

# REGULAR SESSION

# AGENDA

## MILWAUKIE CITY COUNCIL REGULAR SESSION APRIL 2, 2013

MILWAUKIE CITY HALL  
10722 SE Main Street

2147<sup>th</sup> MEETING

- |  | Page #    |
|--|-----------|
| <b>1. CALL TO ORDER</b><br>Pledge of Allegiance  |           |
| <b>2. PROCLAMATIONS, COMMENDATIONS, SPECIAL REPORTS, AND AWARDS</b>  |           |
| <b>A. Metro Update by Councilor Carlotta Collette</b>  |           |
| <b>B. Presentation of Government Finance Officers Association (GFOA) Distinguished Budget Award</b><br>Staff: Casey Camors, Finance Director   |           |
| <b>3. CONSENT AGENDA</b> <i>(These items are considered to be routine, and therefore, will not be allotted Council discussion time on the agenda. The items may be passed by the Council in one blanket motion. Any Council member may remove an item from the "Consent" portion of the agenda for discussion or questions by requesting such action prior to consideration of that portion of the agenda.)</i>  |           |
| <b>A. City Council Minutes:</b>  | <b>2</b>  |
| 1. February 19, 2013 Work Session;   |           |
| 2. February 26, 2013 Study Session;  |           |
| 3. March 5, 2013 Work Session; and   |           |
| 4. March 5, 2013 Regular Session   |           |
| <b>B. Board, Commission and Committee Appointments – Resolutions</b>   | <b>18</b> |
| 1. Reappoint Jeff Davis to the Milwaukie Arts Committee  |           |
| 2. Reappoint Val Hubbard to the Milwaukie Arts Committee   |           |
| 3. Reappoint Melissa Perkins to the Milwaukie Library Board  |           |
| <b>C. Authorize Riverfront Grant Application to Oregon Marine Board – Resolution</b>   | <b>21</b> |
| <b>D. Authorize Riverfront Grant Application to Oregon Parks and Recreation Department – Resolution</b>  | <b>30</b> |
| <b>E. Approve OLCC Application for Albertson's, 10830 SE Oak Street, off-premises sales, change of ownership</b>   | <b>37</b> |
| <b>4. AUDIENCE PARTICIPATION</b> <i>(The Presiding Officer will call for statements from citizens regarding issues relating to the City. Pursuant to Section 2.04.140, Milwaukie Municipal Code, only issues that are "not on the agenda" may be raised. In addition, issues that await a Council decision and for which the record is closed may not be discussed. Persons wishing to address the Council shall first complete a comment card and return it to the City Recorder. Pursuant to Section 2.04.360, Milwaukie Municipal Code, "all remarks shall be</i> |           |

*directed to the whole Council, and the Presiding Officer may limit comments or refuse recognition if the remarks become irrelevant, repetitious, personal, impertinent, or slanderous.” The Presiding Officer may limit the time permitted for presentations and may request that a spokesperson be selected for a group of persons wishing to speak.)*

5. **PUBLIC HEARING** *(Public Comment will be allowed on items appearing on this portion of the agenda following a brief staff report presenting the item and action requested. The Mayor may limit testimony.)*

**None scheduled.**

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

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|----|--|-----------|
| A. | <b>Consider Good Neighbor Fund Allocation<br/>Introduced by Mayor Ferguson</b>   | <b>39</b> |
| B. | <b>Code Amendment Clarifying the Debris on Private Property<br/>Nuisance; Clarifying the Noxious Vegetation Nuisance; and<br/>Repealing Regulations Relating to Notice and Advertisements –<br/>Ordinance</b><br>Staff: Tim Salyers, Code Compliance Coordinator | <b>45</b> |
| C. | <b>Council Reports</b>   |           |

7. **INFORMATION**

8. **ADJOURNMENT**

**Public Information**

- Executive Session: The Milwaukie City Council will meet in executive session immediately following adjournment pursuant to ORS 192.660(2)(e) to deliberate with persons designated by the governing body to negotiate real property transactions.
- All discussions are confidential and those present may disclose nothing from the Session. Representatives of the news media are allowed to attend Executive Sessions as provided by ORS 192.660(3) but must not disclose any information discussed. No Executive Session may be held for the purpose of taking any final action or making any final decision. Executive Sessions are closed to the public.
- For assistance/service per the Americans with Disabilities Act (ADA), please dial TDD 503.786.7555
- The Council requests that all pagers and cell phones be either set on silent mode or turned off during the meeting.

3.

# CONSENT AGENDA

**MINUTES**  
**MILWAUKIE CITY COUNCIL WORK SESSION**  
**FEBRUARY 19, 2013**

**Mayor Ferguson** called the work session to order at 5:00 p.m. in the City Hall Conference Room.

Council Present: Council President Hedges and Councilors Mark Gamba, Scott Churchill, and Mike Miller

Staff Present: City Manager Bill Monahan, Assistant to the City Manager Teri Bankhead, City Recorder Pat DuVal, Finance Director Casey Camors, Assistant Finance Director Rina Byrne, Engineering Manager Jason Rice, Interim Community Development Director Steve Butler, and Library Director Katie Newell

**City Manager's Report**

**Mr. Monahan** reviewed the evening's agenda. He briefed the City Council on the City Prosecutor Personal Services Agreement with Rhett Bernstein, Attorney at Law. He reviewed audience participation from the previous meeting and the desire from several Neighborhood District Association (NDA) members to have more than a "light touch" on the Transportation System Plan (TSP) including more public engagement.

**Community Development, Engineering and Planning Active Projects**

**Mr. Butler** reported on the Riverfront Park and said an update on the capital campaign was scheduled for the March 5 Council agenda.

**Ms. Herrigel** announced two activities planned for March 2: Johnson Creek Watershed Council watershed wide event and tree planting at Klein Point.

**Mr. Butler** reported on the Tacoma Station Area Plan (TSAP), light rail permitting, and the Metro Construction Excise (CET) Grant for the Commercial Core Enhancement Project (CCEP). He reported on engineering projects including quiet zone implementation, the Stormwater Master Plan, Walk Safely Milwaukie Program (WSMP), and the 17<sup>th</sup> Avenue Bike/Pedestrian Path.

**Ledding Library Departmental Report**

**Ms. Newell** reported the Library had had a very good year. The Library Expansion Task Force (LETF) was moving forward and would have a recommendation for the needs assessment consultant shortly. She addressed Oregon Library Association (OLA) standards where in most cases the Ledding Library was between adequate and excellent. She provided information on programs including the recently instituted Ledding Library Cultural Forum funded in part by the Clackamas County Cultural Coalition and Oregon Cultural Trust. In the past year over 700,000 items were circulated, volunteer hours exceeded 8,000, and nearly 250,000 patrons were counted. She discussed the effects of the formation of the Library District and generosity of a very active Friends group that funded many programs and services. She discussed the increase in the service area and the status of the City of Gladstone Library after its decision not to build.

**Mayor Ferguson** recessed the work session at 5:37 p.m. to go into a Budget Committee meeting and reconvened the City Council work session at 6:13 p.m.

**City Council Work Session – February 19, 2013**

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## Lake Road Projects Update

**Mr. Rice** reviewed the history of the Lake Road project that began in the 1990's as the Lake Road Multimodal Project and discussed some of the upcoming decision points. The City was working on two Lake Road projects: the Oregon Department of Transportation (ODOT)/City Project which was Oatfield Road to Where Else Lane and the Safe Routes to School Project from Where Else Lane to Freeman Way. Funding for the two projects was falling short. The question before the City Council was whether staff should negotiate with ODOT to allow the Safe Routes to School funds to be shifted to the Lake Road Project. He outlined the scopes of the projects.

**Councilor Churchill** understood there was a process early on and asked how the City got to the point of knowing there were challenges and a liability issue.

**Mr. Rice** responded the City signed intergovernmental agreements (IGA) with ODOT. One obligated the City to contribute 10.27% of the total costs and to pay any overages beyond the total project cost. The second allowed ODOT to fund a right-of-way phase. In 2007 the consultant designed a project that utilized as much of the money as possible without going over budget. The City relied on the ODOT consultant to track costs. By March 2011 staff understood \$700,000 remained beyond the construction project. Based on the information at the time it appeared that by combining City funds and the remaining ODOT funds that roadway improvements could be made from Guilford Drive to Oatfield Road. During the first week of February, ODOT informed the City about \$422,000 remained and not \$700,000. The State cited increased asphalt costs, traffic control expenses, and \$100,000 in water system modifications requested by the City. The original project was put together in 2005, and a number of circumstances had changed in the intervening years. He discussed lessons learned that would be put to use in the 17<sup>th</sup> Avenue Bike/Pedestrian improvement project.

**Councilor Churchill** noted this type of forensic on the Lake Road project might help the City make decisions on the 17<sup>th</sup> Avenue project. He added it was always good to have trap doors for certain elements of a project.

**Mr. Rice** would be available to make quarterly reports to the City Council on the 17<sup>th</sup> Avenue project and identify priorities. He discussed the impending shortfall and the impact of the Guilford Drive to Where Else Lane segment coming in under budget. The Safe Routes to School Program made \$234,000 available and added the Program would be phased out this year due to changes in the Statewide Transportation Improvement Program (STIP). The ODOT Program Manager for the Safe Routes to Schools Program had preapproved the notion of transferring money to the current Lake Road improvements pending a written request from City staff.

**Councilor Gamba** hoped there was an opportunity to make sure design flaws, such as utility poles in the middle of sidewalks, were avoided.

**Mr. Rice** responded 100% of the design was done, and he understood there were differing views about sidewalks and swales. He added that the sidewalks were ADA compliant, and less right-of-way had to be purchased.

**Councilor Miller** said the section from Where Else Lane to Freeman Road was 450-feet and owned by the School District. How does \$234,000 not build one block of sidewalk?

**Councilor Gamba** understood it was not only the cost to build the sidewalk but also all of the reports required by ODOT. He asked how much it would cost the City to build the sidewalk.

**City Council Work Session – February 19, 2013**

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**Mr. Rice** replied it had not been surveyed yet so it was not clear how the properties on the downhill side would be impacted. He could not see turning the wheel for \$170,000. He would inquire with Tom Weatherford at ODOT.

**Councilor Churchill** asked if there had been a higher level discussion to find out if the City's expectations were reasonable.

**Mr. Rice** said it was not abnormal for 30-40% engineering costs.

**Councilor Churchill** discussed risks related to the process of initial cost work on 17<sup>th</sup> Avenue and how those might be mitigated.

**Mr. Rice** replied as staff submitted grant applications, TSP projects were considered using best judgment without a survey. He discussed the upfront staff time on grant application preparation and how much the City might receive.

**Councilor Hedges** was supportive of the recommendation to complete Lake Road.

**Councilor Miller** agreed however was concerned about the cost of building sidewalks.

**Mr. Rice** replied if the City used its own funds, sidewalk dollars would go further and added consultant's estimates were based on work with ODOT.

#### **Kronberg Property Report**

**Mr. Monahan** provided information based on a question brought before the City Council related to combining certain properties into Kronberg Park. Staff did not feel at this time it was necessary, and they were unclear as to what the implications might be to the Kellogg for Coho Project.

**There was consensus among the members of Council to not combine the parcels but perhaps consider the suggestion at a date in the future.**

**Mayor Ferguson** adjourned the work session at 6:53 p.m.

Respectfully submitted,

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Pat DuVal, Recorder

**MINUTES**  
**MILWAUKIE CITY COUNCIL STUDY SESSION**  
**FEBRUARY 26, 2013**

**Mayor Ferguson** called the study session to order at 5 p.m. in the City Hall Conference Room.

Council Present: Council President Hedges and Councilors Scott Churchill and Mark Gamba

Staff Present: City Manager Bill Monahan, Assistant to the City Manager Teri Bankhead, City Recorder Pat DuVal, Library Director Katie Newell, Parks and Sustainability Director JoAnn Herrigel, Human Resources Director Gary Rebello, Public Works Director Gary Parkin, Interim Community Development Director Steve Butler, and Associate Planner Li Alligood

**Ethics and Conflicts of Interest Training for City Council, Budget Committee, Planning Commission, and Design and Landmarks Committee**

**Bethany Reeves**, Program Analyst/Trainer, Oregon Government Ethics Commission provided training to Milwaukie public officials.

**Library Expansion Task Force Update**

**Ms. Newell** announced the bid award to FFA for the Library needs assessment and noted the Library Endowment funded this phase of the expansion project. She discussed the anticipated increase of Milwaukie's service district.

**Councilor Churchill** understood the needs assessment would evaluate costs by looking at the current facility and work that would need to be done like seismic upgrades.

**Energy Savings in Facilities.**

**Ms. Herrigel** discussed a proposal by Siemens Industries to perform a feasibility study at no cost to the City. The company would conduct a study to estimate the implementation costs and energy and operational savings for City buildings. The first step was an assessment using existing data and would probably involve a little staff time. If eligible projects were identified the City would issue a request for proposals (RFP) to Energy Service Companies (ESCO). She reviewed the options. The City would pay less in energy costs, but it would also be making a loan payment for the projects.

**Councilor Churchill** had worked with 5 of the 6 companies, and it was his experience was that all were aiming for low hanging fruit which may not be consistent with the City's goals. Typically, the ESCO prepared a feasibility study that tended toward its business. He cautioned against being on a track that fed the company's desires but not the City's. Milwaukie would need help with the next level of granularity. He suggested inviting all the companies to do a walk through and asking each to submit a feasibility study that did not necessarily lead to an automatic contract.

**Mr. Parkin** commented that the City had been contacted by a number of firms and felt Councilor Churchill's analysis was accurate.

**Ms. Herrigel** indicated she could work on this after the Riverfront Park grant applications were submitted.

## **Sustainability Plan Update**

**Ms. Herrigel** reported the City Council adopted the Milwaukie Sustainability Plan in March 2009, and the City was doing well in the four main areas identified: waste reduction, purchasing, energy and fossil fuels, and outreach and education. Over the next few months staff would focus on an expanded sustainability fair open to the public, enhanced education, and resource tracking.

**Councilor Gamba** felt sustainability meshed well with City Council goals such as becoming a Tree City USA, Kellogg for Coho, the community's bike and pedestrian infrastructure, and creating commercial pods to make neighborhoods more walkable. He observed there were certain things only government could move forward. He was also interested in looking at fleet and vehicle replacement practices.

**Council President Hedges** hoped to look at things that saved money or were cost neutral. He wanted to avoid making mistakes by making sure the public supported the programs.

**Councilor Churchill** supported public outreach and reinforcing internal studies. He urged ensuring that efforts were cost neutral and fiscally sound and suggested empowering and encouraging employees with a monthly sustainability award.

**Councilor Gamba** encouraged the City to heavily vet any people being presented to the public in a City sponsored event.

**Mayor Ferguson** wanted to increase public awareness of City employee sustainability accomplishments. He commented on solar projects and energy operations that were not only cost neutral but put money back into the general fund. He discussed electric vehicles and electric bikes.

The group discussed developing a framework for preparedness and identifying issues and solutions over the next 30 years. Council President Hedges suggested looking into the feasibility of video conferencing.

## **Metro Construction Excise Tax (CET) Grant and Commercial Core Enhancement Project (CCEP)**

**Mr. Butler** stated Milwaukie lacked a cohesive and clear plan for commercial development which begged the question of what could be done to help existing businesses succeed. He discussed the Metro Grant and Council's expressed discomfort with the urban renewal element which Metro subsequently agreed to remove from the scope. One of the key elements of the CET Grant award was the adoption of an implementation strategy that included removing barriers to development and establishing a funding mechanism to support public infrastructure improvements. The potential opportunity sites in the downtown were the Texaco Block, the triangle site adjacent to the Milwaukie Main Street light rail station, the Cash Spot, and two other publicly or privately owned redevelopment or reuse sites. The Murphy and McFarland sites east of Hwy 224 were privately owned and would go through an initial assessment to determine viability. There were a number of questions for the City Council:

1. Are the scope and phasing of work right?

**Councilor Churchill** understood Hwy 224 was the boundary for the Central Milwaukie area. He was concerned about what the load might be on the transportation system including frontage improvements. He would hope to see an impact analysis of what that might mean to Oak Street, for example.

**Mr. Butler** discussed the phasing which would begin downtown. **Councilor Gamba** had questions about the order of the work since there had been some effort toward the Neighborhood Main Streets already. **Ms. Alligood** said once the consultant was on board a public involvement plan would be developed. Commercial zoning and design standards would be a huge piece of work that would need consultant assistance. **Councilor Churchill** thought it was important for the City to fix what it had before going on to something new. He felt the downtown needed some immediate fixes to stimulate the economic engine.

2. Was the City Council comfortable with the requirement to adopt a preferred implementation strategy for the opportunity sites that would include: cost analysis of infrastructure/public improvements needed to encourage development of opportunity sites, evaluation of potential funding mechanisms, and recommendations about best approaches for City Council action?

**Councilor Gamba** asked if the question was if the City were willing to cover the gap. **Mr. Butler** replied the City would look at the options and perhaps come up with creative funding sources or an option where the City would not have as great a financial responsibility. **Mr. Monahan** recommended being open to the notion that certain things would occur between pre-application and pro forma. **Mr. Butler** added the public would also be involved. **Councilor Churchill** suggested the Cash Spot and McFarland were good sites for a potential developer to do a feasibility analysis to help determine if the City would get the return it was expecting. **Ms. Alligood** said they would also be looking for regulatory and financial barriers. **Council President Hedges** understood Metro was flexible in the plan, but the City was expected to follow through to get the grant. **Mr. Butler** said if the City was not comfortable at the end of Phase 1, then Metro would pay for the work done. Both parties would agree that it was done and reimbursements made. The program was set up so payments were incremental. **Council President Hedges** was not prepared to say at the outset that whatever plan would be implemented in some way. **Mr. Butler** said there would be more than one option, take it or leave it. He believed Metro wanted Phases II and III to move forward. **Councilor Churchill** was concerned the risk was density at all costs and there needed to be a balance for the community and neighborhoods.

**Mr. Butler** said the next time he would address the City Council with more detail and a proposed scope of work and intergovernmental agreement approved by Metro. The phasing was in the City's preferred order and not Metro's.

**Mayor Ferguson** adjourned the study session at 8:23p.m.

Respectfully submitted,

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Pat DuVal, Recorder

**MINUTES**  
**MILWAUKIE CITY COUNCIL WORK SESSION**  
**MARCH 5, 2013**

**Mayor Ferguson** called the work session to order at 5:00 p.m. in the City Hall Conference Room.

Council Present: Council President Hedges and Councilors Scott Churchill, Councilors Mark Gamba, and Mike Miller

Staff Present: City Manager Bill Monahan, Assistant to the City Manager Teri Bankhead, City Recorder Pat DuVal, Finance Director Casey Camors, Assistant Finance Director Rina Byrne, Engineering Manager Jason Rice, Interim Community Development Director Steve Butler, Human Resources Director Gary Rebello, Library Director Katie Newell, and Associate Planner Brett Kelter

**City Manager's Report**

**Mr. Monahan** reviewed the evening's agenda. He had no comments on audience participation.

**Mr. Rebello** updated the City Council on the authorization for the Mayor and City Manager to sign the American Federation of State, County and Municipal Employees (AFSCME) two year contract extension.

**Councilor Gamba** discussed the Harrison Street Water System Project and new earthquake resistant technology. He suggested delaying the award of contract, and there was consensus to postpone the decision for two weeks while more information was gathered.

**Mr. Monahan** provided a letter prepared by Mr. Butler and Mr. Rice for Mayor Ferguson's signature expressing the City's concerns with the Sunnybrook Extension. There was consensus for the Mayor to sign the letter on behalf of the Milwaukie City Council.

**Mr. Monahan** reported he had attended the recent Clackamas Cities Association meeting in Tualatin where he expressed the City's appreciation for the regional support for putting the construction of the Kellogg Bridge Underpass Path on the 150% funding list.

**Community Development, Engineering and Planning Active Projects**

**Mr. Butler** reported staff was preparing grants for Riverfront Park construction for submission to the Oregon Marine Board and Oregon Parks and Recreation Department. Staff attended a pre-application conference for the Wichita Park project.

The Planning Commission approved an application for a veterinary clinic that would be located in the Clackamas Community Credit Union building at 10400 SE Main Street. Three meetings were scheduled this month related to the Tacoma Station Area Plan: the Technical Advisory Committee, the Stakeholder Advisory Group, and the project open house. With funding from Metro's Construction Excise Tax (CET) Grant Program, five Portland State University (PSU) graduate students will begin a community dialogue on the vision for downtown Milwaukie.

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Engineering staff met with the Public Safety Advisory Committee to discuss program funding and which projects to advance. The Kellogg Bridge Underpass Path was on the Statewide Transportation Improvement Program (STIP) 150% funding list.

Community Development conducted a workshop on the Adams Street Connector and posted a historic image survey on the City's website. Mr. Rice commented on the timing of the project in conjunction with the TriMet project with this portion likely to go to bid January 2014. Milwaukie Building Department staff conducted a workshop for Keller Williams agents on basic residential building and zoning requirements.

### **Transportation System Plan Update**

**Mr. Kelver** stated the Transportation System Plan (TSP) was a high level guiding document that set direction for overall system improvements. It implemented the State Transportation Planning Rule and is kept current to demonstrate consistency with Metro's Regional Transportation Plan (RTP). He discussed the process which provided a list of identified needs. The City had proposed a light touch as development had not significantly impacted transportation outside of light rail which had been assumed to be part of the City's future transportation system. The purpose was to stay compliant and make sure travel demand forecasting was consistent with 2035 Metro forecasts. Some projects had been completed and others would be added. Priorities will be reconsidered to reflect current conditions and goals including a process for additional public involvement. He discussed outreach efforts to the Neighborhood District Associations (NDA).

**Councilor Churchill** commented on the TSP high level work and that more was known now about light rail than in 2007. There was less parking at Tacoma and Park Avenue than had originally been planned which would likely impact the Historic Milwaukie Neighborhood in terms of parking and traffic. He believed more than a light touch was warranted.

**Mr. Rice** discussed the Capital Improvement Plan (CIP) which was a 5-year document that brought all the projects together. He would update the City Council in April on that Plan.

**Councilor Gamba** discussed the process and understood there were State and Metro parameters that had to be addressed.

**Mr. Kelver** said the high level conceptual TSP did involve all modes with a push to balance them and to reduce the number of trips generated. He discussed his involvement in the bike elements in 2007 and said basically the participants in the process identified the priorities.

**Mr. Kelver** briefed the Planning Commission on the project in February and also attended the NDA meetings that month. There was interest in the NDAs to be more involved in the prioritization of the projects. He discussed looking at modal needs and taking into consideration City Council goals and current conditions. There was no plan to make policy decisions before going to the Planning Commission and City Council. He reviewed two options for enhancing public involvement. Option A had an open house in April and a public meeting. Option B focused on neighborhood engagement and reprioritization of TSP projects.

**Mr. Butler** added this was very NDA focused and would develop a process for NDAs to come together as well as take a parallel path with other groups.

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**Council President Hedges** was concerned about the area east of Hwy 224 and the Hinterlanders. Light rail was a road to nowhere because the parking was slashed at Tacoma and Park Avenue. Many of the priorities were no longer current, and he added most of the street surfaces in Milwaukie were pitiful. It was important to look at current roads and particularly Railroad Avenue. He felt a public meeting was important, and City Council and staff should not rely only on NDA meetings. He urged focusing on the infrastructure we do have and making light rail usable. The priorities needed to be considered and consensus reached. The City Council was accountable to the residents to provide avenues for gathering public input. As a Councilor he needed to know what benefitted the whole community in order to make a decision.

**Councilor Churchill** agreed with Council President Hedges' comments and found them consistent with his concerns. With reduced parking at Tacoma and Park Stations, the dynamics of the three streets cutting through downtown Milwaukie plus Lake Road would change.

**Councilor Miller** and **Council President Hedges** expressed concern about congestion near the Lake Road Station.

**Councilor Gamba** saw new issues related to light rail and the TSP. He commented on the accuracy of the polling and how to get input on those who may not come to a meeting. There might be other modes to consider such as a shuttle. Light rail was the big new issue, and he asked how the City might most efficiently get the answers it needed.

**Council President Hedges** thought the City would likely have to subsidize a shuttle and suggested it might be looking at costs of this type of service.

**Mr. Butler** understood the City Council's wish to have more public engagement and input. He noted the real action came when the TSP was applied to the CIP.

**Councilor Miller** discussed the importance of infrastructure maintenance.

**Mr. Rice** explained the master plans addressed maintenance but not so much in the transportation utility. There might be a way to address it by modifying the SSMP.

### **Capital Campaign Status Update**

**Ms. Herrigel** provided background on the capital campaign and information on the positive elements of the efforts. She discussed earlier fundraising initiatives since 2001 and the more recent campaign undertaken by C3 Strategies over the past 18 months. During that time a prospectus and visual materials were developed, a Campaign Steering Committee and Advisory Group established, a capital fund at the Oregon Community Foundation was set up, and key project supporters interviewed. The project was now in the grant application and permitting phases.

**Councilor Churchill** asked if C3 had brought in interested parties outside the community and if the consultants had brought any relationships to the table?

**Ms. Herrigel** replied the campaign was more locally based and relationship based. At this point not a lot of money had been generated. There was a total of \$43,000 in campaign seed money commitments with \$9,100 in the fund to date. She was currently working on the grant applications, the Good Neighbor Committee, permitting, and a park access agreement with Clackamas County Service District #1 (CCSD#1). She recommended putting the capital campaign on auto pilot, and she would address questions that came in regarding the Park.

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**Council President Hedges** said there was consensus that all wanted to see the Park built. The consultants had been paid a lot of money with few results. He understood there were some major donors in the wings waiting to see what happened with the grants. He thought the consultants was a non-starter. If putting C3 on standby put donations at risk, then he thought the City should continue to pay them for a few months.

**Councilor Miller** asked what the consultants would do if kept on for the next few months.

**Ms. Herrigel** suggested keeping C3 on retainer so they could talk to people an hour or two a week.

**Councilor Miller** was concerned about not getting potential donors back and having to start all over again.

**Councilor Churchill** noted the running total right now was about \$83,000 that included the \$18,000 base contract. He did not understand what C3 had delivered to date. He discussed the feasibility of keeping them on from March to June. He had a lot of discomfort and appreciated controlling costs from this point forward.

**Councilor Gamba** understood grants and permits would make it easier to bring in donations and that the City funds were still up in the air.

**Mayor Ferguson** discussed the Good Neighbor Committee appointments and use of the Good Neighbor Funds from CCSD#1 for the Park. He liked the notion of the consultants' minimal involvement and working on the grant applications.

**Ms. Herrigel** added she would like to get out and talk with people when she had the grant applications submitted and noted for her the project was getting more real.

**Mayor Ferguson** announced the City Council would meet in executive session pursuant to ORS 192.660(2)(f) to consider information or records exempt by law from public inspection.

Mayor Ferguson adjourned the work session at 6:54 p.m.

Respectfully submitted,

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Pat DuVal, Recorder

**CITY OF MILWAUKIE  
CITY COUNCIL MEETING  
MARCH 5, 2013**

**CALL TO ORDER**

**Mayor Ferguson** called the 2145<sup>th</sup> meeting of the Milwaukie City Council to order at 7:19 p.m. in the City Hall Council Chambers.

Present: Mayor Jeremy Ferguson, Council President Dave Hedges, and Councilors Scott Churchill, Mark Gamba, and Mike Miller

Staff present: City Manager Bill Monahan, City Attorney Tim Ramis, Assistant to the City Manager Teri Bankhead, City Recorder Pat DuVal, Interim Community Development Director Steve Butler, Associate Planner Kari Svanstrom, and Engineering Manager Jason Rice

**PLEDGE OF ALLEGIANCE**

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

**A. Street Surface Maintenance Program Sixth Annual Report**

**Mr. Rice** provided the annual Report on the Street Surface Maintenance Program (SSMP) which took effect July 2007. He reviewed the recently completed projects and discussed projects planned for fiscal year 2014 that included the reconstruction of Harrison Street from Hwy 99E to Hwy 224 and rehabilitation of a portion of Main Street between Scott and Washington Streets. He updated the Council and public on a recent Department of Justice (DOJ) clarification of issues related to paving projects and compliance with American Disabilities Act (ADA) pedestrian ramps. Staff was working on how to address this problem and looking at the feasibility of leveraging Community Development Block Grant (CDBG) funds to bring the City's ramps into compliance.

The Program was funded by three revenue sources: a street maintenance fee, local gas tax, and PGE privilege tax. The primary SSMP goal was to obtain an average Pavement Condition Index (PCI) of 75 on arterials and collectors. Although those streets were in better condition, the overall condition of the network was falling. A majority of the longer streets were in better condition than the shorter streets. There may be some future adjustments to address Milwaukie's local streets and to plan projects that would better maintain the network as a whole.

**Council President Hedges** discussed the condition of Railroad Avenue which was not scheduled for work until fiscal year 2016. It would probably not last two more years without substantial repair work.

**Councilor Churchill** appreciated staff's attention to the ADA issue and understood it could be very expensive.

**Councilor Miller** asked if there had been any thought to perhaps rotating streets and making sure some of the local streets were repaired.

**Mr. Rice** discussed modifying the program when it got to year 10. He added residents were paying for the program yet residential streets were not on the list. Arterials and collectors were mainly used by those living outside the City.

**Councilor Churchill** asked if there was contingency in the event issues came up during street repairs such as the Spring Creek culverts under Harrison and Monroe Streets. When getting down to base, some conditions could be found that would require emergency repairs.

**Mr. Rice** replied there was no funding. He noted they were getting ready to do some core samples on Harrison Street.

**Mayor Ferguson** hoped there was an opportunity for bike lanes on Railroad Avenue.

## **CONSENT AGENDA**

**Mayor Ferguson** announced item A, Consider Contract for Harrison Street Water Improvements, Phase II was removed and would be considered on the March 19, 2013, City Council agenda. A member of the audience wished to comment on item F, Adopt Conditions for Expedited Annexation of 10025 SE Wichita Ave, File #A-12-06, so it was removed for a separate discussion

**It was moved by Council President Hedges and seconded by Councilor Gamba to approve the consent agenda items B - E.**

### **A. Appoint Kellogg Good Neighbor Committee Members:**

1. **Resolution 15-2013**: A Resolution of the City Council of the City of Milwaukie, Oregon, Appointing Sarah Baden as a Citizen at Large Representative of the Milwaukie Community to the Kellogg Good Neighbor Committee;
2. **Resolution 16-2013**: A Resolution of the City Council of the City of Milwaukie, Oregon, Appointing Neil Hankerson as a Representative of the Milwaukie Downtown to the Kellogg Good Neighbor Committee;
3. **Resolution 17-2013**: A Resolution of the City Council of the City of Milwaukie, Oregon, Appointing Gary Klein as a Representative of the Historic Milwaukie Neighborhood District Association (NDA) to the Kellogg Good Neighbor Committee;
4. **Resolution 18-2013**: A Resolution of the City Council of the City of Milwaukie, Oregon, Appointing Dion Shepard as a Representative of the Historic Milwaukie Neighborhood District Association (NDA) to the Kellogg Good Neighbor Committee;
5. **Resolution 19-2013**: A Resolution of the City Council of the City of Milwaukie, Oregon, Appointing Charles Bird as a Representative of the Island Station Neighborhood District Association (NDA) to the Kellogg Good Neighbor Committee; and
6. **Resolution 20-2013**: A Resolution of the City Council of the City of Milwaukie, Oregon, Appointing Karin Power as a Representative of the Island Station Neighborhood District Association (NDA) to the Kellogg Good Neighbor Committee

### **B. Appoint Audit Committee Members:**

1. **Resolution 21-2013**: A Resolution of the City Council of the City of Milwaukie, Oregon, Appointing Macy Ray to the Milwaukie Audit Committee;
2. **Resolution 22-2013**: A Resolution of the City Council of the City of Milwaukie, Oregon, Appointing Troy Reichlein to the Milwaukie Audit Committee; and
3. **Resolution 23-2013**: A Resolution of the City Council of the City of Milwaukie, Oregon, Appointing Jon Stoll to the Milwaukie Audit Committee

### **C. City Council Minutes**

- 1. January 15, 2013 Work Session;**
- 2. January 15, 2013 Regular Session; and**
- 3. January 22, 2013 Work Session; and**

### **D. Approve Amendment to Intergovernmental Agreement (IGA) with Oregon Department of Transportation (ODOT) for Tacoma Station Area Plan; and**

**Motion passed with the following vote: Churchill, Hedges, Gamba, and Miller and Mayor Ferguson voting “aye.” [5:0]**

**Scott Ohman**, spoke on item F. From his perspective the City Council took time to look at the project and ruled fairly and justly. He thought the Mayor and Councilors should be commended.

**It was moved by Councilor Gamba and seconded by Council President Hedges to adopt the conditions drafted for Ordinance 2060 which annexed one tax lot at 10025 SE Wichita Ave. Motion passed with the following vote: Churchill, Hedges, Gamba, and Miller and Mayor Ferguson voting “aye.” [5:0].**

## **AUDIENCE PARTICIPATION**

**Mr. Monahan** reported there were no comments from the previous meeting that required follow up.

**Jean Baker**, Milwaukie, agreed with Mr. Ohman that the City Council was diligent with a hands on approach and noted the SSMP was phenomenal. She discussed a situation with a neighbor now on her third deployment who had planned to remodel her house. They had spent a lot of money, and Ms. Baker felt it would be a good gesture to extend the amount of time people could use their applications and permits in special cases such as this when there were extenuating circumstances.

**Mr. Monahan** would ask Mr. Butler to speak with the Building Official to determine the options and what criteria there were for a valid extension.

**Council President Hedges** would like situations considered under this type of circumstance.

## **PUBLIC HEARING**

None scheduled.

## **OTHER BUSINESS**

### **A. Expedited Annexation of Six Properties, File #A-13-02**

**Ms. Alligood** provided the staff report in which the City Council was requested to adopt the ordinance annexing six properties on Stanley Ave and Hazel Pl into the City limits of the City of Milwaukie. The properties were in the Northeast Sewer Extension (NESE) project area, and the owners wished to annex to the City to access services. Four of the properties were developed with single family residences, one property was vacant, and one was developed with a commercial building. The commercial building was a nonconforming use with respect to current zoning but has been used as a commercial building since 1920 and predated Clackamas County zoning.

All necessary parties, interested persons, and residents and property owners within 400 feet of the subject sites had been notified along with the Lewelling Neighborhood District

Association (NDA) and the Southgate Planning Association. The City did not receive comments from any necessary parties with objections to the proposed annexation.

**It was moved by Councilor Gamba and seconded by Councilor Miller for the first and second readings by title only and adoption of the ordinance annexing multiple tracts of land into the City limits of the City of Milwaukie and withdrawing the tracts from service districts as described, File #A-13-02. Motion passed with the following vote: Councilors Churchill, Hedges, Gamba, and Miller and Mayor Ferguson voting “aye.” [5:0]**

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

**Ms. DuVal polled the City Council: Councilors Churchill, Hedges, Gamba, and Miller and Mayor Ferguson voting “aye.” [5:0]**

**ORDINANCE NO. 2061:**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, ANNEXING MULTIPLE TRACTS OF LAND INTO THE CITY LIMITS OF THE CITY OF MILWAUKIE AND WITHDRAWING THE TRACTS FROM SERVICE DISTRICTS AS DESCRIBED BELOW. (FILE #A-13-02)**

**WITHDRAWAL OF THE FOLLOWING TRACTS OF LAND IDENTIFIED BELOW BY TAX MAP ID NUMBER AND STREET ADDRESS FROM THE TERRITORY OF CLACKAMAS COUNTY SERVICE DISTRICT FOR ENHANCED LAW ENFORCEMENT AND CLACKAMAS COUNTY SERVICE DISTRICT NO. 5 FOR STREET LIGHTS:**

1. 12E30DA04500 9604 SE Stanley Ave
2. 12E30DA04600 9616 SE Stanley Ave
3. 12E30DA04700 5803 SE Hazel Pl
4. 12E30DA04900 5811 SE Hazel Pl
5. 12E30DB00800 9615 SE Stanley Ave
6. 12E30DB00900 9623 SE Stanley Ave

**B. Expedited Annexation Petition for 5910 SE Maple St, File #A-13-03**

**Ms. Alligood** provided the staff report in which the City Council was requested to adopt the ordinance approving the expedited annexation of one tax lot at 5910 SE Maple St. The annexation was initiated by the property owner who wished to access City services. The subject property was developed with a single family dwelling used as a residence and would be zoned R-10 upon annexation. It was in the NESE project area and the Urban Growth Management Area (UGMA).

All necessary parties, interested persons, and residents and property owners within 400 feet of the subject site had been notified along with the Lewelling Neighborhood District Association (NDA) and the Southgate Planning Association. The City did not receive comments from any necessary parties with objections to the proposed annexation.

**It was moved by Council President Hedges and seconded by Councilor Churchill for the first and second readings by title only and adoption of the ordinance annexing a tract of land identified as 5910 SE Maple St into the City limits of the City of Milwaukie and withdrawing the tract from the territory of Clackamas County Service District for Enhanced Law Enforcement and Clackamas County Service District No. 5 for Street Lights, File #A-13-03. Motion passed with the**

following vote: Councilors Churchill, Hedges, Gamba, and Miller and Mayor Ferguson voting “aye.” [5:0]

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

Ms. DuVal polled the City Council: Councilors Churchill, Hedges, Gamba, and Miller and Mayor Ferguson voting “aye.” [5:0]

**ORDINANCE NO. 2062:**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, ANNEXING A TRACT OF LAND IDENTIFIED AS 5910 SE MAPLE ST INTO THE CITY LIMITS OF THE CITY OF MILWAUKIE AND WITHDRAWING THE TRACT FROM THE TERRITORY OF CLACKAMAS COUNTY SERVICE DISTRICT FOR ENHANCED LAW ENFORCEMENT AND CLACKAMAS COUNTY SERVICE DISTRICT NO. 5 FOR STREET LIGHTS. (FILE #A-13-03)**

**C. American Federation of State, County, and Municipal Employees (AFSCME) Contract**

Mr. Monahan reviewed the opportunity to maintain the existing contract language with AFSCME for a two year extension with the exception of a 2% cost of living wage adjustment effective July 1, 2013 and 2.5% effective July 1, 2014. The union membership had ratified the contract extension.

**It was moved by Councilor Miller and seconded by Council President Hedges to authorize the Mayor and City Manager to enter into an agreement with AFSCME for a two year extension to the current collective bargaining agreement. Motion passed with the following vote: Councilors Churchill, Hedges, Gamba, and Miller and Mayor Ferguson voting “aye.” [5:0]**

**D. Council Reports**

**Councilor Miller** had no report.

**Councilor Churchill** met informally with Clackamas County Commissioner Paul Savas who indicated his support for Milwaukie’s efforts.

**Councilor Gamba** attended the Metro Policy Advisory Committee (MPAC) meeting, the 1000 Friends of Oregon Tom McCall Legacy Gala, and the Klein Point tree planting.

**Council President Hedges** with Councilor Miller and Mr. Monahan met with Fire District Board members to explore ways to work together and perhaps save some funds. He also attended the monthly NDA Leadership meeting. He met with various citizens to explore how to separate willing donors and their money for a new police dog.

**Mayor Ferguson** and Councilor Churchill conducted interviews for the Audit Committee and the Kellogg Good Neighbor Committee. He met with the North Clackamas Chamber of Commerce and discussed how to engage downtown Milwaukie businesses, and spent a half day shadowing the Seth Lewelling School principal. He announced a number of upcoming community events including the Cultural Forum and the Emergency Preparedness Forum featuring Milwaukie Police Officer Ulli Neitch. He attended a meeting regarding coal exporting and Day at the Capital in Salem.

## **ADJOURNMENT**

**It was moved by Council President Hedges and seconded by Councilor Gamba to adjourn the meeting. Motion passed with the following vote: Councilors Churchill, Hedges, Gamba, and Miller and Mayor Ferguson voting “aye.” [5:0]**

**Mayor Ferguson** adjourned the regular session at 8:15 p.m.

Respectfully submitted,

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Pat DuVal, Recorder

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

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, REAPPOINTING JEFF DAVIS TO THE MILWAUKIE ARTS COMMITTEE.**

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

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

**WHEREAS**, Jeff Davis has served on the Milwaukie Arts Committee since June, 2008 and possesses the necessary qualifications to serve on the Milwaukie Arts Committee.

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

SECTION 1: That Jeff Davis is reappointed to the Milwaukie Arts Committee.

SECTION 2: That his term of appointment shall commence April 1, 2013 and shall expire on March 31, 2015.

SECTION 3: This resolution takes effect immediately upon passage.

Introduced and adopted by the City Council on **April 2, 2013**.

\_\_\_\_\_  
Jeremy Ferguson, Mayor

ATTEST:

APPROVED AS TO FORM:  
Jordan Ramis PC

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

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

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

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

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

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

**WHEREAS**, Val Hubbard has served on the Arts Committee since February, 2010 and possesses the necessary qualifications to serve on the Milwaukie Arts Committee.

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

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

SECTION 2: That her term of appointment shall commence April 1, 2013 and shall expire on March 31, 2015.

SECTION 3: This resolution takes effect immediately upon passage.

Introduced and adopted by the City Council on **April 2, 2013**.

\_\_\_\_\_  
Jeremy Ferguson, Mayor

ATTEST:

APPROVED AS TO FORM:  
Jordan Ramis PC

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

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

Resolution No. \_\_\_\_\_

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

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, REAPPOINTING MELISSA PERKINS TO THE MILWAUKIE LIBRARY BOARD.**

**WHEREAS**, a vacancy exists on the Milwaukie Library Board; and

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

**WHEREAS**, Melissa Perkins has served on the library board since April, 2011 and possesses the necessary qualifications to serve on the Milwaukie Library Board.

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

SECTION 1: That Melissa Perkins is reappointed to the Milwaukie Library Board.

SECTION 2: That her term of appointment shall commence April 1, 2013 and shall expire on March 31, 2015.

SECTION 3: This resolution takes effect immediately upon passage.

Introduced and adopted by the City Council on **April 2, 2013**.

\_\_\_\_\_  
Jeremy Ferguson, Mayor

ATTEST:

APPROVED AS TO FORM:  
Jordan Ramis PC

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

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

Resolution No. \_\_\_\_\_



3.C.

Agenda Item: OMB Grant  
Resolution  
Meeting Date: 4-02-13

## COUNCIL AGENDA ITEM SUMMARY

**Issue/Agenda Title:** Oregon Marine Board Grant Resolution

**Prepared By:** JoAnn Herrigel, Parks and Sustainability Director

**Dept. Head Approval:** Steve Butler, Interim Community Development Director

**City Manager Approval:** Bill Monahan

**Reviewed by City Manager:**

### ISSUE BEFORE THE COUNCIL

Approve a resolution authorizing staff to submit a grant to the Oregon Marine Board for Riverfront Park improvements to include boat launch, boarding float, parking, riverbank and storm treatment enhancements and a small restroom.

### STAFF RECOMMENDATION

Approve the resolution.

### KEY FACTS & INFORMATION SUMMARY

Staff is proposing to apply for a grant from the Oregon Marine Board under their Facility Grant Program to replace the Jefferson Street Boat Ramp and associated facilities. The Facility Grant funds are made available on a biennial basis beginning July 1 of every odd year and ending June 30 of the ensuing odd year. The next grant cycle runs from July 1, 2013 to June 30, 2015. Marine Board staff has recommended that Milwaukie apply for Facility Grant funds this biennium, based on the positive status of our US Army Corps of Engineers (CORPS) permit. It is expected that the Corps permit will be issued in time for the City to construct the boating facilities during the 2014 construction season.

### OTHER ALTERNATIVES CONSIDERED

Alternate funding sources for these facilities include private funding and funds generated by a general obligation bond. Discussions with private funders have indicated a hesitation to commit to higher levels of funding until public funding has been committed.

### CITY COUNCIL GOALS

#2 of 2013 Council goals – Complete Riverfront Park

**ATTACHMENT LIST**

1. Resolution
2. Project Scope
3. Project drawing/concept plan

**FISCAL NOTES**

This is a reimbursable grant. City funds would be expended to pay for project costs and these costs would then be reimbursed by the grant program.



**To: Mayor and City Council**

**Through: Bill Monahan, City Manager  
Stephen Butler, Interim Community Development Director**

**From: JoAnn Herrigel, Parks and Sustainability Director**

**Subject: Grant Resolution for Oregon Marine Board**

**Date: April 2, 2013 Regular Session**

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### **ACTION REQUESTED**

Staff is requesting Council approve a resolution authorizing staff to submit a grant to the Oregon Marine Board for Riverfront Park improvements to include boat launch, boarding float, parking, riverbank and storm treatment enhancements and a small restroom.

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

No prior action was taken on this grant request.

### **BACKGROUND**

The State Marine Board Facility Grant Program (Facility Grant) was established in 1971 by the Oregon Legislature and is funded by state boat registration fees and marine fuel taxes paid by owners of motorized boats. The Oregon Marine Board (OMB), which administers this grant program, gives funding priority to projects that serve or provide direct benefits to owners of motorized boats.

The Facility Grant funds are made available on a biennial basis beginning July 1 of every odd year and ending June 30 of the ensuing odd year. The next grant cycle runs from July 1, 2013 to June 30, 2015. Marine Board staff has recommended that Milwaukie apply for Facility Grant funds this biennium, based on the positive status of our US Army Corps of Engineers (CORPS) permit. It is expected that the Corps permit

will be issued in time for the City to construct the boating facilities during the 2014 construction season.

The David Evans design team has provided the City with a project estimate of \$2,200,000 for the proposed boating facility improvements. The OMB's guideline for minimum match is 25%. However, the OMB grant manual states that they "give priority consideration to applicants with the greatest contribution of cash or hard matching funds." A 25% match for the \$2,200,000 project would be \$550,000. If the City provides a \$1,000,000 match, however, the percentage would increase to 45%, significantly enhancing our chances of success.

Mayor Ferguson proposed to the Good Neighbor Committee at their on March 7 meeting that matching funds for the Oregon Marine Board grant might come from the Good Neighbor Fund created under the wastewater agreement. The Committee members representing Historic Milwaukie and Island Station Neighborhood District Associations agreed to discuss this proposal with their respective neighborhoods and report back to the Good Neighbor Committee. On March 11 both NDAs supported the use of the Good Neighbor Funds for the OMB grant match.

The Good Neighbor Committee reconvened on March 20 to discuss the neighborhood input and voted 6 to 1 to recommend use of the Good Neighbor Funds for the \$1 million match for the Oregon Marine Board grant.

The grant proposal includes the following amenities:

- A one-lane boat launch
- A boarding float
- A small restroom near the top of the boat launch
- Parking facilities for 20 vehicles with boat trailers
- Installation of riverbank protection and stormwater enhancements required by City, State or Federal permits

The City's match for this project would include:

- A maximum of \$1,000,000 in funding from the Good Neighbor Fund
- Staff costs for project administration (10% of construction costs are allowed)
- Inspection costs (5% of construction costs are allowed)
- Final design and engineering costs (already budgeted)
- Cost of permit preparation and fees

The Marine Board staff has suggested that the City submit two options for potential grant funding in their application. One option would propose full project construction for the boating-related facilities at the Riverfront in one grant cycle. The other option would propose to phase the project over two grant cycles. The phased project would propose to build all amenities in the first year except the southern parking lot improvements. If

the Marine Board chose the phased approach, the City would submit another application for the second phase in 2015. Staff is hopeful that with a higher match proposed by the City, however, the Marine Board will fund the single-phase full construction option.

### **CONCURRENCE**

The Historic Milwaukie and Island Station neighborhood associations and the Good Neighbor Committee support this grant application with a proposed match as described.

### **FISCAL IMPACTS**

This is a reimbursable grant. City funds would be expended to pay for project costs and these costs would then be reimbursed by the grant program. Finance staff will work closely with the project manager to ensure that reimbursements are timed appropriately.

### **WORK LOAD IMPACTS**

Monitoring of the grant expenses will be required by Finance and the project manager. If grant funds are awarded Community Development Department staff time spent on this project will increase as the development of Riverfront Park moves forward.

### **ALTERNATIVES**

Alternate funding sources for these facilities include private funding and funds generated by a general obligation bond. Discussions with private funders have indicated a hesitation to commit to higher levels of funding until public funding has been committed.

### **ATTACHMENTS**

1. Resolution
2. Project Scope
3. Project Drawing/Concept Plan

ATTACHMENT 1

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

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, AUTHORIZING STAFF TO APPLY FOR A GRANT FROM THE OREGON MARINE BOARD FOR VARIOUS ELEMENTS OF RIVERFRONT PARK.**

**WHEREAS**, the Oregon Marine Board is accepting applications for the State Marine Board Facility Grant Program in April 2013; and

**WHEREAS**, the City of Milwaukie desires to participate in the grant program to the greatest extent possible as a means of providing needed boat launch improvements and enhancements; and

**WHEREAS**, City Council, the Riverfront Task Force and the Riverfront Park Design Team at David Evans and Associates have identified several park elements that are eligible for funding by State Marine Board Facility Grant Program; and

**WHEREAS**, the proposed improvements at Milwaukie Riverfront Park will include construction of a boat launch, a boarding dock, a small restroom, parking facilities and storm water and riverbank enhancements, and;

**WHEREAS**, the City hereby certifies that local matching funds will be available to fulfill its obligation related to this grant application should the grant be awarded; and

**WHEREAS**, the City is prepared to complete this project within the Marine Board's two year biennial cycle and agrees to enter into a twenty year cooperative agreement pending award of a grant;

**NOW, THEREFORE, BE IT RESOLVED** that Milwaukie City staff is authorized to apply for a State Marine Board Facility Grant from the Oregon Marine Board for up to \$1,200,000 in park site preparation and enhancements at Milwaukie Riverfront Park as specified above.

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

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

\_\_\_\_\_  
Jeremy Ferguson, Mayor

ATTEST:

APPROVED AS TO FORM:  
Jordan Ramis PC

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

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

**Attachment 2**

**PROJECT SCOPE**

**Oregon Marine Board**

**(April 2013)**

**Milwaukie Riverfront Park**

The Marine Board has suggested that the City submit two options for potential grant funding. One option would propose full project construction for the boating-related facilities at the Riverfront in one grant cycle. The other would propose to phase the project over two grant cycles. The City would submit another application for the second phase in 2015. Following are the two options that will be submitted in the Oregon Marine Board application:

**Project Elements – Option 1**

**One Phase**

Site Prep  
Boat Launch  
Boarding Float  
Small Restroom  
Bank stabilization/ storm swales  
Two access improvements  
North and south parking facilities

**Project Elements – Option 2**

**Two Phases**

Site Prep  
Boat Launch  
Boarding Float  
Small Restroom  
Bank stabilization/ storm swales  
Two access improvements  
North parking facilities in first part of project  
South parking facilities in second funding cycle (if funded)

**Project Costs**

***Option 1 (Complete)***

Grant Request:	\$ 1,200,000
Match	<u>\$ 1,000,000</u> (45%)
Total Project Costs:	\$ 2,200,000

***Option 2 (Phased)***

2013 Grant submittal:	Grant Request	\$1,062,600
	Match:	<u>\$ 869,400</u> (45%)
	Total Project Costs:	\$1,932,000
2014 Grant submittal:	Grant Request	\$ 147,400
	Match:	<u>\$ 120,600</u> (45%)
	Total Project Costs:	\$ 268,000

IF OMB decides to fund the project in two phases, the funds for the match for the second year will be reserved in the City budget for that specific use.

**Match Sources**

- \$1,000,000 - Good Neighbor Fund
- Staff costs for project administration (10% of construction costs allowed)
- Inspection costs (5% of construction costs allowed)
- Final design and engineering costs
- Permit preparation and fees

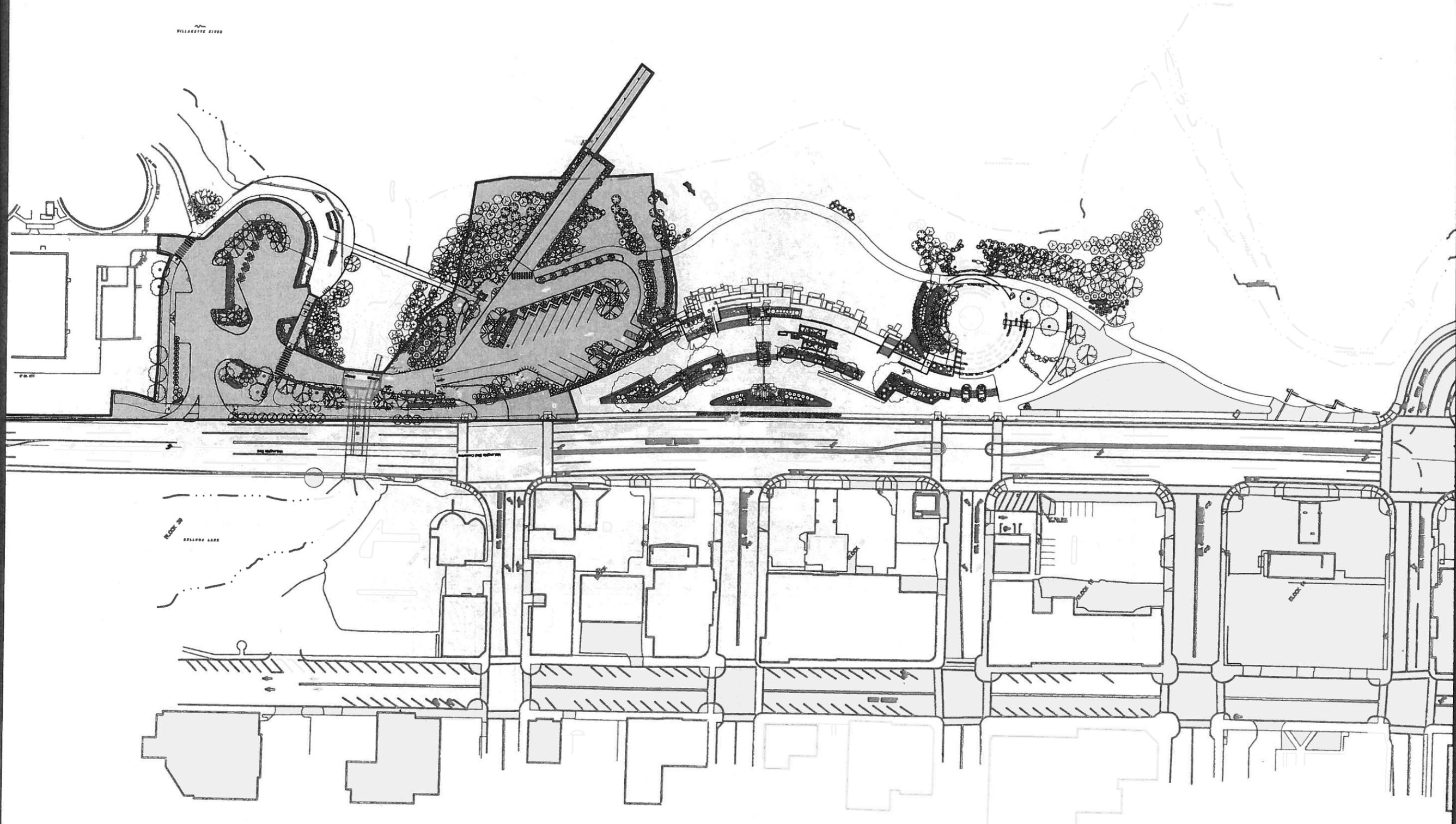
ATTACHMENT 3

PROJECT NO. 018  
DRAWING FILE: MAEX000-0018  
PROJECT NUMBER: MAEX000-0018  
SCALE: AS SHOWN  
DATE: SEPT 1, 2008  
DRAWN BY: [REDACTED]  
CHECKED BY: [REDACTED]  
REVISIONS: [REDACTED]  
APPROVED BY: [REDACTED]

PROJECT NO. 018  
DRAWING FILE: MAEX000-0018  
PROJECT NUMBER: MAEX000-0018  
SCALE: AS SHOWN  
DATE: SEPT 1, 2008  
DRAWN BY: [REDACTED]  
CHECKED BY: [REDACTED]  
REVISIONS: [REDACTED]  
APPROVED BY: [REDACTED]

**DE**  
**DAVID EVANS**  
**AND ASSOCIATES, INC.**  
2100 Southwest River Parkway  
Portland Oregon 97201  
Phone: 503.223.8683

**BOAT RAMP AREA**  
**MILWAUKIE RIVERFRONT PARK**  
**PARK IMPROVEMENT PROJECT**  
CITY OF MILWAUKIE  
MILWAUKIE, OREGON





3.D.

Agenda Item: OPRD Grant  
Meeting Date: 4/2/13

## **COUNCIL AGENDA ITEM SUMMARY**

**Issue/Agenda Title:** Grant Resolution for Oregon Parks and Recreation Department

**Prepared By:** JoAnn Herrigel, Parks and Sustainability Director

**Dept. Head Approval:** Steve Butler, Interim Community Development Director

**City Manager Approval:** Bill Monahan

**Reviewed by City Manager:**

### **ISSUES BEFORE THE COUNCIL**

Approve a resolution authorizing staff to submit a grant to the Oregon Parks and Recreation Department (OPRD) for Riverfront Park improvements to include some or all of the following: site grading, relocation of utility poles and undergrounding of utilities, construction of a walking and biking trail, and riparian enhancements.

### **STAFF RECOMMENDATION**

Approve the proposed resolution.

### **KEY FACTS & INFORMATION SUMMARY**

The Oregon Parks and Recreation Department administers the Local Government Grant Program that distributes money to local government agencies for acquisition and development of parks and recreation areas. This grant program is funded with Oregon Lottery funds. Staff is seeking Council authorization to submit a grant application to OPRD for Riverfront improvements. The grant is due April 12, 2013.

### **OTHER ALTERNATIVES CONSIDERED**

Other potential funding sources for these Riverfront Park facilities include private funding and funds generated by a general obligation bond. Discussions with private funders have indicated a hesitation to commit to higher levels of funding until public funding has been committed.

### **CITY COUNCIL GOALS**

# 2 of 2013 Council goals – Complete Riverfront Park

### **ATTACHMENT LIST**

1. Resolution
2. Project Description

**FISCAL NOTES**

This is a reimbursable grant. City funds would be expended to pay for project costs and these costs would then be reimbursed by the grant program. Finance staff will work closely with the project manager to ensure that reimbursements are timed appropriately.



**To:** Mayor and City Council

**Through:** Bill Monahan, City Manager  
Stephen Butler, Interim Community Development Director

**From:** JoAnn Herrigel, Parks and Sustainability Director

**Subject:** Oregon Parks and Recreation Grant Resolution

**Date:** April 2, 2013 Regular Session

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### **Action Requested**

Approve a resolution authorizing staff to submit a grant to the Oregon Parks and Recreation Department (OPRD) for Riverfront Park improvements to include some or all of the following: site grading, relocation of utility poles and undergrounding of utilities, construction of a walking and biking trail, and riparian enhancements.

### **History of Prior Actions and Discussions**

March 5, 2013 – Staff reported to Council their intent to apply for a grant from OPRD for Riverfront Park improvements.

### **Background**

The Oregon Parks and Recreation Department administers the Local Government Grant Program that distributes money to local government agencies for acquisition and development of parks and recreation areas. This grant program is funded with Oregon Lottery funds. The City of Milwaukie used funding from this same grant program to construct Ball Michel Park in 2005-06.

The maximum single grant amount available under this program in 2013 is \$750,000 and the match requirement is 40% of the total project cost. (For a total project cost of \$1,250,000, and a grant request of \$750,000, a match of \$500,000 would be required.) The City's available cash match for this grant is \$100,000 which will affect the amount of grant funds that the City may request. Staff is continuing to tally other "soft match" contributions the City could add to this cash match, such as staff costs and City funded design and engineering costs. The attached resolution authorizes staff to apply for a

Council Staff Report – Grant Resolution for Oregon Parks and Recreation Grant  
Page 3 of 5

grant with OPRD and states that the City has the grant match available in the event that the grant funds are awarded. The funds for the cash match are available in the 2013-14 Community Development budget.

Overall the goal is to obtain OPRD grant funds that will result in construction of some important aspects of the Riverfront Park and can be used to leverage other project funding sources in the public and private sector. Over the next few weeks, staff will continue to confer with the Oregon Parks and Recreation Department, the David Evans design team and private funders to further define the project proposal. Staff will provide City Council with an update on the proposed grant project details at the April 2 work session.

### **Concurrence**

The Riverfront Task Force supports the submittal of a grant to OPRD for Riverfront improvements.

### **Fiscal Impact**

This is a reimbursable grant. City funds would be expended to pay for project costs and these costs would then be reimbursed by the grant program. Finance staff will work closely with the project manager to ensure that reimbursements are timed appropriately.

### **Work Load Impacts**

The Parks and Recreation Director will manage project construction. Finance staff will consult on grant administration and contract management if a grant is awarded to the City. Engineering and Planning staff will provide some staff time to design review and contract management where necessary.

### **Alternatives**

Other potential funding sources for these facilities include private funding and funds generated by a general obligation bond. Discussions with private funders have indicated a hesitation to commit to higher levels of funding until public funding has been committed.

### **Attachments**

1. Resolution
2. Project Description

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

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, AUTHORIZING STAFF TO APPLY FOR A GRANT FROM THE OREGON PARKS AND RECREATION DEPARTMENT FOR VARIOUS ELEMENTS OF RIVERFRONT PARK.**

**WHEREAS**, the Oregon Parks and Recreation Department is accepting applications for the Local Government Program in April 2013; and

**WHEREAS**, the City of Milwaukie desires to participate in the grant program to the greatest extent possible as a means of providing needed park and recreation improvements and enhancements; and

**WHEREAS**, City Council, the Riverfront Task Force and the Riverfront Park design team at David Evans and Associates have identified several park elements that are eligible for funding by OPRD's Local Government Program; and

**WHEREAS**, construction of Riverfront Park is one of Milwaukie City Council's highest priority goals for 2013; and

**WHEREAS**, the North Clackamas Parks and Recreation District has committed to on-going operation and maintenance of these park facilities should the grant funds be awarded;

**WHEREAS**, the proposed improvements at Milwaukie Riverfront Park will include some or all of the following: site grading, relocation of utility poles and undergrounding of utilities, construction of a walking and biking trail, and riparian enhancements ;

**WHEREAS**, the City has available local matching funds to fulfill its share of obligation related to this grant application should the grant be awarded; and

**NOW, THEREFORE, BE IT RESOLVED** that Milwaukie City Council demonstrates its support for the submittal of a grant application to the Oregon Parks and Recreation Department for park site preparation and enhancements at Milwaukie Riverfront Park.

Introduced and adopted by the City Council on April 2, 2013.

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

\_\_\_\_\_  
Jeremy Ferguson, Mayor

ATTEST:

APPROVED AS TO FORM:  
Jordan Ramis PC

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Pat DuVal, City Recorder

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City Attorney

## ATTACHMENT 2

### PROJECT SCOPE

#### Oregon Parks and Recreation Grant

(April 2013)

#### Milwaukie Riverfront Park

##### Project Elements

- **Site Grading**
- **Relocate Power Poles** – move transmission line poles from center of upper level toward McLoughlin Blvd along sidewalk
- **Underground utilities** – underground utilities on lower level of transmission poles
- **Construct walking/biking trail** – trail leads from McLoughlin and 17<sup>th</sup> Ave to the northern edge of the boat ramp.
- **Riparian enhancements** – riparian planting and woody debris installations
- **Landscaping** – landscaping of non-riparian area and seeding for lawn

##### Project Costs

*Match requirement = 40% of total project costs*

*Actual project scope and costs are still being developed. Following is an example for consideration.*

**Grant Request:** \$ 225,000

**Match (see below):** \$ 150,000 (40%) - \$100,000 cash and \$50,000 “soft match”

**Total Project Cost:** \$ 375,000

##### Match

- \$ 100,000 – PGE refund – in Community Development Budget 2013-14
- \$ 5,000 – staff time for project admin
- \$10,000 – design/engineering for construction docs and permit review
- \$ 35,000 – private contribution or grant funding from other sources



3.E.



**To:** Mayor Ferguson and Milwaukie City Council  
**Through:** **Bill Monahan, City Manager**  
**From:** Bob Jordan, Chief of Police   
**Date:** March 18, 2013  
**Subject:** **O.L.C.C. Application – Albertson’s – 10830 SE Oak Street**

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**Action Requested:**

It is respectfully requested the Council approve the O.L.C.C. Application To Obtain A Liquor License from Albertson’s - 10830 SE Oak Street.

**Background:**

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

6.  
OTHER BUSINESS



6.A.

Agenda Item: Good Neighbor  
Fund Allocation  
Meeting Date: 4/2/2013

## **COUNCIL AGENDA ITEM SUMMARY**

**Issue/Agenda Title:** Good Neighbor Fund Allocation

**Prepared By:** JoAnn Herrigel, Parks and Sustainability Director

**Dept. Head Approval:** Steve Butler, Interim Community Development Director

**City Manager Approval:** Bill Monahan

**Reviewed by City Manager:**

### **ISSUES BEFORE THE COUNCIL**

Approve a resolution accepting the recommendation of the Good Neighbor Committee to use the Good Neighbor Fund to service \$1 million in debt to fund the match for an Oregon Marine Board grant for Riverfront Park enhancements.

### **STAFF RECOMMENDATION**

Approve the attached resolution.

### **KEY FACTS & INFORMATION SUMMARY**

City staff is preparing a grant application for the Oregon Marine Board for construction of a new boat launch and associated facilities. The cost estimate for this project is \$2,200,000. The City would like to provide a \$1 million match for this grant. On March 19<sup>th</sup>, the Good Neighbor Committee voted 6 to 1 to recommend the use of the Good Neighbor Fund to service a \$1 million loan for use as a match for an Oregon Marine Board grant for Riverfront Park.

### **OTHER ALTERNATIVES CONSIDERED**

No other sources of funding for this match have been identified in the City budget or the private sector.

### **CITY COUNCIL GOALS**

# 2 of 2013 Council Goals – Complete Riverfront Park

### **ATTACHMENT LIST**

1. Resolution

**FISCAL NOTES**

The Debt Service on the loan the City pursues would be paid for with monies from the Good Neighbor Fund.



**To: Mayor and City Council**

**Through: Bill Monahan, City Manager**

**From: JoAnn Herrigel, Parks and Sustainability Director**

**Subject: Good Neighbor Fund Allocation**

**Date: April 2, 2013**

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### **ACTION REQUESTED**

Approve a resolution accepting the recommendation of the Good Neighbor Committee to use the Good Neighbor Fund to service \$1 million in debt to fund the match for an Oregon Marine Board (OMB) grant for Riverfront Park enhancements.

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

**March 7** – Mayor Ferguson convened the Good Neighbor Committee and proposed the use of Good Neighbor Funding to raise a \$1 million match for an Oregon Marine Board grant request for Riverfront Park enhancements

**March 11**- Historic Milwaukie and Island Station NDA representatives from the Good Neighbor Committee discuss the proposed fund use at their monthly meetings

**March 20** – Mayor Ferguson convened the Good Neighbor Committee and the group voted 6 to1 to recommend the use the Good Neighbor Fund to service \$1 million in debt to fund the match for the Oregon Marine Board grant for Riverfront Park enhancements

### **BACKGROUND**

In November 2012, Milwaukie City Council approved an intergovernmental agreement with Clackamas County Service District #1 (CCSD#1) for provision of wastewater treatment services. This agreement established a Good Neighbor Fund for the City's use in mitigating the impact of the Kellogg Plant on surrounding neighborhoods. \$1 per EDU per month of the City's sewer connections are to be deposited into this fund for the duration of the agreement, which ends in June 2037. The agreement further stipulates that the City may request that up to 80% of the monthly revenues deposited into the Good Neighbor Fund be remitted to the City's sewer utility fund to support debt service payments for certain capital projects. CCSD#1 staff is to grant such a request so long as :

- 1) The revenues support a project with a fund approved purpose;
- 2) The proposed project will not violate the legal authority of the District's authorizing statutes; and
- 3) The City and the CCSD#1 reach agreement regarding future ownership and/or maintenance of the resulting capital project.

In March of 2013, Milwaukie City Council appointed a Good Neighbor Committee to guide the use of the Good Neighbor Funds and advise on Kellogg Plant impact mitigation. The new committee, made up of two Historic Milwaukie NDA representatives, two Island Station NDA representatives, one downtown business representative, one at large member and a City Councilor, was convened for the first time on March 7, 2013. At this first meeting, the group toured the Kellogg Plant site, discussed their scope as a committee and considered a proposal by Mayor Ferguson to use Good Neighbor Funds to raise a \$1 million match for a grant the City plans to submit to the Oregon Marine Board for Riverfront Park enhancements on April 5, 2013.

The Committee's neighborhood representatives took the Mayor's request to their March 11 neighborhood meetings for their memberships' input. Both the Historic Milwaukie and Island Station NDAs voted to support the use of the Good Neighbor Funds for the OMB grant match. The Good Neighbor Committee reconvened on March 20<sup>th</sup> and voted 6-1 to recommend the use of the Good Neighbor Fund to service \$1 million in debt to be used as match for the Oregon Marine Board grant for Riverfront Park enhancements.

According to the Wastewater Treatment Service Agreement, CCSD#1 staff are to meet and assist in planning any intended uses for the Good Neighbor Fund and will "generally defer to the desires of the City" for the uses of these monies. However, the agreement states that CCSD#1 staff shall make the final determination as to whether the proposed use of the funds is consistent with the purposes of the Good Neighbor Fund as described in the agreement. It is expected that CCSD#1 staff may need to gain approval for this potential use of the Good Neighbor Funds from the Riverhealth Committee and the Board of County Commissioners.

## **CONCURRENCE**

Historic Milwaukie and Island Station neighborhoods and the majority of the Good Neighbor Committee members support the use of the Good Neighbor Funds to raise a \$1 million match for an Oregon Marine Board grant to build Riverfront Park enhancements.

The Finance Director has reviewed the proposed debt service requirements to raise a \$1 million match for the grant and has provided the Mayor with estimated annual debt payments on both 20 and 25 year loan arrangements.

## **FISCAL IMPACTS**

For a \$1,000,000 loan, with a 25 year term, the City would pay approximately \$429,000 in interest (at 3%) for a total debt service of \$1,429,000, or an average annual debt service amount of \$57,000 per year.

For a 20 year term, the City would pay approximately \$355,000 in interest (at 3%) for a total debt service of \$1,355,000, or an average annual debt service amount of \$68,000 per year.

If the Good Neighbor Fund contribution continues at a rate of about \$10,500 per month, the fund balance should generate at least \$126,000 a year. Given the 80% maximum contribution rate for capital project debt service allowed under the agreement with CCSD#1, adequate funds should be available to repay the City's debt (80% of \$126,000 = \$100,800.)

### **WORK LOAD IMPACTS**

The Finance Director and the City Manager would manage any loan applications and administration required to get the \$1,000,000 bank loan.

### **ALTERNATIVES**

No other funding sources have been identified for the OMB grant match.

### **ATTACHMENTS**

1. Resolution

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

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, ACCEPTING THE RECOMMENDATION OF THE GOOD NEIGHBOR COMMITTEE TO USE THE GOOD NEIGHBOR FUND TO SERVICE \$1 MILLION IN DEBT TO FUND THE MATCH FOR AN OREGON MARINE BOARD GRANT FOR RIVERFRONT PARK ENHANCEMENTS AND AUTHORIZING STAFF TO BEGIN THE LOAN APPLICATION PROCESS.**

**WHEREAS**, City Council approved an intergovernmental agreement with Clackamas County Service District #1 (CCSD#1) in November 2012 for provision of wastewater treatment services; and

**WHEREAS**, this agreement with CCSD# 1 establishes a Good Neighbor Fund which receives \$1per EDU per month from all City sewer connections; and

**WHEREAS**, Council appointed a Good Neighbor Committee to advise on the use of the Good Neighbor Fund; and

**WHEREAS**, the Good Neighbor Committee has recommended the use of the Good Neighbor Fund to service \$1 million in debt to fund the match for the Oregon Marine Board grant for Riverfront Park enhancements; and

**WHEREAS**, completion of Riverfront Park is one of City Council’s highest priorities;

**NOW, THEREFORE, BE IT RESOLVED** that City Council accepts the recommendation of the Good Neighbor Committee to use the Good Neighbor Fund to service \$1 million in debt to fund the match for an Oregon Marine Board grant for Riverfront Park enhancements and authorizes staff to begin the loan application process.

Introduced and adopted by the City Council on April 2, 2013.

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

\_\_\_\_\_  
Jeremy Ferguson, Mayor

ATTEST:

APPROVED AS TO FORM:  
Jordan Ramis PC

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

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



Agenda Item: 6.B  
Meeting Date: 4/2/13

## COUNCIL AGENDA ITEM SUMMARY

**Issue/Agenda Title:** Chapter 8.04 Nuisances- Ordinance

**Prepared By:** Tim Salyers, Code Compliance Coordinator

**Dept. Head Approval:** Chief Bob Jordan

**City Manager Approval:** Bill Monahan

**Reviewed by City Manager:** Enter date

### ISSUES BEFORE THE COUNCIL

Shall Council pass an Ordinance to amend Chapter 8.04 Nuisances of the Milwaukie Municipal Code, which would clarify the rubbish and noxious vegetation nuisances, and repeal the restrictions on placing notices and advertisements on property?

### STAFF RECOMMENDATION

Staff recommends that City Council approve the proposed Ordinance.

### KEY FACTS & INFORMATION SUMMARY

Over the past year, city code enforcement staff members have identified three changes to Chapter 8.04 Nuisances of the Milwaukie Municipal Code ("MMC" or "Code") and propose the changes in one ordinance.

#### **Clarify city policy underlying the nuisance of "Debris on Private Property," MMC 8.04.070(B)**

The change would remove a redundant statement that currently makes the code difficult to enforce and prosecute; and does not seem to fit the intent of the code.

#### **Clarify the noxious weeds nuisance**

The change would clarify the intent of the weeds and noxious growth ordinance. It would clearly make grass, weeds, blackberries and other noxious weeds a violation of the code if they were taller than 8 inches in height or a fire hazard or have gone to seed. Currently, the code reads that the noxious vegetation would need to be either 8 inches in height and a fire hazard or 8 inches in height and have gone to seed.

**Repeal prohibitions on notices and advertisements**

This component of the Ordinance would repeal MMC 8.04.160. Council had previously given direction to code compliance staff to bring an ordinance forward repealing this section based on case law upholding similar activities citing First Amendment rights.

**OTHER ALTERNATIVES CONSIDERED**

Deny the ordinance and direct staff to return to council with a modified ordinance.

**CITY COUNCIL GOALS**

N/A

**ATTACHMENT LIST**

1. Redline/strikethrough version of proposed code changes.
2. Previous City Prosecutor's letter in support of changes to 8.04.070B.
3. Ordinance.

**FISCAL NOTES**

Adopting this Ordinance will not diminish money spent on code enforcement. Conversely, declining to pass the Ordinance may reduce city expenditures and revenue on code enforcement, since the Code will capture fewer cases as nuisances.



**To:** Mayor and City Council

**Through:** Bill Monahan, City Manager  
Bob Jordan, Chief of Police  
Steve Bartol, Police Captain

**From:** Tim Salyers, Code Compliance Coordinator

**Subject:** An Ordinance to Clarify the Debris on Private Property Nuisance;  
Clarify the Noxious Vegetation Nuisance; and Repeal Regulations  
Relating to Notices and Advertisements

**Date:** Type text here

---

#### **Action Requested**

Adopt the attached ordinance.

#### **History of Prior Actions and Discussions**

June 2006- Ordinance 1961 was adopted amending Milwaukie Municipal Code Subsection 8.04.070B Debris on Private Property to include inoperable vehicles as a nuisance.

July 2009- A Work Session discussion in which Council favored the prohibition of the notices and advertisements code.

October 2011- During a Special Session, council gave direction to Staff to bring an ordinance forward to remove the unconstitutional prohibition of notices and advertisements.

#### **Background**

Over the past year and a half, city staff members have identified three changes to Chapter 8.04 Nuisances of the Milwaukie Municipal Code ("MMC" or "Code") and propose the changes in one Ordinance. The following paragraphs explain the changes.

Clarify city policy underlying the nuisance of "Debris on Private Property," MMC 8.04.070(B)

Chapter 8.04 Nuisances has multiple statements clarifying intent of what a nuisance is. Specifically, Section 8.04.020 Declared Generally states, "The acts... defined in Sections 8.04.030 through 8.04.160 of this chapter are declared to be public nuisances ... and may be abated by any of the procedures set forth in ... this chapter." This declaration states clearly that anything listed in Sections 8.04.030-8.04.160 are nuisances and therefore not allowed.

In addition to the Declared Generally section, MMC 8.04.070 Nuisances affecting public health begins by stating, "No person may permit or cause a nuisance affecting public health. The following are nuisances affecting the public health and may be abated as provided in this chapter." Therefore all subsections under 8.04.070 are declared to be a nuisance affecting the public health, which includes subsection "B. Debris on Private Property."

Subsection 8.04.070B Debris on Private Property prevents the accumulations of junk, inoperable vehicles, or other rubbish on private property. Staff has been enforcing the provisions of this code with the perceived intent to mean that these conditions should not exist in the City. The Code states that junk accumulations must "affect the health, safety, or welfare of the city," before a Court will order their removal. This became evident in the prosecution of a case in early 2012, which revealed that a reviewing court may read the language as an additional requirement and burden of proof.

Attorney Larry Blake summarized the problem in a letter to the City (Attachment 2). He explained that in early 2012 he encountered a trial judge's interpretation of the Code section during a prosecution for keeping a junk car at a house. In summary, under the current text of the "debris" nuisance, a reviewing court may allow a person to accumulate junk on his or her property; the junk must pose or develop some other negative effect on health, safety, or welfare before the situation becomes a nuisance. In the case prosecuted by attorney Blake, it was not enough that the defendant kept a junk car on her property, rather the nuisance was proven because the car posed a safety issue (demonstrated because criminals actually broke into the car several times and eventually stole the battery).

Because of the reasonable probability future reviewing courts will interpret the Code in the same way attorney Blake encountered, staff requests that Council clarify the policy behind the "Debris on Private Property" nuisance. If Council believes that junk accumulations are a sufficient public detriment on their own, by their nature, then staff requests that Council amend the code as proposed in the attached Ordinance. Conversely, if Council believes the city should have a more "hands off" policy towards rubbish, and allow persons to accumulate debris on private property until the accumulation affects health, safety, or welfare in some way, that policy will be served by leaving the code language as currently written.

The Ordinance also corrects a typo in subsection 8.04.070(I), in that the phrase “in charge or property” should read “in charge of property.”

#### Clarify the noxious weeds nuisance

The city recognizes that overgrown grass, and certain other plants listed in the Code constitute a nuisance when they are present on any real property. Such vegetation can become a public problem in different ways. For example, when grass exceeds 8 inches in height, it becomes an eyesore. Other noxious plants (such as wild blackberry bushes) can become nuisances if property owners allow the plants to go to seed, thus increasing the risk of propagation.

This being said, in applying the noxious weeds nuisance over time (MMC Section 8.04.110(A)), staff have noticed that the pertinent code section is not a model of drafting clarity. At present it constitutes a nuisance to maintain real property with “Grass, thistles cockleburs, brambles, wild blackberry bushes, weeds, or other noxious vegetation greater than eight (8) inches in height, that have gone to seed or that are a fire hazard.” But it is not precisely clear whether all these conditions must be present to result in a nuisance, or must only one condition occur to constitute a nuisance.

Staff understands Council’s intent to be that when a property owner/occupant allows any of the listed conditions to occur, that constitutes a nuisance. For example, tall grass by itself is an eyesore and thus a nuisance; neighbors and city code enforcement need not wait until the tall grass also goes to seed, or dry out to be a fire hazard, to persuade the owner to cut the tall grass.

However, because there is more than one way to interpret the code, staff requests that Council clarify its intent behind the noxious weeds nuisance. If Council believes that any one of the conditions listed in MMC Section 8.04.110(A) is a nuisance, then staff requests Council to amend the code as proposed in the Ordinance. If Council believes that two or more of the listed conditions must occur before a nuisance is identified, Council could serve that policy by changing the grammar and syntax in other ways.

#### Repeal prohibitions on notices and advertisements

This component of the Ordinance would repeal MMC 8.04.160. That section, at present, requires persons to obtain owner permission before leaving placards and other advertisements on property.

However, that very feature amounts to a form of speech analogous to leafleting cars, and in Klein v. City of San Clemente (2010) the U.S. Court of Appeals for the Ninth Circuit held such leafleting was protected speech under the First Amendment. The restrictions in MMC 8.04.160 are too broad to survive scrutiny under the law discussed in that case, and at a City Council Special Session discussing the new code compliance program in October 2011, the consensus between Council and staff was that at this time the City’s best interests were served by repealing the code sections. This Ordinance does that.

**Concurrence**

The City Attorney's Office, past and current City Prosecutor and Code Compliance staff all concur with the ordinance as proposed.

**Fiscal Impact**

The Code Compliance budget includes \$5,000 for abatement, which is routinely used to remedy these types of violations. It is unclear as to how passing the new ordinance would affect this budget. One likely scenario could be that more cases would be enforceable, thereby increasing the number of potential cases that would require abatement if not remedied by the responsible party. The average rate of code cases that result in abatement is less than 3% in the last 5 years.

If the ordinance is not passed, then fewer cases would be enforceable. Accumulations of inoperable vehicles or debris, or tall grass would possibly occur more often, which could have impact on real estate prices and property values, thus impacting property tax revenue.

**Work Load Impacts**

The enforcement of the Debris on Private Property and Weeds and Noxious Growth portions of the Milwaukie Municipal Code take up a significant amount of Code Compliance staff's time. The changes to the code as purposed will clarify the requirements and may make explanation of the code easier and more efficient. These two code sections make up two of the top three code cases every year.

**Alternatives**

Modify the ordinance to fit council's intent, which may differ from staff's perceived intent of the ordinance.

Deny the ordinance.

**Attachments**

1. Redline/strikethrough version of proposed code changes.
2. Previous City Prosecutor's letter in support of changes to 8.04.070B.
3. Ordinance.

## Attachment 1

### Exhibit A: Redline/Strikethrough Exhibit

Agenda Item Summary: Amendments to Milwaukie Municipal Code Chapter 8, relating to certain nuisances.

Text proposed for addition is underlined, text proposed to be eliminated appears in ~~strikethrough~~.

#### **Municipal Code Section 8.04.070(B): debris on private property:**

B. Accumulations of debris, rubbish, manure, and junk, junk machinery, or junk vehicles of any kind, inoperable vehicles, and other refuse located on private property that are not removed within a reasonable time ~~and that affect the health, safety, or welfare of the City.~~

#### **Municipal Code Section 8.04.110(A): noxious weeds.**

A. Grass, thistles cockleburs, brambles, wild blackberry bushes, weeds listed under any weed category in the Oregon State Noxious Weed List maintained by the Oregon State Weed Board, or other noxious vegetation, where the plant has:

1. Grown to greater than eight (8) inches in height; ~~that have~~
2. ~~g~~Gone to seed; ~~or that are~~
3. Become a fire hazard.

Attachment 2

**LARRY J. BLAKE, JR.  
ATTORNEY AT LAW**

Larry J. Blake, Jr.\*  
Suzanne Revelle, Associate\*\*

*\*Also admitted in Washington*  
*\*\* Admitted in Oregon*

February 3, 2012

Bill Monahan  
City Manager  
City of Milwaukie  
10722 SE Main Street  
Milwaukie, OR 97222

**COPY**

Re: Revision of Code Language - MMC 8.04.070(B)

Dear Bill:

This letter is in reference to the above-entitled matter. The purpose of this letter is to forward for your consideration and possible proposal to the City Council that section 8.04.070(B) of the Milwaukie Municipal Code be amended. More specifically, that the additional qualification at the end of the section, "and that affect the health, safety, or welfare of the City", be deleted.

As you may be aware, I recently appeared in the Clackamas County Circuit Court on the case of Juanita Mara (Clackamas County case no. MC11110441, Milwaukie Citation No. 211566) on a citation issued by Tim Salyers for a violation of MMC 8.04.070(B). At the trial in this matter, the judge focused heavily on the additional qualification of the code provision and how the defendant's inoperable vehicle on her property affected "the health, safety, or welfare" of the city. The defendant's husband had testified that on multiple occasions the vehicle had been broke-in into and the batteries stolen thereby indicating that the vehicle was a safety issue since it attracted thieves. But for that testimony, I do not believe the judge would have upheld the citation.

After discussions with the code enforcement officer, he relayed to me that on multiple occasions he has encountered difficulty in enforcing this provision of the code due to the additional qualification language. It is not the intent of the city council to allow the city to become a junk yard for inoperable vehicles and with the current qualification provision in place, without proof of negative affect on health, safety or welfare of the City, that is precisely what may occur. The qualification is subjective in most cases and if the case is appealed to the circuit court, most likely will not be upheld. There are already provisions in place within the opening of MMC 8.04.070 which states that "the following are nuisances affecting the public health and may be abated as provided in this chapter." The additional qualification of subsection B only creates an additional hurdle for the city in the enforcement of this chapter. The removal of the added language would resolve this hurdle.

If you have any questions regarding this correspondence, please do not hesitate in contacting my office. Thank you in advance for your consideration.

Very truly yours,

  
Larry J. Blake, Jr.

Cc: File  
Tim Salyers ✓

3700 Barbur Building, 3718 SW Condor, Suite 110, Portland, OR 97239  
Telephone: 503.228.6200 Facsimile: 503.228.6222 Email: law@larryjblakejr.com

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

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, AMENDING CITY CODE CHAPTER 8 TO CLARIFY THE DEBRIS ON PRIVATE PROPERTY NUISANCE; CLARIFY THE NOXIOUS VEGETATION NUISANCE; AND REPEAL REGULATIONS RELATING TO NOTICES AND ADVERTISEMENTS AS PREVIOUSLY DIRECTED BY COUNCIL.**

**WHEREAS**, Under Municipal Code Section 8.04.070 (B), accumulation of junk, rubbish, debris, and junk or inoperable vehicles on public or private property constitutes a public nuisance, however to obtain a judgment that such conditions constitute a nuisance Section 8.04.070 (B), as presently written, has an additional qualification that requires the city to prove that the nuisance has some effect on the public health, welfare, or safety; and

**WHEREAS**, it is Council's belief that accumulations of junk or rubbish on premises are inherently public nuisances, therefore it is unnecessary for Code Section 8.04.070 (B) to require that the junk has an effect on public health before the city can order its removal; and

**WHEREAS**, it is the general belief in Milwaukie that under Municipal Code Section 8.04.110, grass or noxious vegetation can become a nuisance if one of several conditions develops, such as the vegetation grows over 8 inches tall, or it goes to seed; and

**WHEREAS**, there is an opportunity to clarify the City's weed and noxious growth nuisance, listed at Municipal Code Section 8.04.110 (A), to embody the general belief that if noxious vegetation becomes a nuisance for development of one sufficient reason, the other conditions listed in the code do not also need to occur before the city can declare the nuisance; and

**WHEREAS**, the City of Milwaukie, Oregon ("City") has previously reviewed the city's prohibitions on placing notices and advertisements on public or private property, and the Council has decided the city's prohibitions as currently drafted should be repealed at this time; and

**WHEREAS**, the code sections affected by this Ordinance all appear in Chapter 8 of the City Code, thus, it is efficient to combine all the Chapter 8 changes into one Ordinance for consideration and passage.

Now, Therefore, **THE CITY OF MILWAUKIE DOES ORDAIN AS FOLLOWS:**

**Section 1.** Section 8.04.070 of the Municipal Code of Milwaukie is amended to read as follows:

#### 8.04.070 NUISANCES AFFECTING PUBLIC HEALTH

No person may permit or cause a nuisance affecting public health. The following are nuisances affecting the public health and may be abated as provided in this chapter:

A. Privies

An open vault or privy constructed and maintained within the City, except those constructed or maintained in connection with construction projects in accordance with the State Board of Health regulations.

B. Debris on Private Property

Accumulations of debris, rubbish, manure, and junk, junk machinery, or junk vehicles of any kind, inoperable vehicles, and other refuse located on private property that are not removed within a reasonable time.

C. Stagnant Water

Stagnant water which affords a breeding place for mosquitoes and other insect pests.

D. Water Pollution

Pollution of a body of water, well, spring, stream, or drainage ditch by sewage, industrial wastes, or other substances placed in or near such water in a manner that will cause harmful material to pollute the water.

E. Food

Decayed or unwholesome food which is offered for human consumption.

F. Odor

Premises which are in such a state or condition as to cause an offensive odor or which are in an unsanitary condition.

G. Surface Drainage

Drainage of liquid wastes from private premises.

H. Smoke, etc.

Dense smoke, noxious fumes, gas soot, or cinders in unreasonable quantities.

I. Harborage for Rats

It is unlawful for any person who owns and/or is in charge of property to allow the accumulation of any litter, filth, garbage, decaying animal or vegetable matter, which may or does offer harborage or source of food for rats.

J. Properties Declared "Unfit for Use"

Property placed on the Oregon Health Division "Unfit for Use List" because it has been used for the manufacture of illegal drugs and that has not been issued a "Certificate of Fitness" by the Oregon Health Division.

**Section 2.** Section 8.04.110 of the Municipal Code of Milwaukie is amended to read as follows:

**8.04.110 WEEDS AND NOXIOUS GROWTH—DEAD OR DECAYING TREES OR TREE LIMBS**

The following things, practices, or conditions on any real property are nuisances. For purpose of this section, “real property” includes any portion of a right-of-way adjacent to the real property.

A. Grass, thistles cockleburs, brambles, wild blackberry bushes, weeds listed under any weed category in the Oregon State Noxious Weed List maintained by the Oregon State Weed Board, or other noxious vegetation, where the plant has:

1. Grown to greater than eight (8) inches in height;
2. Gone to seed; or
3. Become a fire hazard.

B. Dead, decaying, or unsafe trees or tree limbs that present a safety hazard to the public or adjacent property. In stating the abatement costs pursuant to subsection C of Section 8.04.200 of this chapter, the Council may, in its sole discretion, determine the cost to be less than the total cost of abatement in order to:

1. Share no more than fifty percent (50%) of the net cost of removal of a tree in the right-of-way with an adjacent property owner who did not plant the tree; and/or
2. Assist a low-income resident of the City who is responsible for paying the cost of removal and whose income level shall meet the low-income eligibility requirement of Chapter 13.20 of this code. In making this determination, the Council shall consider using other alternatives such as deferred and partial payments to minimize the adverse impact on income.

**Section 3.** Section 8.04.160 of the Municipal Code of Milwaukie is hereby repealed.

**Section 4.** Severability. If any provision of this ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are severable. This City Council hereby declares that it would have adopted this ordinance irrespective of the invalidity of any particular portion thereof and intends that the invalid portions should be severed and the balance of the ordinance be enforced.

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

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

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

\_\_\_\_\_  
Jeremy Ferguson, Mayor

ATTEST:

APPROVED AS TO FORM:  
Jordan Ramis, PC

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