

REGULAR SESSION

AGENDA

MILWAUKIE CITY COUNCIL MAY 19, 2009

MILWAUKIE CITY HALL
10722 SE Main Street

2054th MEETING

REGULAR SESSION – 7:00 p.m.

- | | Page # |
|---|-----------|
| 1. CALL TO ORDER
Pledge of Allegiance | |
| 2. PROCLAMATIONS, COMMENDATIONS, SPECIAL REPORTS, AND AWARDS | |
| 3. CONSENT AGENDA <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> | 1 |
| A. City Council Work Session Minutes of February 17, 2009 | 2 |
| B. City Council Work Session Minutes of March 3, 2009 | 9 |
| C. City Council Regular Session Minutes of April 7, 2009 | 13 |
| D. City Council Regular Session Minutes of April 21, 2009 | 23 |
| E. Contract Award for 27th Avenue Paving Project – Resolution | 30 |
| F. Adopt Identity Theft Prevention Program and Repeal Resolution 25-2009 – Resolution | 35 |
| G. Extend City Manager Employment Agreement | 49 |
| 4. AUDIENCE PARTICIPATION <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 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.)</i> | |

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

A. **Motion to Consider Continuation of Amendments to Milwaukie Municipal Code (MMC) Section 19.321.7 and 19.321.3 – Ordinance (Mike Swanson)**

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

A. **Council Reports**

7. **INFORMATION**

8. **ADJOURNMENT**

Public Information

- Executive Session: The Milwaukie City Council may meet in executive session immediately following adjournment pursuant to ORS 192.660.
- 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 17, 2009

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

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

Staff Present: Community Development and Public Works Director Kenny Asher, City Attorney Bill Monahan, Community Services Director JoAnn Herrigel, Engineering Director Gary Parkin, Operations Director Paul Shirey, Program Coordinator Beth Ragel, Resource and Economic Development Specialist Alex Campbell

Milwaukie Arts Committee Update

Ms. Ragel said the committee started meeting in June with 10 members and dubbed themselves ArtMOB (Milwaukie on Board with the Arts). They have developed a vision statement and goals and were working on a website. They wanted to create a networking avenue for all artists living in Milwaukie. At their next meeting they will look at breaking down into smaller committees that would include youth and school outreach and fundraising. The Committee would like to plan an event in the near future by either partnering with another group or creating a small event. They are very interested in public art and what that means in Milwaukie. The Committee met with Planning Director Mangle who had provided some initial ideas. Their big dream is to have a Milwaukie Center for the Arts to revitalize and be an economic stimulus for Milwaukie.

Sustainability Plan Discussion

Ms. Herrigel and **Mr. Shirey** talked about the Sustainability Plan developed for the City. City Council adopted a resolution in 2007 adopting US Conference of Mayors Climate Agreement. After that was approved they formed a committee by pulling City staff from different departments to determine how to be more sustainable and take more environmental steps in Milwaukie. Over the past year they worked together, in separate teams, and created a Sustainable City Plan. It was not complicated and was based on other cities' plans, and the actions are very easy and tangible. Some of the ideas were costly, but they were not planning to do anything very costly without going through the City Council or Budget Committee.

Mr. Shirey reviewed the Plan and the four action areas and how goals were met. Waste reduction – Having the City recycle to the maximum extent. They would have to measure what was in waste stream and spot check waste containers, which they had been doing. The second action area was Energy and Fossil Fuels – they wanted to reduce energy consumption in vehicles and energy consumed by buildings. One way to meet the goal was by implementing energy efficiency measures possible including fixtures and appliances. The wanted to right size the fleet division by looking at intended vehicle function. They will measure progress by tracking fuel efficiency annually and tracking building

energy consumption which translated into the City's carbon footprint. They wanted to measure the carbon footprint and use that to benchmark progress over time. In the long-term they were talking about climate neutrality as a 20-year goal. The third action area was Procurement and Purchasing – they wanted to develop a guide for the City to obtain the most resource efficient and environmentally friendly goods and services by changing buying habits while keeping affordability in mind. They will audit purchasing performance to know if they are meeting the goal. The fourth action area was the ongoing commitment to education of staff and the public about why sustainability matters on the job and what can be done at home. Every decision should be made with a sustainability lens that incorporated the principles of the natural step.

Mayor Ferguson said he was glad to see the City had a plan moving forward, and it looked like a lot of work had gone into it.

Councilor Loomis hoped the plan would show results.

Ms. Herrigel said they went through great lengths to talk to the group about what the focus of the activities should be within a given structure. There were internal processes that needed to be cleaned up before going out and telling other people how to do things. They would provide tools on the web and in *The Pilot* newsletter for the public, but right now the intent was to make sure staff was committed to this environmental movement.

Councilor Barnes believed this could save money in the long run. She discussed the feasibility of electronic utility billing to save paper and postage. She was interested in seeing how much the City could save annually and any other measurable data.

NE (Dual Interest Area A) Sewer Extension Project Update

Mr. Parkin discussed preliminary design. The area to the south of Johnson Creek would be designed as a gravity system and added to the existing system and eventually to Brookside and on to the Kellogg Treatment Plan. The area to the north will feed into Portland's Lents line where there was much less property and fewer lines that needed to be installed. Right now they were doing a topographic survey that should be done at the end of April. There was still some work to be done on easements. Most of the lines would be in public right-of-way with the exception of three properties that are not close enough to the right-of-way. Some easements, already anticipated, were purchased some time ago, but others will need to go through the negotiation process. They hoped to acquire them by July 1 to finish up the design. The design should be final by April 1 with construction starting September 2009.

He discussed annexation at the time of connection and how that might happen. They were moving forward to annex the right-of-way and getting jurisdiction of the roads from the County. They were still looking at County reports regarding conditions of the streets and the costs that would be incurred when taking them over. The additional gas tax was not enough to cover the maintenance costs, so the City would look at using County urban renewal funds. There were a number of properties already connected to sewer that for some reason were not annexed into the City, so staff was trying to bring those properties into the City. There were also properties along King Road that were not connected but were in close proximity that had not for some reason had not connected to the sewer. This project was not providing sewer to those properties.

Councilor Stone asked how many properties were connected but not annexed.

Mr. Parkin said there were about 6 and 12 in proximity but not connected. He discussed financing and the DEQ administered revolving loan. There was incentive to connect immediately when there was a failed system. Some owners had signed non-remonstrance agreements, so they would be obligated to connect. Others might want to avoid interest. They were also looking at incentives to bring people in early such as some kind of program where payments could be scheduled over a 10-year period. They predicted with incentives that 25% would connect in year 1 FY 2010/2011. Conservatively, they were looking at people coming in slowly after that time. If 1-3% trickled in by year 5 there would be a deficit in the loan repayment fund of \$27,000 that would have to be picked up by the capital reserve fund. He reviewed the factors in estimating connections. Connection would be about \$12,000 for a single-family residence payable over a 10-year period. He discussed the urban renewal district funds. The City's estimated annual payment to DEQ was \$250,000. If there was an excess, the City would bank it in the capital reserve fund and collect some interest. At the end of 30 years it balanced out, but in the mean time there would be years such as year 11 that would be the worst with a \$141,000 shortage so maintenance or capital projects would be deferred.

Councilor Stone said if project was estimated at \$3.5 million why were the annual payments over \$5 million.

Mr. Parkin replied that included the interest, which was probably less than inflation. It amounted to \$5 million over a 30-year period.

Councilor Stone asked if there was any way it could than 30 years.

Mr. Parkin said that was with only 90% of the properties connected. This was a realistic and conservative estimate. There were some things that could be done to shorten the payback period. Another part of the financing was the reimbursement district. He reviewed municipal code section 13.30 and the concept. They would be coming back to ask for an amendment to the municipal code so they would have a 10-year time frame extension not limited to 2. It would give the City flexibility. If someone sold their house there would be a lien on the property. He was not sure of the current median household value for the area.

Councilor Barnes estimated the values to be between \$150,000 to \$200,000, so connection at \$12,000 per house was 10% to 15% of the property value. She was starting to have second thoughts. It was a gray area, and it was gambling \$5 million of the City's money.

Mr. Parkin stated the loan was secured through the wastewater fund and capital reserve, and repayment all came out in the end. A number of people needed to connect because their septic systems were failing, so some people were anxiously awaiting the service.

Councilor Stone said the County could provide the service and they had more money than the City. She understood there were systems failing, but she wondered if we were biting off more than we can chew.

Mr. Parkin said they were in the process of looking at their Wastewater Master Plan and there are a lot of issues. Kellogg, treatment and a lot of capital improvements that the City needed to deal with, and this was one of Milwaukie's obligations with the wastewater plan

Mr. Campbell said that both he and Mr. Parkin had done a lot of different versions of the payback schedule. One of the ways to step back and think about

it was the life of the septic system. Homes would not have the option of building a new septic system. Experts say the life of a septic system is 30 to 50 years and a lot of this area was built out in the 1950's – 1970's. There were some newer construction, but about 10% of the existing properties had failing septic systems and were anxious to hook up or were interested in redevelopment. In some cases, people have signed legal binding agreements to connect as soon as sewer was available. There was a group that would probably come in immediately. Over the course of 30 years staff was confident that the fund would be made whole.

Councilor Barnes understood that the 262 people on the list would have to do this one way or another.

Mr. Campbell said if there was a sewer system available they would have to. There were some owners that if their septic systems failed they might have a large enough property to a new septic system, which was not cheap. It would probably be as or more expensive than connecting to public sewer, but they would have that option if there was no sewer to connect to. There were others that did not have a lot big enough for a new septic system, and they would be forced to vacate the property. There were a handful of properties now that were vacant because they were in that situation.

Councilor Loomis said part of his fear was bringing in owners that did not want to come into the City, and current citizens will be subsidizing installation for that area. He was for helping and subsidizing those that wanted to be a part of the City, but not those that did not. By changing the code we were changing the rules to stretch it out from 15 years to 30 years.

Mr. Campbell said under the existing code if some of the septic systems failed in year 15 they could vacate until year 16 and get a free sewer system and reoccupy it.

Councilor Stone was concerned about the shortfall years and not doing capital projects on the priority list. The draft was a best guess scenario. She would also be interested in knowing if a shorter timeframe was realistic. She was not 100% for this idea. She did not want to force this down people's throats. She understood from an environmental perspective the need to hook up. She wondered if it would make sense to do a joint venture with the County. She did not want to pass on the cost for annexing.

Mr. Asher did not want staff to go away from the table completely confused. He knew this was controversial, and there were people in that area that do not want to see this happen, while others do. Staff did not know for sure what the cash flow looked like. They gave a conservative estimate and were being completely open. There was no subsidy from existing ratepayers. At the end of the term the district would have paid for itself by people that had connected as designed. In some years the program may not be able to cover its cost, and that would impact capital projects. It was a great discussion, but the policy direction they were given multiple times was to move forward. Staff met with a designer, and street surveys were being done. The County was moving forward with its assessment district. The wastewater master plan would be a good place to come together and look at all of the competing demands on this fund. He wanted to know if they were supposed to proceed along the policy direction previously given.

Councilor Barnes did not wish to reconsideration of her vote. The detail of the additional information concerned her, but she was sure the process would be refined.

Councilor Chaimov said staff should follow direction given. At this time with the economy if we the have opportunity to put people to work to make the community more environmentally safe we should do that.

Mayor Ferguson said the decision was made by Council, and staff needed to continue with direction provided.

Councilor Stone said if Council wanted to reconsider something it was important to do it sooner than later.

Mayor Ferguson said putting this off would probably just cost more money.

Goal Setting

The upcoming goal setting sessions were cancelled.

Board and Commission Vacancies

Mayor Ferguson discussed upcoming board and commission vacancies and putting information on the City website to generate interest.

Councilor Barnes suggested getting more information out for the neighborhood leadership at its meetings and doing more City Council outreach.

Councilor Chaimov was concerned about how much we would be stimulating people to replace incumbents who would like to return for another term.

Councilor Stone said it used to be that the City had to do a lot of recruitment, but there was a lot of interest in serving on boards and commissions now. She thought that because the NDA's were funded by the City that they were strong and supportive.

Wastewater Matters

Councilor Barnes attended the last Community Solutions group meeting last week with Mr. Parkin and City Attorney Monahan. Oregon City's City Manager Larry Patterson and she were given the task of coming up with Milwaukie's interest. She gave a rough draft to City Attorney Monahan for review. This was to be a proposed action item by the end of the year for the board requested by Chair Peterson. Now there was a push for an intergovernmental agreement. She passed out the proposed letter for the group to review.

City Attorney Monahan wanted to make sure Council was in agreement that Clearwater was supported by the City and we wanted to get it back on track.

Councilor Stone asked why this went to Oregon City before this Council.

City Attorney Monahan explained that was the direction from the Partnership Committee, and there was a time constraint. They asked Councilor Barnes and Mr. Patterson to work on it and for her to take the first cut at it by brining it to the City Council.

Councilor Barnes said she emailed the draft to Council and Mr. Patterson yesterday.

Councilor Chaimov agreed that the recommendation stated the City's position thoroughly. He was concerned about our pushing for and contributing overpayment in consideration of past wastewater usage. He was not sure that was an issue that had been fully developed enough to know whether what we

were offering the partners might be considered to be of value. He agreed it did state the City's position, but he would be more comfortable in the future when the issue has been narrowed down taking a more refined position on that point. He had asked Mr. Swanson the extent to which legally the agreement would put Milwaukie in a potentially worse financial situation than we would be without it.

City Attorney Monahan said their preliminary analysis is an unknown, but their expectation was that if we do not have a partnership agreement we had less control over setting the terms, which could result in greater financial responsibility.

Mr. Asher said the City needed financial records for the annual payments for capital costs, but they were difficult to find.

Mayor Ferguson asked if there was a statute of limitations on reimbursement.

City Attorney Monahan said this was a voluntary discussion with the County. The contract provide for the look back. From the information that he had read going back and forth between the County and City it looked to him like they agreed to review it, but the City has to provide the best data.

Councilor Loomis asked how we came up with the 30/40 scenario.

City Attorney Monahan said that was taken out of some comments from Mr. Swanson, and the actual agreements spoke to the City's being responsible for 40% of usage. They believed the historic usage to be closer to 30%.

Councilor Stone thought it was 20-30%.

Mr. Asher said it was pretty well established over the recent past it had been about 30% of capacity. The original agreement did not address capital, and the City did end up paying 40% for digesters. We do know in the original agreement the 40% came up because the City's rate was set based on not going over 4.0 mgd. He would like to have positive proof that the City had overpaid.

Councilor Barnes said at the next meeting they would be going over the second half of the proposed agreement. They were on the fourth draft.

Mr. Asher asked what the rush was on this agreement.

Councilor Barnes thought the facilitator wanted it wrapped up. The bonds had been issued, and she did not see a reason for the deadline. The District was in a rush but not the partners. The dynamic had changed. Oregon City was not happy, and she felt there was more hesitation now. She asked for Council input

Mayor Ferguson would like the opportunity for Council review.

Councilor Barnes said they were not signing anything, and she was the only elected official at the table. The other partners had to go back to their Councils.

Councilor Stone was interested in knowing since Clearwater was 4 years old how that penciled out. If there was a rough idea of those numbers that could be selling factor. When she sat on the steering committee to look for an alternative site the Clearwater plan was never talked about. She would be careful in wording about how much we paid and make it softer so they can absorb it and take it to heart and consider it.

Councilor Loomis wanted to discuss it at the next work session.

Councilor Barnes was expected to have it at the next wastewater meeting in 2 days.

Councilor Chaimov was fine with it.

Mayor Ferguson was fine with it as long as the language was not too aggressive on the past overpayment.

City Attorney Monahan suggested some language. Leave opening statement and delete the detail.

Mr. Asher noted the agreements talked about having a different entity setting future rates and the City taking on obligations not taken on before such as expansions over which we currently had local control. If this was the City's total response to the partnership agreement advise against it.

City Attorney Monahan said it was just about the Kellogg Treatment Plant and decommissioning.

Councilor Barnes said if this IGA went through we would no longer make decisions on rates.

Councilor Stone wanted to make sure it was a collective voice and a recommendation to change "I" to "we". She did not want to commit the City to an IGA.

Mayor Ferguson adjourned the work session at 6:59 p.m.

Pat DuVal, City Recorder

MINUTES

MILWAUKIE CITY COUNCIL WORK SESSION

March 3, 2009

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

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

Staff Present: City Manager Mike Swanson, Engineering Director Gary Parkin, Resource and Economic Development Specialist Alex Campbell, Community Development and Public Works Director Kenny Asher, and Planning Director Katie Mangle.

Main Street Sewer Replacement Project and Grant Award

Mr. Campbell said the City adopted as part of its Capital Improvement Plan (CIP) process in the last budget process a replacement project that ran mid-block between Main and Hwy 99E from Scott to Jefferson St. The existing clay pipe line was built in the 1920's under an emergency ordinance, and over the years buildings were constructed over it. The City had no easements or rights-of-way. It was legally challenging and would be expensive to replace in the current location. The plan was to replace it in Main Street in the public right-of-way, but that was challenging because of how existing buildings were plumbed. A lot of the buildings fronting Main St. had connections out the back. In order to tap a new main in Main Street there had to be some disruptive plumbing work at a significant expense. They were concerned about expense and disruption to businesses. The plan was to get the new main in the ground as soon as possible and continue allowing people to use the existing main provided it did not fail over a 5-year period. Businesses can plan to incorporate the changes with tenant improvements over a 5-year period. On the financial side they were proposing a grant program where the utility would share some of the costs. In consultations with the city attorney there was no obligation to provide additional payments, or it could be a local improvement district (LID). The City could end up with a serious liability if the existing main under buildings were to fail with no easements. The grant program would provide opportunity to defray some of the costs and pay up to 50% with a \$5,000 cap per tax lot for the first 2 years. It would make it an incentive for property owners to figure out how to connect. The new main was designed to capture segments of the existing main and so the City could decommission the old main in segments. This was an unusual step for the utility, so staff brought it before City Council for direction.

Councilor Barnes asked if this is the only area with pipes this old.

Mr. Parkin replied there were other areas on the south side of Jefferson in similar condition, so staff would look at that as well. The subject line was the oldest part of the system, but there are similarly aged pipes elsewhere. This project was unusual because typically pipe is replaced in the same location but cannot be in this case.

Councilor Chaimov asked how affected property owners had responded.

CITY COUNCIL WORK SESSION – MARCH 3, 2009

DRAFT MINUTES

Page 1 of 4

Mr. Campbell replied people understand the situation. He had received one email from a property owner that was concerned about the cost. It was through conversations with property owners that made them think harder about the cost impact resulting in this proposal. Some property owners thought it was the City's responsibility to reconnect their buildings. The City responded that it was not its responsibility, but staff agreed to ask the City Council about sharing some of the cost since it was an unusual situation.

Councilor Stone asked the anticipated connection costs.

Mr. Campbell said there was a broad range. Some properties like the Collectors' Mall could connect to a new line on the side street and would probably cost a few thousand dollars. For a property that was mid-block, connection could cost \$10,000 or more.

Councilor Stone understood the City would reimburse up to \$5,000 maximum. This pipe had been in the ground for a long time, and she asked if it was leaking. The staff report said it was increasingly difficult to maintain, what made it difficult?

Mr. Campbell explained the joints had become offset over time so cleaning the lines was more difficult, and the lines were not airtight.

Councilor Stone asked if there was any evidence of leaking or failure.

Mr. Campbell responded in the older parts of the system groundwater was leaching into the sanitary sewer pipes. As a result the City was paying to have groundwater treated.

Councilor Stone understood the existing line was vitrified clay, which is still being produced. Staff proposed PVC, but it sounded like the clay pipe actually lasted longer and was stronger. Why was the City replacing the line with PVC instead of clay? She read an article on the internet where they compared how well they held up. Was it more expensive to do the clay?

Mr. Parkin said that PVC was standard, and more people installed it today because it was easier to use and had good watertight joints. He was not aware of any one installing new clay pipe because it was unusual and more expensive. The life expectancy of PVC was 75 years. It was resilient to all the chemicals, but it may be coated in some areas. Clay was not a typical application or suited for this application.

Councilor Stone said the article talked about the joints and leaking prior to 1950. She was wondering if there were problems with the joints or leaking.

Mr. Parkin replied leaking had not been an issue. The biggest issue was cleaning of the pipe, and there were sections that the camera could not reach because of the disjointed joint. Additionally the pipes were on a 6-month cleaning schedule because of problems while the rest of the system was on an annual or every two year schedule.

Councilor Loomis appreciated the City was not legally responsible but was willing help property owners. Maybe it was not enough, but he appreciated that staff had done the outreach. It seemed fair to him.

Mr. Campbell said Council could revisit the matter if the costs were on another order of magnitude.

Mayor Ferguson asked if the newer clay was water permeable.

Mr. Parkin said the material is not but the joints were.

CITY COUNCIL WORK SESSION – MARCH 3, 2009

DRAFT MINUTES

Page 2 of 4

Mr. Campbell added that the proposed resolution was on the consent agenda and wanted it to go on record to the property owners that the City was budgeting for this project.

Long Range Planning Projects: Comprehensive Plan and Local Aspirations

Ms. Mangle said staff was starting to think about updating the Comprehensive Plan that outlined a vision for the future of Milwaukie. The Comprehensive Plan included ancillary documents like the Downtown Plan and others. It was written in 1989 and was implemented in many different ways. Even though it was 20 years old there was a lot of good material in it. Why update it? Because it was part of the famous Oregon land use planning system. One of the key elements was for each city to have a Comprehensive Plan that was updated periodically. The Comprehensive Plan needed to meet certain requirements, which included protecting natural resources and implementing public facilities plans. They were just beginning this project and it would take a lot of staff work and even more public involvement.

There were some core policies that rang true in the work we did. Protecting the natural environment, protecting neighborhoods, lively downtown, strong employment base, and multi-modal transportation. Another thing in the document was the importance of a strong, autonomous, independent local government that coordinated well with other agencies. The Plan envisioned growth that made the City stronger and a quality place to live. She did not see the need to do a full visioning process. She described the 3-phase plan. Staff was just starting to evaluate the Comprehensive Plan. Then they would develop and implement a work program. She noted many of the inventories and data were old. Based on the vision statement, Transportation System Plan (TSP) outreach, and City Council feedback, staff did not see the need to fundamentally change the vision but to update it. The Plan evaluation would be before the Planning Commission, City Council, and at an open house for the community to evaluate the program. It would be a slow process in figuring out what the project would look like, but there would be public involvement all along the way. Council would adopt the work program and decide what it wanted done. An important thing to know was that because of State requirements there was also a grant program through the Department of Land Conservation and Development (DLCDD) to help fund significant elements of the project.

While staff had been evaluating the Comprehensive Plan they prepared a local aspirations memo that tied into the long-range planning and outlined what was important to Milwaukie and where efforts were being made. A lot came down to the overarching 4 policies. Staff would come back to Council with increasing frequency over the year as the project took shape. She said it would be helpful to get feedback on the visioning from Council.

Councilor Stone said visioning would be a good discussion in goal setting.

Councilor Chaimov he was comfortable with the current direction.

Mayor Ferguson asked how open houses would be advertised.

Ms. Mangle replied staff tries to get the word out in many ways including *The Pilot*, the City website, the database of interested people, *Mike's Friday Memo*, and postcards depending on the issue. If someone was interested in an issue the best thing to do would be to contact the City to make sure they were included in the database. They would have 3 years to implement the work program.

Councilor Stone asked about density right now. It looked like density would be 4 units per acre.

Ms. Mangle replied she would get the information to Councilor Stone.

Mayor Ferguson said Council recently interviewed Greg Hemer for the Planning Commission, and he was not appointed. He spoke with Mr. Hemer about a recent resignation on the Design and Landmarks Committee (DLC) and he was interested in serving. Did that meet with the approval of the rest of Council.

Councilor Stone asked if he had a background in graphic art design.

Mayor Ferguson did not know without looking at his application. He currently worked for Milwaukie Lumber and had applied twice for the Planning Commission.

Councilor Chaimov supported the appointment.

Councilor Stone wanted to know if there was anyone else out there that applied. She asked if it had been advertised.

Ms. DuVal said it had not been advertised extensively.

Councilor Stone preferred people who had design or historic preservation knowledge. She did not know if the committee was weighted currently.

Ms. Mangle said the group currently had a landscape designer, a graphic designer, and a member interested in historic buildings and urban design.

Councilor Stone said it seemed like it was well represented and would be fine with her. She wanted to make sure we get a good group of people that had some professional knowledge.

Councilor Loomis said it was fine with him as well. His reservation would be that staff had not advertised it and others would be interested in applying.

Councilor Stone suggested advertising for a couple of weeks to follow the process.

Ms. Mangle said she was comfortable with whatever Council decided. She said there were 2 vacancies over the past year, and the position was advertised for a long time before it was filled. The Committee would appreciate whatever could be done to keep the momentum going.

Council consensus was to appoint Mr. Hemer.

Mayor Ferguson noted the 2009 City Hall Day at the State Capitol was April 1, 2009.

Mayor Ferguson adjourned the work session at 6:10 p.m.

Pat DuVal, City Recorder

**CITY OF MILWAUKIE
CITY COUNCIL MEETING
APRIL 7, 2009**

3 . C .

CALL TO ORDER

Mayor Ferguson called the 2051st meeting of the Milwaukie City Council to order at 7:00 p.m. in the City Hall Council Chambers.

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

Staff present: City Manager Mike Swanson, City Attorney Bill Monahan, Community Development and Public Works Director Kenny Asher.

PLEDGE OF ALLEGIANCE

PROCLAMATIONS, COMMENDATION, SPECIAL REPORTS AND AWARDS

A. Milwaukie High School Student of the Month

The Milwaukie City Council and High School Principal Mark Pinder recognized Lauren Hobson as the Student of the Month for April 2009.

B. High Capacity Transit Study Project Briefing

Mr. Asher introduced **Wendy Hemmen**, Light Rail Design Coordinator, who joined Milwaukie's team under the TriMet umbrella agreement. The position was being funded by TriMet, and she will watch the details of the project closely on behalf of the City.

Metro Councilor Carlotta Collette and **High Capacity Transit Project Manager Tony Mendoza** reported to City Council on Metro planning initiatives and high capacity transit. She referred to the Region 2040 map and discussed the planning effort in 1995 that helped determine how the region should grow. The conclusion was to identify centers where growth could focus that included amenities and be served by transit. She discussed expansion factors and the new process that identified urban and rural reserves. Those designated as urban reserves would be the priority places for growth to occur. Each county and Metro had a delegate to the Core 4, and that group was fairly along on the process. Metro had been meeting consistently with local governments about how they wanted to see their communities grow and how they could be best served by transit including high capacity. The larger project was called *Making the Greatest Place* that included urban and rural reserves and the Regional Transportation Plan (RTP). Workshops were being held throughout the region, and Metro Councilor Collette noted the last high capacity transit plan was done in 1982 and looked at the region like points on a compass. In the current process transportation was being identified that connected population centers, and so far they had come up with 55 possible routes for high capacity transit. Out of that they developed a series of screening criteria including ridership, potential connections now and in the future, connectivity and system benefits, costs, environmental constraints, equity, and regional links. After screening 15 corridors were identified and more evaluation criteria were applied.

Mr. Mendoza reviewed the evaluation criteria. There were four themes: access including sidewalks, feeder buses, and hours of operation; safety; speed of the system; and land use as high capacity transit took people to places and development around

station areas. Metro was just releasing its first batch of technical data, and the subcommittee that included Mr. Asher and Ron Weinman from Clackamas County was looking at how the evaluation penciled out. Mr. Mendoza discussed the technical and policy advisory group process. All criteria and impacts were measured and the outcome would be the final corridors and projects to prioritize. The public process would help people understand the difficulty of making choices and help them clearly express their values. A number of high capacity lines were identified in the Milwaukie area including the Forgotten Bridge to Lake Oswego, the Yellow Line to Milwaukie, and a line from Clackamas Town Center to Washington Square.

Councilor Stone asked where the Milwaukie high capacity transit line would go.

Metro Councilor Collette replied at this time they were looking at swaths, and certain places, like the Forgotten Bridge, made sense in terms of connectivity. Any lines were many years out, and Metro was just looking at what corridors made sense.

Councilor Stone asked where the east/west line was in Milwaukie that was not considered.

Mr. Mendoza replied it was King Road.

Metro Councilor Collette discussed cost and federal funding and encouraged people to take the online survey.

Councilor Stone asked where the streetcar and rapid streetcar fit in to connect business districts. To use light rail one had to drive his car to the station. She encouraged consideration of the streetcar to connect the Milwaukie downtown to other business districts. There was a lot that could be done to better integrate Milwaukie to the Clackamas Town Center, the Milwaukie MarketPlace, and Sellwood. We used to have streetcars, and she wanted to make sure it was given consideration. She hoped that by not being listed in the staff report that did not mean it was not an option.

Metro Councilor Collette responded the City of Portland was developing a streetcar plan except for rapid streetcar like Lake Oswego line. All of the pieces would be woven into the Regional Transportation Plan (RTP). Bus rapid transit (BRT) was currently the placeholder between Milwaukie and Oregon City. The model only assumed light rail because it was easier to model one system rather than many. Metro would look at alternatives analyses after the corridors were prioritized.

Mr. Mendoza added the consultant was looking at eliminating certain modes that might not be appropriate.

Metro Councilor Collette noted the online model also identified community amenities and was a wonderful source of information. Metro hoped to get a real sense of what people valued.

C. Urban and Rural Reserves Project Briefing

Ms. Mangle said the project was lead by Metro in collaboration with the counties and dealt with the urban growth boundary (UGB) around the Portland metropolitan region. Metro reviewed the boundary every five years to ensure compliance with statewide planning goals. She pointed out the boundary expansions over the past 30 years. The Urban and Rural Reserves Project was designed to think 50 years ahead at which areas should be reserved for rural around the borders and which should be planned for development. Water, sewer, and transportation serviceability were the three primary considerations set out in state law. She discussed the expense of providing those services to certain areas like Damascus to accommodate forecasted growth. Suitability had to do with soils, drainage, and slopes. Ms. Mangle participated on the technical advisory meeting at the County level, and she discussed how decisions affected

Milwaukie in the big picture even though it was not a fringe community. She showed a map of the results of the iterative exercise and the areas that were most easily served candidates for urban reserves. The next step would be Metro and Clackamas County designating the reserves.

Metro Councilor Collette pointed out the Stafford Basin, a very controversial area, which was being studied both for urban and rural reserve. She discussed scale of development appropriate to the community's aspirations.

Ms. Mangle briefly discussed Washington County. The next step was a more final level of analysis and what kind of development could be on the land. Metro and the counties will make the designations in 2009. These were reserves for the next expansion in 2010, and the intent of this effort was to encourage understanding and more support for future decisions. For Milwaukie this mattered as an inner ring city because funding went with growth, so there was more money for infrastructure resulting in less money to support infrastructure for existing lands.

There were no questions from City Council.

D. Child Abuse Prevention

Mayor Ferguson read a proclamation naming April 2009 as Child Abuse Prevention Month in the City of Milwaukie.

CONSENT AGENDA

Councilor Stone requested that consent agenda item F, the resolution authorizing the City Manager to enter into an intergovernmental agreement with the Oregon Department of Transportation regarding federal stimulus projects be removed for discussion.

It was moved by Councilor Chaimov and seconded by Councilor Stone to adopt consent agenda items A – E as presented:

- A. City Council Work Session Minutes, December 16, 2008;**
- B. City Council Work Session Minutes, January 20, 2009;**
- C. City Council Regular Session Minutes, February 17, 2009;**
- D. Resolution 17-2009: A Resolution of the City Council of the City of Milwaukie, Oregon, appointing Greg Hemer to the Design and Landmarks Committee; and**
- E. Resolution 18-2009: A Resolution of the City Council of the City of Milwaukie, Oregon, Approving the Purchase of City vehicles that were Approved for Replacement in the Fiscal Year 2008/2009 as Per the City Vehicle Replacement Criteria**

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

AUDIENCE PARTICIPATION

Kim Hutchins, Milwaukie, discussed the secure residential treatment facility going in at the end of Balfour Street and the need for traffic mitigation at 29th Avenue and Balfour. He understood from staff this request did not meet the necessary requirements, but he would continue to pursue the matter through the Public Safety Advisory Committee (PSAC). He requested that staff work with him and others to figure out how it could be done as he believed the commercial facility at the end of the street created a dangerous situation for the neighborhood children. It was a matter of when, not if, an accident would happen. Ideally the neighborhood would like a 2- or 3-way traffic stop sign on Balfour for cars driving west from 32nd Avenue and those driving south on 29th Avenue

CITY COUNCIL REGULAR SESSION – APRIL 7, 2009

DRAFT MINUTES

Page 3 of 10

as it was becoming a more commonly used route for those accessing the Springwater Corridor. A new park was also going in at the end of the street. The residents were told no because there were two dead-end streets, but there were a lot of children in the neighborhood. Perhaps speed bumps would be the solution.

Mayor Ferguson noted Mr. Asher would look into the question.

Councilor Stone asked if 29th Avenue would go through if Hillside were expanded. The right-of-way determinations would have to be studied.

Councilor Barnes saw firsthand how dangerous that area might be.

Mr. Swanson knew the next comments had to do with North Main Village residents and Latitude Bar and Grill. He understood a lot of the concerns had to do with noise. Community Services staff was contacting the parties to find out if they would agree to sitting down with Clackamas County Dispute Resolution to work out some of the issues and come to some agreements.

Debbie Cronk, North Main Village property owner, was told by her tenant that the music was so loud it rattled the pictures on the wall. Other residents expressed similar concerns. She read comments from Dana Cody, a condominium owner, into the record regarding loud music, noise from a DJ, and smoking within 10-feet of the building. A majority of problems were on Friday and Saturday. Milwaukie Police had been called 6 times and Latitude was asked to turn down the volume, but it went back up. A number of complaints had been filed with the Oregon Liquor Control Commission (OLCC) and the City regarding code violations. The windows were tinted black and did not create a downtown Milwaukie, family-oriented feel. There was some indication of bringing in video poker, but downtown Milwaukie already had Foxy's. North Main Village was a non-smoking building and people were dropping their cigarette butts on the street. The Latitude owner said it was not in the Downtown Plan to have a cigarette genie on the sidewalk. There had been problems with public urination on the side of the building and in the courtyard. The previous business, Hartwell's, closed at 10 p.m. and attracted a different clientele. Latitude employees had been seen carrying large pots of grease to the commercial garbage room leaving stains on the sidewalk, and as an owner she was concerned about grease not being disposed of properly. Because of the noise people were selling their units above the bar, and potential buyers were deciding not to move forward with the purchases. North Main Village was the first mixed-use building in Milwaukie, and people felt it was important to have better regulations in place.

Mr. Swanson commented the tinted windows were a violation, and the planning department was working with the owner to remove it.

Ms. Cronk noted the residents wanted it quiet after 10 p.m., and Latitude was a bar.

Erin Bennett, Milwaukie, lived directly above the restaurant and appreciated the idea of mediation. A take away for her would be some kind of expectation in the area of code enforcement. She spoke with Mr. Salyers but felt she needed more information on what was a violation and what she could realistically expect in terms of compliance.

Mayor Ferguson will follow up with Mr. Swanson and staff, and he understood the bar owners were interested in continuing conversations. He wanted to resolve things for both the residents and business owners in a timely manner.

Ms. Bennett had lived in North Main Village since it opened and was excited about the concept of mixed use. She understood mediation was the next best step.

Christie Schaeffer, Milwaukie, also got a lot of noise and vibration in her living space and indicated she too was interested in mediation. She had talked with the owners, but when she called she felt she got a "not my problem" attitude. They had gotten better

about turning down the sound, and she understood there were sounds related to living downtown. Her other big question was about the smoking policy.

Ms. Mangle followed up by saying that cigarette butt receptacles could be allowed similar to those on Jackson Street and in front of City Hall.

Ms. Schaefer said there were ashtrays on top of the garbage cans, and she picked up cigarette butts in the morning. It seemed like the business could empty the ashtrays.

Mr. Swanson would look at the provisions in noise ordinance adopted in 1982 and prepare a letter to Latitude regarding smoking and noise. Staff would also follow up on mediation as that was an appropriate next step.

Councilor Loomis asked Ms. Mangle if more soundproofing was added in this type of construction as this was the kind of development the Council wanted in the downtown.

Ms. Mangle was not familiar with construction details but the development met the standards for commercial and residential construction. She was not sure about the sound separation matter. Staff could look at how it was addressed in other codes to make sure the City was being smart about it. There may be lessons to be learned about how other mixed use development was dealing with this. She had lived in a mixed-use area and good neighbor agreements outlining clear expectations were common between residents and business owners.

Councilor Stone commented on Councilor Loomis's question regarding soundproofing in the construction of that particular site. She suggested the City look at who was responsible for ensuring soundproofing was installed when businesses took over spaces.

Ms. Mangle replied staff would look into best practices, but she understood from residents that it was also vibration and noise from the outside as well as noise coming up through the floor. She thought the first line of attack was behavior modification rather than building construction. We did want activity in the spaces, but the bar needed to be a good neighbor. She would follow up with the building official on the Council's questions.

PUBLIC HEARING

None scheduled.

OTHER BUSINESS

A. Amendment to Milwaukie Municipal Code Chapter 10.20.090, Parking Violation – Citation, Ordinance

Ms. Lander provided the staff report in which the City Council was requested to approve an ordinance that amended the code to provide specific guidelines for the payment of parking fines/bail by the court date printed on the citation and to increase the fine after the court date if bail had not been posted. Through the Transportation System Plan (TSP) process it was established that parking downtown was a problem, and staff was working to improve the situation by various means. This was a housekeeping action that would reflect current practice. Parking downtown was at a premium so it needed to be enforced consistently to improve the situation.

Mayor Ferguson researched other cities and found this proposal was consistent with other communities including the City of Portland.

It was moved by Councilor Chaimov and seconded by Councilor Stone for the first and second readings by title only and adoption of the ordinance amending

CITY COUNCIL REGULAR SESSION – APRIL 7, 2009

DRAFT MINUTES

Page 5 of 10

Chapter 10 of the Milwaukie Municipal Code to reflect court procedures for parking due date and fine. Motion passed with the following vote: Councilors Loomis, Barnes, Chaimov, and Stone and Mayor Ferguson voting “aye.” [5:0]

Mr. Swanson read the ordinance for the first and second times by title only.

The City Recorder polled the Council: Councilors Loomis, Barnes, Chaimov, and Stone and Mayor Ferguson voting “aye.”

ORDINANCE NO. 1997:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, AMENDING CHAPTER 10 OF THE MILWAUKIE MUNICIPAL CODE TO REFLECT COURT PROCEDURES FOR PARKING CITATION DUE DATE AND FINE.

B. Amendments to Milwaukie Municipal Code Chapter 1.08, Short-Form Complaint and Citation Method and Code Enforcement Procedures – Ordinance

City Attorney Monahan provided the staff report. This is one in a series of code amendments to clarify certain sections and to make administration of the Code more efficient. This section had to do with code enforcement abatement of dangerous situations and charging back the property owner who had not complied. These amendments would clean up out-of-date language, clarify those departments using the citation method, identify the process for establishing civil penalties, and outline how the fees were assessed and collected. The amendments made things clearer in how the process was administered.

It was moved by Councilor Chaimov and seconded by Councilor Loomis for the first and second readings by title only of the ordinance amending Milwaukie Municipal Code Chapter 1.08, Short-Form Complaint and Citation Method and Code Enforcement Procedures. Motion passed with the following vote: Councilors Loomis, Barnes, Chaimov, and Stone and Mayor Ferguson voting “aye.” [5:0]

Mr. Swanson read the ordinance for the first and second times by title only.

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

ORDINANCE NO. 1998:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, AMENDING MILWAUKIE MUNICIPAL CODE CHAPTER 1.08 SHORT-FORM COMPLAINT AND CITATION METHOD AND CODE ENFORCEMENT PROCEDURES.

C. Three-Party Grant Agreement with Oregon Department of Transportation and Metro Regarding MTIP-Funded Planning Phase for Kellogg for Coho Initiative – Resolution

Mr. Campbell provided the staff report and requested that the City Council approve a resolution authorizing the City Manager to enter into an intergovernmental agreement (IGA) with Metro and ODOT to carry out a planning phase for the Kellogg-for-Coho Initiative. He had updated the City Council on this initiative about one month ago. The primary goal of the effort was to improve habitat by removing the box culvert under McLoughlin Boulevard as it prevented access to the watershed for a number of

endangered species. It also had significant community development benefits and was identified as part of the open space plan for recreational and aesthetic benefits. The Endangered Species Act presented funding opportunities. This was transportation money to deal with infrastructure that has had negative impacts on those species and regionally allocated for that purpose. Adoption of this resolution would authorize allocation of funds the City was awarded a number of years ago for the planning phase in the amount of approximately \$368,000. This would define the project at a higher level of detail, how the barrier might be removed, the sediments, contamination level, and defining the federal permitting process. This was the first step in a long road toward removal of the dam. He noted the City had recently applied for federal stimulus funding.

Councilor Stone referred to staff report page 2 in paragraph 3 that talked about the completion of a prospectus to ensure this project was included in the Portland-Milwaukie Light Rail environmental mitigation plan. She asked what that meant exactly.

Mr. Campbell replied assuming light rail went to Park Avenue there would be a structure across the Lake and would have some potential negative impact on the habitat. It would make more sense to support this project rather than trying to make it a better lake for example. He felt it was important to reach a level of credibility with agencies approving the mitigation plan.

Councilor Stone asked if this would also impact Robert Kronberg Park.

Mr. Campbell replied the timelines were related. It was more likely to receive mitigation from the light rail project if the City were further along in this planning process with completion of the prospectus. Right now expectations and plans showed them within the freight rail right-of-way and not building any structure in Robert Kronberg Park except for staging which would be mitigated and involve a lease payment.

Mr. Asher explained staging was where vehicles were parked and where materials were stored. Under NEPA there would be impacts to Robert Kronberg Park but not the same as there would be to the Creek. The purpose of the Final Environmental Impact Study (FEIS) was to carefully define those impacts and various mitigations. The City wanted to steer the mitigation to the highest and best purpose with the Kellogg Creek project. It was important that TriMet not take those resources without some kind of plan. The plan was to revegetate the creek area but not mitigate a warm, shallow lake.

Councilor Loomis understood the bridge might not be replaced.

Mr. Campbell replied given how connected the two structures were there was probably not a large cost differential. The fish ladder and the Lake itself were both barriers. The sediment was not hazardous waste but was contaminated. Some of it could go to Tualatin or barged to Ross Island. Worst case it would be trucked to Hillsboro. The cost to the project to remove the silt was about \$1 million.

Councilor Loomis recalled that was one of the reasons for not restoring the Lake because the silt had to be removed, but it had to be removed to restore the Creek.

Mr. Campbell understood the Corps was looking at a significant amount of silt coming out of the Lake. They were hopeful a lot could remain on the site generally to build berms or cap it on Kronberg. He understood there had always been an expectation to dredge quite a bit of sediment.

It was moved by Councilor Chaimov and seconded by Councilor Barnes to adopt the resolution authorizing execution of a three-party agreement with Metro and the Oregon Department of Transportation to expand local and federal money on a planning phase for the Kellogg-for-Coho Initiative. Motion passed with the

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

RESOLUTION 19-2009:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, AUTHORIZING EXECUTION OF A THREE-PARTY AGREEMENT WITH METRO AND THE OREGON DEPARTMENT OF TRANSPORTATION TO EXPEND LOCAL AND FEDERAL MONEY ON A PLANNING PHASE FOR THE KELLOGG-FOR-COHO INITIATIVE.

F. Resolution Authorizing the City Manager to Enter into Intergovernmental Agreements with the Oregon Department of Transportation Regarding Federal Stimulus Projects

Councilor Stone asked that this be pulled in light of news about TriMet having the funds to develop Southgate into a park-and-ride. The City had moved on this quickly and asked if it could be changed. Could the bus layovers be moved to Southgate from Jackson Street? The community had been headed in that direction for a long time. Why can't we move the buses to Southgate?

Mr. Asher replied a couple of things were happening at the downtown transit center that needed to be considered. People were catching buses, so there needed to be a stop with some kind of shelter. Through the TSP process it was re-established that the place to catch a bus or transfer was downtown Milwaukie. The other thing that was going on was that buses were laying over downtown. A couple of years ago they worked on getting fewer buses on the downtown streets, and TriMet was amenable to looking at other sites. He discussed the park-and-ride application. The most recent idea for Southgate was to replace the old park-and-ride with a new one. That was still the idea for Southgate. The confusion he thought came from TriMet's reversing its course and saying there would not be a park-and-ride at Southgate because in the end it did not make sense monetarily or environmentally.

The park-and-ride at Southgate was still envisioned as a place where people would park their cars and catch a bus to downtown Portland. There would be no layovers at Southgate. The Jackson Street project, for which the City was receiving about \$750,000, was not a park-and-ride project but a chance to improve how people caught buses in downtown Milwaukie by upgrading the lighting, shelters, and street and making it a more pleasant place. Stimulus funds have allowed both to happen.

Councilor Stone understood the difference but still thought there could be bus layovers. The City had a parking problem and this would free up City streets. She was frustrated because some time the City had to tell TriMet enough was enough. It was a big surprise to City Council, and it was unfortunate they did not know about it. They gave the nod to Jackson Street, and now they find out this is going to happen. It has been a temporary layover for 25 years. Now there was a possibility to take it off our streets.

Mr. Asher explained the transit center would not be moved but that Milwaukie was getting some of what it wanted. He understood the Jackson Street project would free up about 24 parking spaces because some of the layovers were going away making the footprint smaller. TriMet still had a commitment in the umbrella agreement to get rid of the last 50%. The last lines were 70 and 75.

Mayor Ferguson added the Southgate project went through capital projects and the routes went through service planning. Two remaining lines would layover in the

downtown which was a 52% reduction. It was possible that 75, a frequent service bus, could turn around at the Public Safety Building. That would save extra time that could be given to line 31 to increase the frequency and layover at the Clackamas Town Center. He thought that was working closer to the goal, and he would continue talking with service planning.

Councilor Chaimov provided his perspective. The City would get money to make the area prettier and help put people back to work. The City should also continue to keep TriMet's feet to the fire to get bus layover out of the downtown. He did not see stimulus money to improve the bus shelters as being connected to the issue of the layovers. He stressed the City needed to continue work on getting the buses out.

Councilor Loomis agreed with Councilor Chaimov about the improvements but believed as did Councilor Stone that the bus layovers should go to Southgate.

Mr. Asher explained that would disqualify TriMet from stimulus funding because of the amount of time a change to the land use application would add.

Mr. Campbell discussed the approval process and said the money had to be obligated by June 17, 2009. It was on a different timeline than Milwaukie.

Mr. Asher said there might be a way to convince TriMet that some of the parking spaces at Southgate could be taken out for a layover. The park-and-ride will have 300 spaces, and the downtown will have better looking streets and shelters. He thought it was good progress.

Councilor Stone asked why TriMet, since it knew Milwaukie had been wanting to do this for a long time, did not factor in the possibility and talk with staff. They were pulling the wool over our eyes, and she did not like it. Why did TriMet not also apply for a bus layover in addition to a park-and-ride.

Mr. Swanson replied it was already approved as a park-and-ride, and time was of the essence. If TriMet had asked for a change, it would have been non-competitive for the money. It had a park-and-ride approved.

Mr. Campbell added the Oregon Transportation Commission told its staff to open up a pot of money for competition, and people had only about two weeks to respond.

Mr. Asher explained this pot of money, \$100 million for the state, was for truly shovel-ready projects with an expectation that construction would begin by June. Even if TriMet had wanted to change its plans it could not have applied for these funds.

Councilor Stone encouraged looking for a way to make this happen.

It was moved by Councilor Chaimov and seconded by Councilor Barnes to approve the resolution authorizing the City Manager to execute agreements with the Oregon Department of Transportation for economic stimulus projects and providing appropriation authority to expend some stimulus funds in the current fiscal year. Motion passed with the following vote: Councilors Loomis, Barnes, Chaimov, and Stone and Mayor Ferguson voting "aye." [5:0]

RESOLUTION NO. 20-2009

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, AUTHORIZING EXECUTION OF AGREEMENTS WITH THE OREGON DEPARTMENT OF TRANSPORTATION FOR ECONOMIC STIMULUS PROJECTS AND PROVIDING APPROPRIATION AUTHORITY TO EXPEND SOME STIMULUS FUNDS IN THE CURRENT FISCAL YEAR.

Council Reports

CITY COUNCIL REGULAR SESSION – APRIL 7, 2009

DRAFT MINUTES

Page 9 of 10

David Aschenbrenner announced the grand reopening of Homewood Park on April 11 and expressed his appreciation to resident and project manager Sarah Smith and the contractor.

Mayor Ferguson with consensus of Council directed staff to prepare resolutions appointing Kim Hutchinson to the Public Safety Advisory Committee as the Ardenwald Neighborhood Representative, David Hedges to the Public Safety Advisory Committee as a member at-large, and Dick Newman to the Planning Commission.

Councilor Chaimov announced Crystal Williams would read at the Poetry Series on April 8 in the Pond House.

Councilor Barnes attended the Emerge Oregon Kickoff, met with Clackamas County Firefighters, and encouraged people to attend the Sabin Schellenberg Showcase event. She would attend the Homewood Park event.

Councilor Stone attended the Ardenwald Neighborhood Association meeting and Secret Garden Tour meeting, goal setting, and candidates' forum at the Lewelling Neighborhood Association meeting.

Mayor Ferguson announced the Campbell School Carnival on April 18. He attended the Metro Policy Advisory Committee meeting and spoke with Councilor Collette. He announced several vacancies on advisory boards and commissions.

Mayor Ferguson announced the City Council would meet in executive session pursuant to ORS 192.660(2)(i) performance evaluations of public officers and employees immediately following adjournment of the regular session. The City Council would not return to regular session.

ADJOURNMENT

It was moved by Councilor Chaimov and seconded by Councilor Stone to adjourn the meeting. Motion passed with Councilors Loomis, Barnes, Chaimov, and Stone and Mayor Ferguson voting "aye."

Mayor Ferguson adjourned the regular session at 9:11 p.m.

Pat DuVal, Recorder

**CITY OF MILWAUKIE
CITY COUNCIL MEETING
APRIL 21, 2009**

CALL TO ORDER

Mayor Ferguson called the 2052nd meeting of the Milwaukie City Council to order at 7:07 p.m. in the City Hall Council Chambers.

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

Staff present: City Manager Mike Swanson, City Attorney Bill Monahan, Community Development and Public Works Director Kenny Asher, Code Compliance Coordinator Tim Salyers, Resource/Economic Development Specialist Alex Campbell, Engineering Director Gary Parkin, and Human Resources Director Cynthia Trosino

PLEDGE OF ALLEGIANCE

PROCLAMATIONS, COMMENDATION, SPECIAL REPORTS AND AWARDS

Urban Renewal and Tax Increment Financing 101

Mr. Campbell introduced **Jeff Tashman** who had worked in urban renewal for approximately 30 years. In the past his work with the City of Milwaukie included acquisition of Riverfront Park, one version of the regional center plan, and the Riverfront Plan.

Mr. Tashman explained urban renewal, widely used in the State, was a program to prevent and cure "blight" in targeted areas. A blighted area was one that was not developing to the objectives of the Comprehensive Plan and development code due to identifiable obstacles such as lack of infrastructure or poor streetscape. The finding of blight was up to the city or county adopting the urban renewal plan and was a locally controlled program. There were about 100 urban renewal districts scattered throughout the State. The main reason for urban renewal's wide use was its unique financing mechanism, tax increment financing. Tax increment financing was complex in its mechanics but relatively simple in concept. When an urban renewal plan was adopted it created an urban renewal district with specific boundaries. At the time it was created the assessor certified the assessed value within the district. In the future as the total assessed value grows, the property taxes on the increase go to the urban renewal agency. The initial assessed value was called the frozen base, and the growth above that was called the incremental assessed value. For the period of time tax increment financing was used the property taxes on the incremental assessed value would go to the urban renewal agency to finance the projects and programs in the urban renewal plan. He showed a diagram of the structure. The implication was that the urban renewal agency would be motivated to produce greater assessed value in the area, although property values could only increase by 3% assessed value because of Measure 50. In order to have money to work with, agencies look for projects that resulted in taxable private development and investment and was the principle behind the program. The process began with City Council's adopting an urban renewal plan that identified the area, listed the projects eligible for financing, and stated the maximum indebtedness or expenditure limit but for interest on debt. It represented how much money could be spent on projects and administration. When City Council considered

CITY COUNCIL REGULAR SESSION – APRIL 21, 2009

DRAFT MINUTES

Page 1 of 7

an ordinance to adopt an urban renewal plan notice of that consideration had to go to each household in the City stating the amount of indebtedness. Some of the considerations on defining the urban renewal area were that it must be blighted and no more than 25% of land area or assessed value could be in urban renewal for cities under 50,000 population. Typical projects were infrastructure and streetscape improvements, grant or loan programs to assist property owners or developers which had to be used for capital and public facilities such as parks, city halls, and police and fire stations. There was a best practices issue related to use for public facilities with a citywide benefit that the urban renewal share of the cost should relate to the urban renewal benefit. The City could also buy land and sites for development but could not use eminent domain or condemnation. There was no duration limit to an urban renewal plan which for many jurisdictions came down to a policy matter.

Councilor Chaimov had heard from people that they were concerned about urban renewal districts seeming to last forever. Was it possible to put into the organic documents that extending the life of the urban renewal district would require a super majority vote of the City Council?

Mr. Tashman thought that was possible.

City Attorney Monahan agreed. It could be put into the documentation when the City created the urban renewal plan that it could also be further restricted by a Charter amendment.

Mr. Tashman continued this was a feasibility study, and he discussed the process for adopting an urban renewal plan. He would be looking at developing a methodology for projecting how much development could occur in the study area, develop projections, and then work with staff to develop priorities and rationales for projects in the sense of what projects in their professional opinions could forward the goals of the urban renewal plan. Priorities were a policy choice for the City Council. Staff would rank projects in terms of investment value and make suggestions. If the City Council wished to proceed with a plan a lot of public involvement was required. The Planning Commission was generally the first place where any action was taken on a plan, so a lot of issues could arise not specific to the Comprehensive Plan. The Planning Commission would look at projected development in terms of the Comprehensive Plan and if there was policy to support certain types of development followed by a recommendation to Council. Public input can either be done by an advisory committee, public meetings, or both. He had found advisory committees worked well because once the committee was knowledgeable on the issues the members could go out and talk to the public. During that process the City would provide projections to affected taxing districts on the potential impacts of urban renewal to their revenues. Mr. Tashman commented there was a bill being prepared by legislative counsel that represented some limits on urban renewal if it were to pass. When the City Council got to the ordinance adoption phase of the process all individual households within the City had to be notified. There must be a public hearing and a second hearing for adoption. He cited resources for agencies in general.

Councilor Barnes asked if it was good to begin planning now in preparation for an economic upswing when people wanted to begin reinvesting in Milwaukie's downtown.

Mr. Tashman would be able to give a better answer once the feasibility study was done. Typically planning was done for the upcycle during the economic downturn.

Mr. Campbell said staff will provide a presentation to Planning Commission next week similar to this. The next phase would be to look at the list of projects that have come up through the Downtown and Riverfront Plan, the TSP, and previous CIPs and looking at development opportunity sites. That would take a couple of months. It was an iterative

process about what additional tax increment would that generate, so the model would be run a number of times. Staff would come back about mid-summer.

Councilor Stone asked if the 60 urban renewal districts were cities and counties combined.

Mr. Tashman replied some counties like Clackamas did have districts, but most of them were cities. There were currently 100 districts in Oregon.

Councilor Stone asked if urban renewal districts were always successful and asked for an example and description of one that was not.

Mr. Tashman replied a classic example was the City of Eugene that created a downtown pedestrian mall in the mid-1970's just as the first regional mall opened. It eventually did work for downtown housing and offices. Coos Bay had the same experience with a pedestrian mall. These were failures in that major investments were made that did not work. A number of districts had been very successful, and most were successful to some extent. In terms of a downtown project Medford and Tualatin were highly successful as was Hillsboro. Urban renewal was a tool, and success depended on how well it was used. The City's approach of focusing on what was the real market for development in Milwaukie was a good way to proceed.

Councilor Stone asked if it was always the protocol that the City Council moved forward or if the question went to the voters.

Mr. Tashman responded the City Council had to adopt the plan with a non-emergency ordinance, so it could be referred. Tigard, Gresham, and other cities had charter provisions that it would go to a vote. In any event the ordinance had to be referable.

Building Safety Week

Mayor Ferguson read a proclamation naming May 3 through May 9, 2009 as Building Safety Week in the City of Milwaukie.

CONSENT AGENDA

It was moved by Councilor Chaimov and seconded by Councilor Stone to adopt consent agenda items A – E as presented:

- A. City Council Regular Session Minutes, March 3, 2009;
- B. City Council Regular Session Minutes, March 17, 2009;
- C. Resolution 21-2009: A Resolution of the City Council of the City of Milwaukie, Oregon, Appointing Kim Hutchinson to the Public Safety Advisory Committee as the Ardenwald Neighborhood District Association Representative;
- D. Resolution 22-2009: A Resolution of the City Council of the City of Milwaukie, Oregon, Reappointing David Hedges to the Public Safety Advisory Committee as an At-Large Member; and
- E. Resolution 23-2009: A Resolution of the City Council of the City of Milwaukie, Oregon, Reappointing Dick Newman to the Milwaukie Planning Commission

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

AUDIENCE PARTICIPATION

None.

PUBLIC HEARING

Motion to Consider Continuation of Amendments to Milwaukie Municipal Code (MMC) Sections 19.321.7 and 19.321.3

Mr. Swanson reported this action was considered the second meeting of each month. These two amendments related to community service uses and nonconforming uses had been continued for possible City Council adoption. He recommended that the City Council continue consideration of both code amendments to the second meeting of May. He noted the City Attorney was doing some additional work on the amendments.

Councilor Barnes asked that Mr. Parkin comment on information he received from the Citizens Utility Advisory Board (CUAB).

Mr. Parkin discussed the Partnership Agreement with language regarding a plan for decommissioning of the Kellogg Treatment Plant. The Board recommended that the City Council not sign either agreement without considering the impact to utility ratepayers.

It was moved by Councilor Chaimov and seconded by Councilor Loomis to continue the hearing on the amendments to Milwaukie Municipal Code Sections 19.321.7 and 19.321.3 to May 19, 2009. Motion passed with the following vote: Councilors Chaimov, Stone, and Loomis and Mayor Ferguson voting "aye" and Councilor Barnes voting "no." [4:1]

OTHER BUSINESS

A. Amendment to Milwaukie Municipal code Chapter 12.12, Sidewalk and Street Obstructions – Ordinance

Mr. Salyers provided the staff report in which the staff requested approval of an amendment to Chapter 12.12. He discussed clearances over sidewalks and streets and maintenance responsibilities by adjoining property owners to maintain right-of-way. Currently there was an ordinance in Title 10 that addressed blocking views of traffic control devices as prohibited. The current code also had a somewhat outdated process for posting property and getting authorization to lien. The new code would require adjoining property owners to maintain the right-of-way so traffic control devices were not obscured. The amendment would clearly define restrictions and requirements and removed outdated language.

Councilor Stone asked where the table on page 35 of the staff report came from.

Mr. Salyers replied it came from the City of Portland, and he included speed signs in the middle column and changed the number of feet to be more standard.

Councilor Stone had a question about utility poles and clear vision. She was thinking of the corner on Harvey and 36th. By the time you inched out beyond the painted crosswalk to see you are in the east bound lane. What do you do about making areas like that safer? Who was responsible?

Mr. Salyers replied utility poles and trees were not in this section of the code and exempt from 30-inches above sidewalk grade for a clear view. Trees and utility poles were typically exempt.

Councilor Stone asked if this section of the code was this complaint driven.

Mr. Salyers responded typically the code enforcement process was complaint driven unless the street division, police, or code enforcement identified a safety problem. The property owner would be sent a letter.

It was moved by Councilor Chaimov and seconded by Councilor Barnes for the first and second readings by title only and adoption of the ordinance amending Chapter 12.12, sidewalk and street obstructions to include traffic control device obstructions. Motion passed with the following vote: Councilors Barnes, Chaimov, Stone, and Loomis and Mayor Ferguson voting “aye.” [5:0]

Mr. Swanson read the ordinance for the first and second times by title only.

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

ORDINANCE NO. 1999:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, MILWAUKIE MUNICIPAL CODE CHAPTER 12.12 SIDEWALK AND STREET OBSTRUCTIONS TO INCLUDE TRAFFIC CONTROL DEVICE OBSTRUCTIONS.

B. Amendments to Milwaukie Municipal Code Chapter 8.04.200, Assessment of Costs

City Attorney Monahan provided the staff report in which it was requested that the City Council approve the amendments. This was a follow up to the code enforcement process. In past year the City Council considered an action regarding an abatement of a nuisance, and there was a question at the time about the prevailing interest rate for such actions. Councilor Chaimov recommended the rate set by statute which was currently 9%. The proposed amendment would state that the interest rate be that allowed under Oregon Revised Statutes (ORS). It would also clarify the public hearing process.

It was moved by Councilor Barnes and seconded by Councilor Chaimov for the first and second readings by title only of the ordinance amending Milwaukie Municipal Code Chapter 8.04.200, assessment of costs. Motion passed with the following vote: Councilors Barnes, Chaimov, Stone, and Loomis and Mayor Ferguson voting “aye.” [5:0]

Mr. Swanson read the ordinance for the first and second times by title only.

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

ORDINANCE NO. 2000:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, AMENDING MILWAUKIE MUNICIPAL CODE CHAPTER 8.04.200 ASSESSMENT OF COSTS.

C. Identity Theft Prevention Program Adoption – Resolution

City Attorney Monahan provided the staff report in which staff requested that the City Council adopt a program within the City structure to prevent identity theft as mandated by the State and federal governments. The Program allocated responsibility to ensure appropriate steps were taken to ensure that information was protected. It spelled out employee responsibilities and required mandatory steps if any breach of security occurred.

It was moved by Councilor Chaimov and seconded by Councilor Barnes to adopt the resolution adopting an identity theft prevention program.

Councilor Stone referred to page 54 under E and reporting by the public to the City of suspected identity theft in writing. Did that include email?

City Attorney Monahan replied forms would be available on line.

Councilor Stone thought some text was missing on page 55.

City Attorney Monahan would look at that and recommended that as the Program had to be adopted by May 1 that the City Council do so. Staff would come back with the modification to the text.

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

RESOLUTION 25-2009:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, ADOPTING AN IDENTITY THEFT PREVENTION PROGRAM (ITPP) TO COMPLY WITH THE OREGON IDENTITY THEFT PROTECTION ACT (2003), THE FAIR AND ACCURATE CREDIT TRANSACTIONS ACT (2003) AND THE FEDERAL TRADE COMMISSION RED FLAG RULES OF 2008 PURSUANT THERETO.

D. City Manager Performance Review and Compensation

Mayor Ferguson noted a modified version had been provided during work session, and City Council agreed it was appropriate.

It was moved by Mayor Ferguson and seconded by Councilor Stone to adopt the City Manager’s performance review, to extend the employment agreement with the City Manager for another year, and to modify the City Manager’s employment agreement to incorporate the changes to compensation and benefits noted in the staff report prepared by human resources base on his outstanding performance over the past year. Motion passed with the following vote: Councilors Barnes, Chaimov, Stone, and Loomis and Mayor Ferguson voting “aye.” [5:0]

Councilor Loomis commented the original version had included a bonus which Mr. Swanson declined although it was deserved.

E. Council reports

Councilor Loomis attended Homewood Park grand reopening along with Mayor Ferguson and Councilors Chaimov and Barnes.

Councilor Stone attended several neighborhood association meetings as well as Secret Garden Tour planning meetings. She also attended the Citizen Advisory Committee (CAC) meeting.

Mayor Ferguson announced the Harmony Community Campus Master Plan public workshop on April 23 and the Portland-Milwaukie Light Rail monthly meeting on April 27.

City Attorney Monahan announced the City Council would meet in executive session pursuant to ORS 192.660(2)(h), litigation.

ADJOURNMENT

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

CITY COUNCIL REGULAR SESSION – APRIL 21, 2009

DRAFT MINUTES

Page 6 of 7

Mayor Ferguson adjourned the regular session at 8:09 p.m.

Pat DuVal, Recorder



To: Mayor and City Council

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

**From: Gary Parkin, Engineering Director
Brenda Schleining, Associate Engineer**

Subject: Contract Award for 27th Avenue Paving Project

Date: May 8, 2009 for the May 19, 2009 Regular Session

Action Requested

Authorize the City Manager to execute a contract for the paving of 27th Avenue from Washington Street to Lake Road with Brix Paving, in the amount of \$86,652 (this amount includes a 10% project contingency).

History of Prior Actions and Discussions

January 2007: The Street Surface Maintenance Program (SSMP) was developed during 2006 with extensive public outreach and input. The SSMP was formally adopted on January 2, 2007 by Ordinance No. 1966 and took effect on July 1, 2007.

Background

During the first year of the SSMP the City paved 42nd Avenue (JCB to Harvey), 37th Avenue (Lake to Hwy 224), and Washington Street (99E to Hwy 224).

During the second year of the SSMP the City paved Oak St (Hwy 224 to Monroe), reconstructed King Rd (Hollywood to 43rd Avenue), and will pave Logus Rd (Stanley Avenue to 49th) by early May. The Logus Road paving was done in conjunction with the Logus Road Green Street Project to save time and money.

This is the end of Year Two for the SSMP. The paving of 27th Avenue was originally scheduled for Year Three and has been moved up to the very end of Year Two. The King Road reconstruction was about \$90,000 less than budgeted and this allows another small project to move ahead. This is especially helpful in today's market, because many capital projects have been awarded at lower than estimated amounts.

The project area is 1650 feet long and is adjacent to both Milwaukie Elementary and High Schools. Three speed humps were installed on 27th Avenue in 1999 in an effort to lower vehicle speeds. The speed humps will be removed for construction and then replaced, at the same locations, with a 14-foot standard hump.

The residents on 27th Avenue have been notified about the project with a direct mailing. Residents and businesses along the project will also be notified with door hangers, with a project schedule.

This project went through a competitive bidding process per Chapter 30 of the City's Public Contracting Rules. The following table is a summary of all bid amounts and the engineer's estimate:

	<u>Contractor</u>	<u>Bid Amount</u>
1.	Brix Paving	\$78,773.69
2.	Knife River	\$83,426.60
3.	K.F. Jacobson	\$84,680
4.	Portland Road & Driveway	\$84,795.40
5.	Eagle-Elsner	\$88,847
6.	Lakeside Industries	\$89,148
7.	Oregon Asphaltic Paving	\$93,176
8.	Kodiak Pacific Construction	\$93,355
***	Engineer's Estimate	\$105,000

The lowest responsive bid amount is \$78,773.69.

Concurrence

The Finance Director, and Operations Department concur with awarding this contract.

Fiscal Impact

- None expected, however digging up older streets can put more strain on the existing underground utilities because the ground cover is reduced and the additional loading from heavy construction vehicles can often rattle any hollow spots or leaking lines. This may create additional items that need to be replaced such as broken storm lines, catch basins, water valve boxes, gas boxes, and man holes. Some water lines are also buried very shallow and can get snapped off while grinding. This type of additional work may require quick repairs and additional funding from utility accounts.

Work Load Impacts

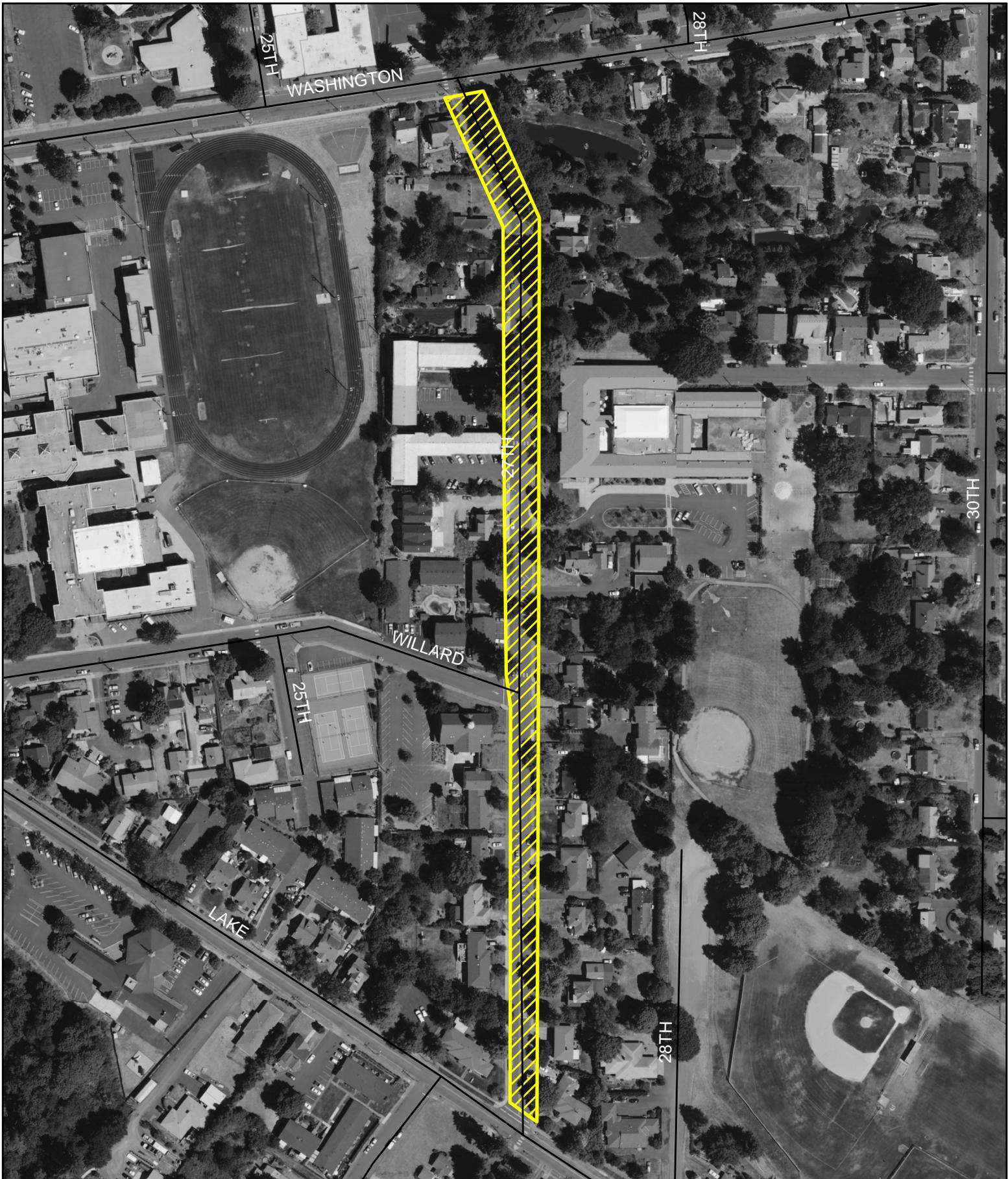
This work is part of the Engineering and Operations work plan and Community Services has incorporated the outreach program into its work plan.

Alternatives

None

Attachments

1. Vicinity Map
2. Resolution



ATTACHMENT 1



MILWAUKIE
Dogwood City of the West

27th Avenue Paving
Project Vicinity Map
RS PAGE 33



RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, APPROVING THE AWARD OF CONTRACT FOR THE PAVING OF 27TH AVE.

WHEREAS, the Street Surface Maintenance Program was adopted January 2, 2007; and

WHEREAS, 27TH Ave. was selected for treatment after analysis of the street system; and

WHEREAS, the project was approved for funding in the 2008/2009 budget; and

WHEREAS, a formal competitive bidding process following Chapter 30 of the City's Public Contracting Rules was conducted, and

WHEREAS, Brix Paving is the lowest responsive bidder;

NOW, THEREFORE, BE IT RESOLVED that the City of Milwaukie authorizes the City Manager to sign a contract for the paving of 27th Ave with Brix Paving in the amount of \$86,652.

Introduced and adopted by the City Council on _____ .

This resolution is effective on _____ .

Acting Mayor

ATTEST:

APPROVED AS TO FORM:
Jordan Schrader Ramis PC

Pat DuVal, City Recorder

City Attorney



To: Mayor and City Council
Through: Mike Swanson, City Manager
From: Pat DuVal, City Recorder
Subject: Adoption of Identity Theft Prevention Program
Date: May 5, 2009 for May 19, 2009 Regular Session

Action Requested

Approve a resolution adopting an Identity Theft Prevention Program (ITPP) for the City of Milwaukie and repealing Resolution 25-2009.

Summary of Relevant Facts and Other Information

Oregon's law, the Identity Theft Protection Act, specifies direction and expectations to ensure the safety of sensitive data. The law contains standards to shield Social Security Numbers, notify consumers in case of a security breach, and safeguard personal identifying information. The Department of Consumer Business Services is charged with enforcing this law as well as providing educational materials. By May 1, 2009, all municipal utilities that provide services for which payment is deferred until a future date (i.e., water or sewer), were required to have written procedures in place to help protect consumer identity and fight theft of consumer account information. Businesses and government agencies are required to develop, implement, and maintain reasonable safeguards to ensure the security, confidentiality, and integrity of the information. Safeguarding also means properly disposing of information.

On April 21, 2009, in compliance with Oregon law, the Fair and Accurate Credit Transactions Act (2003), and the Federal Trade Commission Red Flag Rules (2007), the Milwaukie City Council approved Resolution 25-2009 adopting an Identity Theft Prevention Program ("ITPP") for covered accounts, including municipal utility accounts. In the adoption process Councilor Stone noted a scrivener's error in section H.3 having to do with disposal of records under protective procedures.

To ensure the integrity and clarity of the Program, staff requests that Council approve a resolution readopting the Identity Theft Prevention Program including repeal of Resolution 25-2009 adopted Council on April 21, 2009. Section H.3 is amended to read: "[The destruction of records will be scheduled no longer than on a](#) monthly basis to

minimize possible exposure of information as well as excess storage of records.” Mandatory staff training by the City’s insurance carrier is scheduled in May, and staff will continue to compile internal resource information and continue development of internal procedures as dictated by State and Federal laws and rules governing the program.

Attachments:

1. Proposed Resolution
2. Identity Theft Prevention Program document.

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, ADOPTING AN IDENTITY THEFT PREVENTION PROGRAM (“ITPP”) TO COMPLY WITH THE OREGON IDENTITY THEFT PROTECTION ACT (2003), THE FAIR AND ACCURATE CREDIT TRANSACTIONS ACT (2003) AND THE FEDERAL TRADE COMMISSION RED FLAGS RULES OF 2008 PURSUANT THERETO AND REPEALING RESOLUTION 25-2009.

WHEREAS, Recognizing the pervasive crime of identity theft, the State of Oregon adopted the Fair and Accurate Credit Transactions Act (FACT) (2003) and the Oregon Consumer Identity Theft Protection Act (2007); and

WHEREAS, in 2007 the Federal Trade Commission passed the Red Flags Rules (“Rules”) requiring businesses extending credit to establish an ITPP; and

WHEREAS, the Rules apply to municipalities specifically, as businesses that through their utility services and billing practices maintain personal identifying information and allow customers to defer payment until after services are delivered; and

WHEREAS, the City has written an ITPP policy document in response to the State and Federal mandates referenced above;

WHEREAS, the initial written program was approved by the governing body through Resolution 25-2009 on April 21, 2009; and

WHEREAS, a typographical error was noted in section H.3 of the policy document;

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

Section 1. This City Council hereby repeals Resolution 25-2009 and adopts the corrected Identity Theft Prevention Program attached hereto as Exhibit A.

Section 2. This Resolution is effective immediately.

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

Jeremy Ferguson, Mayor

ATTEST:

APPROVED AS TO FORM:
Jordan Schrader Ramis PC

Pat DuVal, City Recorder

City Attorney



Personnel and Administrative Policy and Procedure

SUBJECT: Identity Theft Prevention Program (ITPP)

Effective Date: May 1, 2009

Purpose

To set forth the purposeful protection of personal information in compliance with the Oregon Consumer Identity Theft Protection Act (2007) and the Fair and Accurate Credit Transactions (FACT) Act (2003), and to implement a Program for detection, prevention and mitigation of Identity Theft in connection with municipal utilities and other deferred payment accounts, as set forth by the Federal Trade Commission Red Flag Rules (2007).

Policies

City employees are responsible for protecting personal information from unauthorized access. Access to personal information shall be restricted to a "need-to-know" basis and be available only to those individuals authorized to use such information as part of their duties and with the requirement that they keep the information confidential and use it only for authorized business purposes.

Departments that collect and store personal data shall develop written procedures to help prevent, detect, and respond to Identity Theft of consumer account information through identification of "Red Flags".

Definitions

Identity Theft: The Red Flags Rule defines "Identity Theft" as "fraud committed using the identifying information of another person."

Personal or Identifying information: For these purposes personal information will be considered a person's first name or first initial and last name in combination with any one or more of the following data elements, when either the name or data elements are not encrypted or when the data elements are encrypted and the encryption key also has been acquired, or when either the name or the data elements are not redacted:

- Social Security number
- Driver's license number or state identification card number

- Identification number issued by a foreign nation
- Passport number or other United States issued identification number
- Account number, credit card number or debit card number, in combination with any required security code, access code or password that would permit access to a consumer's financial account.
- Date of birth
- Alien Registration Number
- Employee or Tax Identification Number
- Computer Internet Provider Protocol Address or Routing Code

Red Flags: A "Red Flag" is a pattern, practice, or specific activity that indicates the possible existence of Identity Theft, including but not limited to:

- Notification and warnings from credit reporting agencies
- Suspicious documents (i.e. documents that appear to be forged, inauthentic, or altered)
- Notice from law enforcement authorities or victims of identify theft about possible compromise of covered accounts
- Suspicious personal identifying information
- Suspicious account activity
- Unusual use of account.

Scope

All City employees are required to adhere to the ITPP policies with respect to preventing Identity Theft. The policies apply both when handling City employee and/or citizen data, and include existing accounts as well as accounts to be opened that are covered under the Red Flag Rules. The ITPP guidelines, policies, and scope encompass both the State of Oregon requirements and the Red Flag requirements under the United States Code.

Guidelines

- The Program shall be adopted by City Council.
- The Records and Information Management Director is designated as the Program Administrator to coordinate implementation of the ITPP Information Security Program with the Information Security Program Coordinator ("ISPC"), and the department directors.
- Each department must put in writing procedures to meet the requirements of this policy and place those procedures on file with the Program Administration as coordinator of this Program.

Responsibilities

Information Security Program Coordinator

- Monitor procedures developed by departments to ensure compliance.
- Retain procedures and make available to other employees and any citizens that may request such information.

Department directors

- Ensure that procedures are established for all personal data as outlined under the guidelines section.

Supervisors

- Audit department operations and note when personal data is being gathered and how it is being stored and disposed of.
 - Inventory all computers, laptops, disks and other equipment to note where and how personal data is being stored. Make sure all storage is secured.
- Scale down any collection of personal data where possible. For example employee numbers have been changed from using the last four digits of a person's social security number to a randomly generated number.
 - Audit forms and procedures to determine how the data is being collected and handled.
 - Eliminate any unnecessary collection and transmission of data.
 - Use social security numbers only for required and lawful purposes such as payroll reporting of employee taxes.
- Make sure there are proper protections and locks on all stored data whether stored in hard copy or electronic format.
- Properly dispose of any stored personal data that is no longer needed.
- Train all employees on the proper collection and storage of personal information collected by your department.

All Employees

Data Collection

When collecting any protected personal information from an employee or citizen, implement and maintain reasonable safeguards to protect the security and confidentiality of the information. This also includes the proper disposal of information.

- Be knowledgeable of agency safeguards and follow all procedures and processes established to protect information assets and personal information.
- Protect personal information from unauthorized viewing.
- Properly secure personal information both when in use and when stored. This includes when filed electronically or in printable format (such as paper, discs, removable storage devices).
- Obtain written permission to transport personal information outside of the physical boundaries of City facilities. This includes not storing data on portable computers or storage devices that will be taken outside of City facilities, unless there is a business necessity for doing so such as the use of mobile data terminals in Police cars.
- Encrypt personal information when appropriate and feasible.
- Have a valid business purpose to send personal information over the network. Only use secure networks to transmit information.

- Have prior written approval to download personal information to any portable or removable device.
- Only use the last 4 numbers of an identifying document when possible. For example, only record the last 4 digits of the ID (such as driver's license) presented when notarizing someone's documents.
- Do not print Social Security numbers on cards or documents mailed or publicly displayed or otherwise post a social security number. Exceptions include requirements to complete and process W2s, W4s, and other records that are required by law to be made available to the public, for use of internal verification or administrative processes, for legal requirements, or for enforcing a judgment or court order.
 - Other exceptions include: Rules adopted by the courts and copies of records possessed by a court, the State court Administrator or the Secretary of State.

Specific Program Elements and Confidentiality

For the effectiveness of the ITPP, the Red Flag Rule envisions a degree of confidentiality regarding the City's specific practices relating to Identity Theft detection, prevention, and mitigation. Therefore, under this Program, knowledge of such specific practices are to be limited to the ISPC or any committee formed pursuant to the Red Flag Rules, and those employees who need to know them for purposes of identifying Identity Theft. Because this Program is to be adopted by a public body and thus publicly available, it would be counterproductive to list these specific practices here. Therefore, only the Program's general Red Flag detection, implementation and prevention practices as specifically required by the Red Flag Rules are shown in this document.

II. ITPP IMPLEMENTATION

This ITPP was developed with oversight and approval of the Milwaukie City Council. It is the policy of the City of Milwaukie to protect personal information by complying with the legal authorities acknowledged above. After consideration of the size and complexity of the City's utility services operations and account systems (the "Utility"), in conjunction with the security procedures implemented earlier in response to State of Oregon and Federal rules, and particularly the nature and scope of the Utility's activities, the City Council determined that this Program was appropriate for the City of Milwaukie, and therefore adopted this Program on April 21, 2009.

A. Fulfilling Requirements of the Red Flags Rule

Under the Red Flag Rule, every financial institution and creditor, in this case the City of Milwaukie as a provider and collector of fees for certain utilities, is required to establish an "Identity Theft Prevention Program" tailored to its size, complexity and the nature of its operation. Each Program must contain reasonable policies and procedures to:

1. Identify relevant Red Flags for new and existing covered accounts and incorporate those Red Flags into the Program;
2. Detect Red Flags that have been incorporated into the Program;
3. Respond appropriately to any Red Flags that are detected to prevent and mitigate Identity Theft; and
4. Ensure the Program is updated periodically, to reflect changes to customers or to the safety and soundness of the creditor from Identity Theft.

B. Red Flags Rule Definitions Used in This Program

“Identity Theft” and “Personal or Identifying Information” are defined at the beginning of this document under I. IMPLEMENTATION. Definitions.

According to the Red Flags Rule, a municipal utility is a creditor subject to the Rule requirements. The Rule defines creditors “to include finance companies, automobile dealers, mortgage brokers, utility companies, and telecommunications companies. Where non-profit and government entities defer payment for goods or services, they, too are to be considered creditors.”

All the Utility’s accounts that are individual utility service accounts held by customers of the utility whether residential, commercial or industrial are covered by the Rule. Under the Rule, a “covered account” is:

1. Any account the Utility offers or maintains primarily for personal, family or household purposes, that involves multiple payments or transactions; and
2. Any other account the Utility offers or maintains for which there is a reasonably foreseeable risk to customers or to the safety and soundness of the Utility from Identity Theft.

“Identifying Information” is defined above under Definitions, Personal or Identifying Information”.

III. IDENTIFICATION OF RED FLAGS.

In order to identify relevant Red Flags, the Utility considers the types of accounts that it offers and maintains, the methods it provides to open its accounts, the methods it provides to access its accounts, and its previous experiences with Identity Theft. The Utility identifies the following red flags, in each of the listed categories:

A. Notifications and Warnings from Credit Reporting Agencies

Red Flags

1. Report of fraud accompanying a credit report;
2. Notice or report from a credit agency of a credit freeze on a customer or applicant;
3. Notice or report from a credit agency of an active duty alert for an applicant; and
4. Indication from a credit report of activity that is inconsistent with a

customer's usual pattern or activity.

B. Suspicious Documents

Red Flags

1. Identification document or card that appears to be forged, altered or inauthentic;
2. Identification document or card on which a person's photograph or physical description is not consistent with the person presenting the document;
3. Other document with information that is not consistent with existing customer information (such as if a person's signature on a check appears forged); and
4. Application for service that appears to have been altered or forged.

C. Suspicious Personal Identifying Information

Red Flags

1. Identifying information presented that is inconsistent with other information the customer provides (example: inconsistent birth dates);
2. Identifying information presented that is inconsistent with other sources of information (for instance, an address not matching an address on a credit report);
3. Identifying information presented that is the same as information shown on other applications that were found to be fraudulent;
4. Identifying information presented that is consistent with fraudulent activity (such as an invalid phone number or fictitious billing address);
5. Social Security number presented that is the same as one given by another customer;
6. An address or phone number presented that is the same as that of another person;
7. A person fails to provide complete personal identifying information on an application when reminded to do so (however, by law Social Security numbers must not be required);
8. A person's identifying information is not consistent with the information that is on file for the customer.

D. Suspicious Account Activity or Unusual Use of Account

Red Flags

1. Change of address for an account followed by a request to change the account holder's name;
2. Payments stop on an otherwise consistently up-to-date account;
3. Account used in a way that is not consistent with prior use (example: very high activity);
4. Mail sent to the account holder is repeatedly returned as undeliverable;

5. Notice to the Utility that a customer is not receiving mail sent by the Utility;
6. Notice to the Utility that an account has unauthorized activity;
7. Breach in the Utility's computer system security; and
8. Unauthorized access to or use of customer account information.

E. Alerts from Others

Red Flags

1. Notice to the Utility from a customer, Identity Theft victim, law enforcement or other person that is has opened or is maintaining a fraudulent account for a person engaged in Identity Theft.

IV. DETECTING RED FLAGS

A. New Accounts

In order to detect any of the Red Flags identified above associated with the opening of a **new account**, Utility personnel will take the following steps to obtain and verify the identity of the person opening the account.

Detect

1. Require certain identifying information such as name, date of birth, residential or business address, principal place of business for an entity, driver's license or other identification;
2. Verify the customer's identity (for instance, review a driver's license or other identification cards);
3. Review documentation showing the existence of a business entity; and
4. Independently contact the customer.

B. Existing Accounts

In order to detect any of the Red Flags identified above for an **existing account**, Utility personnel will take the following steps to monitor transactions within an account:

Detect

1. Verify the identification of customers if they request information (in person, via telephone, via facsimile, via email);
2. Verify the validity of requests to change billing addresses; and
3. Verify changes in banking information given for billing and payment purposes.

V. PREVENTING AND MITIGATING IDENTITY THEFT

In the event Utility personnel detect any identified Red Flags, such personnel shall take one or more of the following steps, depending on the degree of risk posed by the Red Flag, in accordance with other department operating procedures.

Prevent and Mitigate

1. Continue to monitor an account for evidence of Identity Theft;
2. Contact the customer;
3. Change any passwords or other security devices that permit access to accounts;
4. Not open a new account;
5. Close an existing account;
6. Reopen an account with a new number;
7. Notify the Program Administrator for determination of the appropriate step(s) to take;
8. Notify law enforcement; or
9. Determine that no response is warranted under the particular circumstances.

Protect Customer Identifying Information

In order to further prevent the likelihood of Identity Theft occurring with respect to Utility accounts, the Utility will take the following steps in conjunction with its internal operating procedures to protect customer identifying information.

1. Ensure that its website is secure or provide clear notice that the website is not secure;
2. Ensure complete and secure destruction of paper documents and computer files containing customer information;
3. Ensure that office computers are password protected and that computer screens lock after a set period of time;
4. Keep offices clear of papers containing customer information;
5. Request only the last 4 digits of Social Security numbers (if any);
6. Ensure computer virus protection is up to date; and
7. Require and keep only the kinds of customer information that are necessary for utility purposes.

VI. NOTIFICATION OF A BREACH

- Employees must immediately report any suspected breach of personal information to a supervisor.
- The City must notify any affected party as to which files were affected and what personal information has been subject to a security breach.

Risk Manager and HR Director:

- In the event of a possible breach, the risk manager and HR director will in consultation with Council, investigate to determine the severity of the potential harm, including assessment of the confidential information involved, potential victims, and level of risk. An action plan will be developed based on the findings.

VII. PROGRAM UPDATES

The Program Administrator will periodically review and update this Program and if necessary internal procedures to reflect changes in risks to customers and the soundness of the Utility from Identity Theft. In doing so, the Program Administrator will consider the Utility's experiences with Identity Theft situations, changes in Identity Theft methods, changes in Identity Theft detection and prevention methods, and changes in Utility's business arrangements with other entities. After considering these factors, the Program Administrator will determine whether changes to the Program, including the listing of Red Flags, are warranted. If warranted, the Program Administrator will update the Program or present the City Council with his or her recommended changes and the City Council will make a determination of whether to accept, modify or reject those changes to the Program.

VIII. PROGRAM ADMINISTRATION

A. Oversight

Responsibility for developing, implementing and updating this Program lies with the City Manager, who will be responsible for the Program administration, for ensuring appropriate training of Utility staff on the Program, for reviewing any staff reports regarding the detection of Red Flags and the steps for preventing and mitigating Identity Theft, determining which steps of prevention and mitigation should be taken in particular circumstances and considering periodic changes to the Program.

B. Staff Training and Reports

Utility staff responsible for implementing the Program shall be trained with by or under the direction of the Program Administrator in the detection of Red Flags, and the responsive steps to be taken when a Red Flag is detected. Training will occur with designated employees on a need to know basis according to job responsibilities and be documented in the personnel file upon employment, and on an on-going basis to ensure employees are kept up-to-date on new issues. Staff will provide reports to the Program and the effectiveness of the Program.

C. Service Provider Arrangements

In the event the Utility engages a service provider to perform an activity in connection with one or more accounts, the Utility will take the following steps to ensure the service provider performs its activity in accordance with reasonable policies and procedures designed to detect, prevent, and mitigate the risk of Identity Theft.

1. Require, by contract, that service providers have such policies and procedures in place; and
2. Require, by contract, that service providers review the Utility's Program and report any Red Flags to the Program Administrator.

D. Responding to Notices of Address Discrepancies.

1. The City of Milwaukie will furnish a confirmed address to the consumer reporting agency (CRA) under the following conditions:

- The City of Milwaukie can form a reasonable belief the customer report relates to the customer in the City of Milwaukie's records.
 - The customer under review is a current customer with an active account.
 - The request involves a customer opening a new account.
 - CRA provides the request in writing.
 - Utility has established a relationship with the CRA.
2. Confirmation of address will be provided by the City of Milwaukie to CRA in writing within 14 days of request.

E. Properly Handling Reports of Suspected Identity Theft.

1. When a customer suspects Identity Theft, they must notify the City of Milwaukie in writing, completing the Federal Trade Commission ("FTC") Affidavit. Instructions for completion are a part of the form.
2. The Customer must submit a copy of affidavit with police report to the City of Milwaukie.
3. Customer Service staff will make a copy of the customer's photo ID and record the receipt of the documents.
4. Copies of the FTC affidavit, police report and photo ID will be submitted to the City of Milwaukie to ensure reporting to proper organizations.

F. Conducting Information Technology Audits to Monitor Risk for Identity Theft.

1. The City of Milwaukie will develop a Program checklist to audit and evaluate internal and external Identity Theft risk in information technology security.

G. Ensuring the Confidentiality of Medical Records.

1. The City of Milwaukie will treat all medical information pertaining to the customer as confidential.
2. Medical information is information or data, whether oral or recorded, in any form or medium, created by or derived from a health care provider or the consumer that relates to:
 - The past, present, or future physical, mental, or behavioral health care to an individual;
 - The provision of health care to an individual; or
 - The payment for the provision of health care to an individual.
3. Medical information will not be used in the determination of a customer's eligibility for services.
4. The City of Milwaukie will not release medical information to third parties.
5. Rescue squads and government entities that require the location of citizens on ventilators for planning purposes will be provided the information upon the written permission of the customer.

H. Disposal of records under protective procedures.

1. The City of Milwaukie will collect and protect documents and data through the appropriate retention periods, until the time of destruction.
 - Paper including Faxes: The exposure of customer's secured information in the office will be monitored by the City of Milwaukie management. Examples are shredding any documents containing secured information before disposal and locking documents in secured storage until disposal time.
 - Electronic records will be erased.
 - Compact disks (CDs) will be broken.
2. The City of Milwaukie will maintain records of data destruction to include content, date and method of destruction.
3. The destruction of records will be scheduled no longer than on a monthly basis to minimize possible exposure of information as well as excess storage of records.

On a continual basis, the city shall review any new regulations or criteria on the issue of Identity Theft Prevention and make any necessary changes to the rules and procedures created to detect, prevent, and mitigate Identity Theft.



TO Mayor and City Council
FROM: Cynthia Trosino, Human Resources Director
RE: City Manger's Employment Agreement
DATE: May 7, 2009

Action Requested

Approval of a corrected extension of City Manager Mike Swanson's employment agreement. Council may do so by a motion and a second.

Background

After review of the previously submitted extension to City Manger Mike Swanson's employment agreement, it was noted that the extension did not reflect the salary that has been in place since March, 2008. In addition, the language that referenced how the two additions to benefits would be "rolled into salary" created confusion. This extension does not change the salary that has been in place for the past year. The proposed bonus is again not included in the extension.

There is a need to clarify that the two benefits are in addition to the salary paid and not combined with the amount of salary. By so doing this will provide accurate guidance to the Finance Department so that the changes Council granted may be properly provided by the City.

Concurrence

The City Attorney agrees with the above stated terms. Mr. Swanson has agreed that the proposed terms are acceptable to him.

Fiscal Impact

The fiscal impact remains the same as previously noted.

Work Load Impacts

None

Alternatives

Leave the previous extension in place. This would run the risk of not accurately administering the terms of the agreement.

**Employment Agreement
Extension**

This agreement is made and entered in this ___ day of May 2009, by and between the City of Milwaukie, Oregon, a municipal corporation ("CITY") and Michael F. Swanson. ("EMPLOYEE.")

By mutual agreement the CITY and EMPLOYEE agree to extend the Employment Agreement ("Agreement") entered into on March 17, 2004 and extended by mutual consent and City Council action in each of the past three years. The Agreement will be extended for a period of one year until March 1, 2010.

All terms of the Agreement as amended by prior employment agreement extensions will remain intact in their entirety except for the sections below which will be amended, effective March 1, 2009, as follows (bolded language):

Section 4. Salary

EMPLOYEE will receive an annual base salary at the top of the salary range for city manager, as adjusted by the annual budget. As of March 1, 2009, EMPLOYEE'S salary was \$133,088. This salary may be adjusted annually as part of EMPLOYEE'S performance review. The adjustment made in 2009 adds a monthly cell phone allowance of \$75 that is rolled directly into the salary of EMPLOYEE, but not within the established salary range.

Section 5. Use of Automobile

CITY shall provide a monthly automobile allowance of \$350. The monthly automobile allowance is rolled into the salary of EMPLOYEE, but not within the established salary range

CITY OF MILWAUKIE

EMPLOYEE

Mayor Jeremy Ferguson

City Manager Michael F. Swanson

ATTEST:

City Recorder Pat Duval

APPROVED AS TO FORM:

City Attorney Tim Ramis