307.1 Uses Permitted Outright**

In a C-G Zone the following uses and their accessory uses are permitted outright:

- B. ~~Offices of~~ for administrative, editorial, educational, executive, financial, governmental, philanthropic, insurance, real estate, religious, research, testing, scientific, or statistical businesses or organizations.
- C. Retail trade establishment such as a food store, drugstore, gift shop, hardware store, selling primarily from a shelf-goods inventory;
- Y. Marijuana retailer ~~Medical marijuana facilities~~ subject to the standards of Subsection 19.307.3.M509.1;

**19.307.2 Conditional Uses Permitted**

In a C-G Zone the following conditional uses and their accessory uses are permitted subject to the provisions of Section 19.905:

- E. Agricultural or horticultural use, provided that poultry or livestock other than usual household pets are not housed or kept within 100 ft of any dwelling not on the same lot, nor on a lot less than 1 acre, nor having less than 10,000 sq ft per head of livestock; marijuana production is not permitted as an agricultural use;

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**19.307.3 Standards**

In a C-G Zone the following standards shall apply:

- M. Offices for marijuana research or testing shall be subject to the security and odor control standards of Subsection 19.509.2. ~~Medical marijuana facilities shall meet the following standards:~~
  - 1. ~~As set forth by Oregon Administrative Rules, a medical marijuana facility shall not be located within 1,000 ft of the real property comprising a public or private elementary, secondary, or career school attended primarily by minors, or within 1,000 ft of another medical marijuana facility. In addition, a medical marijuana facility shall not be located within 1,000 ft of the Wichita and Hector Campbell school sites.~~
  - 2. ~~A medical marijuana facility shall not be colocated with another business.~~
  - 3. ~~Display of marijuana or marijuana products that are visible from outside of the retail facility is prohibited.~~
  - 4. ~~The hours of operation for medical marijuana facilities shall be limited to the hours between 8:00 a.m. and 10:00 p.m.~~

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**19.308 COMMUNITY SHOPPING COMMERCIAL ZONE C-CS**

In a C-CS Zone the following regulations shall apply:

**19.308.1 Uses**

Development shall be a community-scale shopping center.

- A. Such center shall include at least 3 out of the 4 following uses:

1. Department store uses;
  2. Drug and/or variety store uses;
  3. Food supermarket;
  4. Retail specialty shops.
- B. Such center may include the following additional uses:
7. Marijuana retailer ~~Medical marijuana facilities~~ subject to the standards of Subsection 19.308.5.K 509.1;

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### 19.308.5 Development Standards

- ~~K. Medical marijuana facilities shall meet the following standards:~~
- ~~1. As set forth by Oregon Administrative Rules, a medical marijuana facility shall not be located within 1,000 ft of the real property comprising a public or private elementary, secondary, or career school attended primarily by minors or within 1,000 ft of another medical marijuana facility. In addition, a medical marijuana facility shall not be located within 1,000 ft of the Wichita and Hector Campbell school sites.~~
  - ~~2. A medical marijuana facility shall not be colocated with another business.~~
  - ~~3. Display of marijuana or marijuana products that are visible from outside of the facility is prohibited.~~
  - ~~4. The hours of operation for medical marijuana facilities shall be limited to the hours between 8:00 a.m. and 10:00 p.m.~~

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## 19.309 MANUFACTURING ZONE M

### 19.309.2 Permitted Uses

Permitted uses are limited to industrial uses meeting the following criteria:

- A. Any combination of manufacturing, office, and/or commercial uses are allowed when at least 25% of the total project involves an industrial use as described under Subsection 19.309.2.B.
- B. A use which involves the collection and assembly of durable goods, warehousing of goods, transshipment of goods from other sources, and/or the assembly of goods from products which have been processed elsewhere, general manufacturing, and production.
- C. Commercial and office uses which are accessory to the industrial use(s). Such uses may include gymnasium, health club, secretarial services, sandwich deli, small restaurant, and retail/wholesale commercial use and showroom.
- D. May produce small amounts of noise, dust, vibration, or glare, but may not produce off-site impacts that create a nuisance, as defined by DEQ or the City Noise Ordinance.
- E. A permitted use may require outside storage areas. These storage areas shall be screened with a sight-obscuring fence or dense plantings from any adjoining residential uses or public streets.
- F. Warehouse use which is accessory to an industrial use.

## Proposed Code Amendment

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- G. ~~Marijuana retailers~~ Medical marijuana facilities are allowed as a commercial use under Subsection 19.309.2.A. and subject to the special development standards set forth in Subsection ~~19.309.7.A~~509.1.

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### 19.309.7 Special Development Standards

The following development standards apply to specified uses in the M Zone.

A. Marijuana Businesses ~~Medical Marijuana Facilities~~

1. Marijuana retailers shall be subject to the standards of Subsection 19.509.1 ~~Medical marijuana facilities shall meet the following standards:~~

- ~~1—As set forth by Oregon Administrative Rules, a medical marijuana facility shall not be located within 1,000 ft of the real property comprising a public or private elementary, secondary, or career school attended primarily by minors or within 1,000 ft of another medical marijuana facility. In addition, a medical marijuana facility shall not be located within 1,000 ft of the Wichita and Hector Campbell school sites.~~
- ~~2—A medical marijuana facility shall not be colocated with another business.~~
- ~~3—Display of marijuana or marijuana products that are visible from outside of the facility is prohibited.~~
- ~~4—The hours of operation for medical marijuana facilities shall be limited to the hours between 8:00 a.m. and 10:00 p.m.~~

2. Marijuana production, processing, testing, research, and warehousing shall be subject to the security and odor control standards of Subsection 19.509.2.

3. Marijuana production facilities located in the M-Manufacturing zone to the west of 32<sup>nd</sup> Ave shall be subject the North Milwaukie Industrial Area Marijuana Production Limitations set forth in subsection 19.509.3.

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## 19.310 BUSINESS INDUSTRIAL ZONE BI

### 19.310.2 Uses Permitted Outright

- A. The following business and industrial uses are allowed outright, subject to the standards of Subsection 19.310.6.
1. Experimental, research, film, or testing laboratories, provided no operation shall be conducted or equipment used which would create hazards and/or nuisances off the site (marijuana testing or research shall also be subject to the security and odor control standards of Subsection 19.509.2);
  2. Manufacturing, processing, fabrication, packaging, or assembly of products from previously prepared materials;
- C. Warehousing and distribution (marijuana warehousing shall be subject to the security and odor control standards of Subsection 19.509.2).



C. Marijuana Production

1. Marijuana production shall be subject to the security and odor control standards of Subsection 19.509.2 and the North Milwaukie Industrial Area Marijuana Production Limitations set forth in subsection 19.509.3.

**19.312.6 Standards for Limited Uses**

The following standards apply to those uses listed as limited (L) in Table 19.312.2.

**B. ~~Medical Marijuana Facilities~~**

~~Medical marijuana facilities shall meet the following standards:~~

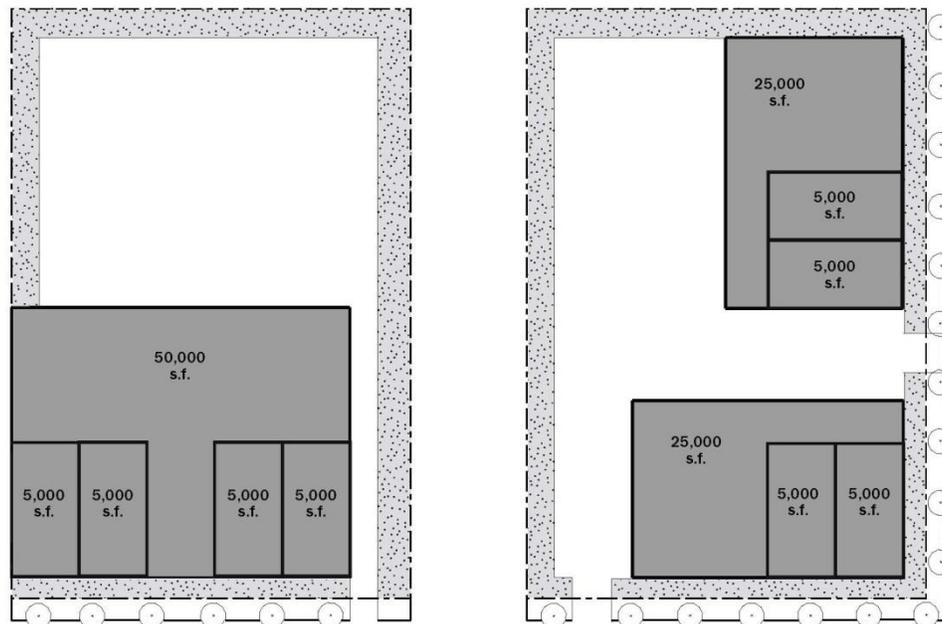
- ~~1. As set forth by Oregon Administrative Rules, a medical marijuana facility shall not be located within 1,000 ft of the real property comprising a public or private elementary, secondary, or career school attended primarily by minors or within 1,000 ft of another medical marijuana facility. In addition, a medical marijuana facility shall not be located within 1,000 ft of the Wichita and Hector Campbell school sites.~~
- ~~2. A medical marijuana facility shall not be colocated with another business.~~
- ~~3. Display of marijuana or marijuana products that are visible from outside of the facility is prohibited.~~
- ~~4. The hours of operation for medical marijuana facilities shall be limited to the hours between 8:00 a.m. and 10:00 p.m.~~

**C-B. Retail Commercial and Professional Services**

In order to ensure that these uses are limited in size and scale and do not dominate land intended for manufacturing uses, the following standards apply. See Figure 19.312.6.B for an illustration of the size limitations.

**Figure 19.312.6.CB**

**Size Limitations for Retail and Professional Service Uses**



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## CHAPTER 19.500 SUPPLEMENTARY DEVELOPMENT REGULATIONS

### 19.507 HOME OCCUPATION STANDARDS

#### 19.507.2 Prohibitions and Use Restrictions

- F. Except as set forth below, all marijuana-related businesses (production, processing, testing, warehousing, and sales) are prohibited as home occupations. State-licensed production for medical marijuana patients is permitted provided the operation is entirely indoors and meets the security and odor control standards of Subsection 19.509.2.

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### 19.509 MARIJUANA BUSINESS STANDARDS

The intent of these regulations is to ensure that potential impacts from marijuana businesses are managed and mitigated.

#### 19.509.1 Standards for Marijuana Retailers

- A. A marijuana retailer shall not be located within 1,000 ft of the real property comprising a public or private elementary, secondary, or career school attended primarily by minors. In addition, a marijuana retailer shall not be located within 1,000 ft of the Wichita and Hector Campbell school sites nor within 1,000 ft of another marijuana retailer.
- B. A marijuana retailer shall not be collocated with another business except when collocated with another state-licensed marijuana business as permitted by state laws.
- C. Display of marijuana or marijuana products that are visible from outside of the retail facility is prohibited.
- D. The hours of operation for marijuana retailer shall be limited to the hours between 8:00 a.m. and 10:00 p.m.
- E. No drive-through sales are permitted.

#### 19.509.2 Security and Odor Control for Certain Marijuana Businesses

- A. The operation shall be entirely indoors, within a fully-enclosed, secure building meeting building codes adopted by the City of Milwaukie and all other applicable state regulations.
- B. Odor shall be managed through the installation of activated carbon filters on exhaust outlets to the building exterior from any rooms used for production, processing, testing, research, and warehousing. Negative air pressure shall be maintained within the rooms. Exhaust outlets shall be a minimum of 25 feet from a property line.
- C. An alternative odor control system may be approved by the building official based on a report by a mechanical engineer licensed by the state of Oregon, demonstrating that the alternative system will control odor equally or better than the required activated carbon filtration system.

**19.509.3 North Milwaukie Industrial Area Marijuana Production Limitations**

- A. Within a building utilized for production, multiple producers may operate but no single producer shall operate in a manner where the mature marijuana plant grow canopy associated with that producer's operation exceeds 10,000 square feet.
- B. A marijuana producer shall not be located in a building that is within 1,500 feet of another building that is utilized for marijuana production.

## Clean Amendments

### Zoning Ordinance

#### CHAPTER 19.200 DEFINITIONS AND MEASUREMENTS

##### 19.201 DEFINITIONS

"Agriculture" means the tilling of the soil, the raising of crops, dairying, or animal husbandry; but not including the keeping or raising of fowl, pigs, or furbearing animals unless the keeping of animals is clearly incidental to the principal use of the property for the raising of crops.

"Production-related office" means offices that are characterized by activities that, while conducted in an office-like setting, involve less face-to-face customer contact and do not tend to generate foot traffic. Their operations are less service-oriented than traditional office uses and focus on the development, testing, research, production, processing, packaging, or assembly of goods and products. Examples include: software and internet content development and publishing; telecommunication service providers; data processing; television, video, radio, and internet studios and broadcasting; scientific and technical services; call centers; and medical and dental labs.

"Medical marijuana facility" means a business that dispenses medical marijuana in accordance with the regulations set forth by ORS Chapter 475B and related Oregon Administrative Rules. State-registered grow sites are not considered to be medical marijuana facilities and are instead classified as "marijuana production" for purposed of this Code.

"Marijuana business" means a state-licensed business involved in the production, processing, warehousing, testing, research, or sale of marijuana or marijuana-derived products.

"Marijuana processor" means a state-licensed business that processes, compounds, transforms, or converts marijuana into other marijuana products including concentrates, extracts, or edible products.

"Marijuana production" means planting, cultivating, growing, or harvesting of marijuana for sale or processing as a legal, state-licensed business.

"Marijuana retailer" means a state-licensed business that sells or distributes marijuana and marijuana-derived products to consumers. A marijuana retailer may sell or distribute recreational or medical marijuana.

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#### CHAPTER 19.300 BASE ZONES

##### 19.301 LOW DENSITY RESIDENTIAL ZONES

###### 19.301.3 Use Limitations and Restrictions

- A. Agricultural or horticultural uses are permitted, provided that the following conditions are met.
1. Retail or wholesale sales associated with an agricultural or horticultural use are limited to the allowances for a home occupation per Section 19.507.

2. Livestock, other than usual household pets, are not housed or kept within 100 ft of any dwelling not on the same lot, nor on a lot less than one acre, nor having less than 10,000 sq ft per head of livestock.
  3. Poultry kept for the production of meat or for commercial sale of eggs are not housed or kept within 100 ft of any dwelling not on the same lot, nor on a lot less than 1 acre. Poultry kept for other purposes are not subject to these limitations and are allowed per Subsection 19.503.1.C.
- B. Marijuana production is not permitted in low density residential zones except as follows:
1. State-licensed production for medical marijuana patients is permitted provided the operation is entirely indoors and meets the security and odor control standards set forth in Subsection 19.509.2.
  2. Growing marijuana indoors or outdoors for personal use is permitted consistent with state laws.

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**19.302 MEDIUM AND HIGH DENSITY RESIDENTIAL ZONES**

**19.302.3 Use Limitations and Restrictions**

- A. Agricultural or horticultural uses are permitted, provided that the following conditions are met.
1. Retail or wholesale sales associated with an agricultural or horticultural use are limited to the allowances for a home occupation per Section 19.507.
  2. Livestock, other than usual household pets, are not housed or kept within 100 ft of any dwelling not on the same lot, nor on a lot less than 1 acre, nor having less than 10,000 sq ft per head of livestock.
  3. Poultry kept for the production of meat or for commercial sale of eggs are not housed or kept within 100 ft of any dwelling not on the same lot, nor on a lot less than 1 acre. Poultry kept for other purposes are not subject to these limitations and are allowed per Subsection 19.503.1.C.
- B. Office uses allowed in the medium and high density zones are offices, studios, clinics, and others similar professional offices. Corporate offices for marijuana businesses are permitted provided that no marijuana or marijuana products associated with the business are onsite. Marijuana testing labs and research facilities are not permitted office uses in these zones.
- C. Marijuana production is not permitted in medium and high density residential zones except as follows:
1. State-licensed production for medical marijuana patients is permitted provided the operation is entirely indoors and meets the security and odor control standards set for in Subsection 19.509.2.
  2. Growing marijuana indoors or outdoors for personal use is permitted consistent with state laws.

**19.303 COMMERCIAL MIXED-USE ZONES**

**19.303.2 Uses**

<b>Table 19.303.2 Uses Allowed in Commercial Mixed-Use Zones</b>			
<b>Uses and Use Categories</b>	<b>GMU</b>	<b>NMU</b>	<b>Standards/Additional Provisions</b>
<b>Commercial<sup>3, 4</sup></b>			
<p>General Office</p> <p>General office means professional, executive, management, or administrative or administrative offices of firms or organizations.</p> <p>Examples include professional services such as lawyers, architects, or accountants; financial businesses such as lenders, credit unions, or real estate agents; sales offices; offices for testing and research-related businesses (including marijuana testing and research), and medical and dental clinics.</p>	P	P	<p><b>Subsection 19.303.6.C</b> Marijuana testing and research facilities</p>
<p>Retail-oriented sales</p> <p>Sales-oriented retail firms are involved in the sale, leasing, and rental of new or used products to the general public. Examples include stores selling, leasing, or renting consumer, home, and business goods including art, art supplies, bicycles, clothing, dry goods, electronics, fabric, gifts, groceries, hardware, household products, jewelry, pets and pet products, pharmaceuticals, plants, printed materials, stationery, and printed and electronic media.</p>	P	P	
<p>Marijuana retailer</p> <p>Marijuana retailer means a state-licensed business that sells or distributes marijuana and marijuana-derived products to consumers. A marijuana retailer may sell or distribute recreational or medical marijuana.</p>	P	P	<p><b>Subsection 19.303.6.A</b> Marijuana retailers</p>

## Proposed Code Amendment

Manufacturing and Production			
<p>Manufacturing and production.<sup>8</sup></p> <p>Manufacturing and production uses are involved in the manufacturing, processing, fabrication, packaging, or assembly of goods. Natural, man-made, raw, secondary, or partially completed materials may be used.</p> <p>Examples include processing of food and related products; catering establishments; breweries, distilleries, and wineries; marijuana processors; weaving or production of textiles or apparel; woodworking, including cabinet makers; manufacture or assembly of machinery, equipment, instruments, including musical instruments, vehicles, appliances, precision items, and other electrical items; and production of artwork and toys.</p> <p>Marijuana production is prohibited.</p>	P	P	<b>Subsection 19.509.2</b> Security and odor control for certain marijuana businesses

P = Permitted.

- In the NMU Zone, unless otherwise specified in this section, all nonresidential uses listed in Table 19.303.2 shall be no greater than 10,000 sq ft in area per use. A nonresidential use greater than 10,000 sq ft in area may be approved through a conditional use review pursuant to Section 19.905.
- The 10,000 sq ft size limitation in Footnote 3 of Table 19.303.2 does not apply to "retail-oriented sales" uses established within the existing lot and building situated at 4320 SE King Rd, within the lot's boundaries that exist on February 13, 2016, the effective date of Ordinance #2112. Redevelopment of the site is subject to all standards of Table 19.303.2.
- Manufacturing and production uses are limited to 5,000 sq ft in floor area per use on the ground floor and are only permitted when associated with, and accessory to, a related retail-oriented sales or eating/drinking establishment use. For purposes of this subsection, manufacturing and production involve goods that are sold or distributed beyond or outside of the associated on-site eating or drinking establishment or retail trade use. For example, a brewing facility that distributes or sells its products elsewhere would be considered a manufacturing and production use, while a restaurant kitchen that prepares food that is purchased on the site would not be considered manufacturing or production.

### 19.303.6 Additional Provision

Depending on the type and use of development proposed, the following sections of the Milwaukie Municipal Code may apply. These sections are references for convenience, and do not limit or determine the applicability of other sections within the Milwaukie Municipal Code.

## 19.304 DOWNTOWN ZONES

### 19.304.2 Uses

Table 19.304.2 Downtown Zones—Uses			
Uses and Use Categories	DMU	OS	Standards/ Additional Provisions
<b>Commercial</b>			
Production-related office	P/CU	N	<b>Subsection 19.304.3.A.2</b>

<p>Production-related office uses are characterized by activities that, while conducted in an office-like setting, involve less face-to-face customer contact and do not tend to generate foot traffic. Their operations are less service-oriented than traditional office uses and focus on the development, testing, research, production, processing, packaging, or assembly of goods and products.</p> <p>Examples include: software and internet content development and publishing; telecommunication service providers; data processing; television, video, radio, and internet studios and broadcasting; scientific and technical services; call centers, marijuana testing and research facilities, and medical and dental labs.</p>			<p>Main St limitations  <b>Subsection 19.304.3.A.3</b>                  Commercial use limitations  <b>Subsection 19.509.2</b>                  Security and odor control for certain marijuana business  <b>Section 19.905</b> Conditional Uses                  Note: Production, processing, packaging, and assembly uses must meet the standards listed below under Manufacturing.</p>
<p>Marijuana retailer</p> <p>Marijuana retailer means a state-licensed business that sells or distributes marijuana and marijuana-derived products to consumers. A marijuana retailer may sell or distribute recreational or medical marijuana.</p>	<p>P/CU</p>	<p>N</p>	<p><b>Subsection 19.509.1</b>                  Standards for Marijuana Retailers</p>
<p><b>Manufacturing</b></p>			
<p>Manufacturing and production</p> <p>Uses are involved in the manufacturing, processing, fabrication, packaging, or assembly of goods. Natural, man-made, raw, secondary, or partially completed materials may be used.</p> <p>Examples include processing of food and related products; catering establishments; breweries, distilleries, and wineries; marijuana processors; weaving or production of textiles or apparel; woodworking, including cabinet makers; manufacture or assembly of machinery, equipment, instruments (including musical instruments), vehicles, appliances, precision items, and other electrical items; and production of artwork and toys.</p>	<p>P</p>	<p>N</p>	<p><b>Subsection 19.304.3.A.7</b>                  Manufacturing and production limitations  <b>Subsection 19.509.2</b>                  Security and odor control for certain marijuana businesses</p>

P = Permitted.

N = Not permitted.

CSU = Permitted with community service use approval subject to provisions of Section 19.904. Type III review required to establish a new CSU or for major modification of an existing CSU. Type I review required for a minor modification of an existing CSU.

## Proposed Code Amendment

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CU = Permitted with conditional use approval subject to the provisions of Section 19.905. Type III review required to establish a new CU or for major modification of an existing CU. Type I review required for a minor modification of an existing CU.

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### 19.304.3 Use Limitations, Restrictions, and Provisions

#### A. Use Limitations and Restrictions

The following provisions describe the limitations for uses listed in Table 19.304.2.

7. Manufacturing and production uses are limited to 5,000 sq ft in floor area per use on the ground floor and are only permitted when associated with, and accessory to, a related retail-oriented sales or eating/drinking establishment use. For purposes of this subsection, manufacturing and production involve goods that are sold or distributed beyond or outside of the associated on-site eating or drinking establishment or retail trade use. For example, a brewing facility that distributes or sells its products elsewhere would be considered a manufacturing and production use, while a restaurant kitchen that prepares food that is purchased on-site would not be considered manufacturing or production. Marijuana production is prohibited.

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### 19.306 LIMITED COMMERCIAL ZONE C-L

In a C-L Zone the following regulations shall apply:

#### 19.306.1 Uses Permitted Outright

In a C-L Zone the following uses and their accessory uses are permitted outright:

- B. Offices for administrative, editorial, educational, executive, financial, governmental, philanthropic, insurance, real estate, religious, research, testing, scientific, or statistical businesses or organizations.
- C. Retail trade establishment such as a food store, drugstore, gift shop, hardware store, selling primarily from a shelf-goods inventory.
- F. Marijuana retailer subject to the standards of Subsection 19.509.1.

#### 19.306.2 Conditional Uses Permitted

In a C-L Zone the following conditional uses and their accessory uses are permitted subject to the provisions of Section 19.905:

- H. Agricultural or horticultural use, provided that poultry or livestock other than usual household pets are not housed or kept within 100 ft of any dwelling not on the same lot, nor on a lot less than 1 acre, nor having less than 10,000 sq ft per head of livestock; marijuana production is not permitted as an agricultural use;

#### 19.306.3 Standards

In a C-L Zone the following standards shall apply:

- L. Offices for marijuana research or testing shall be subject to the security and odor control standards of Subsection 19.509.2.
-

**19.307 GENERAL COMMERCIAL ZONE C-G**

In a C-G Zone the following regulations shall apply:

**19.307.1 Uses Permitted Outright**

In a C-G Zone the following uses and their accessory uses are permitted outright:

- B. Offices for administrative, editorial, educational, executive, financial, governmental, philanthropic, insurance, real estate, religious, research, testing, scientific, or statistical businesses or organizations.
- C. Retail trade establishment such as a food store, drugstore, gift shop, hardware store, selling primarily from a shelf-goods inventory;
- Y. Marijuana retailer subject to the standards of Subsection 19.509.1;

**19.307.2 Conditional Uses Permitted**

In a C-G Zone the following conditional uses and their accessory uses are permitted subject to the provisions of Section 19.905:

- E. Agricultural or horticultural use, provided that poultry or livestock other than usual household pets are not housed or kept within 100 ft of any dwelling not on the same lot, nor on a lot less than 1 acre, nor having less than 10,000 sq ft per head of livestock; marijuana production is not permitted as an agricultural use;

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**19.307.3 Standards**

In a C-G Zone the following standards shall apply:

- M. Offices for marijuana research or testing shall be subject to the security and odor control standards of Subsection 19.509.2.

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**19.308 COMMUNITY SHOPPING COMMERCIAL ZONE C-CS**

In a C-CS Zone the following regulations shall apply:

**19.308.1 Uses**

Development shall be a community-scale shopping center.

- A. Such center shall include at least 3 out of the 4 following uses:
  - 1. Department store uses;
  - 2. Drug and/or variety store uses;
  - 3. Food supermarket;
  - 4. Retail specialty shops.
- B. Such center may include the following additional uses:
  - 7. Marijuana retailer subject to the standards of Subsection 19. 509.1;

**19.309 MANUFACTURING ZONE M**

**19.309.2 Permitted Uses**

Permitted uses are limited to industrial uses meeting the following criteria:

- A. Any combination of manufacturing, office, and/or commercial uses are allowed when at least 25% of the total project involves an industrial use as described under Subsection 19.309.2.B.
- B. A use which involves the collection and assembly of durable goods, warehousing of goods, transshipment of goods from other sources, and/or the assembly of goods from products which have been processed elsewhere, general manufacturing, and production.
- C. Commercial and office uses which are accessory to the industrial use(s). Such uses may include gymnasium, health club, secretarial services, sandwich deli, small restaurant, and retail/wholesale commercial use and showroom.
- D. May produce small amounts of noise, dust, vibration, or glare, but may not produce off-site impacts that create a nuisance, as defined by DEQ or the City Noise Ordinance.
- E. A permitted use may require outside storage areas. These storage areas shall be screened with a sight-obscuring fence or dense plantings from any adjoining residential uses or public streets.
- F. Warehouse use which is accessory to an industrial use.
- G. Marijuana retailers are allowed as a commercial use under Subsection 19.309.2.A. and subject to the special development standards set forth in Subsection 19.509.1.

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**19.309.7 Special Development Standards**

The following development standards apply to specified uses in the M Zone.

- A. Marijuana Businesses
  - 1. Marijuana retailers shall be subject to the standards of Subsection 19.509.1
  - 2. Marijuana production, processing, testing, research, and warehousing shall be subject to the security and odor control standards of Subsection 19.509.2.
  - 3. Marijuana production facilities located in the M-Manufacturing zone to the west of 32<sup>nd</sup> Ave shall be subject the North Milwaukie Industrial Area Marijuana Production Limitations set forth in subsection 19.509.3.

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**19.310 BUSINESS INDUSTRIAL ZONE BI**

**19.310.2 Uses Permitted Outright**

- A. The following business and industrial uses are allowed outright, subject to the standards of Subsection 19.310.6.
  - 1. Experimental, research, film, or testing laboratories, provided no operation shall be conducted or equipment used which would create hazards and/or nuisances off the site (marijuana testing or research shall also be subject to the security and odor control standards of Subsection 19.509.2);

- 2. Manufacturing, processing, fabrication, packaging, or assembly of products from previously prepared materials;
- C. Warehousing and distribution (marijuana warehousing shall be subject to the security and odor control standards of Subsection 19.509.2).

**19.310.5 Conditional Uses**

- B. Uses allowed subject to the above conditions are:
  - 4. Marijuana producers and processors. Marijuana producers and processors shall be subject to the security and odor control standards of Subsection 19.509.

**19.312 TACOMA STATION AREA MANUFACTURING ZONE M-TSA**

**19.312.2 Use Categories**

The categories of land uses that are permitted in the M-TSA Zone are listed in Table 19.312.2. Permitted uses are designated with a “P.” A “C” in this table indicates a use that may be authorized as a conditional use in conformance with Chapter 19.905. An “L” indicates a use that is permitted outright with certain limitations as described in Subsection 19.312.6. Uses not listed in the table are not allowed.

All uses must comply with the land use district standards of this section and all other applicable requirements of the Zoning Ordinance. If it is unclear whether a proposed use is allowed under the use categories, the applicant may submit a Director Determination application per Subsection 19.903 to resolve the issue.

<b>Table 19.312.2 M-TSA Zone Uses</b>	
<b>Use Category</b>	<b>Status</b>
<b>G. Limited Uses</b>	
This category comprises uses that are primarily intended to support and serve other allowed uses in the M-TSA Zone. Limited uses are divided into two subcategories. See Subsection 19.312.6 for applicable limitations on these uses.	L
<b>L. Marijuana Businesses (as Limited and Conditional Uses)</b>	
This category includes the following businesses:	L
1. Marijuana retailers subject to the standards of Subsections 19.312.6 B. and 19.509.1	
2. Marijuana processing, testing, research, and warehousing subject to the standards of Subsection 19.509.2.	
3. Marijuana production subject to the conditional use process and the standards of Subsections 19.509.2 and 19.509.3.	C <sup>1</sup>

P = Permitted.

L = Limited.

C = Conditional use.

<sup>1</sup> Only marijuana production is subject to the condition use process.

**19.312.5 Standards for Conditional Uses**

The following standards apply to those uses listed as conditional (C) in Table 19.312.2.

C. Marijuana Production

1. Marijuana production shall be subject to the security and odor control standards of Subsection 19.509.2 and the North Milwaukie Industrial Area Marijuana Production Limitations set forth in subsection 19.509.3.

**19.312.6 Standards for Limited Uses**

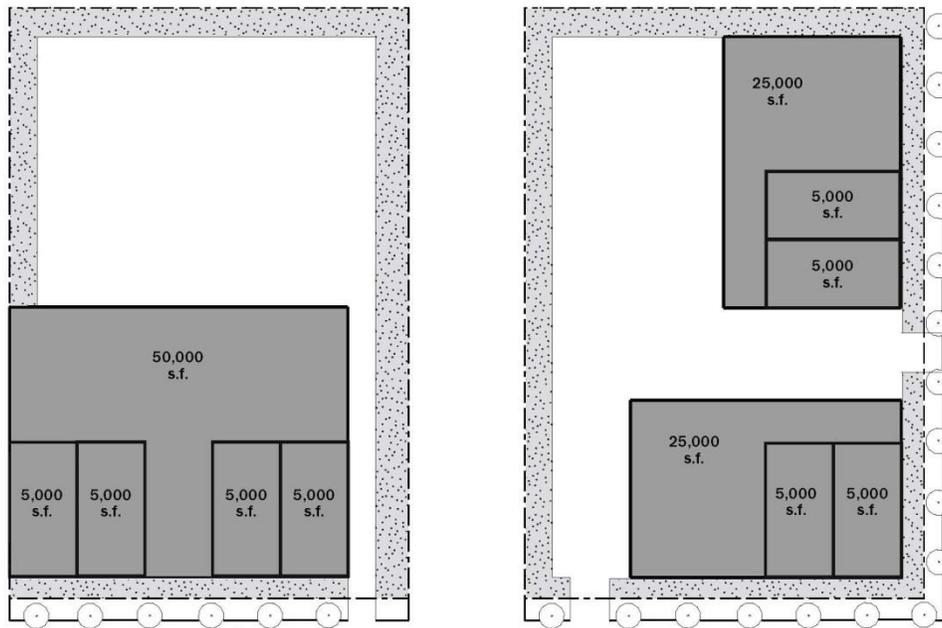
The following standards apply to those uses listed as limited (L) in Table 19.312.2.

B. Retail Commercial and Professional Services

In order to ensure that these uses are limited in size and scale and do not dominate land intended for manufacturing uses, the following standards apply. See Figure 19.312.6.B for an illustration of the size limitations.

**Figure 19.312.6.B**

**Size Limitations for Retail and Professional Service Uses**



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**CHAPTER 19.500 SUPPLEMENTARY DEVELOPMENT REGULATIONS**

**19.507 HOME OCCUPATION STANDARDS**

**19.507.2 Prohibitions and Use Restrictions**

- F. Except as set forth below, all marijuana-related businesses (production, processing, testing, warehousing, and sales) are prohibited as home occupations. State-licensed production for medical marijuana patients is permitted provided the operation is entirely indoors and meets the security and odor control standards of Subsection 19.509.2.

## **19.509 MARIJUANA BUSINESS STANDARDS**

The intent of these regulations is to ensure that potential impacts from marijuana businesses are managed and mitigated.

### **19.509.1 Standards for Marijuana Retailers**

- A. A marijuana retailer shall not be located within 1,000 ft of the real property comprising a public or private elementary, secondary, or career school attended primarily by minors. In addition, a marijuana retailer shall not be located within 1,000 ft of the Wichita and Hector Campbell school sites nor within 1,000 ft of another marijuana retailer.
- B. A marijuana retailer shall not be collocated with another business except when collocated with another state-licensed marijuana business as permitted by state laws.
- C. Display of marijuana or marijuana products that are visible from outside of the retail facility is prohibited.
- D. The hours of operation for marijuana retailer shall be limited to the hours between 8:00 a.m. and 10:00 p.m.
- E. No drive-through sales are permitted.

### **19.509.2 Security and Odor Control for Certain Marijuana Businesses**

- A. The operation shall be entirely indoors, within a fully-enclosed, secure building meeting building codes adopted by the City of Milwaukie and all other applicable state regulations.
- B. Odor shall be managed through the installation of activated carbon filters on exhaust outlets to the building exterior from any rooms used for production, processing, testing, research, and warehousing. Negative air pressure shall be maintained within the rooms. Exhaust outlets shall be a minimum of 25 feet from a property line.
- C. An alternative odor control system may be approved by the building official based on a report by a mechanical engineer licensed by the state of Oregon, demonstrating that the alternative system will control odor equally or better than the required activated carbon filtration system.

### **19.509.3 North Milwaukie Industrial Area Marijuana Production Limitations**

- A. Within a building utilized for production, multiple producers may operate but no single producer shall operate in a manner where the mature marijuana plant grow canopy associated with that producer's operation exceeds 10,000 square feet.
- B. A marijuana producer shall not be located in a building that is within 1,500 feet of another building that is utilized for marijuana production.



**Regular Session  
Agenda Item No.**

**6**

**Other Business**



MILWAUKIE CITY COUNCIL  
**STAFF REPORT**

Agenda Item: **RS 6. A.**  
Meeting Date: **Sept. 6, 2016**

To: Mayor and City Council

Through: Bill Monahan, City Manager

Subject: **Ordinance repealing chapter 3.13, Chapter 3.30 and adding Chapter 21 of the City Code; an Ordinance amending Chapter 5.08.110 and; a Resolution establishing ROW usage fees.**

From: Reba Crocker, Right-of-Way & Contract Coordinator

Date: September 6, 2016

### **ACTION REQUESTED**

Staff respectfully recommends the City Council approve an Ordinance adopting Chapter 21 to the City's code and repealing Chapters 3.13 and 3.30, and an Ordinance amending Chapter 5.08.110. Additionally staff respectfully recommends the City Council approve a Resolution adopting the right-of-way (ROW) usage fees.

### **HISTORY OF PRIOR ACTIONS AND DISCUSSIONS**

#### **May 3, 2016**

City Council held a work session and directed staff to update the City's code in regards to rights-of-way management and usage by utility providers. Council agreed that an update was needed to protect the City's Home-rule authority; plan for future growth; be resilient to changes in technology; receive fair and just compensation for use of the City's rights-of-way by all utility providers located in the City's ROW, not just telecommunication utilities; and efficiently and effectively manage the City's rights-of-way.

#### **May 2016**

Staff and legal counsel collaborated in drafting Chapter 21.

#### **June 2016**

City Council reviewed the draft of Chapter 21 and approved staff to collaborate with current utility providers.

#### **July 2016**

Staff requested input from current franchisees and utility providers (18) on proposed language and structure of Chapter 21.

#### **August 2016**

Staff made adjustments to Chapter 21 after receiving input from the utility providers.

## **BACKGROUND**

The City of Milwaukie does not currently have a designated Municipal Code section for utility providers using the City's ROW. The Code does have a small section on telecommunications companies but over the years, the City has negotiated individual agreements with each utility provider. Although this has historically worked for the City, the industry is moving toward licensing under a more robust and consistent method involving the implementation of a specific Municipal Code section, with utility providers being bound to equal requirements. Individual franchises agreements will phase out over time. Updating the Code will allow a reduction in staff and legal time negotiating individual franchises, and simplify enforcement as the new code will apply the same terms and conditions for all providers, making a level playing field.

By updating the Code, the City will be in a better position to remain resilient and adaptive to future changes in the industry. In addition, this update will make the City's regulation of its ROW, similar to its neighboring jurisdictions (Gladstone, Oregon City, Happy Valley, Beaverton, Gresham and Tigard).

Another benefit of the new section is that the City will be able to identify those providers benefiting from and using the City's ROW, without fairly and justly compensating the City for that use.

On July 6, 2016 staff sent the proposed Chapter 21 to 8 current franchisees, 9 unfranchised ROW users and 1 potential provider, requesting feedback. Staff allowed over three weeks for the providers to provide comments and suggested modifications. Staff believes that ample notice was provided.

Staff received valid feedback from one provider. This provider is regulated by the Oregon Public Utility Commission. This provider objected to section 21.220 (B). The City agrees to discuss a waiver of that section, for providers regulated by the Oregon Public Utility Commission, in 2024 when the current franchise expires. The City understands that the provider is required by the Oregon Public Utility Commission to provide most of this information.

Additional comments were received from a current franchisee requesting the City make modifications specifically naming that provider and inserting the language currently in their franchise into the new Chapter. This request is contrary to the intent of the new Chapter as it will apply to all providers. Staff attempted several times to gain feedback and work with the provider, these attempts were unsuccessful.

During August staff was available to meet with providers to discuss requested modifications. One provider requested a meeting with staff. Staff met with the provider and if the City would not be negatively impacted, modifications were made.

Chapter 21 will replace the current code, Chapter 3.13 (Telecommunications Facilities) and 3.30 (Electric Utility Privilege Tax). Elements contained in chapter 3.13 and 3.30 are included in Chapter 21. However, Chapter 21 expands on the City's rights to manage the ROW.

Additionally Chapter 5.08.110 (Exclusions to Business Taxes Generally) will be amended to include wholesale utility providers. Currently Chapter 5.08.110 could be interpreted to exclude the wholesale utility providers. Adding language to include wholesale utility providers is needed to effectively manage the City's ROW.

## **SPECIAL ISSUES**

Given that many of the existing utility providers have franchise agreements, the Utility Service Code Chapter 21, will only be applied to those providers if there is not a conflict with the existing agreement. After the current franchises expire Chapter 21 would apply. However, if those providers are using the City's ROW for purposes other than what is granted in the franchise, Chapter 21 will apply to those uses of the City's ROW.

## **CONCURRENCE**

Finance Director, Engineering Director, Planning Director, and Public Works Director support the requested action.

## **FISCAL IMPACTS**

Additional revenue is expected from the utility providers not previously compensating the City for the use of the rights-of-way. Staff members will be available to meet with the various utility providers in the coming months to assist with the implementation of the Title 21 and the right-of-way usage fee. Additional savings to the City are expected in reduced costs for negotiation of new franchise agreements.

## **WORK LOAD IMPACTS**

The change to the City's code will reduce the labor costs by a reduction in staff time and reduced the need for outside professional services.

## **ALTERNATIVES**

1. Continue with current process of individually negotiating franchises

## **ATTACHMENTS**

1. Current Code, Sections 3.13 & 3.30
2. Redline of Section 5.08.110
3. Redline of Title 21 showing changes after input from current providers
3. Ordinance adopting Title 21
4. Ordinance modifying 5.08.110
5. Resolution establishing fees

**Current Code****3.13.010 DEFINITIONS**

For the purpose of this chapter the following terms, phrases, words, and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. The words “shall” and “will” are mandatory and “may” is permissive. Words not defined herein shall be given the meaning set forth in the Communications Policy Act of 1934, as amended, the Cable Communications Policy Act of 1984, the Cable Television Consumer Protection and Competition Act of 1992, and the Telecommunications Act of 1996. If not defined there, the words shall be given their common and ordinary meaning.

Aboveground Facilities. See “overhead facilities.”

“Affiliated interest” shall have the same meaning as ORS 759.010.

“Cable Act” means the Cable Communications Policy Act of 1984, 47 U.S.C., Section 521, et seq., as now and hereafter amended.

“Cable service” is to be defined consistent with federal laws and means the one-way transmission to subscribers of video programming, or other programming service; and subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.

“City” means the City of Milwaukie, an Oregon municipal corporation, and individuals authorized to act on the City’s behalf.

“City Council” means the elected governing body of the City of Milwaukie, Oregon.

“Control” or “controlling interest” means actual working control in whatever manner exercised.

“City property” means and includes all real property owned by the City, other than public rights-of-way and utility easements as those are defined herein, and all property held in a proprietary capacity by the City, which are not subject to right-of-way franchising as provided in this chapter.

“Conduit” means any structure, or portion thereof, containing one (1) or more ducts, conduits, manholes, handholes, bolts, or other facilities used for any telegraph, telephone, cable television, electrical, or communications conductors, or cable right-of-way, owned or controlled, in whole or in part, by one (1) or more public utilities.

“Construction” means any activity in the public rights-of-way resulting in physical change thereto, including excavation or placement of structures, but excluding routine maintenance or repair of existing facilities.

“Days” means calendar days unless otherwise specified.

“Duct” means a single enclosed raceway for conductors or cable.

“Emergency” has the meaning provided for in ORS 401.025.

“Federal Communications Commission” or “FCC” means the federal administrative agency, or its lawful successor, authorized to regulate and oversee telecommunications carriers, services and providers on a national level.

“Franchise” means an agreement between the City and a grantee which grants a privilege to use public right-of-way and utility easements within the City for a dedicated purpose and for specific compensation.

“Grantee” means the person to which a franchise is granted by the City.

“Oregon Public Utilities Commission” or “OPUC” means the statutorily created state agency in the State of Oregon responsible for licensing, regulation, and administration of certain telecommunications carriers as set forth in Oregon law, or its lawful successor.

“Overhead” or “aboveground facilities” means utility poles, utility facilities, and telecommunications facilities above the surface of the ground, including the underground supports and foundations for such facilities.

“Person” means an individual, corporation, company, association, joint stock company or association, firm, partnership, or limited liability company.

“Private telecommunications network” means a system, including the construction, maintenance, or operation of the system, for the provision of a service or any portion of a service which is owned or operated exclusively by a person for their use and not for resale, directly or indirectly. “Private telecommunications network” includes services provided by the State of Oregon pursuant to ORS 190.240 and 283.140.

“Public rights-of-way” include, but are not limited to, streets, roads, highways, bridges, alleys, sidewalks, trails, paths, public easements, and all other public ways or areas, including the subsurface under and air space over these areas. This definition applies only to the extent of the City’s right, title, interest, or authority to grant a franchise to occupy and use such areas for telecommunications facilities. “Public rights-of-way” shall also include utility easements as defined below.

“State” means the State of Oregon.

“Telecommunications” means the transmission between and among points specified by the user, of information of the user’s choosing, without change in the form or content of the information as sent and received.

“Telecommunications Act” means the Communications Policy Act of 1934, as amended by subsequent enactments including the Telecommunications Act of 1996 (47 U.S.C., 151 et seq.) and as hereafter amended.

“Telecommunications carrier” means any provider of telecommunications services and includes every person that directly or indirectly owns, controls, operates, or manages telecommunications facilities within the City.

“Telecommunications facilities” means the plant and equipment, other than customer premises equipment, used by a telecommunications carrier to provide telecommunications services.

“Telecommunications service” means two-way switched access and transport of voice communications but does not include:

1. Services provided by radio common carrier;
2. One-way transmission of television signals;

3. Surveying;
4. Private telecommunications networks; or
5. Communications of the customer which take place on the customer side of on-premises equipment.

Telecommunications System. See “telecommunications facilities” above.

“Telecommunications utility” has the same meaning as ORS 759.005(1).

“Underground facilities” means utility and telecommunications facilities located under the surface of the ground, excluding the underground foundations or supports for “overhead facilities.”

“Usable space” means all the space on a pole, except the portion below ground level, the twenty (20) feet of safety clearance space above ground level, and the safety clearance space between communications and power circuits. There is a rebuttable presumption that six (6) feet of a pole is buried below ground level.

“Utility easement” means any easement granted to or owned by the City and acquired, established, dedicated, or devoted for public utility purposes.

“Utility facilities” means the plant, equipment, and property, including but not limited to the poles, pipes, mains, conduits, ducts, cable, wires, plant, and equipment located under, on, or above the surface of the ground within the public right-of-way of the City and used or to be used for the purpose of providing utility or telecommunications services. (Ord. 1866 § 3, 2000)

### **3.13.020 REGISTRATION OF TELECOMMUNICATIONS CARRIERS**

#### **A. Purpose**

The purpose of registration is:

1. To assure that all telecommunications carriers who have facilities and/or provide services within the City comply with the ordinances, rules and regulations of the City.
2. To provide the City with accurate and current information concerning the telecommunications carriers who offer to provide telecommunications services within the City, or that own or operate telecommunications facilities within the City.
3. To assist the City in the enforcement of this code and the collection of any City franchise fees or charges that may be due the City.

#### **B. Registration Required**

Except as provided in subsection D hereof, all telecommunications carriers having telecommunications facilities within the corporate limits of the City, and all telecommunications carriers that offer or provide telecommunications service to customer premises within the City, shall register. The appropriate application and license from: the Oregon Public Utility Commission (PUC); or the Federal Communications Commission (FCC) qualify as necessary registration information. Applicants also have the option of providing the following information:

1. The identity and legal status of the registrant, including the name, address, and telephone number of the duly authorized officer, agent, or employee responsible for the accuracy of the registration information;
2. The name, address, and telephone number for the duly authorized officer, agent, or employee to be contacted in case of an emergency;
3. A description of the registrant's existing or proposed telecommunications facilities within the City, a description of the telecommunications facilities that the registrant intends to construct, and a description of the telecommunications service that the registrant intends to offer or provide to persons, firms, businesses, or institutions within the City;
4. Information sufficient to determine whether the transmission, origination, or receipt of the telecommunications services provided, or to be provided, by the registrant constitutes an occupation or privilege subject to any business license or tax requirements. A copy of the business registration, tax receipt, or the license number must be provided.

C. Registration Fee

Each application for registration as a telecommunications carrier shall be accompanied by a nonrefundable registration fee as established by resolution of the City Council.

D. Exceptions to Registration

The following telecommunications carriers are excepted from registration:

1. Telecommunications carriers that are owned and operated exclusively for its own use by the state or a political subdivision of this state.
2. A private telecommunications network, provided that such network does not occupy any public rights-of-way of the City. (Ord. 1866 § 3, 2000)

**3.13.030 REGULATORY FEES AND COMPENSATION NOT A TAX**

A. The fees and costs provided for in this chapter or by resolution of the City Council authorized under this chapter, and any compensation charged and paid for use of the public rights-of-way provided for in this chapter, are separate from, and in addition to, any and all federal, state, local, and City charges as may be levied, imposed, or due from a telecommunications carrier, its customers or subscribers, or on account of the lease, sale, delivery, or transmission of telecommunications services.

B. The City has determined that any fee provided for by this chapter is not subject to the property tax limitations of Article XI, Sections 11 and 11b of the Oregon Constitution. These fees are not imposed on property or property owners, and these fees are not new or increased fees.

C. The fees and costs provided for in this chapter are subject to applicable federal and state laws. (Ord. 1866 § 3, 2000)

**3.13.040 CONSTRUCTION STANDARDS**

A. General

No person shall commence or continue with the construction, installation, or operation of telecommunications facilities within a public right-of-way except as provided in this code and in compliance with all applicable codes, rules, and regulations.

B. Construction Codes

Telecommunications facilities shall be constructed, installed, operated, and maintained in accordance with all applicable federal, state, and local codes, rules and regulations including the National Electrical Code and the National Electrical Safety Code.

C. Construction Permits

No person shall construct or install any telecommunications facilities within a public right-of-way without first obtaining a construction permit, and paying the construction permit fee established by resolution of the City Council. No permit shall be issued for the construction or installation of telecommunications facilities within a public right-of-way:

1. Unless the telecommunications carrier has first filed a registration statement with the City pursuant to Subsection 3.13.020.B of this code; and if applicable,
2. Unless the telecommunications carrier has first applied for and been granted a franchise pursuant to Section 3.13.060 of this code. (Ord. 1866 § 3, 2000)

**3.13.050 LOCATION OF TELECOMMUNICATIONS FACILITIES**

A. Location of Facilities

All facilities located within the public right-of-way shall be constructed, installed, and located in accordance with the following terms and conditions, unless otherwise specified in a franchise agreement:

1. Whenever all existing electric utilities, cable facilities, or telecommunications facilities are located underground within a public right-of-way of the City, a grantee with permission to occupy the same public right-of-way must also locate its telecommunications facilities underground.
2. Whenever all new or existing electric utilities, cable facilities, or telecommunications facilities are located or relocated underground within a public right-of-way of the City, a grantee that currently occupies the same public right-of-way shall relocate its facilities underground concurrently with the other affected utilities to minimize disruption of the public right-of-way, absent extraordinary circumstances or undue hardship as determined by the City and consistent with applicable state and federal law.

B. Interference with the Public Rights-of-Way

No grantee may locate or maintain its telecommunications facilities so as to unreasonably interfere with the use of the public rights-of-way by the City, by the general public or by other persons authorized to use or be present in or upon the public rights-of-way. All use of public rights-of-way shall be consistent with City codes, ordinances, and regulations.

C. Relocation or Removal of Facilities

Except in the case of an emergency, within ninety (90) days following written notice from the City, a grantee shall, at no expense to grantor, temporarily or permanently remove, relocate, change, or alter the position of any telecommunications facilities within the public rights-of-way whenever the City shall have determined that such removal, relocation, change, or alteration is reasonably necessary for:

1. The construction, repairs, maintenance, or installation of any City or other public improvement in or upon the public rights-of-way;
2. The operations of the City or other governmental entity in or upon the public rights-of-way;
3. The public interest.

#### D. Removal of Unauthorized Facilities

Within thirty (30) days following written notice from the City, any grantee, telecommunications carrier, or other person that owns, controls, or maintains any unauthorized telecommunications system, facility, or related appurtenances within the public rights-of-way of the City shall, at its own expense, remove such facilities or appurtenances from the public rights-of-way of the City. A telecommunications system or facility is unauthorized and subject to removal in the following circumstances:

1. One (1) year after the expiration or termination of the grantee's telecommunications franchise.
2. Upon abandonment of a facility within the public rights-of-way of the City. A facility will be considered abandoned when it is deactivated, out of service, or not used for its intended and authorized purpose for a period of ninety (90) days or longer. A facility will not be considered abandoned if it is temporarily out of service during performance of repairs or if the facility is being replaced.
3. If the system or facility was constructed or installed without the appropriate prior authority at the time of installation.
4. If the system or facility was constructed or installed at a location not permitted by the grantee's telecommunications franchise or other legally sufficient permit.

#### E. Coordination of Construction Activities

All grantees are required to make a good faith effort to cooperate with the City.

1. By January 1st of each year, grantees shall provide the City with a schedule of their proposed construction activities in, around, or that may affect the public rights-of-way.
2. If requested by the City, each grantee shall meet with the City annually or as determined by the City, to schedule and coordinate construction in the public rights-of-way. At that time, the City will provide available information on plans for local, State, and/or federal construction projects.
3. All construction locations, activities, and schedules shall be coordinated, as ordered by the Engineering Director or designee, to minimize public inconvenience, disruption, or damages. (Ord. 1866 § 3, 2000)

### 3.13.060 TELECOMMUNICATIONS FRANCHISE

#### A. Telecommunications Franchise

A telecommunications franchise shall be required of any telecommunications carrier who desires to occupy public rights-of-way of the City.

#### B. Application

Any person that desires a telecommunications franchise must register as a telecommunications carrier and shall file an application with the City which includes the following information:

1. The identity of the applicant;
2. A description of the telecommunications services that are to be offered or provided by the applicant over its telecommunications facilities;
3. Engineering plans, specifications, and a network map in a form customarily used by the applicant of the facilities located or to be located within the public rights-of-way in the City, including the location and route requested for applicant's proposed telecommunications facilities;
4. The area or areas of the City the applicant desires to serve and a preliminary construction schedule for buildout to the entire franchise area;
5. Information to establish that the applicant has obtained all other governmental approvals and permits to construct and operate the facilities and to offer or provide the telecommunications services proposed;
6. An accurate map showing the location of any existing telecommunications facilities in the City that applicant intends to use or lease.

#### C. Application and Review Fee

1. Subject to applicable state law, applicant shall reimburse the City for such reasonable costs as the City incurs in entering into the franchise agreement.
2. An application and review fee as determined by resolution of the City Council shall be deposited with the City as part of the application filed pursuant to subsection B of this section. Expenses exceeding the deposit will be billed to the applicant or the unused portion of the deposit will be returned to the applicant following the determination granting or denying the franchise.

#### D. Determination by the City

The City shall issue a written determination granting or denying the application in whole or in part. If the application is denied, the written determination shall include the reasons for denial.

#### E. Rights Granted

No franchise granted pursuant to this chapter shall convey any right, title, or interest in the public rights-of-way, but shall be deemed a grant to use and occupy the public rights-of-way for the limited purposes and term stated in the franchise agreement.

#### F. Term of Grant

Unless otherwise specified in a franchise agreement, a telecommunications franchise granted hereunder shall be in effect for a term of five (5) years.

#### G. Franchise Territory

Unless otherwise specified in a franchise agreement, a telecommunications franchise granted hereunder shall be limited to a specific geographic area of the City to be served by the franchise grantee, and the public rights-of-way necessary to serve such areas, and may include the entire City.

#### H. Franchise Fee

Each franchise granted by the City is subject to the City's right, which is expressly reserved, to fix a fair and reasonable compensation to be paid for the privileges granted; provided, nothing in this code shall prohibit the City and a grantee from agreeing to the compensation to be paid. The compensation shall be subject to the specific payment terms and conditions contained in the franchise agreement and applicable State and federal laws.

#### I. Amendment of Grant

Conditions for amending a franchise:

1. A new application and grant shall be required of any telecommunications carrier that desires to extend or locate its telecommunications facilities in public rights-of-way of the City which are not included in a franchise previously granted under this chapter.
2. If ordered by the City to locate or relocate its telecommunications facilities in public rights-of-way not included in a previously granted franchise, the City shall grant an amendment without further application.
3. A new application and grant shall be required of any telecommunications carrier that desires to provide a service which was not included in a franchise previously granted under this chapter.

#### J. Renewal Applications

A grantee that desires to renew its franchise under this chapter shall, not less than one hundred eighty (180) days before expiration of the current agreement, file an application with the City for renewal of its franchise which shall include the following information:

1. The information required pursuant to Subsection 3.13.060.B of this code.
2. Any information required pursuant to the franchise agreement between the City and the grantee.

#### K. Renewal Determinations

Within ninety (90) days after receiving a complete application, the City shall issue a written determination granting or denying the renewal application in whole or in part, applying the following standards. If the renewal application is denied, the written determination shall include the reasons for nonrenewal.

1. The financial and technical ability of the applicant.
2. The legal ability of the applicant.
3. The continuing capacity of the public rights-of-way to accommodate the applicant's existing and proposed facilities.

4. The applicant's compliance with the requirements of this code and the franchise agreement.
5. Applicable federal, State, and local telecommunications laws, rules, and policies.
6. Such other factors as may demonstrate that the continued grant to use the public rights-of-way will serve the community interest.

L. Obligation to Cure As a Condition of Renewal

No franchise shall be renewed until any ongoing violations or defaults in the grantee's performance of the agreement, or of the requirements of this code, have been cured, or a plan detailing the corrective action to be taken by the grantee has been approved by the City.

M. Assignments or Transfers of System or Franchise

Ownership or control of a majority interest in a telecommunications system or franchise may not, directly or indirectly, be transferred, assigned, or disposed of by sale, lease, merger, consolidation, or other act of the grantee, by operation of law or otherwise, without the prior consent of the City, which consent shall not be unreasonably withheld or delayed, and then only on such reasonable conditions as may be prescribed in such consent.

1. Grantee and the proposed assignee or transferee of the franchise or system shall agree, in writing, to assume and abide by all of the provisions of the franchise.
2. No transfer shall be approved unless the assignee or transferee has the legal, technical, financial, and other requisite qualifications to own, hold, and operate the telecommunications system pursuant to this code.
3. Unless otherwise provided in a franchise agreement, the grantee shall reimburse the City for all direct and indirect fees, costs, and expenses reasonably incurred by the City in considering a request to transfer or assign a telecommunications franchise.
4. Any transfer or assignment of a telecommunications franchise, system, or integral part of a system without prior approval of the City under this code or pursuant to a franchise agreement shall be void and is cause for revocation of the franchise.

N. Revocation or Termination of Franchise

A franchise to use or occupy public rights-of-way of the City may be revoked for the following reasons:

1. Construction or operation in the City or in the public rights-of-way of the City without a construction permit;
2. Construction or operation at an unauthorized location;
3. Failure to comply with subsection M above with respect to sale, transfer, or assignment of a telecommunications system or franchise;
4. Misrepresentation by or on behalf of a grantee in any application to the City;
5. Abandonment of telecommunications facilities in the public rights-of-way;
6. Failure to relocate or remove facilities as required in this code;
7. Failure to pay taxes, compensation, fees, or costs when and as due the City under this code;

8. Insolvency or bankruptcy of the grantee;
9. Violation of material provisions of this code;
10. Violation of the material terms of a franchise agreement.

O. Notice and Duty to Cure

In the event that the City believes that grounds exist for revocation of a franchise, the City shall give the grantee written notice of the apparent violation or noncompliance, providing a short and concise statement of the nature and general facts of the violation or noncompliance, and providing the grantee a reasonable period of time, not exceeding thirty (30) days, to furnish evidence that:

1. Corrective action has been, or is being actively and expeditiously pursued, to remedy the violation or noncompliance;
2. Rebutts the alleged violation or noncompliance; and/or
3. It would be in the public interest to impose some penalty or sanction less than revocation.

P. Public Hearing

In the event that a grantee fails to provide evidence reasonably satisfactory to the City of its compliance with the franchise or with this code, the City staff shall refer the apparent violation or noncompliance to the City Council. The Council shall provide the grantee with notice and a reasonable opportunity to be heard concerning the matter.

Q. Standards for Revocation or Lesser Sanctions

If persuaded that the grantee has violated or failed to comply with material provisions of this code, or of a franchise agreement, the City Council shall determine whether to revoke the franchise, or to establish some lesser sanction and cure, considering the nature, circumstances, extent, and gravity of the violation as reflected by one (1) or more of the following factors. Whether:

1. The misconduct was egregious;
2. Substantial harm resulted;
3. The violation was intentional;
4. There is a history of prior violations of the same or other requirements;
5. There is a history of overall compliance;
6. The violation was voluntarily disclosed, admitted or cured.

R. Other City Costs

All grantees shall, within thirty (30) days after written demand therefor, reimburse the City for all reasonable direct and indirect costs and expenses incurred by the City in connection with any modification, amendment, renewal, or transfer of the franchise or any franchise agreement consistent with applicable State and federal laws. (Ord. 1866 § 3, 2000)

### 3.13.070 GENERAL FRANCHISE TERMS

A. Facilities

Upon request, each grantee shall provide the City with an accurate map or maps certifying the location of all of its telecommunications facilities within the public rights-of-way. Each grantee shall provide updated maps annually.

**B. Damage to Grantee's Facilities**

Unless directly and proximately caused by wilful, intentional, or malicious acts by the City, the City shall not be liable for any damage to or loss of any telecommunications facility within the public rights-of-way of the City as a result of or in connection with any public works, public improvements, construction, excavation, grading, filling, or work of any kind in the public rights-of-way by or on behalf of the City, or for any consequential losses resulting directly or indirectly therefrom.

**C. Duty to Provide Information.** Within ten (10) business days of a written request from the City, each grantee shall furnish the City with information sufficient to demonstrate:

1. That grantee has complied with all requirements of this code.
2. All books, records, maps, and other documents, maintained by the grantee with respect to its facilities within the public rights-of-way shall be made available for inspection by the City at reasonable times and intervals.

**D. Service to the City**

If the City contracts for the use of telecommunication facilities, telecommunication services, installation, or maintenance from the grantee, the grantee shall charge the City the grantee's most favorable rate offered at the time of the request charged to similar users within Oregon for a similar volume of service, subject to any of grantee's tariffs or price lists on file with the OPUC. With the City's permission, the grantee may deduct the applicable charges from fee payments. Other terms and conditions of such services may be specified in a separate agreement between the City and grantee.

**E. Compensation for City Property**

If any right is granted, by lease, franchise, or other manner, to use and occupy City property for the installation of telecommunications facilities, the compensation to be paid for such right and use shall be fixed by the City.

**F. Cable Franchise**

Telecommunication carriers providing cable service shall be subject to the separate cable franchise requirements of the City and other applicable authority.

**G. Leased Capacity**

A grantee shall have the right, without prior City approval, to offer or provide capacity or bandwidth to its customers; provided that the grantee shall notify the City that such lease or agreement has been granted to a customer or lessee.

**H. Grantee Insurance**

Unless otherwise provided in a franchise agreement, each grantee shall, as a condition of the grant, secure and maintain the following liability insurance policies insuring both the grantee and the City, and its elected and appointed officers, officials, agents and employees as coinsured:

1. Comprehensive general liability insurance with limits not less than:

- a. Three million dollars (\$3,000,000.00) for bodily injury or death to each person;
  - b. Three million dollars (\$3,000,000.00) for property damage resulting from any one accident; and
  - c. Three million dollars (\$3,000,000.00) for all other types of liability.
2. Automobile liability for owned, nonowned, and hired vehicles with a limit of one million dollars (\$1,000,000.00) for each person and three million dollars (\$3,000,000.00) for each accident.
  3. Worker's compensation within statutory limits and employer's liability insurance with limits of not less than one million dollars (\$1,000,000.00).
  4. Comprehensive form-premises, operations, explosions and collapse hazard, underground hazard, and products completed hazard with limits of not less than three million dollars (\$3,000,000.00).
  5. The liability insurance policies required by this section shall be maintained by the grantee throughout the term of the telecommunications franchise, and such other period of time during which the grantee is operating without a franchise hereunder, or is engaged in the removal of its telecommunications facilities. Each such insurance policy shall contain the following endorsement:

It is hereby understood and agreed that this policy may not be canceled nor the intention not to renew be stated until ninety (90) days after receipt by the City, by registered mail, of a written notice addressed to the City of such intent to cancel or not to renew.
  6. Within sixty (60) days after receipt by the City of said notice, and in no event later than thirty (30) days prior to said cancellation, the grantee shall obtain and furnish to the City evidence that the grantee otherwise meets the requirements of this section.
  7. As an alternative to the insurance requirements contained herein, a grantee may provide evidence of self-insurance subject to review and acceptance by the City.

#### I. General Indemnification

Each franchise agreement shall include, to the extent permitted by law, grantee's express undertaking to defend, indemnify, and hold the City and its officers, employees, agents, and representatives harmless from and against any and all damages, losses, and expenses, including reasonable attorney's fees and costs of suit or defense, arising out of, resulting from, or alleged to arise out of or result from the negligent, careless, or wrongful acts, omissions, failures to act or misconduct of the grantee or its affiliates, officers, employees, agents, contractors, or subcontractors in the construction, operation, maintenance, repair, or removal of its telecommunications facilities, and in providing or offering telecommunications services over the facilities or network, whether such acts or omissions are authorized, allowed, or prohibited by this code or by a franchise agreement made or entered into pursuant to this code.

#### J. Performance Surety

Before a franchise granted pursuant to this code is effective, and as necessary thereafter, the grantee shall provide a performance bond, in form and substance acceptable to the

City, as security for the full and complete performance of a franchise granted under this code, including any costs, expenses, damages, or loss the City pays or incurs because of any failure attributable to the grantee to comply with the codes, ordinances, rules, regulations, or permits of the City. This obligation is in addition to the performance surety required for construction of facilities. (Ord. 1866 § 3, 2000)

### **3.13.080 GENERAL PROVISIONS**

#### **A. Governing Law**

Any franchise granted under this code is subject to the provisions of the Constitution and laws of the United States and the State of Oregon and the ordinances and Charter of the City.

#### **B. Written Agreement**

No franchise shall be granted hereunder unless the agreement is in writing.

#### **C. Nonexclusive Grant**

No franchise granted under this code shall confer any exclusive right, privilege, license, or franchise to occupy or use the public rights-of-way of the City for delivery of telecommunications services or any other purposes.

#### **D. Severability and Preemption**

If any article, section, subsection, sentence, clause, phrase, term, provision, condition, covenant, or portion of this code is for any reason held to be invalid or unenforceable by any court of competent jurisdiction, or superseded by State or federal legislation, rules, regulations, or decision, the remainder of the code shall not be affected thereby but shall be deemed as a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions hereof, and each remaining section, subsection, sentence, clause, phrase, provision, condition, covenant, and portion of this code shall be valid and enforceable to the fullest extent permitted by law. In the event that federal or State laws, rules, or regulations preempt a provision or limit the enforceability of a provision of this code, then the provision shall be read to be preempted to the extent and/or the time required by law. In the event such federal or State law, rules, or regulation is subsequently repealed, rescinded, amended, or otherwise changed so that the provision hereof that had been preempted is no longer preempted, such provision shall thereupon return to full force and effect, and shall thereafter be binding, without the requirement of further action on the part of the City, and any amendments hereto.

#### **E. Penalties**

Any person found guilty of violating, disobeying, omitting, neglecting, or refusing to comply with any of the provisions of this chapter shall be fined not less than one hundred dollars (\$100.00) nor more than one thousand dollars (\$1,000.00) for each offense. A separate and distinct offense shall be deemed committed each day on which a violation occurs. The enforcement of this provision shall be consistent with the provisions of this code regulating code enforcement.

#### **F. Other Remedies**

Nothing in this code shall be construed as limiting any judicial remedies that the City may have, at law or in equity, for enforcement of this code.

#### G. Captions

The captions to sections throughout this code are intended solely to facilitate reading and reference to the sections and provisions contained herein. Such captions shall not affect the meaning or interpretation of this code.

#### H. Compliance with Laws

Any grantee under this code shall comply with all federal and state laws and regulations, including regulations of any administrative agency thereof, as well as all ordinances, resolutions, rules, and regulations of the City heretofore or hereafter adopted or established during the entire term any franchise granted under this code, which are relevant and relate to the construction, maintenance, and operation of a telecommunications system.

#### I. Consent

Wherever the consent of either the City or of the grantee is specifically required by this code or in a franchise granted, such consent will not be unreasonably withheld.

#### J. Application to Existing Agreements

To the extent that this code is not in conflict with and can be implemented with existing franchise agreements, this code shall apply to all existing franchise agreements for use of the public right-of-way for telecommunications.

#### K. Confidentiality

The City agrees to use its best efforts to preserve the confidentiality of information as requested by a grantee, to the extent permitted by the Oregon Public Records Law. (Ord. 1866 § 3, 2000)

### **3.30.010 ELECTRIC UTILITY PRIVILEGE TAX**

A. An electric utility privilege tax is imposed on all electric utilities having or required to have a franchise in the City. The privilege tax is one and one-half percent (1.5 ) of the electric utility's adjusted gross revenues, as defined by the ordinance granting the franchise to the utility. The City Manager shall notify its current franchisee in writing of the adoption and terms of the electric utility privilege tax. Payment of all privilege tax proceeds collected by an electric utility shall be paid to the City on the same schedule as the utility's franchise fee payments.

B. All proceeds of the electric utility privilege tax shall be used for the street surface maintenance program established under Chapter 3.25. (Ord. 1967 § 1, 2007)

## Redline of changes to current code

### 5.08.110 EXCLUSIONS

The following situations are specifically excluded from the requirement of paying a business tax:

- A. Wholesalers selling or delivering goods to merchants of the city for the purpose of resale. This exclusion pertains only (i) if the wholesaler does not maintain a place of business within the city and also does not engage in retail trade within the city and (ii) the wholesaler is not a utility service provider or operator as defined in Chapter 21;
- B. Nonprofit organizations;
- C. Persons engaged in delivery of goods or services from points outside the city, providing sales contacts and actual sales take place outside the city;
- D. Newspaper carriers;
- E. Representatives of public utilities;
- F. Garage sales, yard sales, and other similar activities. Such exclusion shall not apply, however, if either of the following conditions is met:
  - 1. More than two (2) such sales take place within any one calendar year at the same location;
  - 2. The sale has a duration of more than seventy-two (72) consecutive hours.
- G. The sale of personal assets such as a personal automobile, residence, appliance, or other articles. Such exclusion shall not apply when such sales are conducted on a regular and continuing basis. That will be assumed to be the case if an individual or family sells its personal residence more than twice or personal automobile more than four (4) times in any given calendar year. Other items shall be determined by the City Manager on the basis of reasonableness on a case-by-case basis.
- H. Licensed real estate salespeople or associate real estate brokers who engage in professional real estate activity only as an agent of a real estate broker or real estate organization.
- I. Licensed insurers, insurance producers, or their representatives in accordance with ORS 731.841
- J. Construction contractors or landscape contractors when their principal place of business is outside of the City and they have proof that they have obtained a business license from the Metropolitan Service District. (Ord. 2048 § 3, 2012; Ord. 1989 § 5, 2008; Ord. 1924 § 1, 2003; Ord. 1863 § 7, 1999; Ord. 1349 § 11, 1976)

**Redline**

**Title 21 Utility Service**

**21.000. Title.**

The ordinance codified in this Chapter shall be known and may be referenced as the utility service ordinance.

**21.100. Purpose and Intent.**

The purpose and intent of this Chapter is to:

- A. For the purpose of this Chapter, utility services owned or operated by the City of Milwaukie are excluded. Utility Services provided by other municipalities are also excluded. However the City reserves the right to include these services upon resolution of the City Council;
- B. Permit and manage reasonable access to the City's rights-of-way for utility purposes, and conserve the limited physical capacity of those rights-of-way held in trust by the City consistent with applicable state and federal law;
- C. Assure that the City's current and ongoing costs of granting and regulating access to and the use of the rights-of-way are fully compensated by the persons seeking such access and causing such costs;
- D. Secure fair and reasonable compensation to the City and its residents for permitting use of the rights-of-way by persons who generate revenue by placing, owning or operating facilities therein or charging residents for services delivered;
- E. Assure that all utility companies, persons and other entities owning or operating facilities or providing services within the City comply with the ordinances, rules and regulations of the City;
- F. Assure that the City can continue to fairly and responsibly protect the public health, safety and welfare of its residents;
- G. Encourage the provision of advanced and competitive utility services on the widest possible basis to businesses and residents of the City; and
- H. Comply with applicable provisions of state and federal law.

**21.110. Jurisdiction and Management of the Public Right-of-way.**

- A. The City has jurisdiction and exercises regulatory management over all rights-of-way within the City under authority of the City Charter and Oregon law.

B. The City has jurisdiction and exercises regulatory management over each rights-of-way whether the City has a fee, easement, or other legal interest in the rights-of-way, and whether the legal interest in the rights-of-way was obtained by grant, dedication, prescription, reservation, condemnation, annexation, foreclosure or other means.

C. The exercise of jurisdiction and regulatory management of a right-of-way by the City is not official acceptance of the rights-of-way, and does not obligate the City to maintain or repair any part of the rights-of-way.

D. The provisions of this Chapter are subject to and will be applied consistent with applicable state and federal laws, rules and regulations, and to the extent possible, shall be interpreted to be consistent with such laws, rules and regulations.

#### **21.120. Regulatory Fees and Compensation Not a Tax.**

A. The fees and costs provided for in this Chapter, and any compensation charged and paid for use of the rights-of-way provided for in this Chapter, are separate from, and in addition to, any and all other federal, state, local, and City charges, including any permit fee, or any other generally applicable fee, tax, or charge on the business, occupation, property, or income as may be levied, imposed, or due from a utility operator, its customers or subscribers, or on account of the lease, sale, delivery, or transmission of utility services.

B. The City has determined that any fee or tax provided for by this Chapter is not subject to the property tax limitations of Article XI, Sections 11 and 11b of the Oregon Constitution. These fees or taxes are not imposed on property or property owners.

C. The fees and costs provided for in this Chapter are subject to applicable federal and state laws.

#### **21.130. Definitions.**

For the purpose of this Chapter the following terms, phrases, words and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number and words in the singular number include the plural number. The words “shall” and “will” are mandatory and “may” is permissive.

“Cable Act” means the Cable Communications Policy Act of 1984, 47 U.S.C., Section 521, et seq., as now and hereafter amended.

“Cable service” is to be defined consistent with federal laws and means the one-way transmission to subscribers of: (i) video programming, or (ii) other programming service; and subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.

“City” means the City of Milwaukie, an Oregon municipal corporation, and individuals authorized to act on the City’s behalf.

“City Council” means the elected governing body of the City of Milwaukie, Oregon.

“City standards” means the Milwaukie Public Works Standards.

“City facilities” means City or publicly-owned structures or equipment located within the rights-of-way or public easement used for governmental purposes.

“City property” means and includes all real property owned by the City, other than public right-of-way and utility easement as those are defined herein, all property held in proprietary capacity by the City.

“Communications services” means any service provided for the purpose of transmission of information including, but not limited to, voice, video, or data, without regard to the transmission protocol employed, whether or not the transmission medium is owned by the provider itself. Communications service includes all forms of telephone services and voice, video, data, or information transport, but does not include: (1) cable service; (2) open video system service, as defined in 47 C.F.R. 76; (3) private communications system services provided without using the public right-of-way; (4) over-the-air radio or television broadcasting to the public-at-large from facilities licensed by the Federal Communications Commission or any successor thereto; (5) direct-to-home satellite service within the meaning of Section 602 of the Telecommunications Act and (6) public communications systems.

“Construction” means any activity in the public right-of-way resulting in physical change thereto, including excavation or placement of structures.

“Days” means calendar days unless otherwise specified.

“Emergency” has the meaning provided for in ORS 401.025.

“Federal Communications Commission” or “FCC” means the federal administrative agency, or its lawful successor, authorized to regulate and oversee telecommunications carriers, services and providers on a nation level.

“Gross Revenue” means any and all revenue, of any kind, nature or form, without deduction for expense, less net uncollectable, derived from the operation of utility facilities in the City, subject to all applicable limitations in federal or state law.

“Oregon Public Utilities Commission” or “OPUC” means the statutorily created state agency in the State of Oregon responsible for licensing, regulation, and administration of certain telecommunication carriers as set forth in Oregon law, or its lawful successor.

“Person” means and includes any individual, firm, sole proprietorship, corporation, company, partnership, co-partnership, joint-stock company, trust, limited liability company, association, municipality, special district, government entity or other organization, including any natural person or any other legal entity.

“Private communications system” means a system, including the construction, maintenance or operation of the system, for the provision of a service or any portion of a service which is owned or operated exclusively by a person for their use and not for sale or resale, including trade, barter or other exchange of value, directly or indirectly, to any person.

“Public communications system” means any system owned or operated by a government entity or entities for its exclusive use for internal communications or communications with other government entities, and includes services provided by the state of Oregon pursuant to ORS 283.140. “Public communications system” does not include any system used for sale or resale,

including trade, barter or other exchange of value, of communications services or capacity on the system, directly or indirectly, to any person.

“Public utility easement” means the space in, upon, above, along, across, over or under an easement for the constructing, reconstructing, operating, maintaining, inspecting, and repairing of utility~~ies~~ facilities. “Public utility easement” does not include an easement (i) that has been privately acquired by a utility operator, (ii) solely for the constructing, reconstructing, operating, maintaining, inspecting, and repairing of City facilities, or (iii) where the proposed use by the utility operator is inconsistent with the terms of ~~any~~another easement granted to the City that applies to the same location.

“Right-of-way”, “Rights-of-way”, “Public right-of-way”, or “ROW” means and includes, but is not limited to, the space in, upon, above, along, across, over or under the public streets, roads, highways, lanes, courts, ways, alleys, boulevards, bridges, trails, paths, sidewalks, bicycle lanes, public utility easements and all other public ways or areas, including the subsurface under and air space over these areas, but does not include parks, parkland, or other City property not generally open to the public for travel. This definition applies only to the extent of the City’s right, title, interest and authority to grant a license to occupy and use such areas for utility facilities.

“Right-of-Way License” or “License” means the authorization granted by the City to a utility provider pursuant to this Chapter.

“State” means the State of Oregon.

“Structure” means any facility a Utility Provider or Utility Operator places in the ROW, including but not limited to poles, vaults or manholes, hand holds or junction boxes, conduit, direct bury cable, wires, pedestals, aerial cables or wires and transformers.

“Telecommunications Act” means the Communications Policy Act of 1934, as amended by subsequent enactments including the Telecommunication Act of 1996 (47 U.S.C., 151 et seq.) and as hereafter amended.

“Telecommunications carrier” means any provider of telecommunications services and includes every person that directly or indirectly owns, controls, operates, or manages telecommunication facilities within the City.

“Utility facility” or “Facility” means any physical component of a system, including but not limited to the poles, pipes, mains, conduits, ducts, cables, wires, transmitters, plant, equipment and other facilities, located within, under or above the ROW, any portion of which is used or designed to be used to deliver, transmit or otherwise provide utility service.

“Utility operator” or “Operator” means any person who owns, places, operates or maintains a utility facility within the City limits.

“Utility provider” or “Provider” means any person who provides utility service to customers within the City limits, whether or not any facilities in the ROW are owned by such provider.

“Utility service” means the provision, by means of utility facilities permanently located within, under or above the ROW, whether or not such facilities are owned by the service provider, of electricity, natural gas, communications services, cable services, water, sewer, or storm sewer to or from customers within the City limits, or the transmission or provision of any of these services

through the City whether or not customers within the City are served by those transmissions.

“Work” means the construction, demolition, installation, replacement, repair, maintenance or relocation of any utility facility, including but not limited to any excavation and restoration required in association with such construction, demolition, installation, replacement, repair, maintenance or relocation.

#### **21.140. Business Registration.**

A. Registration Required. Every person that desires to provide utility services to customers within the City shall register with the City prior to providing any utility services to any customer, person, entity, or business in the City, in compliance with Municipal Code section 5.08. Every person providing utility services within the City as of the effective date of this Chapter shall register within thirty (30) days of the effective date of this Chapter or within thirty (30) days of a person providing utility services within the City, whichever is longer.

B. Annual Registration. After registering with the City pursuant to subsection A of this section, the registrant shall, by December 31 of each year, file with the City a new registration form if it intends to provide utility service at any time in the following calendar year.

C. Registration Application. The registration shall be on a form provided by the City, and shall be accompanied by any additional documents required by the City, at no cost to the City, to identify the registrant and its legal status, describe the type of utility services provided or to be provided by the registrant and a description of the facilities over which the utility services will be provided.

D. Registration Fee. Each application for registration shall be accompanied by a nonrefundable registration fee in an amount to be determined annually by resolution of the City Council.

E. Exception. A person with a valid franchise agreement from the City shall not be required to register to provide the utility services expressly permitted by the franchise agreement, until the expiration of the franchise.

#### **21.145 Electric Utility Privilege Tax**

A. For electric utilities with an existing franchise with the City as of the time of adoption of this Code, a privilege tax of one and one-half (1.5) percent of the electric utility’s gross revenue is imposed. Payment of all privilege taxes shall be paid to the City on the same schedule as the utility’s franchise fee payment or ROW of way usage fee payment.

#### **21.150. Right-of-way Licenses.**

A. License Required.

1. Except those utility operators with a valid franchise agreement from the City, every person shall obtain a license from the City prior to conducting any work in the ROW.

2. Every person that owns, controls, or uses utility facilities in the ROW as of the effective date of this Chapter shall apply for a license from the City within thirty (30) days of the later of: (1) the effective date of this Chapter, (2) the expiration of a valid franchise from the City, unless a new franchise is granted by the City pursuant

to subsection E of this Chapter or (3) a person providing utility services within the City.

B. License Application. The license application shall be on a form provided by the City, and shall be accompanied by any additional documents required by the application or the City, to identify the applicant, its legal status, including its authorization to do business in Oregon, a description of the type of utility service provided or to be provided by the applicant, a description of the facilities over which the utility service will be provided, and other information reasonably necessary to determine the applicant's ability to comply with the terms of this Chapter.

C. License Application Fee. The application shall be accompanied by a nonrefundable application fee or deposit set by resolution of the City Council.

D. Determination by City. The City shall issue, within a reasonable period of time, a written determination granting or denying the license in whole or in part. If the license is denied, the written determination shall include the reasons for denial. The license shall be evaluated based upon the provisions of this Chapter, the continuing capacity of the ROW to accommodate the applicant's proposed utility facilities and the applicable federal, state and local laws, rules, regulations and policies.

E. Franchise Agreements. If the public interest warrants, as determined by the City, the City and utility provider must enter into a written franchise agreement that includes terms that clarify, enhance, expand, waive or vary the provisions of this Chapter, consistent with applicable state and federal law. The franchise may conflict with the terms of this Chapter with the review and approval of the City Council. The franchise shall be subject to the provisions of this Chapter to the extent such provisions are not in conflict with the franchise. In the event of a conflict between the express provisions of a franchise and this Chapter, the franchise shall control.

F. Rights Granted.

1. The license granted hereunder shall authorize and permit the licensee, subject to the provisions of the City code and other applicable provisions of state or federal law, in effect and as may be subsequently amended, to construct, place, maintain, upgrade, repair and operate utility facilities in the ROW for the term of the license.

2. Any license granted pursuant to this Chapter shall not convey equitable or legal title in the ROW, and may not be assigned or transferred except as permitted in subsection K of this section.

3. Neither the issuance of the license, nor any provisions contained therein, shall constitute a waiver or bar to the exercise of any governmental right or power, including without limitation, the police power or regulatory power of the City in existence at the time the license is issued or thereafter obtained.

G. Term. Subject to the termination provisions in subsection M of this section, the license granted pursuant to this Chapter will remain in effect for a term of five (5) years.

H. License Nonexclusive. No license granted pursuant to this section shall confer any exclusive right, privilege, license or franchise to occupy or use the ROW for delivery of utility services or any other purpose. The City expressly reserves the right to grant licenses, franchises or

other rights to other persons, as well as the City's right to use the ROW, for similar or different purposes. The license is subject to all recorded deeds, easements, dedications, conditions, covenants, restrictions, encumbrances, and claims of title of record that may affect the ROW. Nothing in the license shall be deemed to grant, convey, create, or vest in licensee a real property interest in land, including any fee, leasehold interest or easement.

I. **Reservation of City Rights.** Nothing in the license shall be construed to prevent the City from grading, paving, repairing or altering any ROW, constructing, laying down, repairing, relocating or removing City facilities or establishing any other public work, utility or improvement of any kind, including repairs, replacement or removal of any City facilities. If any of licensee's utility facilities interfere with the construction, repair, replacement, alteration or removal of any ROW, public work, City utility, City improvement or City facility, except those providing utility services in competition with a licensee, licensee's facilities shall be removed or relocated as provided in subsections C, D and E of Section 21.170, in a manner acceptable to the City and consistent with industry standard engineering and safety codes.

J. **Multiple Services.**

1. A utility operator that provides or transmits or allows the provision or transmission of utility services and other services over its facilities is subject to the license and ROW usage fee requirements of this Chapter for the portion of the facilities and extent of utility services delivered over those facilities. Nothing in this subsection J (1) requires a utility operator to pay the ROW usage fee, if any, owed to the City by a third party using the utility operator's facilities.

2. A utility operator that provides or transmits more than one utility service over its facilities may not be required to obtain a separate license or franchise for each utility service, but is required to pay to the City separate ROW usage fees for each service.

K. **Transfer or Assignment.** To the extent permitted by applicable state and federal laws, the licensee shall obtain the written consent of the City prior to the transfer or assignment of the license. The license shall not be transferred or assigned unless;

1. The proposed transferee or assignee is authorized under all applicable laws to own or operate the utility system; and
2. The transfer or assignment is approved by all agencies or organizations required or authorized under federal and state laws to approve such transfer or assignment.

The provider requesting the transfer or assignment must cooperate with the City and provide requested documentation, as the City deems necessary, at no cost to the City, to sufficiently understand the transferees' ability to perform under the license.

If the City approves such transfer or assignment, the transferee or assignee shall become responsible for fulfilling all obligations under the license with respect to all facilities of the licensee at the time of transfer or assignment. A transfer or assignment of a license does not extend the term of the license.

L. **Renewal.** At least ninety (90), but no more than one hundred eighty (180), days prior to the expiration of a license granted pursuant to this section, a licensee seeking renewal of its license shall submit a license application to the City, including all information required in subsection B of this section and the application fee required in subsection C of this section. The City shall review

the application as required by subsection D of this section and grant or deny the license within ninety (90) days of submission of the application. If the City determines that the licensee is in violation of the terms of this Chapter at the time it submits its application, the City may require that the licensee cure the violation or submit a detailed plan to cure the violation within a reasonable period of time, as determined by the City, before the City will consider the application or grant the license. If the City requires the licensee to cure or submit a plan to cure a violation, the City will grant or deny the license application within ninety (90) days of confirming that the violation has been cured or of accepting the licensee's plan to cure the violation.

M. Termination.

1. Revocation or Termination of a License. The City may terminate or revoke the license granted pursuant to this Chapter for any of the following reasons:

- a. Violation of any of the provisions of this Chapter;
- b. Violation of any provision of the license;
- c. Misrepresentation in a license application;
- d. Failure to pay taxes, compensation, fees or costs due to the City after final determination of the taxes, compensation, fees or costs;
- e. Failure to restore the ROW as required by this Chapter or other applicable state and local laws, ordinances, rules and regulations;
- f. Failure to comply with technical, safety and engineering standards related to work in the ROW; or
- g. Failure to obtain or maintain any and all licenses, permits, certifications and other authorizations required by state or federal law for the placement, maintenance or operation of the utility facilities.

2. Standards for Revocation or Termination. In determining whether termination, revocation or some other sanction is appropriate, the following factors shall be considered:

- a. The egregiousness of the violation;
- b. The harm that resulted;
- c. Whether the violation was intentional;
- d. The utility operator's history of compliance; and
- e. The utility operator's cooperation in discovering, admitting or curing the violation.

3. Notice and Cure. The City shall give the utility operator written notice of any apparent violations before terminating a license. The notice shall include a short and concise statement of the nature and general facts of the violation or noncompliance and provide a reasonable time (no less than twenty (20) and no more than forty (40) days) for the utility operator to demonstrate that the utility operator has remained in compliance, or that the utility operator has cured, or is in the process of curing any violation or noncompliance, or that it would be in the public interest to impose a penalty or sanction less than termination or revocation. If the utility operator is in the process of curing a violation or noncompliance, the utility operator must demonstrate that it acted promptly and continues to actively work on compliance. If the utility operator does not respond or if the City determines that the utility operator's response is inadequate, the City shall refer the matter to the City Council, which shall provide a duly noticed public hearing to determine whether the license shall be terminated or revoked and if any fines or damages will be imposed.

## 21.160. Construction and Restoration.

A. Construction Codes. Utility facilities shall be constructed, installed, operated, repaired and maintained in accordance with all applicable federal, state and local codes, rules and regulations, including the City standards, the National Electrical Code, the National Electrical Safety Code, and the City's pavement cut standards, in effect and as may be subsequently amended. When a utility operator, or any person acting on its behalf, does any work in or affecting the ROW, the utility operator shall, at its own expense, promptly restore the ROW as directed by the City consistent with applicable City codes, rules and regulations, and the City standards. A utility provider or other person acting on its behalf must use suitable barricades, flags, flagging attendants, lights, flares or other measure as required for the safety of the general public and to prevent injury or damage to any person(s), vehicle or property by reason of such work in or affecting the ROW or property.

### B. Construction Permits.

1. No person shall perform any work on utility facilities within the ROW without first obtaining all required permits. The City shall not issue a permit for the construction, installation, maintenance or repair of utility facilities unless the utility operator of the facilities has applied for and received a valid license, registration, and franchise agreement (if applicable), required by this Chapter, and all applicable fees have been paid. No permit is required for service drops to customer premises or routine maintenance or repairs where such drops, repairs or maintenance do not require cutting, digging, breaking, or damage to, the ROW and do not result in closing or blocking any portion of the travel lanes for vehicular traffic, bicycle lanes, or sidewalks.

2. In the event of an emergency, a utility operator with a license pursuant to this Chapter or its contractor may perform work on its utility facilities without first obtaining a permit from the City, provided that, to the extent reasonably feasible, it attempts to notify the City prior to commencing the emergency work and in any event applies for a permit from the City as soon as reasonably practicable, but not later than ~~12:00 noon~~ 5:00pm PST of the next business day after commencing the emergency work. As used in this subsection, "emergency" means a circumstance in which immediate work is necessary to restore lost service or prevent immediate harm to persons or property.

3. Applications for permits to construct utility facilities shall be submitted upon forms to be provided by the City and shall be accompanied by drawings, plans and specifications in sufficient detail to demonstrate:

a. That the facilities will be constructed in accordance with all applicable codes, rules, and regulations.

b. The location and route of all utility facilities to be installed above ground or on existing utility poles.

c. The location and route of all the applicant's utility facilities on or in the ROW to be located under the surface of the ground, including the line and grade proposed for the burial at all points along the route that are within the ROW. Applicant's existing utility facilities shall be differentiated on the plans from new construction. The City may require additional information necessary to demonstrate that the purposed location can accommodate the utility facilities, as reasonably determined by the City. A cross section shall be provided showing applicant's new or existing utility facilities in relation to the street, curb, sidewalk, or ROW.

- d. The construction methods to be employed for work within or adjacent to the ROW, description of any improvements that applicant proposes to temporarily or permanently remove or relocate, and if deemed necessary by the City, methods to be employed for protection of existing structures, fixtures, and facilities within or adjacent to the ROW.
  - e. The permittee has an adequate traffic control plan.
4. All permit applications shall be accompanied by the verification of a qualified and duly authorized representative of the applicant that the drawings, plans, and specifications submitted with the application comply with applicable technical codes, rules, and regulations. The City may, in its sole discretion, require the verification of a registered professional engineer or other licensed professional, at no cost to the City.
  5. All permit applications shall be accompanied by a written construction schedule, which shall include an estimated start date and a deadline for completion of construction. The construction schedule is subject to approval by the City.
  6. In addition to the requirements of this Chapter, the applicant shall, at all times, comply with all other City requirements.
  7. If satisfied that the applications, plans, and documents submitted comply with all requirements of this Chapter, the City shall issue a permit authorizing construction of the utility facilities, subject to such ~~further-additional~~ conditions, restrictions, or regulations affecting the time, place, and manner of performing the work as the City may deem necessary or appropriate.
  8. Except in the case of an emergency, the permittee shall notify the City not less than two (2) working days in advance of any excavation or construction in the ROW.
  9. All construction practices and activities shall be in accordance with the permit final plans and specifications for the utility facilities that have been “Approved for Construction” by the City. The City and their representatives shall be provided access to the work site and such further information as they may require or deem appropriate to ensure compliance with such requirements.
  10. All work which does not comply with the permit, the approved or corrected plans, and specifications for the work, or the requirements of this Chapter, shall be removed or corrected at the sole expense of the permittee. The City is authorized to stop work in order to assure compliance with the provision of this Chapter. If the permittee fails to remove or correct work as required in this subsection, the City may remove or correct the work at the expense of the permittee, after notice and opportunity to cure, using qualified personnel or contractors consistent with applicable state and federal safety laws and regulations.
  11. The permittee shall be responsible for providing correct and complete information. If the City believes the permittee misrepresented, misstated, or omitted any material fact(s) in its permit application, the City may deny or revoke the permit. The City may at any time require the permit holder to take additional measures to protect the health, safety, and welfare of the public. The permit holder shall be responsible for and pay all costs for such measures.

12. The permittee shall promptly complete all construction activities so as to minimize disruption of the City's ROW and other public and private property. All construction work within the ROW, including restoration, must be completed within one-hundred eighty (180) days of the date of issuance of the construction permit unless an extension or an alternate schedule has been approved by the City.

13. Traffic Control Plan. The permittee shall protect the work area with sufficient traffic controls reviewed and accepted by the City before work begins. The permittee shall at all times ensure the presence of such workers, tools and materials, flaggers, barricades, and other safety devices as may be necessary to properly protect bicyclists, pedestrians, construction personnel, and vehicular traffic upon the roadway, and to warn and safeguard the public against injury or damage resulting from the work.

14. Any supervision or control exercised by the City shall not relieve the permittee or utility operator of any duty to the general public nor shall such supervision or control relieve the permittee or utility operator from any liability for loss, damage, or injury to persons or property.

C. Performance Surety.

1. The City may require a performance bond or other form of surety acceptable to the City equal to at least one hundred ~~and twenty-five~~ percent (100~~25~~%) of the estimated cost of the work within the City's ROW, which bond shall be provided before construction is commenced.

2. If required, the performance bond or other form of surety acceptable to the City shall remain in force until sixty (60) days after substantial completion of the work, as determined in writing by the City, including restoration of ROW and other property affected by the construction.

3. If required, the performance bond or other form of surety acceptable to the City shall guarantee, to the satisfaction of the City:

- a. Timely completion of the work;
- b. That the work is performed in compliance with applicable plans, permits, technical codes, and standards;
- c. Proper location of the facilities as specified by the City;
- d. Restoration of the City's ROW and other property affected by the work; and
- e. Timely payment and satisfaction of all claims, demands or liens for labor, material, or services provided in connection with the work.

4. The release of the performance bond or other surety pursuant to subsection C (1) of this section does not relieve the utility operator from its obligation to restore the ROW or other property as required in subsection E of this section regardless of when the failure to restore the City's ROW or other property as required by this chapter occurs or is discovered.

D. Injury to Persons or Property. A utility operator, or any person acting on its behalf, shall preserve and protect from injury or damage other utility operators' facilities in the ROW, the public using the ROW and any adjoining property, and take other necessary measures to protect

life and property, including but not limited to buildings, walls, fences, trees or facilities that may be subject to damage from the permitted work. A utility operator shall be responsible for all injury to persons or damage to public or private property resulting from its failure to properly protect people and property and to carry out the work in the City's ROW.

E. Restoration.

1. When a utility operator, or any person acting on its behalf, does any work in or affecting any ROW, it shall, at its own expense, promptly restore such ROW to the same or better condition as existed before the work was undertaken, in accordance with applicable federal, state and local laws, codes, ordinances, rules, and regulations, unless otherwise directed by the City.

2. If weather or other conditions beyond the utility operator's control do not permit the complete restoration required to the affected ROW, the utility operator shall temporarily restore the affected area. Such temporary restoration shall be at the utility operator's sole expense and the utility operator shall promptly undertake and complete the required permanent restoration when the weather or other conditions no longer prevent such permanent restoration. Any corresponding modification to the construction schedule is subject to approval by the City.

3. If the utility operator fails to restore the City's ROW as required in this Chapter, the City shall give the utility operator written notice and provide the utility operator a reasonable period of time of not less than ten (10) days, unless an emergency or threat to public safety is deemed to exist, and not exceeding thirty (30) days to restore the ROW. If, after said notice, the utility operator fails to restore the ROW as required in this Chapter, or the City's express written permission for a time extension, the City shall cause such restoration to be made at the expense of the utility operator. If the City determines a threat to public safety exists, the City shall provide necessary temporary safeguards, at the utility providers' sole expense. If such threat exists the utility provider shall have twenty four (24) hours to commence restoration. If work is not commenced in twenty four (24) hours, the City, at its sole option, may commence restoration at the utility provider's sole expense.

F. Inspection. Every utility operator's facilities shall be subject to the right of periodic inspection by the City to determine compliance with the provisions of this Chapter and all other applicable state and City codes, ordinances, rules and regulations, in effect and as may be subsequently amended. Every utility operator shall cooperate with the City in permitting the inspection of utility facilities upon request of the City. The utility operator shall perform all testing, or permit the City to perform any testing at the utility operator's expense, required by the City to determine that the installation of the utility operator's facilities and the restoration of the ROW comply with the terms of this Chapter and applicable state and City codes, ordinances, rules and regulations.

G. Coordination of Construction. All utility operators are required to make a good faith effort to both cooperate with and coordinate their construction schedules with those of the City and other users of the ROW.

1. Prior to January 1<sup>st</sup> of each year, utility providers shall provide the City with a schedule of known proposed construction activities for that the upcoming year in and around, or that may affect the ROW.

2. All construction locations, activities, and schedules within the ROW shall be coordinated as ordered by the City, to minimize public inconvenience, disruption, or damages.

H. Contractors. A utility operator may authorize a qualified contractor to perform any of the work authorized or required in this Chapter on the utility operator's behalf. Any contractor performing work on behalf of a utility operator shall be subject to the provisions of this Chapter. In the event a utility operator authorizes a contractor to perform work on its behalf, the utility operator shall remain responsible and liable for compliance with the provisions of this Chapter.

### **21.170. Location of Facilities.**

A. Location of Facilities. Unless otherwise agreed to in writing by the City, whenever any existing electric utilities, cable facilities or communications facilities are located underground within a ROW of the City, the utility operator with permission to occupy the same ROW shall install all new facilities underground at no cost to the City. This requirement shall not apply to facilities used for transmission of electric energy at nominal voltages in excess of thirty-five thousand (35,000) volts or to pedestals, cabinets, or other above-ground equipment of any utility operator. The City reserves the right to require written approval of the location of any such above-ground equipment in the ROW.

B. Interference with the ROW. No utility operator or other person may locate or maintain its facilities so as to unreasonably interfere with the use of the ROW by the City, by the general public, or by other persons authorized to use or be present in or upon the ROW. Utility facilities shall not be located in areas of restricted sight distance nor interfere with the proper function of traffic control signs, signals, lighting, or other devices that affect traffic operation. All use of the ROW shall be consistent with City codes, ordinances, rules, and regulations in effect and as may be subsequently amended.

C. Relocation of Utility Facilities.

1. A utility operator shall, at no cost to the City, temporarily or permanently remove, relocate, change or alter the position of any utility facility within a ROW, including relocation of aerial facilities underground, when requested to do so in writing by the City.

2. Nothing herein shall be deemed to preclude the utility operator from requesting reimbursement or compensation from a third party, pursuant to applicable laws, regulations, tariffs or agreements, provided that the utility operator shall timely comply with the requirements of this section regardless of whether or not it has requested or received such reimbursement or compensation.

3. The City shall coordinate the schedule for relocation of utility facilities and based on such effort shall provide written notice of the time by which the utility operator must remove, relocate, change, alter or underground its facilities. If a utility operator fails to remove, relocate, alter or underground any utility facility as requested by the City and by the date reasonably established by the City, the utility operator shall pay all costs incurred by the City due to such failure, including but not limited to costs related to project delays, and the City may cause, using qualified personnel or contractors consistent with applicable state and federal safety laws and regulations, the utility facility to be removed, relocated, altered, or undergrounded at the utility operator's sole expense. Upon receipt of a detailed invoice from the City, the utility operator shall reimburse the City for the costs the City

incurred within thirty (30) days.

4. The City will cooperate with the utility provider in securing alternate locations within the City's ROW. The City shall bear no responsibility to obtain, compensate, or otherwise assist the utility operator to relocation to locations not in the control of the City.

D. Removal of Unauthorized Facilities.

1. Unless otherwise agreed to in writing by the City, within thirty (30) days following written notice from the City or such other time agreed to in writing by the City, a utility operator and any other person that owns, controls, or maintains any unauthorized utility facility within the ROW shall, at its own expense, remove the facility and restore the ROW to City Standards.

2. A utility system or facility is unauthorized under any of the following circumstances:

a. The utility facility is outside the scope of authority granted by the City under the license, franchise or other written agreement. This includes facilities that were never licensed or franchised and facilities that were once licensed or franchised but for which the license or franchise has expired or been terminated. This does not include any facility for which the City has provided written authorization for abandonment in place.

b. The facility has been abandoned and the City has not provided written authorization for abandonment in place. A facility is abandoned if it is not in use and is not planned for further use. A facility will be presumed abandoned if it is not used for a period of one (1) year. A utility operator may overcome this presumption by presenting plans for future use of the facility.

c. The utility facility is improperly constructed or installed or is in a location not permitted by the construction permit, license, franchise, or this Chapter.

d. The utility operator is in violation of a material provision of this Chapter and fails to cure such violation within thirty (30) days of the City sending written notice of such violation, unless the City extends such time period in writing.

E. Removal by City.

1. The City retains the right and privilege to cut or move the facilities of any utility operator or similar entity located within the City's ROW, without notice, as the City may determine to be necessary, appropriate, or useful in response to a public health or safety emergency. The City will use qualified personnel or contractors consistent with applicable state and federal safety laws and regulations to the extent reasonably practical without impeding the City's response to the emergency. The City will notify the utility operator of any cutting or moving of facilities as soon as reasonably practical after resolution of the emergency.

2. If the utility operator fails to remove any facility when required to do so under this Chapter, the City may remove the facility using qualified personnel or contractors consistent with applicable state and federal safety laws and regulations, and the utility operator shall be responsible for paying the full cost of the removal and any administrative

costs incurred by the City in removing the facility and obtaining reimbursement. Upon receipt of an invoice from the City, the utility operator shall reimburse the City for the costs the City incurred within thirty (30) days. The obligation to remove shall survive the termination of the license or franchise.

3. The City shall not be liable to any utility operator for any damage to utility facilities, or for any consequential losses resulting directly or indirectly therefrom, by the City or its contractor in removing, relocating or altering the facilities pursuant to subsections B, C or D of this section or undergrounding its facilities as required by subsection A of this section, or resulting from the utility operator's failure to remove, relocate, alter, or underground its facilities as required by those subsections, unless such damage arises directly from the City's negligence or willful misconduct.

F. Engineering Designs and Plans. The utility operator shall provide the City with two complete sets of engineered plans in a form acceptable to the City showing the location of all its utility facilities in the ROW after initial construction if such plans changed during construction. The utility operator shall provide two updated complete sets of 'as built' plans upon request of the City, but not more than once per year.

G. Utility provider shall provide, at no cost to the City, a comprehensive map showing the location of any facilities in the City. Such map shall be provided in a format acceptable to the City, with accompanying data sufficient enough for the City to determine the exact location of facilities, currently in Shapefile or geodatabase format. The City may not request such information more than once per year.

#### **21.180. Leased Capacity.**

A utility operator may lease capacity on or in its system to others, provided that, upon request, the utility operator provides the City with the name and business address of any lessee. A utility operator is not required to provide such information if disclosure is prohibited by applicable law. A utility operator shall ~~ensure~~ **require** that all lessees have obtained proper authority, in the form of a permit, license, or franchise from the City before leasing capacity on its system.

#### **21.190. Maintenance.**

A. Every utility operator shall install and maintain all facilities in a manner that complies with applicable federal, state and local laws, rules, regulations, and policies. The utility operator shall, at its own expense, repair and maintain facilities from time to time as may be necessary to accomplish this purpose.

B. If, after written notice from the City of the need for repair or maintenance as required in subsection A of this section, a utility operator fails to repair and maintain facilities as requested by the City and by the date reasonably established by the City, the City may perform such repair or maintenance using qualified personnel or contractors consistent with applicable state and federal safety laws and regulations at the utility operator's sole expense. Upon receipt of a detailed invoice from the City, the utility operator shall reimburse the City for the costs the City incurred within thirty (30) days.

#### **21.200. Vacation.**

If the City vacates any ROW, or portion thereof, that a utility operator uses, the utility operator shall, at its own expense, remove its facilities from the ROW unless the City reserves a public utility easement, which the City shall make a reasonable effort to do, provided that there is no expense to the City, or the utility

operator obtains an easement for its facilities from the controlling jurisdiction. If the utility operator fails to remove its facilities within thirty (30) days after a ROW is vacated, or as otherwise directed or agreed to in writing by the City, the City may remove the facilities using qualified personnel or contractors consistent with applicable federal, state and local laws, rules, regulations, and policies, at the utility operator's sole expense. Upon receipt of an invoice from the City, the utility operator shall reimburse the City for the costs the City incurred within thirty (30) days.

**21.210. Right-of-Way Usage Fee.**

A. Every person that owns utility facilities in the City and every person that uses utility facilities in the City to provide utility service, whether or not the person owns the utility facilities used to provide the utility services, shall pay the right-of-way usage fee for every utility service provided using the City's ROW in the amount determined by resolution of the City Council.

B. A utility operator whose only facilities in the ROW are facilities mounted on structures within the ROW, which structures are owned by another person, and with no facilities strung between such structures or otherwise within, under or above the ROW, shall pay an attachment fee set by City Council resolution for each attachment, or such other fee set forth in the license granted by the City. Unless otherwise agreed to in writing by the City, the fee shall be effective as of January 1, 2017, and shall be paid quarterly, in arrears, within thirty (30) days after the end of each calendar quarter, and shall be accompanied by information sufficient to illustrate the calculation of the amount payable.

C. No acceptance of any payment shall be construed as accord that the amount paid is in fact the correct amount, nor shall such acceptance of payment be construed as a release of any claim the City may have for further or additional sums payable.

D. Unless otherwise agreed to in writing by the City, the right-of-way usage fee set forth in subsection A of this section shall be effective as of January 1, 2017, and shall be paid quarterly, in arrears, within thirty (30) days after the end of each calendar quarter. Each payment shall be accompanied by an accounting of gross revenues, if applicable, and a calculation of the amount payable. The City may request, and will be provided at no cost to the City, any additional reports or information it deems necessary to ensure compliance by the utility provider.

E. In the event that a right-of-way usage fee is not received by the City on or before the due date, or is underpaid, the utility provider shall pay in addition to the payment, or sum due, interest from the due date at a rate equal to nine percent (9%) per annum, compounded daily, or current maximum rate allowed by state law, computed based on the actual number of days elapsed from the due date until payment is received by the City.

F. The calculation of the right-of-way usage fee required by this section shall be subject to all applicable limitations imposed by federal or state law in effect and as may be subsequently amended.

G. The City reserves the right to enact other fees and taxes applicable to the utility providers subject to this Chapter. Unless expressly permitted by the City in enacting such fee or tax, or required by applicable state or federal law, no utility operator may deduct, offset or otherwise reduce or avoid the obligation to pay any lawfully enacted fees or taxes based on the payment of the right-of-way usage fee or any other fees required by this Chapter.

### **21.220 Consumer Protection Standards**

A. The City reserves the right to enforce customer service and consumer protection standards as established by state or federal law or regulation and applicable to utility operators. In addition, the City reserves the right to establish additional specific customer service and consumer protection standards and procedures to the extent permitted by applicable law.

B. Upon initiating service and at least annually, utility operators shall provide to all customers, at the sole cost of the utility operator, the following information:

1. The equipment and service currently available and the rates and charges which apply;
2. The utility operator's policies and procedures by which complaints or inquiries of any nature will be addressed;
3. The utility operator's breach of agreement policy; and
4. The phone number and address of Milwaukie City Hall.

C. In the 1<sup>st</sup> quarter of each calendar year, the utility provider shall provide the City, at no cost to the City, a copy of at least one invoice as presented to a consumer within the City, but with account numbers, and other information likely to be considered by the consumer to be confidential, redacted.

### **21.230. Audits.**

A. Within thirty (30) days of a written request from the City, or as otherwise agreed to in writing by the City:

1. Every provider of utility service shall furnish the City, at no cost to the City, information sufficient to demonstrate that the provider is in compliance with all the requirements of this Chapter or its franchise agreement, if any, including but not limited to payment of any applicable business registration fee, license fee, right-of-way usage fee, attachment fee, or franchise fee.
2. Every utility operator shall make available for inspection by the City at reasonable times and intervals all maps, records, books, diagrams, plans, and other documents, maintained by the utility operator with respect to its facilities within the City's ROW. Access shall be provided within the City unless prior arrangement for access elsewhere has been made with the City.

B. If the City's audit of the books, records and other documents or information of the utility operator or utility service provider demonstrate that the utility operator or provider has underpaid the right-of-way usage fee, license fee, attachment fee, franchise fee, or any other fee or payment by three percent (3%) or more in any one (1) year, the utility operator shall reimburse the City for the cost of the audit, in addition to any interest owed pursuant to subsection B or subsection D of Section 21.210 or as specified in a other agreements or franchises with the City.

C. Any underpayment, including any interest or audit cost reimbursement, shall be paid within thirty (30) days of the City's notice to the utility service provider of such underpayment.

D. The Utility Provider is not required to maintain records for more than six (6) years. The City is not required to maintain records beyond the State retention schedules.

## **21.240. Insurance and Indemnification.**

### **A. Insurance.**

1. All utility operators shall maintain in full force and effect the following liability insurance policies that protect the utility operator and the City, as well as the City's officers, agents, and employees:

- a. Comprehensive general liability insurance with limits not less than:
  - i. Three million dollars (\$3,000,000.00) for bodily injury or death to each person;
  - ii. Three million dollars (\$3,000,000) aggregate including collapse, explosions, underground hazards and products completed operations.
- b. Commercial automobile liability insurance for owned, non-owned and hired vehicles with a limit of two million dollars (\$2,000,000) combined single limit.
- c. Worker's compensation within statutory limits and employer's liability with limits of not less than one million dollars (\$1,000,000).
- d. Liability insurance shall name as additional insured the City and its officers, agents, and employees. Additional insured coverage shall be for both on-going operations and products and completed operations, on forms acceptable to the City. Coverage shall be Primary and Non-Contributory. Waiver of Subrogation endorsement, in a form acceptable to the City, shall be provided for general liability and worker's compensation.

2. The limits of the insurance shall be subject to statutory changes as to maximum limits of liability imposed on municipalities of the State of Oregon. The insurance shall be without prejudice to coverage otherwise existing. The coverage must apply as to claims between insureds on the policy. The insurance shall not be canceled or materially altered without thirty (30) days prior written notice first being given to the City. If the insurance is canceled or materially altered, the utility operator shall obtain a replacement policy that complies with the terms of this section and provide the City with a replacement certificate of insurance. The utility operator shall maintain continuous uninterrupted coverage, in the terms and amounts required. The utility operator may self-insure, or keep in force a self-insured retention plus insurance, for any or all of the above coverage.

3. The utility operator shall maintain on file with the City a certificate of insurance or proof of self-insurance acceptable to the City, certifying the coverage required above.

B. Financial Assurance. Unless otherwise agreed to in writing by the City, before a franchise is granted or license issued pursuant to this Chapter is effective, and as necessary thereafter, the utility operator shall provide a performance bond or other financial security or assurance, in a form acceptable to the City, as security for the full and complete performance of the franchise or license, if applicable, and compliance with the terms of this Chapter, including any costs, expenses, damages or loss the City pays or incurs because of any failure that is attributable to the utility operator to comply with the codes, ordinances, rules, regulations or permits of the City. This obligation is in addition to the performance surety required by subsection C of Section. 21.160.

C. Indemnification.

1. To the fullest extent permitted by law, each utility operator shall defend, indemnify, and hold the City and its officers, employees, agents and representatives harmless from and against any and all liability, causes of action, claims, damages, losses, judgments, and other costs and expenses, including attorney fees and costs of suit or defense (at both the trial and appeal level, whether or not a trial or appeal ever takes place) that may be asserted by any person or entity in any way arising out of, resulting from, during, or in connection with, or alleged to arise out of or result from the negligent, careless, or wrongful acts, omissions, failure to act, or other misconduct of the utility operator or its affiliates, officers, employees, agents, contractors, subcontractors, or lessees in the construction, operation, maintenance, repair, or removal of its facilities, and in providing or offering utility services over the facilities, whether such acts or omissions are authorized, allowed, or prohibited by this Chapter or by a franchise agreement. The acceptance of a license under Section 21.310 of this Chapter shall constitute such an agreement by the applicant whether the same is expressed or not. Upon notification of any such claim the City shall notify the utility operator and provide the utility operator with an opportunity to provide defense regarding any such claim.

2. Every utility operator shall also indemnify the City for any damages, claims, additional costs, or expenses assessed against or payable by the City arising out of or resulting, directly or indirectly, from the utility operator's failure to remove or relocate any of its facilities in the ROW in a timely manner, unless the utility operator's failure arises directly from the City's negligence or willful misconduct.

**21.250. Compliance**

Every utility operator shall comply with all applicable federal and state laws and regulations, including regulations of any administrative agency thereof, as well as all applicable ordinances, resolutions, rules, and regulations of the City, heretofore or hereafter adopted or established during the entire term of any license, registration, franchise, or agreement granted under this Chapter.

**21.260. Confidential/Proprietary Information.**

If any person is required by this Chapter to provide books, records, maps, or information to the City that the person reasonably believes to be confidential or proprietary, and such books, records, maps, or information are clearly marked as confidential at the time of disclosure to the City ("confidential information"), the City shall take reasonable steps to protect the confidential information to the extent permitted by Oregon Public Records Laws. In the event the City receives a public records request to inspect any confidential information and the City determines that it will be necessary to reveal the confidential information, to the extent reasonably possible the City will notify the person that submitted the confidential information of the records request prior to releasing the confidential information. The City shall not be required to incur any costs to protect any confidential information, other than the City's routine internal procedures for complying with the Oregon Public Records Law.

**21.270. Penalties.**

A. Any person found in violation of any of the provisions of this Chapter or the license shall be subject to a penalty of not less than one hundred fifty dollars (\$150) nor more than twenty-five hundred dollars (\$2,500) for each offense. A violation shall be deemed to exist separately for each and every day during which a violation exists.

B. Nothing in this Chapter shall be construed as limiting any judicial or other remedies the City may have at law or in equity, for enforcement of this Chapter.

**21.280. Severability and Preemption.**

A. The provisions of this Chapter shall be interpreted to be consistent with applicable federal and state law, and shall be interpreted, to the extent possible, to cover only matters not preempted by federal or state law.

B. If any article, section, subsection, sentence, clause, phrase, term, provision, condition, or portion of this Chapter is for any reason declared or held to be invalid or unenforceable by any court of competent jurisdiction or superseded by state or federal legislation, rules, regulations, or decision, the remainder of this Chapter shall not be affected thereby but shall be deemed as a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions hereof, and each remaining section, subsection, clause, phrase, term, provision, condition, covenant, and portion of this Chapter shall be valid and enforceable to the fullest extent permitted by law. In the event any provision is preempted by federal or state laws, rules, or regulations, the provision shall be preempted only to the extent required by law and any portion not preempted shall survive. If any federal or state law resulting in preemption is later repealed, rescinded, amended, or otherwise changed to end the preemption, such provision shall thereupon return to full force and effect and shall thereafter be binding without further action by the City.

**21.290. Application to Existing Agreements.**

To the extent that this Chapter is not in conflict with and can be implemented consistent with existing franchise agreements, this Chapter shall apply to all existing franchise agreements granted to utility operators by the City.



**CITY OF MILWAUKIE**  
*"Dogwood City of the West"*

**Ordinance No.**

**AN ORDINANCE OF THE CITY OF MILWAUKIE, OREGON, AMENDING CODE TITLE 3 BY REPEALING CHAPTER 3.13 (TELECOMMUNICATION FACILITIES) AND CHAPTER 3.30 (ELECTRIC UTILITY PRIVILEGE TAX) AND ADOPTING TITLE 21 (UTILITY SERVICE).**

**WHEREAS**, the City of Milwaukie has constitutional and charter authority to manage its right-of-way and receive compensation for use of the right-of-way consistent with applicable federal and state law; and

**WHEREAS**, the City has typically granted individually negotiated franchises to each utility using the City's right-of-way to provide utility service, each franchise agreement setting forth the terms of use and compensation to be paid for such use; and

**WHEREAS**, the City has determined that it can more effectively, efficiently, fairly, and uniformly manage the City's right-of-way and provide consistent standards for utility use of the right-of-way through licenses rather than franchises; and

**WHEREAS**, Title 21 is intended to replace the Telecommunications Facilities of Chapter 3.13 and the Electric Utility Privilege Tax of Chapter 3.30; and

**WHEREAS**, the City finds it is in the public interest to enact the changes to the City of Milwaukie Code as set forth in this Ordinance.

**Now, Therefore, the City of Milwaukie does ordain as follows:**

Section 1. Milwaukie Code Chapter 3.13 is hereby repealed.

Section 2. Milwaukie Code Chapter 3.30 is hereby repealed.

Section 3. Milwaukie Code Chapter 21 is hereby added to read as follows:

**Title 21 Utility Service**

**21.000. Title.**

The ordinance codified in this Chapter shall be known and may be referenced as the utility service ordinance.

**21.100. Purpose and Intent.**

The purpose and intent of this Chapter is to:

A. For the purpose of this Chapter, utility services owned or operated by the City of Milwaukie are excluded. Utility Services provided by other municipalities are also excluded. However the City reserves the right to include these services upon resolution of the City Council;

B. Permit and manage reasonable access to the City's rights-of-way for utility

purposes, and conserve the limited physical capacity of those rights-of-way held in trust by the City consistent with applicable state and federal law;

C. Assure that the City's current and ongoing costs of granting and regulating access to and the use of the rights-of-way are fully compensated by the persons seeking such access and causing such costs;

D. Secure fair and reasonable compensation to the City and its residents for permitting use of the rights-of-way by persons who generate revenue by placing, owning or operating facilities therein or charging residents for services delivered;

E. Assure that all utility companies, persons and other entities owning or operating facilities or providing services within the City comply with the ordinances, rules and regulations of the City;

F. Assure that the City can continue to fairly and responsibly protect the public health, safety and welfare of its residents;

G. Encourage the provision of advanced and competitive utility services on the widest possible basis to businesses and residents of the City; and

H. Comply with applicable provisions of state and federal law.

#### **21.110. Jurisdiction and Management of the Public Right-of-way.**

A. The City has jurisdiction and exercises regulatory management over all rights-of-way within the City under authority of the City Charter and Oregon law.

B. The City has jurisdiction and exercises regulatory management over each rights-of-way whether the City has a fee, easement, or other legal interest in the rights-of-way, and whether the legal interest in the rights-of-way was obtained by grant, dedication, prescription, reservation, condemnation, annexation, foreclosure or other means.

C. The exercise of jurisdiction and regulatory management of a right-of-way by the City is not official acceptance of the rights-of-way, and does not obligate the City to maintain or repair any part of the rights-of-way.

D. The provisions of this Chapter are subject to and will be applied consistent with applicable state and federal laws, rules and regulations, and to the extent possible, shall be interpreted to be consistent with such laws, rules and regulations.

#### **21.120. Regulatory Fees and Compensation Not a Tax.**

A. The fees and costs provided for in this Chapter, and any compensation charged and paid for use of the rights-of-way provided for in this Chapter, are separate from, and in addition to, any and all other federal, state, local, and City charges, including any permit fee, or any other generally applicable fee, tax, or charge on the business, occupation, property, or income as may be levied, imposed, or due from a utility operator, its customers or subscribers, or on account of the lease, sale, delivery, or transmission of utility services.

B. The City has determined that any fee or tax provided for by this Chapter is not subject to the property tax limitations of Article XI, Sections 11 and 11b of the Oregon Constitution. These fees or taxes are not imposed on property or property owners.

C. The fees and costs provided for in this Chapter are subject to applicable federal and state laws.

### **21.130. Definitions.**

For the purpose of this Chapter the following terms, phrases, words and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number and words in the singular number include the plural number. The words “shall” and “will” are mandatory and “may” is permissive.

“Cable Act” means the Cable Communications Policy Act of 1984, 47 U.S.C., Section 521, et seq., as now and hereafter amended.

“Cable service” is to be defined consistent with federal laws and means the one-way transmission to subscribers of: (i) video programming, or (ii) other programming service; and subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.

“City” means the City of Milwaukie, an Oregon municipal corporation, and individuals authorized to act on the City’s behalf.

“City Council” means the elected governing body of the City of Milwaukie, Oregon.

“City standards” means the Milwaukie Public Works Standards.

“City facilities” means City or publicly-owned structures or equipment located within the rights-of-way or public easement used for governmental purposes.

“City property” means and includes all real property owned by the City, other than public right-of-way and utility easement as those are defined herein, all property held in proprietary capacity by the City.

“Communications services” means any service provided for the purpose of transmission of information including, but not limited to, voice, video, or data, without regard to the transmission protocol employed, whether or not the transmission medium is owned by the provider itself. Communications service includes all forms of telephone services and voice, video, data, or information transport, but does not include: (1) cable service; (2) open video system service, as defined in 47 C.F.R. 76; (3) private communications system services provided without using the public right-of-way; (4) over-the-air radio or television broadcasting to the public-at-large from facilities licensed by the Federal Communications Commission or any successor thereto; (5) direct-to-home satellite service within the meaning of Section 602 of the Telecommunications Act and (6) public communications systems.

“Construction” means any activity in the public right-of-way resulting in physical change thereto, including excavation or placement of structures.

“Days” means calendar days unless otherwise specified.

“Emergency” has the meaning provided for in ORS 401.025.

“Federal Communications Commission” or “FCC” means the federal administrative agency, or its lawful successor, authorized to regulate and oversee telecommunications carriers, services and providers on a nation level.

“Gross Revenue” means any and all revenue, of any kind, nature or form, without deduction for expense, less net uncollectable, derived from the operation of utility facilities in the City, subject to all applicable limitations in federal or state law.

“Oregon Public Utilities Commission” or “OPUC” means the statutorily created state agency in the State of Oregon responsible for licensing, regulation, and administration of certain telecommunication carriers as set forth in Oregon law, or its lawful successor.

“Person” means and includes any individual, firm, sole proprietorship, corporation, company, partnership, co-partnership, joint-stock company, trust, limited liability company, association, municipality, special district, government entity or other organization, including any natural person or any other legal entity.

“Private communications system” means a system, including the construction, maintenance or operation of the system, for the provision of a service or any portion of a service which is owned or operated exclusively by a person for their use and not for sale or resale, including trade, barter or other exchange of value, directly or indirectly, to any person.

“Public communications system” means any system owned or operated by a government entity or entities for its exclusive use for internal communications or communications with other government entities, and includes services provided by the state of Oregon pursuant to ORS 283.140. “Public communications system” does not include any system used for sale or resale, including trade, barter or other exchange of value, of communications services or capacity on the system, directly or indirectly, to any person.

“Public utility easement” means the space in, upon, above, along, across, over or under an easement for the constructing, reconstructing, operating, maintaining, inspecting, and repairing of utility facilities. “Public utility easement” does not include an easement (i) that has been privately acquired by a utility operator, (ii) solely for the constructing, reconstructing, operating, maintaining, inspecting, and repairing of City facilities, or (iii) where the proposed use by the utility operator is inconsistent with the terms of another easement granted to the City that applies to the same location.

“Right-of-way”, “Rights-of-way”, “Public right-of-way”, or “ROW” means and includes, but is not limited to, the space in, upon, above, along, across, over or under the public streets, roads, highways, lanes, courts, ways, alleys, boulevards, bridges, trails, paths, sidewalks, bicycle lanes, public utility easements and all other public ways or areas, including the subsurface under and air space over these areas, but does not include parks, parkland, or other City property not generally open to the public for travel. This definition applies only to the extent of the City’s right, title, interest and authority to grant a license to occupy and use such areas for utility facilities.

“Right-of-Way License” or “License” means the authorization granted by the City to a utility provider pursuant to this Chapter.

“State” means the State of Oregon.

“Structure” means any facility a Utility Provider or Utility Operator places in the ROW, including but not limited to poles, vaults or manholes, hand holds or junction boxes, conduit, direct bury cable, wires, pedestals, aerial cables or wires and transformers.

“Telecommunications Act” means the Communications Policy Act of 1934, as amended by subsequent enactments including the Telecommunication Act of 1996 (47 U.S.C., 151 et seq.) and as hereafter amended.

“Telecommunications carrier” means any provider of telecommunications services and includes every person that directly or indirectly owns, controls, operates, or manages telecommunication facilities within the City limits.

“Utility facility” or “Facility” means any physical component of a system, including but not limited to the poles, pipes, mains, conduits, ducts, cables, wires, transmitters, plant, equipment and other facilities, located within, under or above the ROW, any portion of which is used or designed to be used to deliver, transmit or otherwise provide utility service.

“Utility operator” or “Operator” means any person who owns, places, operates or maintains a utility facility within the City limits.

“Utility provider” or “Provider” means any person who provides utility service to customers within the City limits, whether or not any facilities in the ROW are owned by such provider.

“Utility service” means the provision, by means of utility facilities permanently located within, under or above the ROW, whether or not such facilities are owned by the service provider, of electricity, natural gas, communications services, cable services, water, sewer, or storm sewer to or from customers within the City limits, or the transmission or provision of any of these services through the City whether or not customers within the City are served by those transmissions.

“Work” means the construction, demolition, installation, replacement, repair, maintenance or relocation of any utility facility, including but not limited to any excavation and restoration required in association with such construction, demolition, installation, replacement, repair, maintenance or relocation.

#### **21.140. Business Registration.**

A. Registration Required. Every person that desires to provide utility services to customers within the City shall register with the City prior to providing any utility services to any customer, person, entity, or business in the City, in compliance with Municipal Code section 5.08. Every person providing utility services within the City as of the effective date of this Chapter shall register within thirty (30) days of the effective date of this Chapter or within thirty (30) days of a person providing utility services within the City, whichever is longer.

B. Annual Registration. After registering with the City pursuant to subsection A of this section, the registrant shall, by December 31 of each year, file with the City a new registration form if it intends to provide utility service at any time in the following

calendar year.

C. Registration Application. The registration shall be on a form provided by the City, and shall be accompanied by any additional documents required by the City, at no cost to the City, to identify the registrant and its legal status, describe the type of utility services provided or to be provided by the registrant and a description of the facilities over which the utility services will be provided.

D. Registration Fee. Each application for registration shall be accompanied by a nonrefundable registration fee in an amount to be determined annually by resolution of the City Council.

E. Exception. A person with a valid franchise agreement from the City shall not be required to register to provide the utility services expressly permitted by the franchise agreement, until the expiration of the franchise.

### **21.145 Electric Utility Privilege Tax**

A. For electric utilities with an existing franchise with the City as of the time of adoption of this Code, a privilege tax of one and one-half (1.5) percent of the electric utility's gross revenue is imposed. Payment of all privilege taxes shall be paid to the City on the same schedule as the utility's franchise fee payment or ROW of way usage fee payment.

### **21.150. Right-of-way Licenses.**

A. License Required.

1. Except those utility operators with a valid franchise agreement from the City, every person shall obtain a license from the City prior to conducting any work in the ROW.

2. Every person that owns, controls, or uses utility facilities in the ROW as of the effective date of this Chapter shall apply for a license from the City within thirty (30) days of the later of: (1) the effective date of this Chapter, (2) the expiration of a valid franchise from the City, unless a new franchise is granted by the City pursuant to subsection E of this Chapter or (3) a person providing utility services within the City.

B. License Application. The license application shall be on a form provided by the City, and shall be accompanied by any additional documents required by the application or the City, to identify the applicant, its legal status, including its authorization to do business in Oregon, a description of the type of utility service provided or to be provided by the applicant, a description of the facilities over which the utility service will be provided, and other information reasonably necessary to determine the applicant's ability to comply with the terms of this Chapter.

C. License Application Fee. The application shall be accompanied by a nonrefundable application fee or deposit set by resolution of the City Council.

D. Determination by City. The City shall issue, within a reasonable period of time, a written determination granting or denying the license in whole or in part. If the license is

denied, the written determination shall include the reasons for denial. The license shall be evaluated based upon the provisions of this Chapter, the continuing capacity of the ROW to accommodate the applicant's proposed utility facilities and the applicable federal, state and local laws, rules, regulations and policies.

E. Franchise Agreements. If the public interest warrants, as determined by the City, the City and utility provider must enter into a written franchise agreement that includes terms that clarify, enhance, expand, waive or vary the provisions of this Chapter, consistent with applicable state and federal law. The franchise may conflict with the terms of this Chapter with the review and approval of the City Council. The franchise shall be subject to the provisions of this Chapter to the extent such provisions are not in conflict with the franchise. In the event of a conflict between the express provisions of a franchise and this Chapter, the franchise shall control.

F. Rights Granted.

1. The license granted hereunder shall authorize and permit the licensee, subject to the provisions of the City code and other applicable provisions of state or federal law, in effect and as may be subsequently amended, to construct, place, maintain, upgrade, repair and operate utility facilities in the ROW for the term of the license.

2. Any license granted pursuant to this Chapter shall not convey equitable or legal title in the ROW, and may not be assigned or transferred except as permitted in subsection K of this section.

3. Neither the issuance of the license, nor any provisions contained therein, shall constitute a waiver or bar to the exercise of any governmental right or power, including without limitation, the police power or regulatory power of the City in existence at the time the license is issued or thereafter obtained.

G. Term. Subject to the termination provisions in subsection M of this section, the license granted pursuant to this Chapter will remain in effect for a term of five (5) years.

H. License Nonexclusive. No license granted pursuant to this section shall confer any exclusive right, privilege, license or franchise to occupy or use the ROW for delivery of utility services or any other purpose. The City expressly reserves the right to grant licenses, franchises or other rights to other persons, as well as the City's right to use the ROW, for similar or different purposes. The license is subject to all recorded deeds, easements, dedications, conditions, covenants, restrictions, encumbrances, and claims of title of record that may affect the ROW. Nothing in the license shall be deemed to grant, convey, create, or vest in licensee a real property interest in land, including any fee, leasehold interest or easement.

I. Reservation of City Rights. Nothing in the license shall be construed to prevent the City from grading, paving, repairing or altering any ROW, constructing, laying down, repairing, relocating or removing City facilities or establishing any other public work, utility or improvement of any kind, including repairs, replacement or removal of any City facilities. If any of licensee's utility facilities interfere with the construction, repair, replacement, alteration or removal of any ROW, public work, City utility, City improvement or City facility, except those providing utility services in competition with a

licensee, licensee's facilities shall be removed or relocated as provided in subsections C, D and E of Section 21.170, in a manner acceptable to the City and consistent with industry standard engineering and safety codes.

J. Multiple Services.

1. A utility operator that provides or transmits or allows the provision or transmission of utility services and other services over its facilities is subject to the license and ROW usage fee requirements of this Chapter for the portion of the facilities and extent of utility services delivered over those facilities. Nothing in this subsection J (1) requires a utility operator to pay the ROW usage fee, if any, owed to the City by a third party using the utility operator's facilities.

2. A utility operator that provides or transmits more than one utility service over its facilities may not be required to obtain a separate license or franchise for each utility service, but is required to pay to the City separate ROW usage fees for each service.

K. Transfer or Assignment. To the extent permitted by applicable state and federal laws, the licensee shall obtain the written consent of the City prior to the transfer or assignment of the license. The license shall not be transferred or assigned unless;

1. The proposed transferee or assignee is authorized under all applicable laws to own or operate the utility system; and

2. The transfer or assignment is approved by all agencies or organizations required or authorized under federal and state laws to approve such transfer or assignment.

The provider requesting the transfer or assignment must cooperate with the City and provide requested documentation, as the City deems necessary, at no cost to the City, to sufficiently understand the transferees' ability to perform under the license.

If the City approves such transfer or assignment, the transferee or assignee shall become responsible for fulfilling all obligations under the license with respect to all facilities of the licensee at the time of transfer or assignment. A transfer or assignment of a license does not extend the term of the license.

L. Renewal. At least ninety (90), but no more than one hundred eighty (180), days prior to the expiration of a license granted pursuant to this section, a licensee seeking renewal of its license shall submit a license application to the City, including all information required in subsection B of this section and the application fee required in subsection C of this section. The City shall review the application as required by subsection D of this section and grant or deny the license within ninety (90) days of submission of the application. If the City determines that the licensee is in violation of the terms of this Chapter at the time it submits its application, the City may require that the licensee cure the violation or submit a detailed plan to cure the violation within a reasonable period of time, as determined by the City, before the City will consider the application or grant the license. If the City requires the licensee to cure or submit a plan to cure a violation, the City will grant or deny the license application within ninety (90) days of confirming that the violation has been cured or of accepting the licensee's plan to cure the violation.

M. Termination.

1. Revocation or Termination of a License. The City may terminate or revoke the license granted pursuant to this Chapter for any of the following reasons:

- a. Violation of any of the provisions of this Chapter;
- b. Violation of any provision of the license;
- c. Misrepresentation in a license application;
- d. Failure to pay taxes, compensation, fees or costs due to the City after final determination of the taxes, compensation, fees or costs;
- e. Failure to restore the ROW as required by this Chapter or other applicable state and local laws, ordinances, rules and regulations;
- f. Failure to comply with technical, safety and engineering standards related to work in the ROW; or
- g. Failure to obtain or maintain any and all licenses, permits, certifications and other authorizations required by state or federal law for the placement, maintenance or operation of the utility facilities.

2. Standards for Revocation or Termination. In determining whether termination, revocation or some other sanction is appropriate, the following factors shall be considered:

- a. The egregiousness of the violation;
- b. The harm that resulted;
- c. Whether the violation was intentional;
- d. The utility operator's history of compliance; and
- e. The utility operator's cooperation in discovering, admitting or curing the violation.

3. Notice and Cure. The City shall give the utility operator written notice of any apparent violations before terminating a license. The notice shall include a short and concise statement of the nature and general facts of the violation or noncompliance and provide a reasonable time (no less than twenty (20) and no more than forty (40) days) for the utility operator to demonstrate that the utility operator has remained in compliance, or that the utility operator has cured, or is in the process of curing any violation or noncompliance, or that it would be in the public interest to impose a penalty or sanction less than termination or revocation. If the utility operator is in the process of curing a violation or noncompliance, the utility operator must demonstrate that it acted promptly and continues to actively work on compliance. If the utility operator does not respond or if the City determines that the utility operator's response is inadequate, the City shall refer the matter to the City Council, which shall provide a duly noticed public hearing to determine whether the license shall be terminated or revoked and if any fines or damages will be imposed.

**21.160. Construction and Restoration.**

A. Construction Codes. Utility facilities shall be constructed, installed, operated, repaired and maintained in accordance with all applicable federal, state and local codes, rules and regulations, including the City standards, the National Electrical Code, the National Electrical Safety Code, and the City's pavement cut standards, in effect and as may be subsequently amended. When a utility operator, or any person acting on its behalf, does any work in or affecting the ROW, the utility operator shall, at its own expense, promptly restore the ROW as directed by the City consistent with applicable

City codes, rules and regulations, and the City standards. A utility provider or other person acting on its behalf must use suitable barricades, flags, flagging attendants, lights, flares or other measure as required for the safety of the general public and to prevent injury or damage to any person(s), vehicle or property by reason of such work in or affecting the ROW or property.

**B. Construction Permits.**

1. No person shall perform any work on utility facilities within the ROW without first obtaining all required permits. The City shall not issue a permit for the construction, installation, maintenance or repair of utility facilities unless the utility operator of the facilities has applied for and received a valid license, registration, and franchise agreement (if applicable), required by this Chapter, and all applicable fees have been paid. No permit is required for service drops to customer premises or routine maintenance or repairs where such drops, repairs or maintenance do not require cutting, digging, breaking, or damage to, the ROW and do not result in closing or blocking any portion of the travel lanes for vehicular traffic, bicycle lanes, or sidewalks.

2. In the event of an emergency, a utility operator with a license pursuant to this Chapter or its contractor may perform work on its utility facilities without first obtaining a permit from the City, provided that, to the extent reasonably feasible, it attempts to notify the City prior to commencing the emergency work and in any event applies for a permit from the City as soon as reasonably practicable, but not later than 5:00pm PST of the next business day after commencing the emergency work. As used in this subsection, “emergency” means a circumstance in which immediate work is necessary to restore lost service or prevent immediate harm to persons or property.

3. Applications for permits to construct utility facilities shall be submitted upon forms to be provided by the City and shall be accompanied by drawings, plans and specifications in sufficient detail to demonstrate:

a. That the facilities will be constructed in accordance with all applicable codes, rules, and regulations.

b. The location and route of all utility facilities to be installed above ground or on existing utility poles.

c. The location and route of all the applicant’s utility facilities on or in the ROW to be located under the surface of the ground, including the line and grade proposed for the burial at all points along the route that are within the ROW. Applicant’s existing utility facilities shall be differentiated on the plans from new construction. The City may require additional information necessary to demonstrate that the purposed location can accommodate the utility facilities, as reasonably determined by the City. A cross section shall be provided showing applicant’s new or existing utility facilities in relation to the street, curb, sidewalk, or ROW.

d. The construction methods to be employed for work within or adjacent to the ROW, description of any improvements that applicant proposes to temporarily or permanently remove or relocate, and if deemed necessary by the City, methods to be employed for protection of existing structures, fixtures, and facilities within or adjacent to the ROW.

e. The permittee has an adequate traffic control plan.

4. All permit applications shall be accompanied by the verification of a qualified and duly authorized representative of the applicant that the drawings, plans, and specifications submitted with the application comply with applicable technical codes, rules, and regulations. The City may, in its sole discretion, require the verification of a registered professional engineer or other licensed professional, at no cost to the City.
5. All permit applications shall be accompanied by a written construction schedule, which shall include an estimated start date and a deadline for completion of construction. The construction schedule is subject to approval by the City.
6. In addition to the requirements of this Chapter, the applicant shall, at all times, comply with all other City requirements.
7. If satisfied that the applications, plans, and documents submitted comply with all requirements of this Chapter, the City shall issue a permit authorizing construction of the utility facilities, subject to such additional conditions, restrictions, or regulations affecting the time, place, and manner of performing the work as the City may deem necessary or appropriate.
8. Except in the case of an emergency, the permittee shall notify the City not less than two (2) working days in advance of any excavation or construction in the ROW.
9. All construction practices and activities shall be in accordance with the permit final plans and specifications for the utility facilities that have been "Approved for Construction" by the City. The City and their representatives shall be provided access to the work site and such further information as they may require or deem appropriate to ensure compliance with such requirements.
10. All work which does not comply with the permit, the approved or corrected plans, and specifications for the work, or the requirements of this Chapter, shall be removed or corrected at the sole expense of the permittee. The City is authorized to stop work in order to assure compliance with the provision of this Chapter. If the permittee fails to remove or correct work as required in this subsection, the City may remove or correct the work at the expense of the permittee, after notice and opportunity to cure, using qualified personnel or contractors consistent with applicable state and federal safety laws and regulations.
11. The permittee shall be responsible for providing correct and complete information. If the City believes the permittee misrepresented, misstated, or omitted any material fact(s) in its permit application, the City may deny or revoke the permit. The City may at any time require the permit holder to take additional measures to protect the health, safety, and welfare of the public. The permit holder shall be responsible for and pay all costs for such measures.
12. The permittee shall promptly complete all construction activities so as to minimize disruption of the City's ROW and other public and private property. All construction work within the ROW, including restoration, must be completed within

one-hundred eighty (180) days of the date of issuance of the construction permit unless an extension or an alternate schedule has been approved by the City.

13. Traffic Control Plan. The permittee shall protect the work area with sufficient traffic controls reviewed and accepted by the City before work begins. The permittee shall at all times ensure the presence of such workers, tools and materials, flaggers, barricades, and other safety devices as may be necessary to properly protect bicyclists, pedestrians, construction personnel, and vehicular traffic upon the roadway, and to warn and safeguard the public against injury or damage resulting from the work.

14. Any supervision or control exercised by the City shall not relieve the permittee or utility operator of any duty to the general public nor shall such supervision or control relieve the permittee or utility operator from any liability for loss, damage, or injury to persons or property.

C. Performance Surety.

1. The City may require a performance bond or other form of surety acceptable to the City equal to at least one hundred percent (100%) of the estimated cost of the work within the City's ROW, which bond shall be provided before construction is commenced.

2. If required, the performance bond or other form of surety acceptable to the City shall remain in force until sixty (60) days after substantial completion of the work, as determined in writing by the City, including restoration of ROW and other property affected by the construction.

3. If required, the performance bond or other form of surety acceptable to the City shall guarantee, to the satisfaction of the City:

- a. Timely completion of the work;
- b. That the work is performed in compliance with applicable plans, permits, technical codes, and standards;
- c. Proper location of the facilities as specified by the City;
- d. Restoration of the City's ROW and other property affected by the work; and
- e. Timely payment and satisfaction of all claims, demands or liens for labor, material, or services provided in connection with the work.

4. The release of the performance bond or other surety pursuant to subsection C (1) of this section does not relieve the utility operator from its obligation to restore the ROW or other property as required in subsection E of this section regardless of when the failure to restore the City's ROW or other property as required by this chapter occurs or is discovered.

D. Injury to Persons or Property. A utility operator, or any person acting on its behalf, shall preserve and protect from injury or damage other utility operators' facilities in the ROW, the public using the ROW and any adjoining property, and take other necessary measures to protect life and property, including but not limited to buildings, walls, fences, trees or facilities that may be subject to damage from the permitted work. A utility operator shall be responsible for all injury to persons or damage to public or

private property resulting from its failure to properly protect people and property and to carry out the work in the City's ROW.

E. Restoration.

1. When a utility operator, or any person acting on its behalf, does any work in or affecting any ROW, it shall, at its own expense, promptly restore such ROW to the same or better condition as existed before the work was undertaken, in accordance with applicable federal, state and local laws, codes, ordinances, rules, and regulations, unless otherwise directed by the City.

2. If weather or other conditions beyond the utility operator's control do not permit the complete restoration required to the affected ROW, the utility operator shall temporarily restore the affected area. Such temporary restoration shall be at the utility operator's sole expense and the utility operator shall promptly undertake and complete the required permanent restoration when the weather or other conditions no longer prevent such permanent restoration. Any corresponding modification to the construction schedule is subject to approval by the City.

3. If the utility operator fails to restore the City's ROW as required in this Chapter, the City shall give the utility operator written notice and provide the utility operator a reasonable period of time of not less than ten (10) days, unless an emergency or threat to public safety is deemed to exist, and not exceeding thirty (30) days to restore the ROW. If, after said notice, the utility operator fails to restore the ROW as required in this Chapter, or the City's express written permission for a time extension, the City shall cause such restoration to be made at the expense of the utility operator. If the City determines a threat to public safety exists, the City shall provide necessary temporary safeguards, at the utility providers' sole expense. If such threat exists the utility provider shall have twenty four (24) hours to commence restoration. If work is not commenced in twenty four (24) hours, the City, at its sole option, may commence restoration at the utility provider's sole expense.

F. Inspection. Every utility operator's facilities shall be subject to the right of periodic inspection by the City to determine compliance with the provisions of this Chapter and all other applicable state and City codes, ordinances, rules and regulations, in effect and as may be subsequently amended. Every utility operator shall cooperate with the City in permitting the inspection of utility facilities upon request of the City. The utility operator shall perform all testing, or permit the City to perform any testing at the utility operator's expense, required by the City to determine that the installation of the utility operator's facilities and the restoration of the ROW comply with the terms of this Chapter and applicable state and City codes, ordinances, rules and regulations.

G. Coordination of Construction. All utility operators are required to make a good faith effort to both cooperate with and coordinate their construction schedules with those of the City and other users of the ROW.

1. Prior to January 1<sup>st</sup> of each year, utility providers shall provide the City with a schedule of known proposed construction activities for that the upcoming year in and around, or that may affect the ROW.

2. All construction locations, activities, and schedules within the ROW shall be

coordinated as ordered by the City, to minimize public inconvenience, disruption, or damages.

H. Contractors. A utility operator may authorize a qualified contractor to perform any of the work authorized or required in this Chapter on the utility operator's behalf. Any contractor performing work on behalf of a utility operator shall be subject to the provisions of this Chapter. In the event a utility operator authorizes a contractor to perform work on its behalf, the utility operator shall remain responsible and liable for compliance with the provisions of this Chapter.

### **21.170. Location of Facilities.**

A. Location of Facilities. Unless otherwise agreed to in writing by the City, whenever any existing electric utilities, cable facilities or communications facilities are located underground within a ROW of the City, the utility operator with permission to occupy the same ROW shall install all new facilities underground at no cost to the City. This requirement shall not apply to facilities used for transmission of electric energy at nominal voltages in excess of thirty-five thousand (35,000) volts or to pedestals, cabinets, or other above-ground equipment of any utility operator. The City reserves the right to require written approval of the location of any such above-ground equipment in the ROW.

B. Interference with the ROW. No utility operator or other person may locate or maintain its facilities so as to unreasonably interfere with the use of the ROW by the City, by the general public, or by other persons authorized to use or be present in or upon the ROW. Utility facilities shall not be located in areas of restricted sight distance nor interfere with the proper function of traffic control signs, signals, lighting, or other devices that affect traffic operation. All use of the ROW shall be consistent with City codes, ordinances, rules, and regulations in effect and as may be subsequently amended.

C. Relocation of Utility Facilities.

1. A utility operator shall, at no cost to the City, temporarily or permanently remove, relocate, change or alter the position of any utility facility within a ROW, including relocation of aerial facilities underground, when requested to do so in writing by the City.

2. Nothing herein shall be deemed to preclude the utility operator from requesting reimbursement or compensation from a third party, pursuant to applicable laws, regulations, tariffs or agreements, provided that the utility operator shall timely comply with the requirements of this section regardless of whether or not it has requested or received such reimbursement or compensation.

3. The City shall coordinate the schedule for relocation of utility facilities and based on such effort shall provide written notice of the time by which the utility operator must remove, relocate, change, alter or underground its facilities. If a utility operator fails to remove, relocate, alter or underground any utility facility as requested by the City and by the date reasonably established by the City, the utility operator shall pay all costs incurred by the City due to such failure, including but not limited to costs related to project delays, and the City may cause, using qualified personnel or contractors consistent with applicable state and federal safety laws

and regulations, the utility facility to be removed, relocated, altered, or undergrounded at the utility operator's sole expense. Upon receipt of a detailed invoice from the City, the utility operator shall reimburse the City for the costs the City incurred within thirty (30) days.

4. The City will cooperate with the utility provider in securing alternate locations within the City's ROW. The City shall bear no responsibility to obtain, compensate, or otherwise assist the utility operator to relocation to locations not in the control of the City.

D. Removal of Unauthorized Facilities.

1. Unless otherwise agreed to in writing by the City, within thirty (30) days following written notice from the City or such other time agreed to in writing by the City, a utility operator and any other person that owns, controls, or maintains any unauthorized utility facility within the ROW shall, at its own expense, remove the facility and restore the ROW to City Standards.

2. A utility system or facility is unauthorized under any of the following circumstances:

a. The utility facility is outside the scope of authority granted by the City under the license, franchise or other written agreement. This includes facilities that were never licensed or franchised and facilities that were once licensed or franchised but for which the license or franchise has expired or been terminated. This does not include any facility for which the City has provided written authorization for abandonment in place.

b. The facility has been abandoned and the City has not provided written authorization for abandonment in place. A facility is abandoned if it is not in use and is not planned for further use. A facility will be presumed abandoned if it is not used for a period of one (1) year. A utility operator may overcome this presumption by presenting plans for future use of the facility.

c. The utility facility is improperly constructed or installed or is in a location not permitted by the construction permit, license, franchise, or this Chapter.

d. The utility operator is in violation of a material provision of this Chapter and fails to cure such violation within thirty (30) days of the City sending written notice of such violation, unless the City extends such time period in writing.

E. Removal by City.

1. The City retains the right and privilege to cut or move the facilities of any utility operator or similar entity located within the City's ROW, without notice, as the City may determine to be necessary, appropriate, or useful in response to a public health or safety emergency. The City will use qualified personnel or contractors consistent with applicable state and federal safety laws and regulations to the extent reasonably practical without impeding the City's response to the emergency. The City will notify the utility operator of any cutting or moving of facilities as soon as reasonably practical after resolution of the emergency.

2. If the utility operator fails to remove any facility when required to do so under this Chapter, the City may remove the facility using qualified personnel or contractors consistent with applicable state and federal safety laws and regulations, and the utility operator shall be responsible for paying the full cost of the removal and any administrative costs incurred by the City in removing the facility and obtaining reimbursement. Upon receipt of an invoice from the City, the utility operator shall reimburse the City for the costs the City incurred within thirty (30) days. The obligation to remove shall survive the termination of the license or franchise.

3. The City shall not be liable to any utility operator for any damage to utility facilities, or for any consequential losses resulting directly or indirectly therefrom, by the City or its contractor in removing, relocating or altering the facilities pursuant to subsections B, C or D of this section or undergrounding its facilities as required by subsection A of this section, or resulting from the utility operator's failure to remove, relocate, alter, or underground its facilities as required by those subsections, unless such damage arises directly from the City's negligence or willful misconduct.

F. Engineering Designs and Plans. The utility operator shall provide the City with two complete sets of engineered plans in a form acceptable to the City showing the location of all its utility facilities in the ROW after initial construction if such plans changed during construction. The utility operator shall provide two updated complete sets of 'as built' plans upon request of the City, but not more than once per year.

G. Utility provider shall provide, at no cost to the City, a comprehensive map showing the location of any facilities in the City. Such map shall be provided in a format acceptable to the City, with accompanying data sufficient enough for the City to determine the exact location of facilities, currently in Shapefile or geodatabase format. The City may not request such information more than once per year.

#### **21.180. Leased Capacity.**

A utility operator may lease capacity on or in its system to others, provided that, upon request, the utility operator provides the City with the name and business address of any lessee. A utility operator is not required to provide such information if disclosure is prohibited by applicable law. A utility operator shall require that all lessees have obtained proper authority, in the form of a permit, license, or franchise from the City before leasing capacity on its system.

#### **21.190. Maintenance.**

A. Every utility operator shall install and maintain all facilities in a manner that complies with applicable federal, state and local laws, rules, regulations, and policies. The utility operator shall, at its own expense, repair and maintain facilities from time to time as may be necessary to accomplish this purpose.

B. If, after written notice from the City of the need for repair or maintenance as required in subsection A of this section, a utility operator fails to repair and maintain facilities as requested by the City and by the date reasonably established by the City, the City may perform such repair or maintenance using qualified personnel or contractors consistent with applicable state and federal safety laws and regulations at the utility operator's sole expense. Upon receipt of a detailed invoice from the City, the utility operator shall reimburse the City for the costs the City incurred within thirty (30)

days.

**21.200. Vacation.**

If the City vacates any ROW, or portion thereof, that a utility operator uses, the utility operator shall, at its own expense, remove its facilities from the ROW unless the City reserves a public utility easement, which the City shall make a reasonable effort to do, provided that there is no expense to the City, or the utility operator obtains an easement for its facilities from the controlling jurisdiction. If the utility operator fails to remove its facilities within thirty (30) days after a ROW is vacated, or as otherwise directed or agreed to in writing by the City, the City may remove the facilities using qualified personnel or contractors consistent with applicable federal, state and local laws, rules, regulations, and policies, at the utility operator's sole expense. Upon receipt of an invoice from the City, the utility operator shall reimburse the City for the costs the City incurred within thirty (30) days.

**21.210. Right-of-Way Usage Fee.**

A. Every person that owns utility facilities in the City and every person that uses utility facilities in the City to provide utility service, whether or not the person owns the utility facilities used to provide the utility services, shall pay the right-of-way usage fee for every utility service provided using the City's ROW in the amount determined by resolution of the City Council.

B. A utility operator whose only facilities in the ROW are facilities mounted on structures within the ROW, which structures are owned by another person, and with no facilities strung between such structures or otherwise within, under or above the ROW, shall pay an attachment fee set by City Council resolution for each attachment, or such other fee set forth in the license granted by the City. Unless otherwise agreed to in writing by the City, the fee shall be effective as of January 1, 2017, and shall be paid quarterly, in arrears, within thirty (30) days after the end of each calendar quarter, and shall be accompanied by information sufficient to illustrate the calculation of the amount payable.

C. No acceptance of any payment shall be construed as accord that the amount paid is in fact the correct amount, nor shall such acceptance of payment be construed as a release of any claim the City may have for further or additional sums payable.

D. Unless otherwise agreed to in writing by the City, the right-of-way usage fee set forth in subsection A of this section shall be effective as of January 1, 2017, and shall be paid quarterly, in arrears, within thirty (30) days after the end of each calendar quarter. Each payment shall be accompanied by an accounting of gross revenues, if applicable, and a calculation of the amount payable. The City may request, and will be provided at no cost to the City, any additional reports or information it deems necessary to ensure compliance by the utility provider.

E. In the event that a right-of-way usage fee is not received by the City on or before the due date, or is underpaid, the utility provider shall pay in addition to the payment, or sum due, interest from the due date at a rate equal to nine percent (9%) per annum, compounded daily, or current maximum rate allowed by state law, computed based on the actual number of days elapsed from the due date until payment is received by the City.

F. The calculation of the right-of-way usage fee required by this section shall be subject to all applicable limitations imposed by federal or state law in effect and as may be subsequently amended.

G. The City reserves the right to enact other fees and taxes applicable to the utility providers subject to this Chapter. Unless expressly permitted by the City in enacting such fee or tax, or required by applicable state or federal law, no utility operator may deduct, offset or otherwise reduce or avoid the obligation to pay any lawfully enacted fees or taxes based on the payment of the right-of-way usage fee or any other fees required by this Chapter.

### **21.220 Consumer Protection Standards**

A. The City reserves the right to enforce customer service and consumer protection standards as established by state or federal law or regulation and applicable to utility operators. In addition, the City reserves the right to establish additional specific customer service and consumer protection standards and procedures to the extent permitted by applicable law.

B. Upon initiating service and at least annually, utility operators shall provide to all customers, at the sole cost of the utility operator, the following information:

1. The equipment and service currently available and the rates and charges which apply;
2. The utility operator's policies and procedures by which complaints or inquiries of any nature will be addressed;
3. The utility operator's breach of agreement policy; and
4. The phone number and address of Milwaukie City Hall.

C. In the 1<sup>st</sup> quarter of each calendar year, the utility provider shall provide the City, at no cost to the City, a copy of at least one invoice as presented to a consumer within the City, but with account numbers and other information likely to be considered by the consumer to be confidential, redacted.

### **21.230. Audits.**

A. Within thirty (30) days of a written request from the City, or as otherwise agreed to in writing by the City:

1. Every provider of utility service shall furnish the City, at no cost to the City, information sufficient to demonstrate that the provider is in compliance with all the requirements of this Chapter or its franchise agreement, if any, including but not limited to payment of any applicable business registration fee, license fee, right-of-way usage fee, attachment fee, or franchise fee.

2. Every utility operator shall make available for inspection by the City at reasonable times and intervals all maps, records, books, diagrams, plans, and other documents, maintained by the utility operator with respect to its facilities within the City's ROW. Access shall be provided within the City unless prior arrangement for access elsewhere has been made with the City.

B. If the City's audit of the books, records and other documents or information of the utility operator or utility service provider demonstrate that the utility operator or provider

has underpaid the right-of-way usage fee, license fee, attachment fee, franchise fee, or any other fee or payment by three percent (3%) or more in any one (1) year, the utility operator shall reimburse the City for the cost of the audit, in addition to any interest owed pursuant to subsection B or subsection D of Section 21.210 or as specified in a other agreements or franchises with the City.

C. Any underpayment, including any interest or audit cost reimbursement, shall be paid within thirty (30) days of the City's notice to the utility service provider of such underpayment.

D. The Utility Provider is not required to maintain records for more than six (6) years. The City is not required to maintain records beyond the State retention schedules.

## **21.240. Insurance and Indemnification.**

### **A. Insurance.**

1. All utility operators shall maintain in full force and effect the following liability insurance policies that protect the utility operator and the City, as well as the City's officers, agents, and employees:

a. Comprehensive general liability insurance with limits not less than:

i. Three million dollars (\$3,000,000.00) for bodily injury or death to each person;

ii. Three million dollars (\$3,000,000) aggregate including collapse, explosions, underground hazards and products completed operations.

b. Commercial automobile liability insurance for owned, non-owned and hired vehicles with a limit of two million dollars (\$2,000,000) combined single limit.

c. Worker's compensation within statutory limits and employer's liability with limits of not less than one million dollars (\$1,000,000).

d. Liability insurance shall name as additional insured the City and its officers, agents, and employees. Additional insured coverage shall be for both on-going operations and products and completed operations, on forms acceptable to the City. Coverage shall be Primary and Non-Contributory. Waiver of Subrogation endorsement, in a form acceptable to the City, shall be provided for general liability and worker's compensation.

2. The limits of the insurance shall be subject to statutory changes as to maximum limits of liability imposed on municipalities of the State of Oregon. The insurance shall be without prejudice to coverage otherwise existing. The coverage must apply as to claims between insureds on the policy. The insurance shall not be canceled or materially altered without thirty (30) days prior written notice first being given to the City. If the insurance is canceled or materially altered, the utility operator shall obtain a replacement policy that complies with the terms of this section and provide the City with a replacement certificate of insurance. The utility operator shall maintain continuous uninterrupted coverage, in the terms and amounts required. The utility operator may self-insure, or keep in force a self-insured retention plus insurance, for any or all of the above coverage.

3. The utility operator shall maintain on file with the City a certificate of insurance or proof of self-insurance acceptable to the City, certifying the coverage required above.

B. Financial Assurance. Unless otherwise agreed to in writing by the City, before a franchise is granted or license issued pursuant to this Chapter is effective, and as necessary thereafter, the utility operator shall provide a performance bond or other financial security or assurance, in a form acceptable to the City, as security for the full and complete performance of the franchise or license, if applicable, and compliance with the terms of this Chapter, including any costs, expenses, damages or loss the City pays or incurs because of any failure that is attributable to the utility operator to comply with the codes, ordinances, rules, regulations or permits of the City. This obligation is in addition to the performance surety required by subsection C of Section. 21.160.

C. Indemnification.

1. To the fullest extent permitted by law, each utility operator shall defend, indemnify, and hold the City and its officers, employees, agents and representatives harmless from and against any and all liability, causes of action, claims, damages, losses, judgments, and other costs and expenses, including attorney fees and costs of suit or defense (at both the trial and appeal level, whether or not a trial or appeal ever takes place) that may be asserted by any person or entity in any way arising out of, resulting from, during, or in connection with, or alleged to arise out of or result from the negligent, careless, or wrongful acts, omissions, failure to act, or other misconduct of the utility operator or its affiliates, officers, employees, agents, contractors, subcontractors, or lessees in the construction, operation, maintenance, repair, or removal of its facilities, and in providing or offering utility services over the facilities, whether such acts or omissions are authorized, allowed, or prohibited by this Chapter or by a franchise agreement. The acceptance of a license under Section 21.310 of this Chapter shall constitute such an agreement by the applicant whether the same is expressed or not. Upon notification of any such claim the City shall notify the utility operator and provide the utility operator with an opportunity to provide defense regarding any such claim.

2. Every utility operator shall also indemnify the City for any damages, claims, additional costs, or expenses assessed against or payable by the City arising out of or resulting, directly or indirectly, from the utility operator's failure to remove or relocate any of its facilities in the ROW in a timely manner, unless the utility operator's failure arises directly from the City's negligence or willful misconduct.

### **21.250. Compliance**

Every utility operator shall comply with all applicable federal and state laws and regulations, including regulations of any administrative agency thereof, as well as all applicable ordinances, resolutions, rules, and regulations of the City, heretofore or hereafter adopted or established during the entire term of any license, registration, franchise, or agreement granted under this Chapter.

### **21.260. Confidential/Proprietary Information.**

If any person is required by this Chapter to provide books, records, maps, or information to the City that the person reasonably believes to be confidential or proprietary, and such books, records, maps, or information are clearly marked as confidential at the time

of disclosure to the City (“confidential information”), the City shall take reasonable steps to protect the confidential information to the extent permitted by Oregon Public Records Laws. In the event the City receives a public records request to inspect any confidential information and the City determines that it will be necessary to reveal the confidential information, to the extent reasonably possible the City will notify the person that submitted the confidential information of the records request prior to releasing the confidential information. The City shall not be required to incur any costs to protect any confidential information, other than the City’s routine internal procedures for complying with the Oregon Public Records Law.

**21.270. Penalties.**

A. Any person found in violation of any of the provisions of this Chapter or the license shall be subject to a penalty of not less than one hundred fifty dollars (\$150) nor more than twenty-five hundred dollars (\$2,500) for each offense. A violation shall be deemed to exist separately for each and every day during which a violation exists.

B. Nothing in this Chapter shall be construed as limiting any judicial or other remedies the City may have at law or in equity, for enforcement of this Chapter.

**21.280. Severability and Preemption.**

A. The provisions of this Chapter shall be interpreted to be consistent with applicable federal and state law, and shall be interpreted, to the extent possible, to cover only matters not preempted by federal or state law.

B. If any article, section, subsection, sentence, clause, phrase, term, provision, condition, or portion of this Chapter is for any reason declared or held to be invalid or unenforceable by any court of competent jurisdiction or superseded by state or federal legislation, rules, regulations, or decision, the remainder of this Chapter shall not be affected thereby but shall be deemed as a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions hereof, and each remaining section, subsection, clause, phrase, term, provision, condition, covenant, and portion of this Chapter shall be valid and enforceable to the fullest extent permitted by law. In the event any provision is preempted by federal or state laws, rules, or regulations, the provision shall be preempted only to the extent required by law and any portion not preempted shall survive. If any federal or state law resulting in preemption is later repealed, rescinded, amended, or otherwise changed to end the preemption, such provision shall thereupon return to full force and effect and shall thereafter be binding without further action by the City.

**21.290. Application to Existing Agreements.**

To the extent that this Chapter is not in conflict with and can be implemented consistent with existing franchise agreements, this Chapter shall apply to all existing franchise agreements granted to utility operators by the City.

Section 4. The effective date of this ordinance shall be January 1, 2017.

Read the first time on \_\_\_\_\_, and moved to second reading by \_\_\_\_\_ vote

of the City Council.

Read the second time and adopted by the City Council on \_\_\_\_\_.

Signed by the Mayor on \_\_\_\_\_.

\_\_\_\_\_  
Mark Gamba, Mayor

ATTEST:

APPROVED AS TO FORM:  
Jordan Ramis PC

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

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



**CITY OF MILWAUKIE**  
*"Dogwood City of the West"*

**Ordinance No.**

**AN ORDINANCE OF THE CITY OF MILWAUKIE, OREGON, AMENDING CODE TITLE 5.08.110 (EXCLUSIONS TO BUSINESS TAXES GENERALLY).**

**WHEREAS**, the City of Milwaukie has adopted an ordinance (No. \_\_\_\_\_) enacting Title 21 to the City's Municipal Code; and

**WHEREAS**, the City has determined that Utility Operators and Utility Providers are not exempt from business taxes.

**Now, Therefore, the City of Milwaukie does ordain as follows:**

Section 1. Milwaukie Code Chapter 5.08.110.A is hereby amended by adding (ii) and shall read as follows:

- A. Wholesalers selling or delivering goods to merchants of the City for the purpose of resale. This exclusion pertains only (i) if the wholesaler does not maintain a place of business within the City and also does not engage in retail trade within the City, and (ii) the wholesaler is not a utility service provider or operator as defined in Chapter 21.

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

Read the second time and adopted by the City Council on \_\_\_\_\_.

Signed by the Mayor on \_\_\_\_\_.

\_\_\_\_\_  
Mark Gamba, Mayor

ATTEST:

APPROVED AS TO FORM:  
Jordan Ramis PC

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

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



**CITY OF MILWAUKIE**  
*"Dogwood City of the West"*

**Resolution No.**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, ESTABLISHING THE RIGHT-OF-WAY USAGE FEE FOR UTILITIES OPERATING IN THE CITY OF MILWAUKIE RIGHTS-OF-WAY**

**WHEREAS**, the City of Milwaukie has constitutional and charter authority to manage its rights-of-way; and

**WHEREAS**, the Milwaukie City Council on \_\_\_\_\_, 2016 adopted Ordinance No. \_\_\_\_\_, which establishes an ordinance regulating utilities operating the City's rights-of-way and exercising the City's authority to secure compensation to the City and its residents for utility use of the rights-of-way, codified as Title 21 of the Milwaukie City Code; and

**WHEREAS**, per Section 21.21 (A), of the Milwaukie City Code, the Council shall by resolution establish a rights-of-way fee for the use of utility providers in the City to provide utility service(s);

**Now, Therefore, be it Resolved** that the City of Milwaukie, Oregon:

**Section 1.** The rights-of-way fee established per Section 21.21 shall be as follows, to the extent permitted under applicable law:

<i>Utility Service</i>	<i>RoW Usage Fee Rate</i>
Electric	5% of gross revenue
Natural Gas	5% of gross revenue
Telecommunications	7% of gross revenue
Cable System	5% of gross revenue
Usage of the rights-of-way for purposes other than generating revenue within the City.	\$3.00 per linear foot of Utility Facilities in the rights-of-way or a minimum annual fee of \$5,000, whichever is greater. The per-linear-foot fee and the minimum fee shall increase 3% annually on July 1 <sup>st</sup> of each year, beginning July 1, 2018

"Gross Revenue" means any and all revenue, of any kind, nature or form without deduction for expense, less net uncollectable, derived from the operation of utility facilities in the City, subject to all applicable limitations in federal or state law.

"Usage" means ownership, operation or maintenance of any Utility Facility as define in the City's Code, title 21.

**Section 2.** The annual attachment fee per Section 21.21.B shall be \$5,000 per attachment. The attachment fee shall increase 3% annual on July 1<sup>st</sup> of each year, beginning on July 1, 2018.

**Section 3.** The Right-of-Way License fee established per Section 21.150.A shall be \$250 for a five year license.

**Section 4.** The Right-of-Way License application fee established per Section 21.150.C shall be \$50.

**Section 5.** The revised ROW usage fee rate shall take effect on January 1, 2017.

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

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

\_\_\_\_\_  
Mark Gamba, Mayor

ATTEST:

APPROVED AS TO FORM:  
Jordan Ramis PC

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

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



MILWAUKIE CITY COUNCIL  
**STAFF REPORT**

Agenda Item: **RS 6. B.**  
Meeting Date: September 6 2016

To: Mayor and City Council

Through: Bill Monahan, City Manager

Subject: **Bicycle and Pedestrian Accessibility Program  
Fee Establishment**

From: Charles Eaton, Engineering Director

Date: August 28, 2016

### **ACTION REQUESTED**

Solicit final public testimony before setting a fee amount for the Bicycle and Pedestrian Accessibility Program.

### **HISTORY OF PRIOR ACTIONS AND DISCUSSIONS**

**July 19, 2016:** Staff presented the proposed Bicycle and Pedestrian Program along with the implementing ordinance for public comment and council consideration. Staff presented CUAB's recommendation for a proposed funding level for the program based on direction of City Council. City Council took public testimony and adopted the proposed ordinance implementing the Bicycle and Pedestrian Accessibility Program.

**June 21, 2016:** PSAC presented the draft Bicycle and Pedestrian Accessibility Plan together with the public comments received during the public outreach effort for City Council Review and comment. Council discussed the draft plan, prioritization process, potential funding scenarios, and the next steps. PSAC and Staff received direction needed on basic program development for the proposed plan.

**April 21, 2016:** Staff presented a Draft Corridor Plan and financial requirements to solicit council input on additions and/or changes desired. Council discussion centered on the level of corridor identification and the desire to increase the study to include safe routes to school corridors and include them within the overall plan. Staff also received direction on the desire to have some of the specific projects prioritization changed and for the inclusion of other specific corridors within the plan.

**February 2, 2016:** PSAC presented a concept map establishing priority routes for the new Bicycle and Pedestrian Accessibility Program (BPAP) in accordance with ADA transition plan requirements. City Council gave additional direction on the need for connectivity within the plan and the desire to elevate areas as needed to Priority 1 to facilitate that connectivity.

**September 17, 2015:** Staff presented information on the American with Disabilities Act (ADA) transition plan and public sidewalk accessibility needs of the City with the concept of forming a new program similar to the city street program for sidewalk needs. Council directed staff to create a program to address these needs as well as the bicycle needs of the City. Council also

designated the Public Safety Advisory Committee (PSAC) as the Community Planning Advisory Council to develop the program in compliance with the requirements of ADA.

**October 23, 2014:** Staff presented a summary proposal to gauge council's interest in increasing the City's current rate of completing sidewalk improvements. Discussions centered on alternatives to sidewalk requirements, utility obstructions and funding options. Extensive discussions revolved around sidewalk width and placement requirements with the desire to analyze alternatives within the right-of-way. Additional discussion addressed local improvement districts and other funding options to accomplish the goal of increasing sidewalk construction within the city.

## **BACKGROUND**

PSAC developed the BPAP program over the last twelve months. The process has involved the Neighborhood Associations (NDA's) with each of the NDA representatives to PSAC who solicited and gave input on the identified corridors within their respective NDA's. The PSAC members also assisted staff in the identification of facilities covered by the ADA act that were required to be served within each NDA, discussed the identification of additional priority corridors, reassigned some priorities and compared all the corridors with the adopted master plans to facilitate the council's desire for better connectivity.

PSAC members evaluated the corridors to include additional routes that function as safe routes to schools. They looked at both the distance from school, existing school boundaries and logical walking corridors during this process. Staff inspected and evaluated all routes identified by PSAC and has develop estimated costs to bring these facilities in compliance with ADA and to provide for a safe pedestrian corridor. Preliminary costs were presented to CUAB to review funding options and were discussed at both the June and July meetings. Staff visited all the NDA's, was at the Farmers Market and First Friday events to solicit input on the types of facilities that they would like to see prioritized and how to pay for the needed improvements. Staff developed preliminary project prioritization, based on the public input received. PSAC and CUAB created the final prioritized Capital Improvement Plan.

Staff finalized the Capital Improvement Plan based on PSAC and CUAB recommendations and presented the final draft Plan to PSAC at the June meeting. PSAC amended and approved the draft plan with a recommendation to City Council to approve the proposed Bicycle and Pedestrian Accessibility Program.

The program was adopted by City Council on July 19, 2016 along with the implementing ordinance establishing the basis for a fee to be charged. PSAC met in August and discussed the name of the proposed fee to differentiate it from the "Street Charge" currently being used for the Street Surface Maintenance Program (SSMP) and recommended S.A.F.E (Safe Access For Everyone).

The ordinance became effective August 18, 2016 and staff has prepared a resolution establishing the name, fee amounts and exclusions for Councils consideration. Based on the City Council discussions of July 19<sup>th</sup> and August 2<sup>nd</sup> staff has developed the proposed resolution without a cap on commercial, except for nonprofits which includes schools.

CUAB met on July 14, 2016 to discuss the BPAP and make recommendations to City Council on the appropriate action plan and funding for the program. Staff presented CUAB's discussion and recommendation to City Council on July 19, 2016 as part of the program adoption. The recommended fee of \$0.46 per trip was selected by CUAB and formally recommended to council at their meeting of July 14, 2016. CUAB determined this rate was an acceptable compromise to provide for the complete funding of the proposed action plan yet maintaining a rate comparable to other cities. This was done by extending the time period to complete the plan from 20 years to 25 years and have the rate adjusted annually for inflation. Composite single family transportation rates for comparable cities are as follows:

Oregon City	\$12.26
West Linn	\$11.94
Lake Oswego	\$8.65
Milwaukie	\$7.91 (Proposed)
Happy Valley	\$7.64 (Proposed)

### **FISCAL IMPACTS**

The proposed funding level will generate approximately \$880,000 per year and be dedicated to pedestrian safety projects identified within the adopted Capital Improvement Plan. This funding level is the minimum necessary to fund the Kronberg Park Multi-Use Path and Monroe Street Neighborhood Greenway projects as committed within each projects grant application.

### **WORK LOAD IMPACTS**

Finance staff time will be needed to set up the required budget and accounting system to implement the new charge on monthly utility bills. An additional engineering FTE (Associate Engineer/Project Manager level) will be required for the department to develop and administer the projects identified within the program that will be funded by the new fee.

### **ALTERNATIVES**

Council could choose to adopt the proposed resolution, adopt the proposed resolution with commercial maximum limits, adopt the proposed resolution with an alternative base rate, or not adopt any resolution at this time leaving the program unfunded.

### **ATTACHMENTS**

1. Proposed Resolution



**CITY OF MILWAUKIE**  
*"Dogwood City of the West"*

**Resolution No.**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, ESTABLISHING FEES FOR THE BICYCLE AND PEDESTRIAN ACCESSIBILITY PROGRAM AND UPDATING THE MASTER FEES SCHEDULE OF THE CITY OF MILWAUKIE.**

**WHEREAS**, the City Council passed Ordinance 2123 on July 19, 2016, establishing a Bicycle and Pedestrian Accessibility Program; and

**WHEREAS**, Ordinance 2123 provides for the establishment of a fee by resolution of the City Council; and

**WHEREAS**, the City Council desires to set a fee and amend the City of Milwaukie "Master Fee Schedule"; and

**Now, Therefore, be it Resolved** that the City of Milwaukie "Master Fees" documents is amended as follows.

Section 1 The Transportation Utility, included in Exhibit A to this resolution, is hereby adopted and included in the City of Milwaukie "Master Fees" document..

Section 2 The S.A.F.E charge for Commercial uses, excluding nonprofit uses, will not be capped.

Section 3 The S.A.F.E charge for Commercial Nonprofit uses, including schools shall be capped at \$390.18, and indexed yearly per MMC 3.26.070.

Section 4 The fees established by this resolution will become effective January 1, 2017.

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

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

\_\_\_\_\_  
Mark Gamba, Mayor

ATTEST:

APPROVED AS TO FORM:  
Jordan Ramis PC

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

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

## Exhibit A

### UTILITIES

#### Transportation Fees

<b>Categories</b>	<b>Street Charge</b>	<b>S.A.F.E Charge</b>
<b>Account Type</b>	<b>Rates</b>	<b>Rates<sup>5</sup></b>
Base Rate per Trip Generation	\$ 0.35	\$ 0.46
Single Family Residential	\$ 3.35	\$ 4.60
Low Income	Exempt	Exempt
Multi-Family Residential	\$ 2.10 per unit	\$ 2.76 per unit
Elderly Housing/Mobile Homes	\$ 1.40 per unit	\$ 1.84 per unit
Congregate Care	\$ 0.70 per unit	\$ 0.92 per unit
Commercial	per daily trip generated <sup>4</sup>	per daily trip generated <sup>6</sup>
Nonprofit		per daily trip generated <sup>7</sup>

<sup>1</sup> The Citizens Utility Advisory Board reviews the existing rate structure and capital improvement plan to advise City Council on utility rates.

<sup>2</sup> Customers participating in the City's Low Income Utility Assistance program are exempt from the monthly fixed charge.

<sup>3</sup> Residential wastewater volume charges are determined by the average monthly water usage from November to February (winter average). The winter average is adjusted annually on March 31st.

<sup>4</sup> Commercial daily trip generated is calculated based on type of use and building square feet. Monthly bill is capped at \$250 indexed annually for CPI published by the Bureau of Labor Statistics. Current maximum is \$296.88 (Municipal Code Section 3.25.060).

<sup>5</sup> All rates are indexed annually for CPI published by the Bureau of Labor Statistics.

<sup>6</sup> Commercial daily trip generated is calculated based on type of use and building square feet.

<sup>7</sup> Nonprofit daily trip generated is calculated based on type of use and building square feet. Monthly bill is capped and indexed annually for CPI published by the Bureau of Labor Statistics. Current maximum is \$390.18 (Resolution \_\_\_\_\_).



MILWAUKIE CITY COUNCIL  
STAFF REPORT

**RS 6. D.**  
**Sept. 6, 2016**  
**[REMOVED]**

To: Mayor and City Council

Subject: **Dedicate Wichita Site for Park Services**

From: Bill Monahan, City Manager

Date: September 2, 2016

**NOTICE:**

The Agenda Item referenced above, and the associated Staff Report, has been removed from the September 6, 2016, Regular Session Agenda.



MILWAUKIE CITY COUNCIL  
STAFF REPORT

Agenda Item: **RS 6. E.**  
Meeting Date: **Sept. 6, 2016**

To: Mayor and City Council  
Through: Bill Monahan, City Manager  
Subject: **Expedited Annexation of 9412 SE Stanley Ave and Tax Lot 5301**  
From: Brett Kelter, Associate Planner  
Date: 8/30/16

### **ACTION REQUESTED**

Approve application A-2016-003, an expedited annexation petition, and adopt the attached ordinance and associated findings in support of approval (Attachment 1). Approval of this application would result in the following actions:

- Annexation of 9412 SE Stanley Avenue (Tax Lot 1S2E30AD05300) and the adjacent unaddressed lot to the north (Tax Lot 1S2E30AD05301), together the “Annexation Properties,” into the City.
- Application of a Low Density (LD) Comprehensive Plan land use designation and a Residential (R-7) zoning designation to the Annexation Properties.
- Amendments to the City’s Comprehensive Plan Land Use Map and Zoning Map to reflect the City’s new boundary and the Annexation Properties’ new land use and zoning designations.
- Withdrawal of the Annexation Properties from the following urban service districts:
  - Clackamas County Service District for Enhanced Law Enforcement
  - Clackamas County Service District No. 5 for Street Lights

### **HISTORY OF PRIOR ACTIONS AND DISCUSSIONS**

**June 2016:** Property owner at 9412 SE Stanley Avenue approached the City’s Community Development Department with a request for an emergency connection to the City’s public sewer system in Firwood Street.

**June 2010:** Council approved the first annexation of property in the Northeast Sewer Extension (NESE) Project Area, at 5840 SE Morris St (Ordinance #2016, Land use file #A-10-01). Since then, Council has approved the annexation of approximately 150 additional properties in the NESE area.

**January 2010:** Council annexed the rights-of-way in the Northeast Sewer Extension (NESE) Project Area making all properties in this area contiguous to the City limits and eligible for annexation (Ordinance #2010).

**July 1990:** Clackamas County Order No 90-726 established an Urban Growth Management Agreement in which the City and County agreed to coordinate the future delivery of services to the unincorporated areas of North Clackamas County. With respect to Dual Interest Area “A,” the agreement states: *“The City shall assume a lead role in providing urbanizing services.”*

## **BACKGROUND**

### **Proposal**

The current owner of the Annexation Properties wishes to annex to the City to access City sewer service. In March 2016, the previous owner paid the Reimbursement Fee and applicable System Development Charges for the Annexation Properties, which were configured as a single tax lot at the time. The property was sold and the new (current) owner re-established the underlying subdivision lots as two separate tax lots. In June 2016, the current owner requested approval to make an emergency connection to the City sewer service for 9412 SE Stanley Ave. The City issued the necessary Land Use Compatibility Statement (LUCS) to allow the owner to obtain a plumbing permit from Clackamas County and make the sewer connection for 9412 SE Stanley Ave.

The Annexation Properties currently have residential County land use and zoning designations and will receive equivalent residential City land use and zoning designations. The property at 9412 SE Stanley Ave (Tax Lot 5300) is developed with a single-family home; Tax Lot 5301 is vacant and will be assigned the address 9410 SE Stanley Ave once the annexation is official. Upon annexation, the existing residential use at 9412 SE Stanley Ave will be a conforming use, subject to the City's zoning ordinance for review and approval of any proposed alterations; new development of Tax Lot 5301 will also be subject to the City's zoning ordinance for review and approval.

### **Site and Vicinity**

The Annexation Properties are contiguous to the existing city limits as a result of the NESE right-of-way annexation in 2010, as well as via the adjacent properties to the north and east. The Annexation Properties are within the City's urban growth management area (UGMA) and the NESE project area. The surrounding area consists of single-family dwellings.

### **Annexation Petition**

The petition is being processed as an expedited annexation at the request of the Annexation Properties' owner. Under the expedited process, a City land use and zoning designation is automatically applied to the Annexation Properties upon annexation. Any property that is within the UGMA and contiguous to the city boundary may apply for an expedited annexation so long as all property owners of the area to be annexed and at least 50% of registered voters within the area to be annexed consent to the annexation. Clackamas County has certified that these thresholds are met for the Annexation Properties.

As set forth in Milwaukie Municipal Code (MMC) Table 19.1104.1.E, the expedited annexation process automatically assigns City land use and zoning designations to the Annexation Properties based on the existing Clackamas County land use and zoning designations. The existing County Comprehensive Plan land use designation for the Annexation Properties is Urban Low Density Residential (LDR), which would assign the City's Low Density Residential (LD) Comprehensive Plan designation upon annexation. The current County zoning designation for the Annexation Properties is Residential R7, which would assign a City zoning designation of Residential Zone R-7 upon annexation.

Pursuant to City, regional, and State regulations on expedited annexations, all necessary parties, interested persons, and residents and property owners within 400 feet of the site were notified of these proceedings, under MMC Subsection 19.1103.4.1.C. A public hearing is not required for an expedited annexation; however, Council must adopt an ordinance to implement the annexation.

### **Expedited Annexation Approval Criteria**

Expedited annexations must meet the approval criteria of MMC Subsection 19.1102.3. Compliance with the applicable criteria is detailed in Attachment 1 (Exhibit A, Findings).

### **Utilities, Service Providers, and Service Districts**

The City is authorized by ORS Section 222.120(5) to withdraw the Annexation Properties from non-City service providers and districts upon annexation to the City. This allows for a more unified and efficient delivery of urban services to newly annexed properties and is in keeping with the City's Comprehensive Plan policies relating to annexation.

- Wastewater: The Annexation Properties is within the City's sewer service area and served by the City's 8-inch sewer lines accessible in Stanley Avenue and Firwood Street.
- Water: The Annexation Property at 9412 SE Stanley Ave is currently served by CRW through a 6-inch CRW water line in Stanley Avenue adjacent to the Annexation Properties. An 8-inch City water line also exists in Stanley Avenue adjacent to the Annexation Properties and is available to serve new development on the Annexation Property at Tax Lot 5301. Pursuant to the City's intergovernmental agreement (IGA) with CRW, the Annexation Property at 9412 SE Stanley Ave should not be withdrawn from this district at this time, but Tax Lot 5301 will be withdrawn from the district upon annexation.
- Storm: The Annexation Properties are not connected to a public stormwater system. Treatment and management of on-site stormwater will be required when new development occurs.
- Fire: The Annexation Properties are currently served by Clackamas Fire District No. 1 and will continue to be served by this fire district upon annexation, since the entire City is within this district.
- Police: The Annexation Properties are currently served by the Clackamas County Sheriff's Department and are within the Clackamas County Service District for Enhanced Law Enforcement, which provides additional police protection to the area. The City has its own police department, and this department can adequately serve the site. In order to avoid duplication of services, the site should be withdrawn from Clackamas County Service District for Enhanced Law Enforcement upon annexation to the City.
- Street Lights: The Annexation Properties are currently within Clackamas County Service District No. 5 for Street Lights (the "District"). As of July 1, 2011, an IGA between the City and the District transferred operational responsibility to the City for the street lights and street light payments in the NESE area. Although the City now provides the services through the IGA, the properties will remain in the District until they are annexed to the City. The Annexation Properties should be withdrawn from the District upon annexation.
- Other Services: Planning, Building, Engineering, Code Enforcement, and other municipal services are available through the City and will be available to the site upon annexation. The Annexation Properties will continue to receive services and remain within the boundaries of certain regional and county service providers, such as TriMet, North Clackamas School District, Vector Control District, and North Clackamas Parks and Recreation District.

## **CONCURRENCE**

All City departments, necessary parties, interested persons, and residents and property owners within 400 feet of the Annexation Properties were notified of these annexation proceedings as required by City, regional, and State regulations. The Lewelling Neighborhood District Association and the Southgate Planning Association also received notice of the annexation petition and meeting.

The City did not receive comments from any necessary parties with objections to the proposed annexation.

## **FISCAL IMPACTS**

The annexation of the Annexation Properties will have minimal fiscal impact on the City. As with most annexations of residential properties, the costs of providing governmental services will likely be off-set by the collection of property taxes. Per Clackamas County Assessor data, the total assessed value of the Annexation Properties in 2015 was \$123,399. Notwithstanding future development on the currently vacant Tax Lot 5301, total property tax collection of approximately \$2,014 is anticipated for the Annexation Properties, and the City will receive approximately \$528 of this total.

## **WORK LOAD IMPACTS**

Work load impacts will be minimal and will likely include, but are not limited to, the following: utility billing, provision of general governmental services, and the setting up and maintenance of property records.

## **ALTERNATIVES**

The application is subject to Milwaukie Comprehensive Plan Chapter 6 City Growth and Governmental Relationships, Oregon Revised Statutes Chapter 222 City Boundary Changes, Metro Code Chapter 3.09 Local Government Boundary Changes, and MMC Chapter 19.1100 Annexations and Boundary Changes.

The City Council has two decision-making options:

1. Approve the application and adopt the ordinance and findings in support of approval.
2. Deny the application and adopt findings in support of denial.

## **ATTACHMENTS**

1. Annexation Ordinance
  - Exhibit A. Findings in Support of Approval
  - Exhibit B. Legal Description and Tax Map
2. Annexation Site Map
3. Applicant's Annexation Application



**CITY OF MILWAUKIE**

*"Dogwood City of the West"*

**Ordinance No.**

**AN ORDINANCE OF THE CITY OF MILWAUKIE, OREGON, ANNEXING TRACTS OF LAND IDENTIFIED AS TAX LOTS 1S2E30AD05300 AND 05301 AND LOCATED AT 9412 SE STANLEY AVEUNUE AND IMMEDIATELY ADJACENT TO THE NORTH OF 9412 SE STANLEY AVENUE, RESPECTIVELY, INTO THE CITY LIMITS OF THE CITY OF MILWAUKIE. (FILE #A-2016-003)**

**WHEREAS**, the territory proposed for annexation is contiguous to the City's boundary and is within the City's urban growth management area; and

**WHEREAS**, the requirements of the Oregon Revised Statutes for initiation of the annexation were met by providing written consent from all owners of land in the territory proposed for annexation; and

**WHEREAS**, the requirements of the Oregon Revised Statutes for initiation of the annexation are further satisfied in that written consent from a majority of electors is not required given that there are no electors residing on the property; and

**WHEREAS**, the territory proposed for annexation lies within the territory of Clackamas County Service District No. 5 for Street Lights and Clackamas County Service District for Enhanced Law Enforcement; and

**WHEREAS**, the annexation and withdrawals are not contested by any necessary party; and

**WHEREAS**, the annexation will promote the timely, orderly, and economic provision of public facilities and services; and

**WHEREAS**, Table 19.1104.1.E of the Milwaukie Municipal Code provides for the automatic application of City zoning and Comprehensive Plan land use designations; and

**WHEREAS**, the City conducted a public meeting and mailed notice of the public meeting as required by law; and

**WHEREAS**, the City prepared and made available an annexation report that addressed all applicable criteria, and, upon consideration of such report, the City Council favors annexation of the tracts of land and withdrawal from all applicable districts based on findings and conclusions attached hereto as Exhibit A;

**Now, Therefore, the City of Milwaukie does ordain as follows:**

Section 1. The Findings in Support of Approval and attached as Exhibit A are hereby adopted.

Section 2. The tracts of land described and depicted in Exhibit B are hereby annexed to the City of Milwaukie.

Section 3. The tracts of land annexed by this ordinance and described in Section 2 are hereby withdrawn from Clackamas County Service District for Enhanced Law Enforcement and Clackamas County Service District No. 5 for Street Lights.

Section 4. The tracts of land annexed by this ordinance and described in Section 2 are hereby assigned a Comprehensive Plan land use designation of Low Density Residential and a Municipal Code zoning designation of Residential zone R-7.

Section 5. The City shall immediately file a copy of this ordinance with Metro and other agencies required by Metro Code Chapter 3.09.030 and ORS 222.005 and 222.177. The annexation and withdrawals shall become effective upon filing of the annexation records with the Secretary of State as provided by ORS 222.180.

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

Read the second time and adopted by the City Council on \_\_\_\_\_.

Signed by the Mayor on \_\_\_\_\_.

\_\_\_\_\_  
Mark Gamba, Mayor

ATTEST:

APPROVED AS TO FORM:  
Jordan Ramis PC

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

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

## FINDINGS IN SUPPORT OF APPROVAL

Based on the expedited annexation staff report for 9412 SE Stanley Avenue and the unaddressed property immediately adjacent to the north (Tax Lot 5301), together the “Annexation Properties,” the Milwaukie City Council finds:

1. The Annexation Properties consist of two tax lots comprising 0.29 acres (Tax Lots 1S2E30AD05300 and 05301). The Annexation Properties are contiguous to the existing City limits via the adjacent public rights-of-way in Stanley Avenue to the west and Firwood Street to the south, as well as via the adjacent properties to the north and east. The Annexation Properties are within the regional urban growth boundary and also within the City’s urban growth management area (UGMA).  
  
The property at 9412 SE Stanley Ave (Tax Lot 5300) is developed with a single-family dwelling unit; Tax Lot 5301 is vacant and will be assigned the address 9410 SE Stanley Ave once the annexation is official. The surrounding area consists of single-family dwellings.
2. The property owner seeks annexation to the City to access City services, namely sewer service.
3. The annexation petition was initiated by Consent of All Owners of Land on July 11, 2016, with an application for annexation submitted to the City on July 15, 2016. It meets the requirements for initiation set forth in ORS 222.125, Metro Code Section 3.09.040, and Milwaukie Municipal Code (MMC) Subsection 19.1102.2.A.1.
4. The annexation petition was processed and public notice was provided in accordance with ORS Section 222.125, Metro Code Section 3.09.045, and MMC 19.1104.
5. The annexation petition is being processed as an expedited annexation at the request of the property owner. It meets the expedited annexation procedural requirements set forth in MMC 19.1104.
6. The expedited annexation process provides for automatic application of City Comprehensive Plan land use and zoning designations to the Annexation Properties based on their existing Comprehensive Plan land use and zoning designations in the County, which are Low Density Residential and Residential R7, respectively. Pursuant to MMC Table 19.1104.1.E, the automatic City Comprehensive Plan land use and zoning designations for the Annexation Properties are Low Density Residential and Residential Zone R-7, respectively.
7. The applicable City approval criteria for expedited annexations are contained in MMC 19.1102.3. They are listed below with findings in italics.
  - A. The subject site must be located within the City’s urban growth management area (UGMA);

*The Annexation Area is within the City's UGMA.*

- B. The subject site must be contiguous to the existing city limits;  
*The Annexation Area is contiguous to the existing city limits via the adjacent public rights-of-way in Stanley Avenue to the west and Firwood Street to the south, as well as via the adjacent properties to the north and east.*
- C. The requirements of Oregon Revised Statutes for initiation of the annexation process must be met;  
*Jon Laufenberg, on behalf of Phoenix Redevelopment, Inc., owner of the Annexation Properties, consented to the annexation by signing the petition. There are no registered voters residing at the Annexation Properties. As submitted, the annexation petition meets the Oregon Revised Statutes requirements for initiation pursuant to the "Consent of All Owners of Land" initiation method, which requires consent by all property owners and a majority of the electors, if any, residing in the Annexation Area.*
- D. The proposal must be consistent with Milwaukie Comprehensive Plan Policies;  
*Chapter 6 of the Comprehensive Plan contains the City's annexation policies. Applicable annexation policies include: (1) delivery of City services to annexing areas where the City has adequate services and (2) requiring annexation in order to receive a City service. City sewer service is available to the Annexation Properties in both Firwood Street and Stanley Avenue. As proposed, the annexation is consistent with Milwaukie Comprehensive Plan policies.*
- E. The proposal must comply with the criteria of Metro Code Sections 3.09.045(d) and, if applicable, (e).  
*The annexation proposal is consistent with applicable Metro Code sections for expedited annexations as detailed in Finding 8.*

8. Prior to approving an expedited annexation, the City must apply the provisions contained in Section 3.09.045.D of the Metro Code. They are listed below with findings in italics.

- A. Find that the change is consistent with expressly applicable provisions in:
- (1) Any applicable urban service agreement adopted pursuant to ORS 195.205;  
*There is one applicable urban service agreement adopted pursuant to ORS 195 in the area of the proposed annexation (see Finding #9, Street lights). The City has an UGMA agreement with Clackamas County that states that the City will take the lead in providing urban services in the area of the proposed annexation. Pursuant to this agreement, the City completed construction of a public sewer system in this area. The proposed annexation is in*

*keeping with the City's policy of requiring properties to annex to the City in order to connect to City services such as the new sewer line.*

- (2) Any applicable annexation plan adopted pursuant to ORS 195.205;

*There are no applicable annexation plans adopted pursuant to ORS 195 in the area of the proposed annexation.*

- (3) Any applicable cooperative planning agreement adopted pursuant to ORS 195.020 (2) between the affected entity and a necessary party;

*There are no applicable cooperative planning agreements adopted pursuant to ORS 195 in the area of the proposed annexation.*

- (4) Any applicable public facility plan adopted pursuant to a statewide planning goal on public facilities and services;

*Clackamas County completed a North Clackamas Urban Area Public Facilities Plan in 1989 in compliance with Goal 11 of the Land Conservation and Development Commission for coordination of adequate public facilities and services. The City subsequently adopted this plan as an ancillary Comprehensive Plan document. The plan contains four elements:*

- *Sanitary Sewerage Services*
- *Storm Drainage*
- *Transportation Element*
- *Water Systems*

*The proposed annexation is consistent with the four elements of this plan as follows:*

*Sewer:* *The City is the identified sewer service provider in the area of the proposed annexation and maintains a public sewer system that can adequately serve the Annexation Properties.*

*Storm:* *The Annexation Properties are not connected to a public storm water system. Treatment and management of on-site storm water will be required when new development occurs.*

*Transportation:* *The City may require public street improvements along the Annexation Properties' frontage when new development occurs.*

*Water:* *Clackamas River Water (CRW) is the identified water service provider in this plan. However, the City's more recent UGMA agreement with the County identifies the City as the lead urban service provider in the area of the proposed annexation. The City's water service master plan for all of the territory within its UGMA addresses the need to prepare for future demand and*

*coordinate service provision changes with CRW. As per the City's intergovernmental agreement (IGA) with CRW, CRW will continue to provide water service to the Annexation Property at 9412 SE Stanley Ave; the City will provide water service for new development on the Annexation Property at Tax Lot 5301.*

- (5) Any applicable comprehensive plan.

*The proposed annexation is consistent with the Milwaukie Comprehensive Plan, which is more fully described on the previous pages. The Clackamas County Comprehensive Plan contains no specific language regarding City annexations. The comprehensive plans, however, contain the City-County UGMA agreement, which identifies the area of the proposed annexation as being within the City's UGMA. The UGMA agreement requires that the City notify the County of proposed annexations, which the City has done. The agreement also calls for City assumption of jurisdiction of local streets that are adjacent to newly annexed areas. The City has already annexed and taken jurisdiction of the Stanley Avenue and Firwood Street rights-of-way adjacent to the Annexation Properties.*

- B. Consider whether the boundary change would:

- (1) Promote the timely, orderly and economic provision of public facilities and services;

*The City is the identified urban service provider in the area of the proposed annexation, and the proposed annexation will facilitate the timely, orderly, and economic provision of urban services to the Annexation Properties.*

*The City has public sewer service in this area via Stanley Avenue and Firwood Street, with water service available via Stanley Avenue.*

- (2) Affect the quality and quantity of urban services; and

*The Annexation Properties include one tax lot developed with a single-family residence and another undeveloped tax lot. Annexation of the site is not expected to affect the quality or quantity of urban services in this area, given the surrounding level of urban development and the existing level of urban service provision in this area.*

- (3) Eliminate or avoid unnecessary duplication of facilities and services.

*The Annexation Properties will be served by the Milwaukie Police Department upon annexation. In order to avoid duplication of law enforcement services, the site will be withdrawn from the Clackamas County Service District for Enhanced Law Enforcement.*

9. The City is authorized by ORS Section 222.120 (5) to withdraw annexed territory from non-City service providers and districts upon annexation of the territory to the City. This allows for more unified and efficient delivery of urban services to newly annexed properties and is in keeping with the City's Comprehensive Plan policies relating to annexation.

Wastewater: The Annexation Properties are within the City's sewer service area and are served by the City's 8-inch sewer lines accessible in Stanley Avenue and Firwood Street.

Water: The Annexation Property at 9412 SE Stanley Ave is currently served by CRW through a 6-inch CRW water line in Stanley Avenue adjacent to the Annexation Properties. An 8-inch City water line also exists in Stanley Avenue adjacent to the Annexation Properties and is available to serve new development on the Annexation Property at Tax Lot 5301. Pursuant to the City's IGA with CRW, the Annexation Property at 9412 SE Stanley Ave should not be withdrawn from this district at this time, but Tax Lot 5301 will be withdrawn from the district upon annexation.

Storm: The Annexation Properties are not connected to a public storm water system. Treatment and management of on-site storm water will be required when new development occurs.

Fire: The Annexation Properties are currently served by Clackamas Fire District No. 1 and will continue to be served by this fire district upon annexation, since the entire City is within this district.

Police: The Annexation Properties are currently served by the Clackamas County Sheriff's Department and are within the Clackamas County Service District for Enhanced Law Enforcement, which provides additional police protection to the area. The City has its own police department, and this department can adequately serve the site. In order to avoid duplication of services, the site should be withdrawn from Clackamas County Service District for Enhanced Law Enforcement upon annexation to the City.

Street Lights: The Annexation Properties are currently within Clackamas County Service District No. 5 for Street Lights (the "District"). As of July 1, 2011, an IGA between the City and the District transferred operational responsibility to the City for the street lights and street light payments in the NESE area. Although the City now provides the services through the IGA, the properties will remain in the District until they are annexed to the City. The Annexation Properties should be withdrawn from the District upon annexation.

Other Services: Planning, Building, Engineering, Code Enforcement, and other municipal services are available through the City and will be available to the site upon annexation. The Annexation Properties will continue to receive services and remain within the boundaries of certain regional and county service providers, such as TriMet, North Clackamas School District, Vector Control District, and North Clackamas Parks and Recreation District.

Exhibit B

Annexation to the City Of Milwaukie  
LEGAL DESCRIPTION

Milwaukie Annexation File No. A-2016-003

Property Address: 9412 SE Stanley Ave, Milwaukie OR 97222

Tax Lot Description: 1S2E30AD05300 and 05301

Legal Description: Lots 17, 18, and West 1/2 of Lot 16, Block 2, HOLLYWOOD PARK, in the County of Clackamas and State of Oregon.

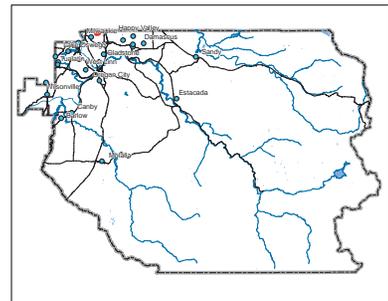
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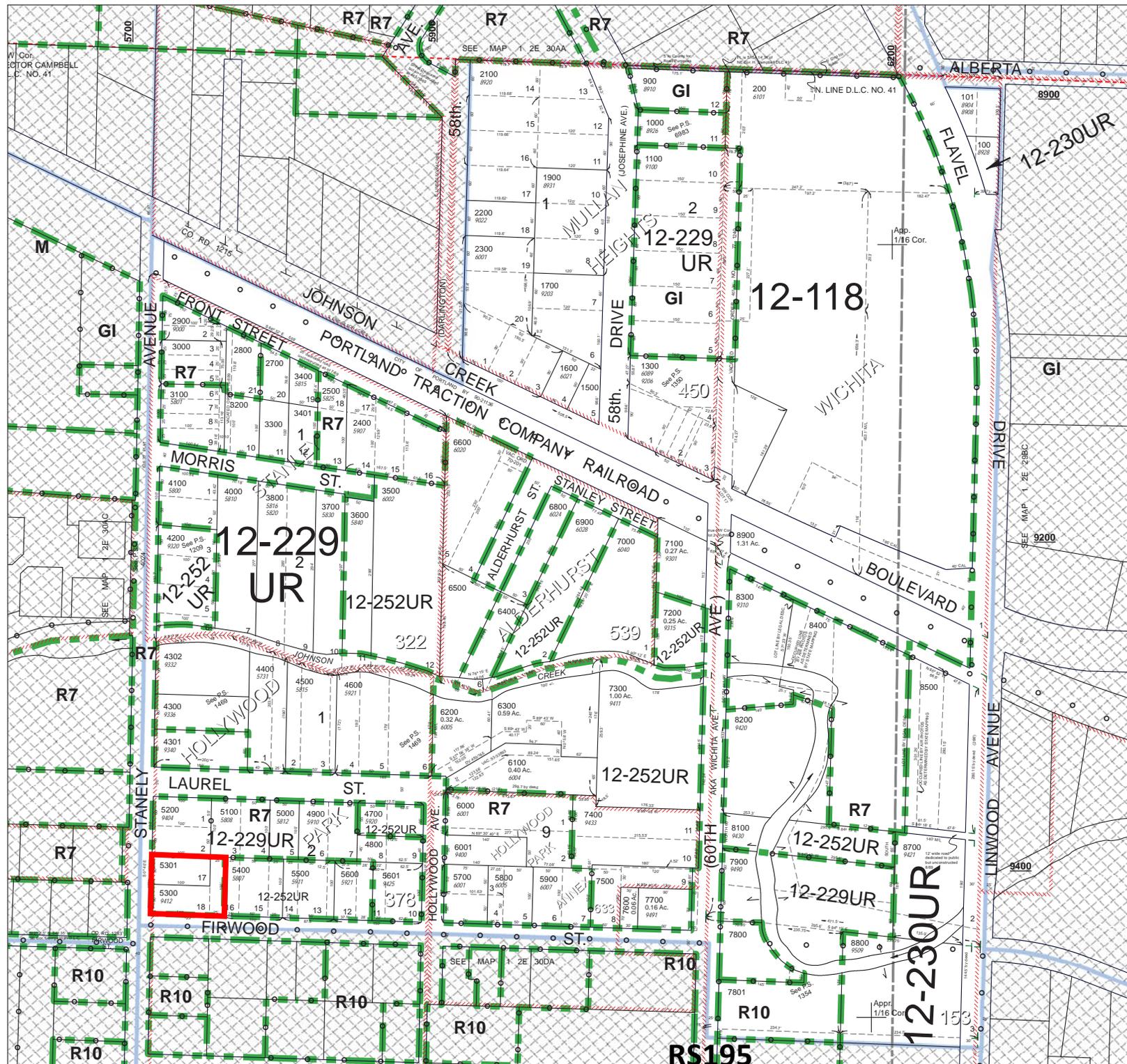
Cancelled Taxlots

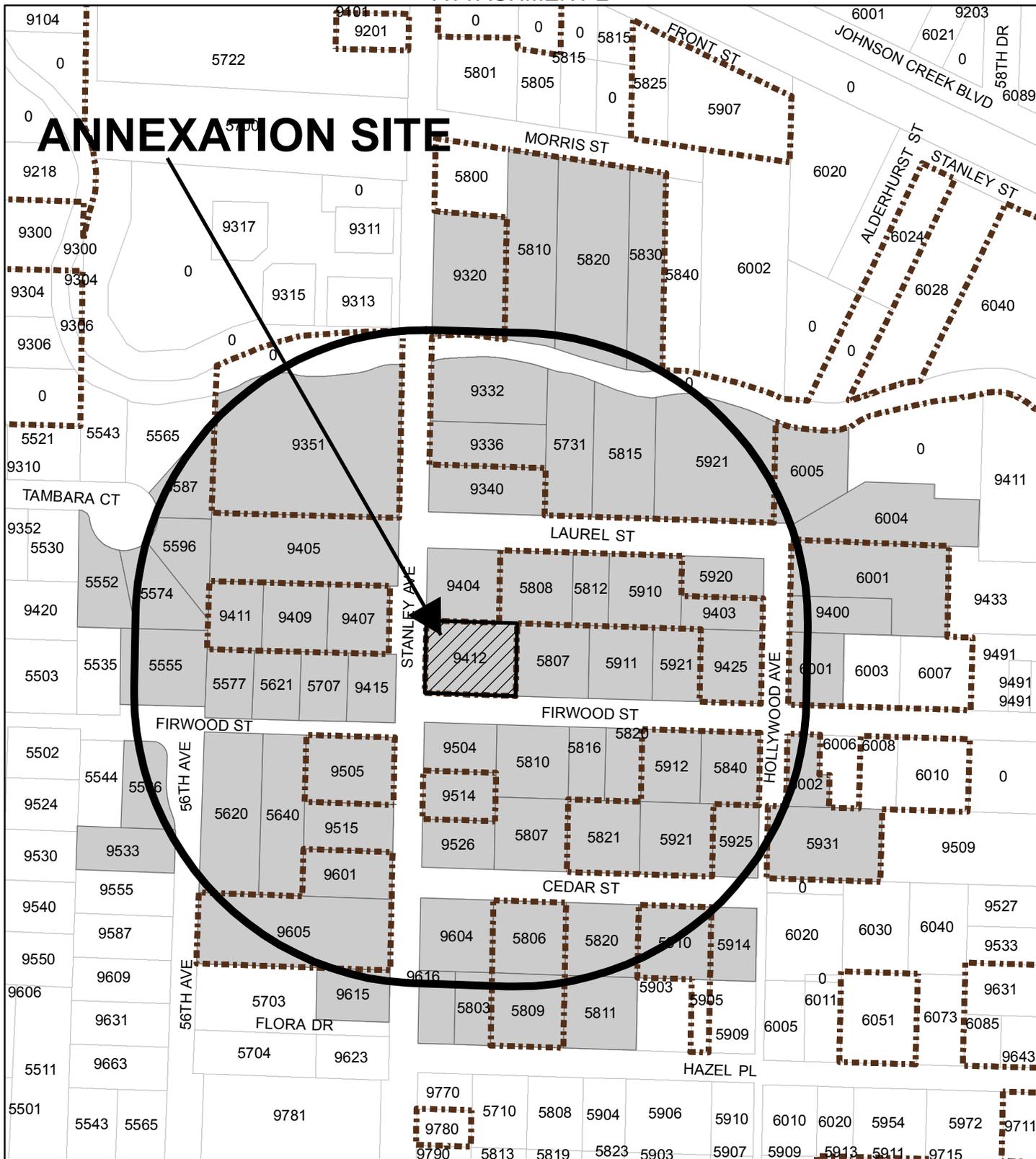
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- 8600

- Parcel Boundary
- Private Road ROW
- Historical Boundary
- Railroad Centerline
- TaxCodeLines
- Map Index
- WaterLines
- Land Use Zoning
- Plats
- Water
- Corner
- Section Corner
- 1/16th Line
- Govt Lot Line
- DLC Line
- Meander Line
- PLSS Section Line
- Historic Corridor 40'
- Historic Corridor 20'



THIS MAP IS FOR ASSESSMENT PURPOSES ONLY





# ANNEXATION SITE

**Public Notice Map**  
**9412 SE Stanley Ave**  
**(Tax Lot ID 1S2E30AD05300 and 05301)**  
**File# A-2016-003**

### Legend

-  A-2016-003 site
-  400-ft public notice boundary
-  Properties receiving notice selection
-  Other tax lots
-  Milwaukie City Limits



**RS196**



**PLANNING DEPARTMENT**  
 6101 SE Johnson Creek Blvd  
 Milwaukie OR 97206

PHONE: 503-786-7630  
 FAX: 503-774-8236  
 E-MAIL: [planning@milwaukieoregon.gov](mailto:planning@milwaukieoregon.gov)  
 WEB: [www.milwaukieoregon.gov](http://www.milwaukieoregon.gov)

# Expedited Annexation Application

File #: A-2016-003

**RESPONSIBLE PARTIES:**

**APPLICANT** (owner or other eligible applicant): Phoenix Redevelopment, Inc.

Mailing address: 516 SE Morrison St, #200 <sup>Portland</sup> OR Zip: 97214

Phone(s): 503-238-0113 E-mail: JONL@PHOENIXREDEVELOPMENT.COM

**APPLICANT'S REPRESENTATIVE** (if different than above): Jon Laufenberg, Vice President

Mailing address: \_\_\_\_\_ Zip: \_\_\_\_\_

Phone(s): \_\_\_\_\_ E-mail: \_\_\_\_\_

**SITE INFORMATION:**

Address(es): 9412 SE Stanley Ave Map & Tax Lot(s): Block 2, Hollywood Park <sup>Lot 18 + west 1/2 of Lot 16</sup> Property size: 7,500 sqft

Existing County zoning: R7 Proposed City zoning: R7

Existing County land use designation: Urban Low Density Residential Proposed City land use designation: Low Density Res

**PROPOSAL (describe briefly):**

Annex this parcel into the City of Milwaukie

**LIST OF ALL CURRENT UTILITY PROVIDERS:**

Check all that apply (do not list water or sewer service providers)

Cable, internet, and/or phone:  Comcast  CenturyLink (formerly Qwest)

Energy:  PGE  NW Natural Gas

Garbage hauler:  Waste Management  Mel Deines  Hoodview Disposal and Recycling

Wichita Sanitary  Oak Grove Disposal  Clackamas Garbage

Other (please list): \_\_\_\_\_

**SIGNATURE:**

**ATTEST:** I am the property owner or I am eligible to initiate this application per Milwaukie Municipal Code (MMC) Subsection 19.1001.6.A. I have attached all owners' and voters' authorizations to submit this application. I understand that uses or structures that were not legally established in the County are not made legal upon annexation to the City. To the best of my knowledge, the information provided within this application package is complete and accurate.

Submitted by: Jon Laufenberg, Vice President Date: 7/11/16

CONTINUED ON REVERSE

**THIS SECTION FOR OFFICE USE ONLY:**

File # <i>A-2016-003</i> Fee: \$ <i>(See other)</i> Receipt #: Rcd. by: Date stamp:	
Associated application file #'s:	RECEIVED  JUL 15 2016  CITY OF MILWAUKEE PUBLIC WORKS
Neighborhood District Association(s):	
Notes (include discount if any):	

North  
↑

Vicinity Map  
9412 SE Stanley Annexation Applicants



RS199

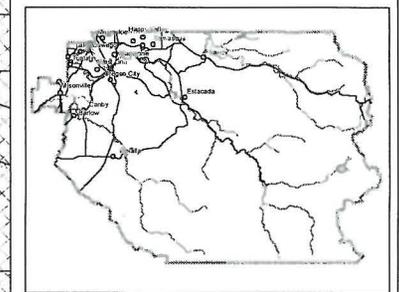
12 E 30AD  
 S.E. 1/4 N.E. 1/4 SEC. 30 T. 1S. R. 2E. W.M.  
 CLACKAMAS COUNTY  
 1" = 100'

D. L. C.  
 HECTOR CAMPBELL NO. 41

Cancelled Taxlots

- 201
- 202
- 203
- 400
- 470
- 500
- 700
- 800
- 1200
- 1400
- 1454
- 1700
- 2000
- 2100
- 2970
- 3800
- 4700
- 5700
- 7700
- 2800
- 5900

- Parcel Boundary
- Private Road ROW
- Historical Boundary
- Railroad Centerline
- Tax Code Lines
- Map Index
- Water Lines
- Land Use Zoning
- Plats
- Water
- Corner
- Section Corner
- 1/16th Line
- Grant Lot Line
- DLC Line
- Meander Line
- PLSS Section Line
- Historic Corridor 40'
- Historic Corridor 20'



THIS MAP IS FOR ASSESSMENT  
 PURPOSES ONLY



RS200

12 E 30AD

**EXPEDITED ANNEXATION  
PETITION OF OWNERS OF 100% OF LAND AREA  
AND PETITION OF AT LEAST 50% OF REGISTERED VOTERS**

**TO: The Council of the City of Milwaukie, Oregon**

**RE: Petition for Annexation to the City of Milwaukie, Oregon**

We, the petitioners (listed on reverse), are property owners of and/or registered voters in the territory described below. We hereby petition for, and give our consent to, annexation of this territory to the City of Milwaukie.

This petition includes a request for the City to assign a zoning and land use designation to the territory that is based on the territory's current zoning designation in the County, pursuant to the City's expedited annexation process.

The territory to be annexed is described as follows:

*(Insert legal description below OR attach it as Exhibit "A")*

Lot 18 and West 1/2 of Lot 16, Block 2, Hollywood Park

# PETITION SIGNERS

NOTE: This petition may be signed by qualified persons even though they may not know their property description or voter precinct number.

SIGNATURE	PRINTED NAME	I AM A:*			DATE
		PO	RV	OV	
<i>Jon A. Lautenberg, Vice President of Phoenix Redevelopment, Inc.</i>	Jon A. Lautenberg	<input checked="" type="checkbox"/>			7/11/16
PROPERTY ADDRESS	PROPERTY DESCRIPTION				VOTER PRECINCT #
	TOWNSHIP	RANGE	¼ SEC.	LOT #(S)	
9412 SE Stanley Ave	15	2E	30 AD	18 and W ½ 16	420
T205300					

SIGNATURE	PRINTED NAME	I AM A:*			DATE
		PO	RV	OV	
PROPERTY ADDRESS	PROPERTY DESCRIPTION				VOTER PRECINCT #
	TOWNSHIP	RANGE	¼ SEC.	LOT #(S)	

SIGNATURE	PRINTED NAME	I AM A:*			DATE
		PO	RV	OV	
PROPERTY ADDRESS	PROPERTY DESCRIPTION				VOTER PRECINCT #
	TOWNSHIP	RANGE	¼ SEC.	LOT #(S)	

SIGNATURE	PRINTED NAME	I AM A:*			DATE
		PO	RV	OV	
PROPERTY ADDRESS	PROPERTY DESCRIPTION				VOTER PRECINCT #
	TOWNSHIP	RANGE	¼ SEC.	LOT #(S)	

SIGNATURE	PRINTED NAME	I AM A:*			DATE
		PO	RV	OV	
PROPERTY ADDRESS	PROPERTY DESCRIPTION				VOTER PRECINCT #
	TOWNSHIP	RANGE	¼ SEC.	LOT #(S)	

SIGNATURE	PRINTED NAME	I AM A:*			DATE
		PO	RV	OV	
PROPERTY ADDRESS	PROPERTY DESCRIPTION				VOTER PRECINCT #
	TOWNSHIP	RANGE	¼ SEC.	LOT #(S)	

\*PO = Property Owner    RV = Registered Voter    OV = Owner and Registered Voter

**CERTIFICATION OF LEGAL DESCRIPTION AND MAP**

I hereby certify that the description of the territory included within the attached petition (located on Assessor's Map 12E30AD) has been checked by me. It is a true and exact description of the territory under consideration and corresponds to the attached map indicating the territory under consideration.

Name CRAIG FERRIS *Craig Ferris*  
Title CARTOGRAPHER III  
Department ASSESSMENT & TAX  
County of CLACKAMAS  
Date 7-11-16



## CERTIFICATION OF REGISTERED VOTERS

I hereby certify that the attached petition contains the names of at least 50% of the electors registered in the territory proposed for annexation as described in the attached petition.

Name PAUL HANES  
Title DEPUTY CLERK  
Department CLERK / ELECTIONS  
County of CLACKAMAS  
Date 7/11/16

CLACKAMAS COUNTY ELECTIONS  
SHERRY HALL, COUNTY CLERK  
1710 RED SOILS CT, SUITE 100  
OREGON CITY, OR 97045



**CERTIFICATION OF PROPERTY OWNERSHIP OF  
100% OF LAND AREA**

I hereby certify that the attached petition contains the names of the owners<sup>1</sup> (as shown on the last available complete assessment roll) of 100% of the land area of the territory proposed for annexation as described in the attached petition.



Name CRAIG FERRIS *Craig Ferris*  
Title CARTOGRAPHER III  
Department ASSESSMENT & TAX  
County of CLACKAMAS  
Date 7-11-16

<sup>1</sup> Owner means the legal owner of record or, where there is a recorded land contract which is in force, the purchaser thereunder. If a parcel of land has multiple owners, each consenting owner shall be counted as a percentage of their ownership interest in the land. That same percentage shall be applied to the parcel's land mass and assessed value for purposes of the consent petition. If a corporation owns land in territory proposed to be annexed, the corporation shall be considered the individual owner of that land.

# 9412 SE Stanley Ave Annexation Application

## List of current and proposed urban service provider districts

- Sanitary Sewer: City of Milwaukie (proposed)
- Water District: Clackamas River Water
- Fire: Clackamas RFPD #1
- Law Enforcement: Clackamas County Sherriff
- Parks and Recreation: North Clackamas Park and Recreation District
- Transit: Tri Met
- School District: North Clackamas School District

## List of current urban service provider franchises

- Cable: Comcast of Oregon
- Natural Gas: NW Natural Gas
- Electricity: PGE
- Telco: CenturyLink
- Garbage: Mel Deines

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JUL 15 2016

CITY OF MILWAUKIE  
PUBLIC WORKS

## NOTICE LIST

(This form is NOT the petition)

**LIST THE NAMES AND ADDRESSES OF ALL PROPERTY OWNERS AND REGISTERED VOTERS IN THE TERRITORY PROPOSED FOR ANNEXATION.**

	Mailing Street Address	Property Address
	Mailing City/State/Zip	Property Description <small>(township, range, ¼ section, and tax lot)</small>
1	Phoenix Redevelopment, Inc 516 SE Morrison St, #700 Portland, OR 97214	9412 SE Stanby Ave 1S-2E-30. Lots 18 and W ½ of Lot 16
2		
3		
4		
5		
6		
7		
8		
9		
10		

# 9412 SE Stanley Ave Annexation Application Narrative

## MMC Section 19.1104.1.A.5:

Address the following Approval Criteria found in MMC Section 19.1102.3 (Subsections A-F):

*This Criteria is Met (see next section below)*

## MMC Section 19.1102.3.A-F:

Subsection A: The subject site must be located within the City urban growth boundary

*This Criteria is Met*

Subsection B: The subject site must be contiguous to the existing City limits

*This Criteria is Met (see attached Vicinity map)*

Subsection C: The requirements of the ORS for initiation of the annexation process must be met

*This Criteria is Met by virtue of following the City of Milwaukie's guidelines for annexation*

Subsection D: The proposal must be consistent with Milwaukie Comprehensive Plan policies

*This Criteria is Met as this property fits into the Comp Plan policies*

Subsection E: The proposal must comply with the criteria of Metro Code Subsections 3.09.050(d) and, if applicable, (e)

*This Criteria is Met (see next section below)*

Subsection F: The proposal must comply with the criteria of Section 19.902 for Zoning Map Amendments and Comprehensive Plan Map Amendments, if applicable. (Ord. 2051 § 2, 2012; Ord. 2025 § 2, 2011)

*This Criteria is Met*

## Metro Code Subsections 3.09.050(d):

“reviewing entity shall apply the criteria and consider the factors set forth in subsections (D) and (E) of section 3.09.045”

Section 3.09.045 (d):

*All these Criteria are Met*

## Milwaukie Comprehensive Plan Chapter 6:

*Given this site abuts other property already within the City's boundaries, this criteria is met.*

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