

REGULAR SESSION

REVISED

AGENDA

**MILWAUKIE CITY COUNCIL
SEPTEMBER 18, 2012**

MILWAUKIE CITY HALL
10722 SE Main Street

2134th MEETING

REGULAR SESSION – 7:00 p.m.

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No. |
|---|---------------------|
| 1. CALL TO ORDER | |
| Pledge of Allegiance | |
| 2. PROCLAMATIONS, COMMENDATIONS, SPECIAL REPORTS, AND AWARDS | |
| A. Green Power Challenge -- Proclamation | 2 |
| B. Constitution Week -- Proclamation | 3 |
| C. Milwaukie High School Student of the Month Maddie Odegaard | |
| 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> | |
| A. A Resolution Appointing Sine Adams as Alternate to the Planning Commission | 5 |
| B. City Council Minutes | 6 |
| 1. August 7, 2012 Regular Session | |
| 2. August 21, 2012 Work Session | |
| C. City Manager's Contract | |
| 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 <i>(Public Comment will be allowed on items appearing on this portion of the agenda following a brief staff report presenting the item and action requested. The Mayor may limit testimony.)</i> | |
| A. Residential Development Standards Code Amendments, File #ZA-11-03, CPA-11-04 (Continued from August 21, 2012) – Ordinance
Staff: Ryan Marquardt, Senior Planner | 19 |

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. **Lake Road Improvement Project** 43
Staff: Grady Wheeler, Public Affairs Coordinator
- B. **City Manager's Contract** 48
Presenter: Mayor Ferguson
- C. **Council Reports**

7. INFORMATION

8. ADJOURNMENT

Public Information

- **Executive Session:** The Milwaukie City Council may meet in executive session immediately following adjournment of the regular session pursuant to ORS 192.660(2).
- All discussions are confidential and those present may disclose nothing from the Session. Representatives of the news media are allowed to attend Executive Sessions as provided by ORS 192.660(3) but must not disclose any information discussed. No Executive Session may be held for the purpose of taking any final action or making any final decision. Executive Sessions are closed to the public.
- The Council requests that all pagers and cell phones be either set on silent mode or turned off during the meeting.

2.

PROCLAMATIONS,
COMMENDATIONS,
SPECIAL REPORTS,
AND AWARDS



2.A.

City of Milwaukie - GREEN POWER CHALLENGE

PROCLAMATION

- WHEREAS,** The City of Milwaukie is committed to sustainability throughout the community and in its own operations its responsibility to:
- Support a stable, diverse and equitable economy;
 - Protect the quality of the air, water, land and other natural resources; and
- WHEREAS,** Using electricity derived from clean energy sources like wind, solar, geothermal, and biogas is a key strategy in advancing sustainability in Milwaukie, supporting local job creation, energy security, and reduction carbon emissions, the primary cause of global climate change; and
- WHEREAS,** Residents and small business owners in the City of Milwaukie have the ability to make a difference to the quality of the environment by selecting a PGE “green power” option that reduce air pollution and reduce emissions of greenhouse gasses; and
- WHEREAS,** Milwaukie, partnering with Portland General Electric, will participate in its renewable energy program and seeks to encourage citywide participation by setting a goal of enrolling 200 new green power customers in Milwaukie between September 18, 2012 and November 20, 2012;

Now, therefore, I, Jeremy Ferguson, Mayor of the City of Milwaukie, do hereby proclaim
Tuesday, September 18, 2012, the

Green Power Challenge Kickoff

and call upon local residents and businesses to sign up for green power and to acquaint themselves with the issues involved in making our City and our Earth a healthier place to live.

Jeremy Ferguson, Mayor of the City of Milwaukie
Signed this 18th day of September 2012



2.B.

PROCLAMATION

WHEREAS, September 17, 2011, marks the two hundred twenty-fifth anniversary of the drafting of the Constitution of the United States of America by the Constitutional Convention; and

WHEREAS, it is fitting and proper to accord official recognition to this magnificent document and its memorable anniversary, and to the celebrations which will commemorate the occasion; and

WHEREAS, Public Law 915 guarantees the issuing of a proclamation each year by the President of the United States of America designating September 17 through 23 as Constitution Week,

NOW, THEREFORE, I, Jeremy Ferguson, by virtue of the authority vested in me as Mayor of the City of Milwaukie in the State of Oregon do hereby proclaim the week of September 17 through 23 as

CONSTITUTION WEEK

And ask our citizens to reaffirm the ideals the Framers of the Constitution had in 1787 by vigilantly protecting the freedoms guaranteed to us through this guardian of our liberties, remembering that lost rights may never be regained.

IN WITNESS WHEREOF, I hereunto set my hand this
18th day of September 2012.

Jeremy Ferguson, Mayor

3.
CONSENT AGENDA

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, APPOINTING SINE ADAMS AS AN ALTERNATE TO THE MILWAUKIE PLANNING COMMISSION.

WHEREAS, Council has established an alternate program for City Boards, Commission and Committees; and

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

WHEREAS, Sine Adams possesses the necessary qualifications to serve as an alternate on the Milwaukie Planning Commission.

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

SECTION 1: That Sine Adams is appointed as an alternate to the Milwaukie Planning Commission.

SECTION 2: That her term of appointment shall commence September 18, 2012 and shall expire on September 18, 2013.

SECTION 3: This resolution takes effect immediately upon passage.

Introduced and adopted by the City Council on September 18, 2012.

Jeremy Ferguson, Mayor

ATTEST:

APPROVED AS TO FORM:
Jordan Ramis PC

Pat DuVal, City Recorder

City Attorney

**CITY OF MILWAUKIE
CITY COUNCIL REGULAR SESSION
AUGUST 7, 2012**

CALL TO ORDER

Mayor Ferguson called the 2131st meeting of the Milwaukie City Council to order at 7:00 p.m. in the City Hall Council Chambers.

Present: Council President Chaimov and Councilors Dave Hedges, Joe Loomis, and Mike Miller

Staff present: City Manager Bill Monahan, City Attorney Tim Ramis, Assistant to the City Manager Teri Bankhead, City Recorder Pat DuVal, Community Development/Public Works Director Kenny Asher, Associate Planner Li Alligood, and Community Services Director JoAnn Herrigel

Media: Victoria Edwards, *The Oregonian* and Alex Blum, *The Clackamas Review*

PLEDGE OF ALLEGIANCE**PROCLAMATIONS, COMMENDATION, SPECIAL REPORTS AND AWARDS****A. Report on Phase Three Feasibility Findings Regarding the Minor League Baseball Project**

Mr. Asher provided an update on Phase Three of the minor league baseball feasibility study. City Council stated its goal of exploring the opportunity to bring minor league baseball to Milwaukie as an attractor for revitalization and adopted Resolution 46-2011 identifying the pursuit of baseball as a high priority economic development initiative. In October 2011 City Council adopted Resolution 89-2011 launching Phase One of the "Bring It Back" project and in January 2012 adopted Resolution 4-2012 accepting the Phase One feasibility reports. A 13-member Minor League Baseball Exploratory Task Force facilitated by former Oregon City Mayor Alice Norris was appointed February 2012. The City Council adopted Resolution 27-2012 in May 2012 accepting feasibility reports completed in Phase Two and authorizing staff to begin work on Phase Three tasks and objectives.

Considerable progress had been made, but now timing was critical. A replacement site for the Oregon Department of Transportation (ODOT) maintenance yard had been identified, but there was still a lot of work to accomplish on that. A team had not been secured, but a new private partner had been identified that could lead to a team. Mr. Asher reviewed discussions with the Northwest League (NWL) about bringing the Yakima Bears to the Portland metropolitan area. The decision was made to relocate the team to Hillsboro. In May the City was contacted by representatives of the college summer ball West Coast League (WCL), and Mr. Asher described League. He attended a Corvallis Knights game with his family to get an idea of what the League was like.

Mr. Asher gave a brief overview of the decisions that would have to be made in order to put a money measure on the November 2012 General Election ballot. He provided a rendering of a 2,000 seat ballpark that would accommodate the WCL. It was located only on the ODOT site which was smaller and less expensive and would not require acquisition of other adjacent properties.

Steve Flood of Nonbox, a branding, advertising, and marketing agency, discussed the WCL. He was of the opinion that Milwaukie would be a great location for this platform of

affordable family fun. There had been about a 58% increase in attendance last year in the League. Standard ticket prices were \$5 - \$10, and there was no charge for parking.

Mr. Asher requested that the City Council accept Phase Three findings and provide direction to staff related to the fourth and final feasibility phase. The cost of Phase Four would be capped at \$5,000 that included the components of working with the WCL to put together an ownership group, negotiate development and operating agreement term sheets with the WCL, updating the design and facility uses based on a smaller facility, updating the economic impact analysis, preparing a ballot measure for a General Obligation (GO) bond, and executing a purchase and sale agreement with ODOT.

Mayor Ferguson called for public comment.

Angel Falconer, Ardenwald resident and Task Force member, spoke on her own behalf in support of baseball in Milwaukie. She felt baseball was still feasible and the objectives attainable. The notion of the multi-use facility was not posed against other City projects like Riverfront Park. It seemed to her that *The Oregonian* had promoted a false competition between the Cities of Hillsboro and Milwaukie and that Milwaukie was the loser. She thought the Portland metropolitan area could support two teams.

Matt Rinker, Ardenwald resident and Task Force member spoke on his own behalf and provided neutral comments. The City would need to work carefully to achieve the same kind of goals with a scaled back ballpark and college team players. Baseball was a way to bring money to and interest in the City of Milwaukie. Even with a scaled back project the City could still have that gateway gem and could foster community events. Not all of the data was in to make a careful decision on how this type of project would help meet the goal of enhancing economic vitality.

Mary King, Milwaukie, spoke in opposition to continuing. She suggested the City Council shelve this project and pursue those which addressed the broader community such as Riverfront Park and sidewalks. She urged that the City Council stop the process at this time and get on with the business of Milwaukie's going forward in a broader manner. She added that as an Ardenwald resident, she was concerned about the impact to the neighborhood.

John Fox, Budget Committee member and Task Force member provided his opinion as well as those with whom he had spoken. He had originally supported the project but not after Hillsboro obtained a team. He was opposed to going forward and did not wish to spend more money or put it on the ballot where he thought it would fail.

Jim Sanders, Ardenwald resident, spoke in opposition to continuing. Nearly \$200,000 had been spent to date out of the general fund along with the money spent on the light rail boondoggle. The Dogwood City would soon become the deadwood city. If a GO bond did not pass, then he felt the City Council would tell the public it would be built anyway. Stop the bleeding of money and the insanity.

Jean Baker, Milwaukie, spoke in opposition to continuing on behalf of the Historic Milwaukie Neighborhood. It looked like millions chasing thousands. There are good projects on the board like to Riverfront Park and Library expansion. If a measure went on the ballot it would not be approved. The area already had Skavone Field. She recommended dressing up our pretty little town.

Lisa Batey, Island Station Neighborhood, spoke as an individual in opposition to continuing. She commended the City for exploring use of key property in the North Industrial Area and attracting new faces to the Task Force. It was, however, time to bring the feasibility studies to an end. Rather than committing more public resources to the effort, let potential developers and business owners come forward. She read a list of items that had been on the City's list of crucial things to do to spur downtown

development. She would wholeheartedly support a ballot measure for these projects. She recommended stopping the process while staying informed.

Terry Cach, Milwaukie business owner whose property would have been impacted with the larger development, recommended that the City Council stop spending money. There was no team by the agreed upon Council imposed July 31 deadline.

Ed Parecki, Milwaukie business owner, spoke in opposition to continuing. About 12 years ago the City spent \$400,000 on a Downtown Plan and has now spent at least \$160,000 on baseball feasibility. The City did not have a team by the July 31 deadline. The City already made a \$5 million commitment for light rail. The study showed a stadium was not feasible, and he questioned knowingly entering into something that would not make money. He urged that the City Council stop spending money on plans that did not pan out.

Brian Dorr, Ardenwald resident, spoke in opposition to continuing. He agreed the decision should be made by the voters, but lately it looked like Milwaukie would not get a Single A team. He appreciated the City Council and Task Force for going through the process, but it just did not look very feasible any longer. He suggested using any remaining funds to print *The Pilot* again.

Councilor Hedges expressed concern about the purchase of a site for ODOT and the cost. Would the City be committing to purchasing a site for ODOT prior to a November ballot measure if the City Council approved the proposed resolution?

Mr. Asher said it would cost approximately \$5 million to buy property and move ODOT and would happen prior to the election. The current ODOT site had been appraised at \$2 million. The proposed resolution authorized continued discussions with a report back to the City Council for a decision.

Councilor Miller had a question related to Phase Four costs and workload impacts to community development staff and other departments. He asked the source of the \$10 million estimate for the scaled back ballpark.

Mr. Asher replied it was hard to quantify staff time, but there were consultants working on the ODOT relocation and pursuing potential funders. 360 Architecture provided the estimate for the smaller ballpark.

Councilor Loomis asked Mr. Asher to describe his experience at the Corvallis Knight's game he recently attended.

Mr. Asher responded it was a quality baseball game, and he enjoyed the community and family experience. The stadium was nicely done with comfortable seating. WCL presented itself well and had enthusiastic young players.

Councilor Loomis observed this project had always been about family and community and was a City Council directive and not staff driven. His vote was not predetermined, and he always listened. This project was about Milwaukie not baseball. The City Council had invested \$160,000 on these studies, and he felt the site was still a great location. Even if baseball did not move forward now, it was determined the site would work in the future if the opportunity arose. He felt the site could still achieve the goals, and he would vote to continue.

Councilor Chaimov felt the process had been done professionally. He appreciated that Mr. Fox had stated why his opinion of the project had changed.

Mayor Ferguson felt the relationship with ODOT has improved, and without the money being spent on this project, the parties would not have had the same level of understanding. He saw it as a huge relationship building opportunity. He briefly

reviewed the options before City Council and asked Mr. Asher what could be done successfully in the North Industrial Area.

Mr. Asher replied the vision for that area was being considered in the Tacoma Station Planning effort. In terms of the North Industrial Area, as Ms. Batey had astutely observed, it was a combination of the City Council's assertiveness plus the vision. There were no calls from developers interested in the site; the market was not there yet. It was important to continue doing things to draw attention to the community in order to make things happen. He noted the filing deadline for a November ballot measure. He recommended using the little time left to see if a deal could be galvanized.

Councilor Hedges understood Mr. Asher was doing what the City Council had asked and was amazed at what had been achieved in a relatively short period of time.

Councilor Loomis added the study gave credibility to the City Council with the community and potential investors. He was pleased with how the process had been conducted.

Councilor Hedges said when the project started it was not to bring baseball to Milwaukie but to bring in new revenue streams. He related his conversations with the Walla Walla Sweets. At the point where the project was not financially feasible, the process would stop. The WCL was second best, and the NWL was just about feasible. The question should go to a vote of the people. The WCL was a much smaller operation, and the City would be building a stadium half the size. No one has built a stadium for a collegiate team. The adopted resolution said if the City had not identified a team by July 31 then the process would stop. He would vote "no" based on that.

It was moved by Councilor Chaimov to amend the resolution Phase Four process by: deleting (1) securing a commitment from an investor group...; amending to read (2) update the multi-use facility design, size...; (3) no change; and amending to read (4) Present Council with real estate agreements that will facilitate....

Councilor Miller echoed Councilor Hedges' comments. He spent a long time researching the Corvallis Knights and determined competing interests in the Portland area would result in low attendance. He commended all those involved on the quality process, but with the conditions of the previous adopted resolution, he would not be voting in favor of the proposed resolution. He did not see it as a revenue generating project, and it was time to do things to accomplish what the City Council set out to do.

Councilor Loomis saw this as being similar to the Winterhawks. He did not see baseball as a revenue generator but rather as a way to attract development.

Councilor Loomis seconded the motion.

Mayor Ferguson agreed the proposal had changed. He would like to move forward with Phase Four and not spend more than \$5,000.

Mr. Asher understood he was to refrain from working with an investor group and the WCL at this time.

Councilor Chaimov did not feel the City should look for an investor group until there was data on the feasibility of smaller facility. Further, the City Council had not made the decision on a ballot measure. It may look at the study information and determine it would not work.

Motion passed with the following vote: Councilors Loomis and Chaimov and Mayor Ferguson voting "aye" and Councilors Miller and Hedges voting "no." [3:2]

RESOLUTION NO. 48-2012:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, FINALIZING PHASE THREE OF THE MINOR LEAGUE BASEBALL FEASIBILITY STUDY AND DIRECTING STAFF TO UNDERTAKE ACTIVITIES COMPRISING A FOURTH FEASIBILITY PHASE.

CONSENT AGENDA

It was moved by Councilor Chaimov and seconded by Councilor Miller to adopt the consent agenda as presented.

A. Resolution 49-2012: A Resolution of the City Council of the City of Milwaukie, Oregon, appointing Wilda Parks to the Planning Commission; and

B. City Council Minutes of:

- 1. June 19, 2012 Work Session;**
- 2. July 3, 2012 Work Session;**
- 3. July 17, 2012 Work Session; and**
- 4. July 17, 2012 Regular Session**

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

AUDIENCE PARTICIPATION

Vince Alvarez, Milwaukie, spoke in opposition to the use of trains to move coal to the Port of Coos Bay. There would be no benefit to Milwaukie, and the only reason for this method would be to help corporations make more money. He had seen first-hand what devastation coal mining could cause and encouraged the Milwaukie City Council to formally oppose the proposal.

Jean Baker, Milwaukie, provided neutral comments on the coal train matter. She hoped the City would have a large public meeting on this matter. The comments made during the work session gave her great hope, and she was placing trust in the way this would play out. Some key points missed were health and environmental impacts. It did not matter what the Port of Coos Bay was doing, and it would be free in the future to expand. Soil tests along these types of tracks show 20% coal. She was also concerned about state and local taxes.

PUBLIC HEARING

A. Comprehensive Plan Amendment, North Clackamas Park North Side Master Plan, File CPA-10-01 – Ordinance

Mayor Ferguson called the public hearing on the legislative Comprehensive Plan amendment, File #CPA-10-01 initiated by the North Clackamas Parks and Recreation District to order at 8:50 p.m.

The purpose of the hearing was to consider an ordinance to adopt proposed amendments to the Comprehensive Plan that include the North Clackamas Park North Side Master Plan as an ancillary document.

This was a legislative decision by the City Council based on statewide planning goals, applicable federal or state laws and rules, applicable plans and rules adopted by Metro, applicable City Comprehensive Plan policies, and applicable provisions implementing ordinances.

Mayor Ferguson reviewed the order of business. The City Council decision was the final decision of the City. All testimony and evidence had to be directed toward the

applicable substantive criteria. Failure to address a criterion or raise any issue with sufficient detail would preclude an appeal based on that criterion or issue. Any party with standing could appeal the decision of the City Council to the State Land Use Board of Appeals according to the rules adopted by that Board. Persons with standing were those who submitted written comments or testified and signed the City Council Attendance sign-up sheet.

Conflicts of interest: Councilor Loomis announced he was an employee of the North Clackamas Parks and Recreation District and recused himself.

Challenges: There were no challenges to any Council member's ability to participate in the decision.

Staff Report

Ms. Alligood provided the staff report. The subject site was at 5440 SE Kellogg Creek Drive. The property was owned by the City of Milwaukie and managed by the North Clackamas Parks and Recreation District (NCPRD). She gave a brief overview of the application and the elements of the Plan being proposed for the north side of the North Clackamas Park and bounded by Camas Creek. She reviewed the amenities on the south side of the Park. The north side of the park was subject to a number of local, regional, and federal regulations related to natural resource protection, waterways, flood plain development, and habitat conservation. Most of the site was in the FEMA 100 Year Flood Plain, and the entire north side was mapped Habitat Conservation Area (HCA). In the absence of a master plan, each land use application was reviewed individually. The proposed master plan would provide a framework for future development certainty for the community and City and District staff when land use applications were considered. She reviewed the decision making options.

Correspondence

Ms. Alligood provided a letter dated July 26, 2012, from North Clackamas Park Stewardship Committee Chair Anthony Clark in support of the Comprehensive Plan Amendment.

Applicant Presentation

Michelle Healy and **Katie Dunham**, North Clackamas Parks and Recreation District, provided a context for the application and historical relationship between the City and the District. The area north of Camas Creek, where the Milwaukie Center was located, was an opportunity to create a passive recreation setting. The area south of the Creek included multiple sports fields, an equestrian facility, Sara Hite Rose Garden, and parking areas.

In 2007 the Milwaukie Park and Recreation Board (PARB) requested a master plan for the north side of the Park that would provide guidance for the City and the District staffs in future land use applications. She provided information on community involvement meetings and showed a slide of the conceptual plan to upgrade existing features and provide for passive recreation and educational opportunities.

Testimony in support

Anthony Clark, Clackamas, spoke in support of the Comprehensive Plan Amendment. He represented dog owners on the Stewardship Committee and hoped to see quality development of the north side of the Park as had occurred on the south side.

Barbara Grigsby, Milwaukie, spoke in support of the Comprehensive Plan Amendment. The Park was one of the community's greatest assets and was a beautiful piece of property. She considered it a quality of life investment and was pleased with the changes she saw being made. She urged maintaining and improving the dog park.

Dick Shook, Clackamas County, spoke in support of the Comprehensive Plan Amendment. This plan with few exceptions promoted passivity of the north side of the park. The fencing to protect the natural areas would be split rail compatible with the surroundings. He hoped to see the improvements come to fruition.

Ms. Herrigel, Community Services Director, addressed PARB support of the Master Plan adoption.

Neutral Testimony

None.

Testimony in opposition

None.

Close Public Hearing

It was moved by Councilor Chaimov and seconded by Councilor Miller to close the public testimony portion of the hearing. Motion passed with the following vote: Councilors Miller, Chaimov, and Hedges and Mayor Ferguson voting “aye.” [4:0]. Mayor Ferguson closed the public hearing at 9:24 p.m.

Decision by Council

It was moved by Councilor Miller and seconded by Councilor Chaimov for the first and second readings by title only and adoption of the ordinance distributed at the work session amending the City of Milwaukie Comprehensive Plan by adopting the North Clackamas Park North Side Master Plan as an ancillary document – File CPA 10-01. Motion passed with the following vote: Councilors Miller, Chaimov, and Hedges and Mayor Ferguson voting “aye.” [4:0]

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

Ms. DuVal polled the Council: Councilors Miller, Chaimov, and Hedges and Mayor Ferguson voting “aye.” [4:0]

ORDINANCE 2049:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, AMENDING THE CITY OF MILWAUKIE COMPREHENSIVE PLAN AS AN ANCILLARY DOCUMENT (FILE #CPA-10-01)

Mayor Ferguson read the Land Use Board of Appeals (LUBA) information.

Councilor Loomis returned to the meeting.

OTHER BUSINESS

A. Expedited Annexation of Property Located at 9950 SE Wichita File #A-12-02 – Ordinance

Ms. Alligood presented the staff report in which the City Council was requested to approve the expedited annexation of property located at 9950 SE Wichita with findings. The site was composed of two properties under the same ownership. The owners would like to annex both properties to allow for sewer connection and future lot division.

Annexation would result in the application of a Low Density (LD) land use designation and a Residential (R-10) zoning designation, amendments to the City Land Use Map and Zoning Map to reflect the City’s new boundary and new land use and zoning designations, and withdrawal of the property from the Clackamas County Service District for Enhanced Law Enforcement and Clackamas County Service District No. 5

for Street Lights. All City departments, necessary parties, interested persons, and residents and property owners within 400 feet of the subject site were notified. The City did not receive comments from any necessary parties with objections to the proposed annexation.

It was moved by Councilor Chaimov and seconded by Councilor Loomis for the first and second readings by title only and adoption of the ordinance annexing tracts of land identified as 9950 SE Wichita Street into the City limits of the City of Milwaukie and withdrawing the tracts from the territory of Clackamas County Service District for Enhanced Law Enforcement and Clackamas County Service District No. 5 for Street Lights, File A-12-02. Motion passed with the following vote: Councilors Loomis, Miller, Chaimov, and Hedges and Mayor Ferguson voting “aye.” [5:0]

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

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

ORDINANCE 2050:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, ANNEXING TRACTS OF LAND IDENTIFIED AS 9950 SE WICHITA STREET INTO THE CITY LIMITS OF THE CITY OF MILWAUKIE AND WITHDRAWING THE TRACTS FROM THE TERRITORY OF CLACKAMAS COUNTY SERVICE DISTRICT FOR ENHANCED LAW ENFORCEMENT AND CLACKAMAS COUNTY SERVICE DISTRICT NO. 5 FOR STREET LIGHTS (FILE #A-12-02)

B. Bid Award for Construction of Phase 1 of Riverfront Park – Resolution

Ms. Herrigel provided the staff report in which the City Council was requested to authorize the City Manager to sign an agreement with Subcom Excavation and Utilities LLC for the construction of Phase 1 of Milwaukie Riverfront Park (Klein Point) in the amount of \$272,435.50. She reviewed the bid process and noted most of the project’s costs were covered by a grant from Metro.

Gary Klein, Milwaukie, spoke in support of this long-awaited project.

It was moved by Mayor Ferguson and seconded by Councilor Loomis to adopt the resolution authorizing the City Manager to sign an agreement with Subcom Excavation and Utilities LLC for the construction of Phase 1 of Milwaukie Riverfront Park (Klein Point) for the amount of \$272,435.50. Motion passed with the following vote: Councilors Loomis, Miller, Chaimov, and Hedges and Mayor Ferguson voting “aye.” [5:0]

RESOLUTION 50-2012

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, AUTHORIZING THE CITY MANAGER TO SIGN AN AGREEMENT WITH SUBCOM EXCAVATION AND UTILITIES LLC FOR THE CONSTRUCTION OF PHASE 1 OF MILWAUKIE RIVERFRONT PARK (KLEIN POINT) FOR THE AMOUNT OF \$272,435.50

C. Council Reports

Mayor Ferguson and Councilors reported on meetings they had attended on behalf of the City and announced upcoming events. Included in their comments were expressions of appreciation to those involved with the 2012 Festival Daze.

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 be reconvening.

ADJOURNMENT

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

Mayor Ferguson adjourned the regular session at 9:41 p.m.

Respectfully submitted,

Pat DuVal, Recorder

MINUTES
MILWAUKIE CITY COUNCIL WORK SESSION
AUGUST 21, 2012

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

Council Present: Council President Chaimov and Councilors Dave Hedges, Mike Miller; and Joe Loomis

Staff Present: City Manager Bill Monahan, City Attorney Tim Ramis, Community Services Director JoAnn Herrigel, Assistant to the City Manager Teri Bankhead, Community Development and Public Works Director Kenny Asher, Finance Director Casey Camors, and Assistant Finance Director Rina Byrne

Media: Victoria Edwards, *The Oregonian*

Community Development and Planning Active Projects

Mr. Asher reviewed the Planning code amendments.

Council President Chaimov suggested a discussion of what the desired results might be before starting the projects.

Mayor Ferguson thought it would be beneficial to move quickly.

Mr. Asher agreed it would be important for the City Council to be clear in what it wanted and thereby limiting the scope when possible. He would ask Mr. Siegel to provide a review for the City Council at the next study session.

City Manager's Report

Mr. Monahan reviewed the evening's agenda.

Mayor Ferguson recommended pulling the baseball matter from the agenda and make some comments. **Councilor Hedges** preferred that the matter stay on the agenda for discussion.

Discussion of City Attorney Review

Mr. Monahan reminded the City Council of the upcoming City Attorney review at the next study session and asked if there were any Mayor and Council input.

PGE Green Power Challenge

Thor Hinckley and **Annette Mattson**, PGE, provided background material on the Clean Wind Award Levels and reviewed the benefits of participating. It was a strong way of showing the City's commitment to the environment.

Mayor Ferguson personally supported going into the Bronze Level of Clean Wind Awards if funds were available in the amount of \$1,650 annually.

Mr. Hinckley said the first step was the City's moving forward, and the second step was a challenge to Milwaukie citizens to participate. He suggested a proclamation be prepared for a September Council meeting that would be used in October during the citizen portion of the program. The Challenge would end in December with a presentation by an Environmental Protection Agency (EPA) official.

Update on Interim Rate Implementation and Business Registration Information

Ms. Camors and **Ms. Byrne** discussed the utility rate implementation process that included Citizens Utility Advisory Board (CUAB) discussions followed by a recommendation to the City Council in February 2012. The Board recommended, based on Capital Improvement Plan (CIP) discussions, a 7% stormwater rate increase and a 7% wastewater rate increase that did not address potential additional treatment costs from Clackamas County Service District (CCSD#1). Further, in March 2012 the Board recommended a 17.1% water rate increase based on fund projections. These rates were adopted by the Budget Committee and City Council in the 2013 – 2014 biennial budget.

Ms. Camors reviewed the discussions with CCSD#1 and the May 2012 memorandum of understanding (MOU) between the City and CCSD#1. The combination of the equivalent dwelling unit (EDU) count and rate resulted in an estimated \$1.2 million increase in FY 2013 treatment costs. It was evident a rate analysis was needed. She briefly reviewed the projections and spend down of reserves. It was necessary to bring in more revenue to meet the costs and maintain a healthy fund balance for the future. The rate analysis was expected to be completed for City Council adoption in January 2013. Outreach was done to explain overall rate increases to typical residential customers. Additionally new winter averages were applied in June. Overall many utility bills went up, and she summarized customer feedback. She provided a chart of comparable rates in the region.

The group discussed Tri-City costs, and Mayor Ferguson asked that Happy Valley and Gladstone be added to the list of comparables. **Council President Chaimov** noted he had received a message from a constituent suggesting doing business in a different way.

Councilor Miller asked why Milwaukie had the highest surface water rate.

Mayor Ferguson believed staff was following City Council direction on separating surface water from wastewater.

Ms. Camors addressed the questions related to information on business licenses being available to the public. She explained the Finance Department had implemented a waiver system to business license registrants based on City Attorney feedback. She read the section of the Milwaukie Municipal Code based on Oregon Revised Statutes.

Councilor Hedges discussed the reasons the neighborhoods might want this information which had mostly to do with retail purposes.

Mr. Monahan said the code language could be modified if disclosure were in the public interest. A majority of the concerns had to do with home occupations.

Council President Chaimov would prefer that the policy was one of disclosure unless the information needed to be held confidential.

Mayor Ferguson could see reasons why some businesses would not want their information released. He suggested structuring it in a way that the home occupations could opt out.

Councilor Miller said it was a public record and understood why the neighborhoods wanted the information.

Councilor Loomis thought it much ado about nothing and said he had no issue with disclosure.

Mr. Monahan said staff would come back with examples from other municipal codes and a recommendation for the City of Milwaukie.

Mayor Ferguson provided an update on the work he had done on coal trains. He met last week with the Milwaukie Coal Train Task Force as well as David Koch, Chief Executive Officer of the Port of Coos Bay. He suggested a work session update on September 4 and a conversation with Mr. Koch at the September 25 study session.

The group discussed the quiet zone program, and **Council President Chaimov** suggested the Finance Department staff come up with funds to complete them as quickly as possible. The Mayor and Council discussed hours of operation and the feasibility of covered coal cars. **Councilor Miller** thought it would be important to take a hard look at the Linwood and Harmony crossing.

Mayor Ferguson adjourned the work session at 6:58 p.m.

Pat DuVal, Recorder

5.
PUBLIC HEARING



Agenda Item: 5.A
Meeting Date: 09/18/12

COUNCIL AGENDA ITEM SUMMARY

Issue/Agenda Title: Residential Development Standards (File #ZA-12-03, CPA-11-04)

Prepared By: Ryan Marquardt, Senior Planner
Dept. Head Approval: Scot Siegel, Interim Planning Director
City Manager Approval: Bill Monahan, City Manager
Reviewed by City Manager: 9/6/12

ISSUE BEFORE THE COUNCIL

Adoption of the code amendments resulting from the Residential Development standards update project.

STAFF RECOMMENDATION

Approve the proposed code amendments for File #ZA-11-03 and CPA-11-04.

KEY FACTS & INFORMATION SUMMARY

This item is a continuation of Council's first hearing on August 21, 2012. Staff has developed alternatives for questions that Council raised regarding detached accessory dwelling units and single-family design standards for Council's consideration.

OTHER ALTERNATIVES CONSIDERED

Alternatives on key issues are covered in the staff report, and will be discussed at the hearing. Council may adopt the amendments if options in the staff report are suitable. A continuation may be necessary if other edits are required.

CITY COUNCIL GOALS

N/A

ATTACHMENT LIST

1. Alternatives for detached accessory dwelling units – Subsection 19.910.1
2. Alternatives for single-family design standards – Subsection 19.505.1
3. Edits to other code sections
4. Revised findings of approval

FISCAL NOTES

Resources required for reprinting code, updating city forms and informational material



To: Mayor and City Council

Through: Bill Monahan, City Manager

From: Kenny Asher, Community Development & Public Works Director
Scot Siegel, Interim Planning Director
Ryan Marquardt, Senior Planner

Subject: Residential Development Standards Code Amendments (File #ZA-11-03, CPA-11-04)

Date: September 12, 2012, for September 18, 2012, Regular Session

ACTION REQUESTED

Approve the proposed code amendments for File #ZA-11-03 and CPA-11-04 as presented in the August 21, 2012 City Council packet, with the revisions presented in the attachments to this report.

HISTORY OF PRIOR ACTIONS AND DISCUSSIONS

August 2012: City Council held its first hearing on the proposed code amendment. The hearing was continued to September 18, 2012 to allow staff time to develop alternatives on some issues.

July 2012: Briefing at a Study Session on the contents of the proposed code amendments in preparation for the initial hearing on the amendments in August 2012.

January 2012: Key issues in the Residential Development Standards project were presented to City Council at a study session.

September 2011: Briefing on the proposed multifamily development and design standards were presented at the City Council worksession.

June 2011: Joint Council/ Planning Commission discussion of the Residential Development Standards Project, focusing on the public involvement to date and preliminary recommendations for single family home design.

February 2011: During a joint meeting to discuss the Planning Commission work plan, City Council requested that the two groups meet more frequently to discuss major initiatives. During its discussion of Council Goals for the coming fiscal year, the Council identified the Residential Development Standards project as one which should be discussed with the Commission long before the final proposal enters the public hearing process.

March 2010: City Council approved an Intergovernmental Agreement between the City and the State of Oregon that commits the state to funding \$50,000 in consultant time and the City to providing staff time, to prepare draft code amendments based on priorities that were identified in the 2009 Smart Growth Code Assessment Final Report. The first phase of the project resulted in the Land Use and Development Review Tune Up amendments (which Council adopted in March 2011). The second phase is the Residential Development Standards project, which will result in a package of proposed amendments to be considered in late 2011.

October 2009: Staff presented the 2009 Smart Growth Code Assessment Final Report to Council. Council concurred with the code amendment priorities identified in the report and requested that staff move forward with the next phase of the project.

BACKGROUND

At the August 21, 2012 hearing, Council directed staff to explore alternative approaches on the following topics:

- Detached accessory dwelling units (ADUs) and notification of neighboring properties, and,
- Exceptions to design standards for single-family dwellings in difficult or unusual circumstances.

Pursuant to that direction, staff has gathered additional information on these topics and developed the alternative approaches described below.

Notice for Detached ADUs

Council expressed a desire to have more notification for nearby properties when a detached ADU is proposed. In considering this issue, the Planning Commission recommended an approach that would require a higher level of notice and review for ADUs that have a potential for greater impacts, while allowing a more streamlined review where fewer impacts would be likely. Staff believes this is an appropriate approach for permitting ADUs in that it provides notice in situations where there are likely to be impacts.

The proposed amendments would allow a 1-story, 600 sq ft ADU through a Type I review without public notice if it meets the required setbacks for a primary structure.

In most residential zones, the setback is 5-10 ft from a side lot line and 20 ft from a rear lot line. ADUs that are larger in height or area, or that have reduced setbacks would be subject to a review that requires notice to surrounding properties and considers public comments in the decision. An attached ADU that is a conversion of existing space in a dwelling or an addition to an existing dwelling would be subject to Type I review.

For comparison, staff found that detached ADUs in Clackamas County, Oregon City, Tigard, Lake Oswego, West Linn and Portland are either allowed outright or are subject to minor administrative review without public notice. Gresham was the only city found that requires Type II review for an ADU.

Staff proposes 2 alternatives for Council's consideration with regard to ADUs and notice requirements. See Attachment 1. Both options include notice for nearby properties, with the key difference being the standing of neighbors to comment on or appeal the proposal.

- Option A: Notice to Neighbors with a Type I Review

This option would add notification to adjacent property owners when a smaller ADU is proposed (1-story, 600 sq ft or less, and meets setbacks for a primary structure). The notice would occur at the time a complete land use application is received. The other proposed standards and procedures for ADUs would not be revised.

This approach allows for notice in a manner that does not increase time or incur more than minor administrative costs to the city (<\$50) for processing the application. Adjacent property owners would be aware of what is being developed before work begins. This can allow time for the neighboring property owner to take measures on their own property to preserve privacy, such as installing accessory structures, fences, or planting vegetation. This option does not allow neighboring properties a formal opportunity for comment on the proposal or the ability to appeal the decision.

- Option B: Type II review for all detached ADUs

This option would result in reviewing all detached ADUs through a Type II process. A Type II review includes:

- Notice posted on-site
- Notice mailed to property owners within 300 ft
- Public comment period of at least 14 days
- Review against criteria for ADU placement and privacy impacts
- Broader standing to appeal a decision to the Planning Commission
- \$1,000 application fee

This option would not have any impact on the level of review proposed for larger ADUs. For smaller ADUs, this option would incur an \$800 increase in application fees require another month of review time compared to the Type I review process

currently proposed. Selecting this option enacts a policy that all nearby property owners have standing to make comments and to appeal whenever a detached ADU is proposed.

Staff believes that this issue of notification should be resolved as part of these code amendments, and not delayed for future consideration. The RDS project revealed broad support for detached ADUs, and this has been a key issue in the project from the outset. Some notable indicators of support are: 48% of 83 respondents to a project survey said they had considered building a detached ADU; all 33 attendees of a housing workshop in 2011 supported allowing detached ADUs; and numerous parties have written and testified in support of allowing detached ADUs in public hearings. Staff believes the question remaining before Council is, given that there is broad support for allowing detached ADUs, in what circumstances should nearby properties have standing to comment on a detached ADU.

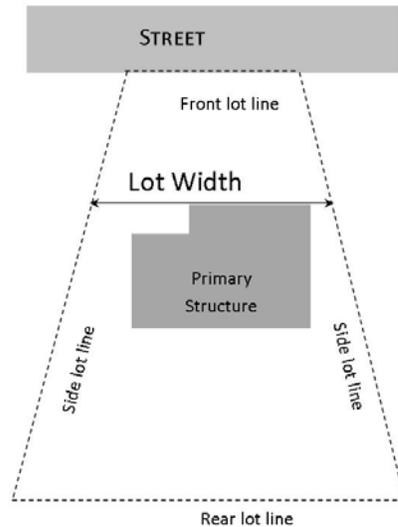
Exemptions for Single-family Design Standards

Council directed staff to explore exceptions, aside from a variance, for cases in which the single-family design standards would be difficult to meet based on unusual lot configurations or circumstances beyond an applicant's control. Staff wishes to highlight the existing exceptions and safeguards in the proposed amendments.

It is important to clarify that staff's understanding of this topic is to address situations where meeting the design standards is impracticable or would be a major hardship. This is different from situations where meeting the standard is possible and the applicant's development plan or preferences do not align with the standards. The proposed standards reflect input received during the RDS process about the minimum level of design that a single-family dwelling should have. The exceptions discussed below are not intended to provide relief where it is practical for a property owner to meet the standards and the owner is dissatisfied with the standards themselves.

1) Cul-de-sac Lots

A concern was raised at the August 21st hearing about how the proposed design standards would apply on a pie-shaped cul-de-sac lot. Staff does not believe this situation presents a problem with regard to the standards. For these lots, the zoning code links lot width and building location such that the building cannot extend into the area of the lot that does not meet the lot width standard, typically 50-60 ft. See the illustration below. For this reason, development on such lots will have the same lot width as rectangular lots and would not have any more difficulty meeting the design standards than a typical lot.



2) General Exception for non-street facing facades

The design standards are applicable to street facing facades, which are defined as walls that are visible from, and at an angle of 45 degrees or less to, a front lot line or street side lot line. Structures on unusual lots may be placed such that they are not visible from the street, and the design standards would not apply.

3) General exception for garage standards

The regulations for garage width and location are applicable when the garage or carport is located within 50 ft of the front lot line. This exception may provide relief for large properties and properties along waterways.

4) Garage width allowance

The standards for an attached garage limit the width of the garage doors to no more than 40% of the total width of the façade, with an allowance for 50% if additional design features are added. Regardless of these percentage limitations, a property is allowed at least a 12-ft wide garage door, which is the width of a standard single-car garage.

Additional Exemptions for Council's Consideration

If Council wishes to consider additional exemptions for new single-family dwellings in unusual situations, staff suggests consideration of the following. See Attachment 2.

- Exempt street facing facades of 30 ft in width or less from articulation standards, and reduce the number of required articulation features for houses 30-60 ft in width from 2 to 1. The exemption for narrow houses may alleviate situations where it is not feasible to include an articulation feature. Requiring

1 feature for facades 30-60 ft in length would make it less onerous for most single-family dwellings to meet this standard, especially since 2 of the 5 articulation features are found only on buildings taller than 1 story.

- Exempt dwellings from the single-family design standards and garage width and placement standards if the dwelling is located at least 50 ft away from the front lot line.

Staff believes that these would provide additional safeguards to prevent dwellings from needing a variance due to unusual lot characteristics. Relaxing the articulation standard would provide an exemption for situations where the buildable area on a lot is very narrow and constrains the width of the building. Exempting buildings that are 50 ft away or more from the front lot line would provide relief for lots whose buildable area may be located in a difficult to reach area. This also corresponds to the proposed distance from the lot line for which the garage width and placement standards would not apply. It also allows an option for property owners with larger lots to be exempt from the design standards.

Council's direction was about avoidance of the variance process for unusual lot characteristics. Consistent with the spirit of this intent, Council may also wish to consider situations where expansions of existing single-family dwellings may necessitate a variance. Staff does not recommend outright exemption for the situations listed below, since that could allow large expansions that are not consistent with the intent of the standards. Staff is prepared to discuss alternative approaches at the hearing for these situations if Council wishes to consider them.

- Eyes on the street - Though there is an exemption for small additions, it is possible that this standard could be problematic for additions to existing dwellings. For example, an addition of 100 sq ft of façade area would need to include a 3 ft X 5 ft window to comply with the standard. This may be a difficult feature to include, especially if the area behind the front façade addition is a closet or bathroom. Additions of more than 200 sq ft of façade area on dwellings that do not already comply with this standard would need to add more windows or doors to bring the total front façade area up to 15%.
- Articulation – it is possible that an addition over 20 ft in width could trigger a requirement for an articulation feature. An existing 40 ft wide house with an addition of 20 ft in length would be required to have 2 articulation features. This may be problematic if the addition is for a street-side yard that does not already include an articulation feature. One-story homes would also be at a disadvantage along a street side yard since 3 out of the possible articulation feature are not feasible (porch, dormer, and balcony).

Other Revisions

Staff has made 3 other revisions from the proposed code amendments in the August 21st Council packet.

1. References to the siding material Hardiplank have been changed to fiber-cement siding, which is a more generic reference to the type of material than a specific brand.
2. The prohibition on metal siding for accessory structures over 200 sq ft or 10 ft in height has been revised. It now allows for metal siding on such structures if it replicates the siding on the dwelling or has the appearance of siding that is commonly used for residential structures.
3. Edits to the garage standards in Subsection 19.505.2 to clarify that the standards apply for attached garages or carports. Standards elsewhere in the proposed code prohibit placement of accessory structures in front of the dwelling, and staff does not believe that the width standards should apply to a detached garage.

CONCURRENCE

No changes to this section from the August 21st staff report.

FISCAL IMPACT

No changes to this section from the August 21st staff report.

WORK LOAD IMPACTS

No changes to this section from the August 21st staff report.

ALTERNATIVES

Staff has provided alternatives in the staff report and attachments on issues identified by Council at the last hearing.

Staff recommends adoption of the RDS amendments at the hearing if specific changes in the attachments can be read into the motion for approval. Staff has provided a revised set of findings for approval in Attachment 4 if Council is ready to adopt the amendments.

Staff would request continuation to the following hearing or a future hearing if more substantive edits are needed to the proposed amendments.

ATTACHMENTS

1. Alternatives for detached accessory dwelling units – Subsection 19.910.1
2. Alternatives for single-family design standards – Subsection 19.505.1
3. Edits to other code sections
4. Revised findings in support of approval

Changes to existing proposal shown in red text. Attachments illustrate changes to selected sections and do not contain all amended text in the proposed code amendments.

19.910 RESIDENTIAL DWELLINGS

This section contains applications for types of residential dwellings that require land use approval.

19.910.1 Accessory Dwelling Units (~~Type 1~~)

A. Purpose

To provide the means for reasonable accommodation of accessory dwelling units, providing affordable housing, opportunity to house relatives, and a means for additional income for property owners, thereby encouraging maintenance of existing housing stock. It is the intent of this subsection that development of accessory dwelling units not diminish the single-family character of a neighborhood.

B. Applicability

The procedures and standards of this chapter apply to the establishment of any accessory dwelling unit.

C. Procedures

An application to establish an accessory dwelling unit shall be evaluated through a Type I review, per Section 19.1004, or a Type II review, per Section 19.1005, as per the standards of Table 19.910.1.E.4.B.

Where a detached accessory dwelling unit is proposed that would undergo a Type I review, properties adjoining the site shall receive mailed notice of the proposed development. The notice shall include a site plan, building elevations, and a description of the standards and review process for the development. The notice shall be mailed within 7 days of the date that the application is deemed complete per Subsection 19.1003.3.

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D. Approval Standards and Criteria

1. An application for an accessory dwelling unit reviewed through a Type I review shall be approved if the following standards are met.
 - a. An accessory dwelling unit is an allowed use in the base zones, and any applicable overlay zones or special areas, where the accessory dwelling unit would be located.
 - b. The primary use of property for the proposed accessory dwelling unit is a single-family detached dwelling.
 - c. One accessory dwelling unit per lot is allowed.
 - d. The development standards of Subsection 19.910.1.E are met.
 - e. The proposal complies with all other applicable standards of this title.
2. An application for an accessory dwelling unit reviewed through a Type II review shall be approved if the following criteria are met.
 - a. The standards in Subsection 19.910.1.D.1 are met.
 - b. The accessory dwelling unit is not incompatible with the existing development on the site, and on adjacent lots, in terms of architectural style, materials, and colors.
 - c. The massing of the accessory dwelling unit and its placement on the site maximizes privacy for, and minimizes impacts to, adjacent properties.
 - d. There will be an appropriate level of screening for nearby yards and dwellings, provided by the design of the accessory dwelling unit and existing and proposed vegetation and other screening.

E. Standards

1. Creation

An accessory dwelling unit may be created by conversion of an existing structure, addition to an existing structure, or construction of a new structure. It is permissible to combine both an addition to an existing structure and conversion of space in the structure for the creation of an accessory dwelling unit.

2. Coordination of Standards

The more restrictive provisions shall be applicable in the event of a conflict between standards in Subsection 19.910.1.E and other portions of this title, except where specifically noted.

3. Standards for Attached Accessory Dwelling Units

The standards listed below apply to accessory dwelling units that are part of the primary structure on the property. An attached accessory dwelling unit shall be reviewed by a Type I review per Subsection 19.1004.

a. Maximum Allowed Floor Area

The floor area of an attached accessory dwelling unit is limited to 800 sq ft or 75% of the floor area of the primary structure, whichever is less. The measurements are based on the floor areas of the primary and accessory dwelling units after completion of the accessory dwelling unit.

b. Design Standards

- (1) The façade of the structure that faces the front lot line shall have only 1 entrance. A secondary entrance for the accessory dwelling unit is allowed on any other façade of the structure.
- (2) Stairs, decks, landings, or other unenclosed portions of the structure leading to the entrance of the accessory dwelling unit are not allowed on the façade of the structure that faces the front lot line.
- (3) Proposals for attached accessory dwelling units that would increase floor area through new construction are subject to the following design standards.
 - (a) The exterior finish on the addition shall match the exterior finish material of the primary dwelling unit in type, size, and placement.
 - (b) Trim must be the same in type, size, and location as the trim used on the primary dwelling unit.
 - (c) Windows on street-facing facades must match those in the primary dwelling unit in proportion (relationship of width to height) and orientation (horizontal or vertical).
 - (d) Eaves must project from the building walls at the same proportion as the eaves on the primary dwelling unit.

4. Standards for Detached Accessory Dwelling Units

The standards in Subsection 19.901.1.E.4 apply to accessory dwelling units that are separate from the primary structure on the property. The design standards for detached accessory dwelling units require a minimum level of design. These standards are intended to promote attention to detail, while affording flexibility to use a variety of architectural styles.

a. Maximum Allowed Floor Area

The floor area of the accessory dwelling unit is limited to 800 sq ft or 75% of the floor area of the primary structure, whichever is less.

b. Footprint, Height, and Required Yards

The maximum structure footprint, height, and yard regulations for a detached accessory dwelling unit are listed in Table 19.910.1.E.4.b. ~~Structures that exceed any of the maximums associated with a Type I review require Type II review. Structure are not allowed to exceed any of the maximums associated with a Type II review without approval of a variance per Section 19.911.~~

Table 19.910.1.E.4.b Footprint, Height, and Required Yards for Detached Accessory Dwelling Units		
<u>Level of Review</u>	<u>Type I</u>	<u>Type II</u>
<u>Maximum Structure Footprint</u>	600 sq ft	800 sq ft
<u>Maximum Structure Height</u>	15', limited to 1 story	25', limited to 2 stories
<u>Required Side and Rear Yard</u>	Base zone requirement for side and rear yard	5'
<u>Required Front Yard</u>	10' behind front yard as defined in Section 19.201, unless located at least 40' from the front lot line.	
<u>Required Street Side Yard</u>	Base zone requirement for street side yard	

c. Design Standards

- (1) A detached accessory structure shall include at least 2 of the design details listed below. An architectural feature may be used to comply with more than 1 standard.
 - (a) Covered porch at least 5 ft deep, as measured horizontally from the face of the main building façade to the edge of the deck, and at least 5 ft wide.
 - (b) Recessed entry area at least 2 ft deep, as measured horizontally from the face of the main building façade, and at least 5 ft wide.
 - (c) Roof eaves with a minimum projection of 12 in from the intersection of the roof and the exterior walls.
 - (d) Horizontal lap siding between 3 to 7 in wide (the visible portion once installed). Only wood, HardiePlank, or other similar lap siding material will be credited as a design detail. Vinyl siding with the appearance of lap siding is not prohibited, but it shall not be credited as a design detail.
 - (e) Window trim around all windows at least 3 in wide and 5/8 in deep.
- (2) An applicant may request a variance to the design standards in Subsection 19.901.1.E.4.c(1) through a Type II review, pursuant to Subsection 19.911.3.B.
- (3) An accessory dwelling unit structure with a floor-to-ceiling height of 9 ft or more is required to have a roof pitch of at least 4/12.

(4) A yurt may be used as a detached accessory dwelling unit and is exempt from the design standards of Subsection 19.901.1.E.4.c.(1). To be used as a detached accessory dwelling unit, a yurt must be approved as a dwelling by the Building Official, and must meet all other applicable development standards.

d. Privacy Standards

(1) ~~Privacy standards are required for detached accessory dwelling units processed through a Type I review. A detached accessory dwelling unit permitted through a Type II review may be required to include privacy elements to meet the Type II review approval criteria.~~

Privacy standards are required on or along wall(s) of a detached accessory dwelling unit, or portions thereof, that meet all of the following conditions. ~~Additional privacy elements may be required to meet the Type II review approval criteria.~~

(a) The wall is within 20 ft of a side or rear lot line.

(b) The wall is at an angle of 45 degrees or less to the lot line.

(c) The wall faces an adjacent residential property.

(2) A detached accessory dwelling unit meets the privacy standard if either of the following standards is met.

(a) All windows on a wall shall be placed in the upper third of the distance between a floor and ceiling

(b) Visual screening is in place along the portion of a property line next to the wall of the accessory dwelling unit, plus an additional 10 lineal ft beyond the corner of the wall. The screening shall be opaque; shall be at least 6 ft high; and may consist of a fence, wall, or evergreen shrubs. Newly planted shrubs shall be no less than 5 ft above grade at time of planting, and they shall reach 6 ft. high within 1 year. Existing features on the site can be used to comply with this standard.

Changes to existing proposal shown in red text. Attachments illustrate changes to selected sections and do not contain all amended text in the proposed code amendments.

19.505 BUILDING DESIGN STANDARDS

19.505.1 Design Standards for Single-Family Dwellings and Duplexes

A. Purpose

The design standards for single-family dwellings and duplexes require a minimum level of design on every dwelling. These standards are intended to promote attention to detail, human-scale design, street visibility, and privacy of adjacent properties, while affording flexibility to use a variety of architectural styles.

B. Applicability

The design standards in this subsection apply to the types of development listed below **when the closest wall of the street-facing façade is within 50 ft of a front or street side lot line.**

1. New single-family detached dwellings, residential homes, duplexes, and rowhouses on individual lots. Placement of a new manufactured home on a lot outside of a manufactured home park is subject to the requirements of Section 19.506 and the standards of Subsection 19.505.1.
2. Expansions of structures in Subsection 19.505.1.B.1 that add area to any street-facing façade. The design standards for such expansions are applicable as follows:
 - a. Expansions that add 75 sq ft or less of street-facing façade area are exempt from all design standards in Subsection 19.505.1.
 - b. Expansions that add more than 75 sq ft and less than 200 sq ft of street-facing façade area are subject to Subsection 19.505.1.C.2 Eyes on the Street. The expanded façade area must meet the standards of Subsection 19.505.1.C.2 without consideration of the original street-facing façade area.
 - c. Expansions that add 200 sq ft or more of street-facing façade area are subject to the following design standards:
 - (1) The entire street-facing façade shall comply with Subsection 19.505.1.C.2 Eyes on the Street.
 - (2) Subsection 19.505.1.C.3 Main Entrance is applicable if an expansion would create a new main entrance. No expansion shall bring the street-facing façade out of conformance, or further out of conformance if already nonconforming, with the design standard.
 - (3) Subsection 19.505.1.C.1 Articulation is applicable for expansions that add 20 lineal ft or more to the length of the street-facing façade.
 - d. Subsection 19.505.1.C.4 Detailed Design is not applicable for expansions. However, no expansion shall bring the street-facing façade out of conformance, or further out of conformance if already nonconforming, with the Detailed Design standards.
 - e. Expansions to street-facing façades of less than 200 sq ft are limited to no more than 1 expansion every 5 years, calculated from the date of issuance for the development permit. Multiple expansions are allowed within a 5-year period if the

street-facing façade will comply with the design standards that would have been applicable if the expansions occurred at the same time.

3. Remodels that convert an attached garage to a habitable residential space. When applicable, the design standards apply only to the street-facing façade of the garage being converted. The following design standards are applicable:
 - a. Subsection 19.505.1.C.3 Main Entrance is applicable if the garage conversion would create a new main entrance. No conversion shall bring the street-facing façade out of conformance, or further out of conformance if already nonconforming, with the design standard.
 - b. Subsection 19.505.1.C.4 Detailed Design is not applicable. However, no conversion shall bring the street-facing façade out of conformance, or further out of conformance if already nonconforming, with the design standard.

C. Standards

All buildings that meet the applicability provisions in Subsection 19.505.1.B shall meet the following design standards. The graphics provided are intended to illustrate how development could comply with these standards and should not be interpreted as requiring a specific architectural style. An architectural feature may be used to comply with more than one standard.

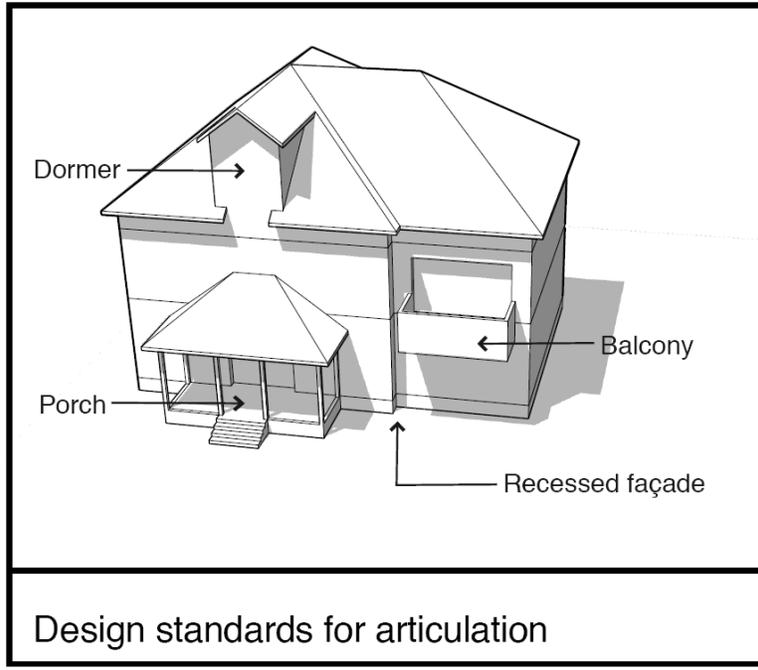
An applicant may request a variance to the Detailed Design standards in Subsection 19.505.1.C.4 through a Type II review, pursuant to Subsection 19.911.3.B. Variances to any other design standards requires a variance through a Type III review, per Subsection 19.911.3.C.

1. Articulation

All buildings shall incorporate design elements that break up all street-facing façades into smaller planes as follows. See Figure 19.505.1.C.1 for illustration of articulation.

- a. For buildings with 30-60 ft of street frontage, a minimum of ~~1~~ 2 of the following elements shall be provided along the street-facing façades.
 - (1) A porch at least 5 ft deep.
 - (2) A balcony that is at least 2 ft deep and is accessible from an interior room.
 - (3) A bay window that extends at least 2 ft wide.
 - (4) A section of the façade that is recessed by at least 2 ft deep and 6 ft long.
 - (5) A gabled dormer.
- b. For buildings with over 60 ft of street frontage, at least one element in Subsection 19.505.1.C.1.a(1)-(4) above shall be provided for every 30 ft of street frontage. Elements shall be distributed along the length of the façade so that there are no more than 30 ft between 2 elements.
- c. For buildings with less than 30 ft of street frontage, ~~the building articulation standard is not applicable one of the elements in Subsection 19.505.1.C.1.a(1)-(4) above shall be provided along the street-facing facade.~~

Figure 19.505.1.C.1 **Building Articulation**



Changes to existing proposal shown in red text. Attachments illustrate changes to selected sections and do not contain all amended text in the proposed code amendments.

CHAPTER 19.500 SUPPLEMENTARY DEVELOPMENT REGULATIONS

19.502.2 ~~Single-Family Residential~~ Specific Provisions for Accessory Structures

A. The following standards apply for residential accessory structures on single-family detached, duplex, rowhouse, and cottage cluster properties. The standards in Subsection 19.502.2.A do not apply to pools, uncovered decks, and patios.

The purpose of these standards is to allow accessory structures that accommodate the typical needs of a single-family residence, while protecting the character of single-family neighborhoods.

2. Design Standards

- a. Metal siding is prohibited on structures more than 10 ft high or with a footprint greater than 200 sq ft, **unless the siding replicates the siding on the primary dwelling or has the appearance of siding that is commonly used for residential structures.**
- b. Structures located in a front, side, or street side yard that are visible from the right-of-way at a pedestrian level shall use exterior siding and roofing materials that are commonly used on residential structures.

19.505 BUILDING DESIGN STANDARDS

19.505.1 Design Standards for Single-Family Dwellings and Duplexes

C. Standards

All buildings that meet the applicability provisions in Subsection 19.505.1.B shall meet the following design standards. The graphics provided are intended to illustrate how development could comply with these standards and should not be interpreted as requiring a specific architectural style. An architectural feature may be used to comply with more than one standard.

An applicant may request a variance to the Detailed Design standards in Subsection 19.505.1.C.4 through a Type II review, pursuant to Subsection 19.911.3.B. Variances to any other design standards requires a variance through a Type III review, per Subsection 19.911.3.C.

4. Detailed Design

All buildings shall include at least 5 of the following features on any street-facing façade. See Figure 19.505.1.C.4 for illustration of detailed design elements.

- h. Horizontal lap siding between 3 to 7 in wide (the visible portion once installed). **Only wood, fiber-cement siding HardiePlank, or other similar lap siding material will be credited as a design detail.** Vinyl siding with the appearance of lap siding is not prohibited, but shall not be credited as a design detail.

19.505.2 Garage and Carport Standards

B. Applicability

The standards in this subsection apply to all new attached ~~and detached~~ garages and carports on properties with a single-family detached dwelling, residential home, or duplex when the street-facing façade of the garage, or columns of the carport, are located within 50 ft of the front property line. Standards for garages in rowhouse development are in Subsection 19.505.5.

CHAPTER 19.900 LAND USE APPLICATIONS

19.910 RESIDENTIAL DWELLINGS

This section contains applications for types of residential dwellings that require land use approval.

19.910.1 Accessory Dwelling Units (Type 1)

E. Standards

4. Standards for Detached Accessory Dwelling Units

The standards in Subsection 19.901.1.E.4 apply to accessory dwelling units that are separate from the primary structure on the property. The design standards for detached accessory dwelling units require a minimum level of design. These standards are intended to promote attention to detail, while affording flexibility to use a variety of architectural styles.

c. Design Standards

(1) A detached accessory structure shall include at least 2 of the design details listed below. An architectural feature may be used to comply with more than 1 standard.

(d) Horizontal lap siding between 3 to 7 in wide (the visible portion once installed). Only wood, ~~fiber-cement siding HardiePlank~~, or other similar lap siding material will be credited as a design detail. Vinyl siding with the appearance of lap siding is not prohibited, but it shall not be credited as a design detail.

Findings in Support of Approval

(changes from August 21, 2012 version of Attachment 1, Exhibit A are shown in red text)

1. The City of Milwaukie (“applicant”) proposes to amend various residential regulations that are contained in Title 14 Sign Ordinance, Title 17 Land Division Ordinance, and Title 19 Zoning Ordinance of the Milwaukie Municipal Code (MMC), and Chapter 4 of the Milwaukie Comprehensive Plan (MCP). The land use applications for these amendments are ZA-11-03 and CPA-11-04.
2. The purpose of the proposed code amendments is to improve the user-friendliness and clarity of the residential use zones; update Milwaukie’s site development and building design standards for single-family and multifamily housing outside of downtown; and establish policies that reflect the community’s changing housing needs and preferences. While the proposed amendments are located in several titles of the municipal code, the most substantive amendments are proposed to the following chapters of Title 19:
 - Chapter 19.300 Base Zones
 - Chapter 19.500 Supplementary Development Regulations
 - Chapter 19.900 Land Use Applications

Additionally, amendments are proposed to Title 14, Title 17, and Chapter 4 of the MCP to coordinate with the proposed amendments to Title 19.

3. The proposed amendments are subject to the following provisions of the MMC:
 - MMC Section 19.902 Amendments to Maps and Ordinances
 - MMC Chapter 19.1000 Review Procedures
4. Sections of the MMC or MCP not addressed in these findings are found to be not applicable to the decision on this land use application.
5. MMC Chapter 19.1000 establishes the initiation and review requirements for land use applications. The City Council finds that these requirements have been met as follows.
 - A. MMC Subsection 19.1001.6 requires that Type V applications be initiated by the Milwaukie City Council, Planning Commission, Planning Director, or any individual.

The amendments are proposed by the City of Milwaukie and were initiated by the Planning Director on December 13, 2011.
 - B. MMC Section 19.1008 establishes requirements for Type V review.
 - i) Subsection 19.1008.3.A.1 requires opportunity for public comment. Opportunity for public comment and review has been provided. Staff held a public open house on October 20, 2011, for review of the draft amendments. The Planning Commission and City Council have had numerous worksessions and study sessions about the proposed amendments. The draft amendments were sent to members of the project steering committee, the Planning Commission, and “interested persons” for review on December 13, 2011. Public comments received, including any City responses, are summarized in a separate attachment.
 - ii) Subsection 19.1008.3.A.2 requires notice of public hearing on a Type V Review to be posted on the City website and at City facilities that are open to the public at least 30 days prior to the hearing. A notice of the Planning Commission’s February 28, 2012, hearing was posted as required on January 27, 2012, at City Hall, Ledding Library,

Public Safety Building, and Johnson Creek Facility. A notice of the City Council's August 21, 2012, hearing was posted as required on July 20, 2012, at the same locations.

- iii) Subsection 19.1008.3.A.2 requires notice be sent to individual property owners if the proposal affects a discrete geographic area. The proposed amendments will apply to all residential properties in the City, and specific property owner notice is not required. All residential property owners were notified of the hearing date via a Measure 56 notice (see Finding 5.B.v).
 - iv) Subsection 19.1008.3.B and C require notice of a Type V application be sent to Metro and the Department of Land Conservation and Development (DLCD) 45 days prior to the first evidentiary hearing. The first evidentiary hearing was held on February 28, 2012, and notice of the proposed amendments was sent to Metro and to DLCDC on December 30, 2011.
 - v) Subsection 19.1008.3.D requires notice to property owners if, in the Planning Director's opinion, the proposed amendments would affect the permissible uses of land for those property owners. The proposed amendments would affect residential development on residential properties or properties in residential use. The City sent a Measure 56 Notice summarizing the proposal and announcing the date of the first public hearing to all residential property owners in the city on January 26, 2012.
 - vi) Subsection 19.1008.4 and 5 establish the review authority and process for review of a Type V application. The Planning Commission held duly advertised public hearings on February 28, March 13, April 10, April 24, and June 20, 2012, and passed a motion recommending that the City Council approve the proposed amendments. The City Council held a duly advertised public hearing on August 21, 2012 and **September 18, 2012**, and approved the amendments.
6. MMC Chapter 19.902 establishes requirements for amendments to the text of the Milwaukie Comprehensive Plan and the Milwaukie Municipal Code. The City Council finds that these requirements have been met as follows.
- A. MMC Subsection 19.902.3.A requires that changes to the text of the Milwaukie Comprehensive Plan shall be evaluated through a Type V review per Section 19.1008.

The Planning Commission held duly advertised public hearings on February 28, March 13, April 10, April 24, and June 20, 2012. The City Council held a public hearing on the proposed amendments on August 21, 2012 and **September 18, 2012**. Public notice was provided in accordance with MMC Subsection 19.1008.3.
 - B. MMC Subsection 19.902.3.B contains approval criteria for text amendments to the Milwaukie Comprehensive Plan.
 - i) MMC Subsection 19.902.3.B.1 requires that the proposed amendment be consistent with the goals and policies of the Comprehensive Plan, as proposed to be amended.

The proposed amendments are consistent with the relevant goals and policies of the MCP, which are contained in Chapter 4: Residential Land Use and Housing Element. There are several relevant policies contained in this element. Amendments are proposed to sections of the following:
 - Objective #2, Policy 5

The proposed amendments retain the policy of protecting lower-density areas from the impacts of higher-density development, while removing unenforceable policies regarding traffic movement.

- *Objective #3, Policies 1, 2, 5, and 6*

The proposed amendments retain existing policies regarding compatibility between new multifamily development and existing lower-density development; delete development standards that are more appropriately located in the MMC; and remove references to nonexistent regulations.

- *Objective #4, Policies 6 and 7*

The proposed amendments delete references to Design Review for residential development for compliance with federal regulations and to reflect the development review process contained in the MMC.

- *Objective #5, Policy 2*

The proposed amendments retain the overarching policy of encouraging the provision of affordable housing through additional density allowances, and relocate specific standards to the MMC.

- ii) MMC Subsection 19.902.3.B.2 requires that the proposed amendment is in the public interest with regard to neighborhood or community conditions.

The proposed amendments reflect the community's desire for policies that encourage maintenance of existing housing and sensitivity to existing neighborhoods, while recognizing the importance of housing options for all community residents.

- iii) MMC Subsection 19.902.3.B.3 requires the public need be best satisfied by this particular proposed amendment.

The proposed amendments clarify existing policies while retaining their intent; remove unenforceable or confusing language; and update the MCP to relate more closely to the standards contained in the MMC.

- iv) MMC Subsection 19.902.3.B.4 requires that the proposed amendment is consistent with the Metro Urban Growth Management Functional Plan and relevant regional policies.

The proposed amendments were sent to Metro for comment. Metro did not submit any comments.

- v) MMC Subsection 19.902.3.B.5 requires that the proposed amendment be consistent with relevant State statutes and administrative rules, including the Statewide Planning Goals and Transportation Planning Rule.

The proposed amendments were sent to the Department of Land Conservation and Development (DLCD) for comment. DLCD's comments on the amendments were incorporated into the proposal presented to the Planning Commission at the first public hearing. DLCD did not otherwise identify any areas where the proposed amendments were inconsistent with State statutes and administrative rules.

- C. MMC Subsection 19.902.5.A requires that changes to the text of the Milwaukie Municipal Code shall be evaluated through a Type V review per Section 19.1008.

The Planning Commission held duly advertised public hearings on February 28, March 13, April 10, April 24, and June 20, 2012. The City Council held public hearings on the proposed amendments on August 21, 2012 and September 18, 2012. Public notice was provided in accordance with MMC Subsection 19.1008.3.

D. MMC Subsection 19.902.5.B contains approval criteria for text amendments to the Milwaukie Municipal Code.

- i) MMC Subsection 19.902.5.B.1 requires that the proposed amendment be consistent with other provisions of the Milwaukie Municipal Code.

The amendments to Titles 14 and 17 are proposed to be consistent with the amendments to Title 19. They are intended to ensure that all internal code references are consistent and accurate, all new and existing terms are clearly defined, and all affected code sections are appropriately located.

- ii) MMC Subsection 19.902.5.B.2 requires that the proposed amendment be consistent with the goals and policies of the Comprehensive Plan.

The relevant section of the Comprehensive Plan is Chapter 4 – Land Use: Residential Land Use and Housing Element. Current Comprehensive Plan goals and policies strongly support City-wide design standards for single-family and multifamily residential development; ensuring development compatible with existing single-family neighborhoods; and provision of a variety of housing types to meet the needs of residents. The proposed amendments:

- *Strengthen existing single-family design standards.*
- *Establish design standards for multifamily development.*
- *Ensure that new development is compatible with existing development through compatibility standards such as increased setbacks for taller structures.*
- *Allow detached accessory dwelling units (ADUs) in addition to attached ADUs, and reduces the level of review required.*
- *Add rowhouse and cottage cluster development to the housing types allowed in multifamily zones.*

- iii) MMC Subsection 19.902.5.B.3 requires that the proposed amendment be consistent with the Metro Urban Growth Management Functional Plan and relevant regional policies.

The proposed amendments were sent to Metro for comment. Metro did not object to the proposed amendments, and was supportive of the addition of cottage cluster housing to the zoning ordinance.

- iv) MMC Subsection 19.902.5.B.4 requires that the proposed amendment be consistent with relevant State statutes and administrative rules, including the Statewide Planning Goals and Transportation Planning Rule.

The proposed amendments were sent to the Department of Land Conservation and Development (DLCD) for comment. DLCD's comments on the amendments were incorporated into the proposal presented to the Planning Commission at the first public hearing. DLCD did not otherwise identify any areas where the proposed amendments were inconsistent with State statutes and administrative rules.

- v) MMC Subsection 19.902.5.B.5 requires that the proposed amendment be consistent with relevant federal regulations.

The Federal Fair Housing Amendments Act of 1988 is relevant to the proposed amendments. The proposed amendments retain the current clear and objective review of single-family housing and duplexes, and provide a choice between clear and objective review and discretionary review of new

- 7. In publishing the adopted amendments, City Council authorizes city staff to make any adjustments to the graphics in Attachment 1, Exhibits B and C that are necessary to accurately depict the text of the amendments in those exhibits.

6.
OTHER BUSINESS



Agenda Item: 6.A.
Meeting Date: 9/18/12

COUNCIL AGENDA ITEM SUMMARY

Issue/Agenda Title: Lake Road Project Assessment

Prepared By: Grady Wheeler, Public Affairs Coordinator and Jason Rice, Civil Engineer

Dept. Head Approval: NA

City Manager Approval: Bill Monahan, City Manager

Reviewed by City Manager: Enter date

ISSUES BEFORE THE COUNCIL

Review the report assessing staff's management and communication of the Lake Road Improvement Project

STAFF RECOMMENDATION

None, this report is for information only.

KEY FACTS & INFORMATION SUMMARY

Due to the scale of the Lake Road Improvement Project the City Council suggested staff provide the Council with a report summarizing the project's successes and the areas that could be improved upon so that staff could refine its practices for future projects.

OTHER ALTERNATIVES CONSIDERED

Not Applicable

CITY COUNCIL GOALS

Not Applicable

ATTACHMENT LIST

None

FISCAL NOTES

None



To: Mayor and City Council

Through: Bill Monahan, City Manager

**From: Grady Wheeler, Public Affairs Coordinator
Jason Rice, Civil Engineer**

Subject: Lake Road Improvement Project Assessment

Date: Sept. 5, 2012

ACTION REQUESTED

None. This report is for information only.

HISTORY OF PRIOR ACTIONS AND DISCUSSIONS

Not Applicable

BACKGROUND

Due to the scale of the Lake Road Improvement Project the City Council suggested staff provide the Council with a report summarizing the project's successes and the areas that could be improved upon so that staff could refine its practices for future projects.

Improving Lake Road has been a City goal for decades. In 1997 the Lake Road Multi-Modal Plan was adopted as an ancillary document to the Comprehensive Plan. The product of thorough and considerable public outreach, the plan provided a series of recommendations for future improvements. As some long-time residents have pointed out, the needs for this project reach back well beyond 1997 and into the early 1960's when Rowe Middle School was built.

The goals have always been fairly simple: make Lake Road safer for drivers, bikers and walkers. Measured against these goals staff believes the recently completed Lake Road Improvement Project is a success.

However, there are always areas where improvements can be made. This report will outline the successful practices that will continue to be employed in future projects and recommend actions that could be taken in the future to enhance project management and communication for projects of this scale.

In evaluating this project staff found three different areas where staff could best assess its efforts – managing and communicating the project’s schedule, managing and communicating what the project would include, and managing right of way issues.

Project schedule

For a project of this size and involving as many moving parts as the Lake Road Improvement Project there are a great number of factors that influence its schedule. The challenge is to keep the public apprised of the shifting timelines over an extended period of time. Below is an account of the primary factors that impacted the timeline for the Lake Road project.

During the design phase of the project there were three different timeline shifts due to budget concerns. As in any project, especially of this magnitude, multiple checks are completed to make sure the desired project will meet its funding requirements. At each of these checks the scope has to be adjusted accordingly, and in this case the project limits were reduced. If these steps were to be ignored and the project cost came in higher than what was earmarked, the City would be responsible for the cost overrun. At different points in the project construction completion estimates of 2008 and 2010 were relayed to residents.

Invites to project Open Houses that included project updates relaying schedule information were mailed to residents in the Lake Road Neighborhood in the summer of 2006, fall of 2008, and the winter of 2009, and periodic updates were made in the Lake Road Neighborhood column of the city’s newsletter, *The Milwaukie Pilot*.

Early in 2012 a Projects page was developed for the City’s website that allowed staff to provide regular status reports on city projects. Lake Road was one of the first projects featured on this page and weekly updated were posted to this section. With greater promotion, this area could become a greater resource for those who are not as plugged in to city issues or with the Neighborhood Association.

Another factor that influenced the Lake Road project’s schedule was that the project was funded with federal dollars that were administered by the Oregon Department of Transportation. This enacts a prescribed process that requires more time to navigate and introduces additional project partners. With additional requirements and agency reviews these kinds of projects take a longer time to complete. This point will be of focus and emphasized early-on in future projects.

Then there are unforeseen events that take place during construction that impacts schedule. In the preconstruction conference with Kodiak Construction the contractor outlined a schedule where multiple crews would be onsite. However, when work commenced in June of 2011, a Qwest fiber bank was found to be in conflict with much of the City’s designed stormwater improvements. Although Qwest was found to be at fault and they are reimbursing the project, the schedule was pushed into the fall, and the optimal paving window was missed and the contractor allocated crews elsewhere.

Weekly email project updates to an interested persons list and monthly appearances by city staff at Lake Road Neighborhood Associations reported the problem and the resulting delays but greater emphasis could have been placed on longer-term effects to the schedule.

Another schedule challenge involved expectations of when the contractor would be onsite. The contract with Kodiak called for work to occur between May 1, 2011 through June 15, 2012. This timeframe captures the typical construction window for a road project since paving cannot occur during rainy months. However, there were periods during this time where weather appeared suitable and crews were not onsite, causing frustration among drivers and residents.

The weekly email updates and Neighborhood Association updates explained the city was trying to bring the contractor onsite more regularly and that the contract provided for a June 15, 2012 completion, but this message only reached those on the email list or who attended the Neighborhood Association Meetings. As described above, greater utilization of the website's projects page will address this issue.

A number of staffing changes and reorganizations not only within the City but with our engineering contractor and Kodiak also contributed to schedule delays. Clear communication reporting these challenges and the impact it will have on schedule will be emphasized in future projects.

Project expectations

A recurring challenge was reshaping the project to meet project goals while still meeting the project's budget, and then communicating those project modifications and the reasons behind those modifications.

With a project that extends as long as the Lake Road Project did – funding allocated in 2004, design through 2009, right of way acquisition in 2010 and construction in 2011 – the costs for materials and services fluctuated considerably. The scope of the project was adjusted in response to cost estimates and the construction bid.

For example, right before the project went to bid the cost estimate indicated the project was \$500,000 over budget. In response, the two blocks between Guilford Drive and Oatfield Road were removed from the project. Now that construction is substantially completed and budget is available, staff is working to add those blocks back in for construction next summer.

Budget also influences the placement of project elements such as sidewalks, swales, fences, crosswalks and retaining walls, which are added and subtracted in order to meet budget and accomplish project goals. Providing continuous sidewalks on the school-side of Lake Road was a priority. But when it became apparent constructing continuous sidewalks on the north side would require the purchase of additional right of way and more retaining walls, the priority was to preserve the length of the project.

This type of information was provided at the Neighborhood Association meetings, in the Pilot newsletter and in the weekly project updates but it was largely reactive. In future long-term projects attention will be given to explaining future project milestones and how they might affect project scope.

Right of way issues

Since the City could not carry out right of way negotiations due to the fact it does not have any ODOT certified negotiators, ODOT and the City, through the design firm selection process, hired ROW Associates to carry out the 57 right of way files. Once the right of way phase begins, the City removes itself from negotiations because it can condemn property and therefore is restricted as to what advice can be given during this phase. This creates a difficult dynamic to manage. Staff provided information and clarifications when approached by residents but ROW Associates secured the agreements.

Not completely understanding how the agreements would impact their property, a number of residents were upset with the effects when construction began. In future projects staff will invest the time to be present during ROW negotiations to help property owners understand the implications of the agreements.

CONCURRENCE

Not Applicable

FISCAL IMPACTS

Not Applicable

WORK LOAD IMPACTS

Not Applicable

ALTERNATIVES

Not Applicable

ATTACHMENTS

None



6.B.

To: Mayor and City Council
Through: Bill Monahan, City Manager
From: Teri Bankhead, Asst. to the City Manager
Date: September 11, 2012
Subject: City Manager's Contract

ACTION REQUESTED

Approve Amended and Restated Employment Agreement for the City Manager

HISTORY OF PRIOR ACTIONS AND DISCUSSIONS

October 2010: The City Council appointed William A. Monahan as City Manager in October 2010. An Employment Agreement was signed.

August 2012: The City Council conducted a performance review of the Manager and directed the City Attorney to prepare amendments to the employment agreement to reflect its directive.

BACKGROUND

The City Council reviewed the performance of the City Manager, as required annually by the Employment Agreement. City Council offered to make revisions to the term of the agreement and other provisions. The City Attorney prepared the revised Amended and Restated Employment Agreement that reflects the changes proposed. The City Manager proposed some modifications to benefits that Council authorized the City Attorney to incorporate into the draft agreement. The agreement does not modify existing salary.

The Mayor has reviewed drafts with the amendment and the input of the City Manager and concluded that the proposed language changes reflect the intent of the Council as expressed during its discussion.

The Amended and Restated Employment Agreement is before the City Council for review and adoption. If adopted, the amended agreement will be effective immediately with benefit changes effective October 1, 2012.

CONCURRENCE

FISCAL IMPACT

The agreement does not modify salary. The total cost of amended benefits increases by at least \$600 annually, depending upon budget authorization and benefits elected by the employee.

WORK LOAD IMPACTS

ALTERNATIVES

ATTACHMENTS

1. Amended and Restated Employment Agreement for the City Manager

**CITY OF MILWAUKIE
AMENDED and RESTATED EMPLOYMENT AGREEMENT
CITY MANAGER**

This Amended and Restated Employment Agreement (“Agreement”) is made and entered into effective this _____ day of _____, 2012, by and between City of Milwaukie, an Oregon municipal corporation (“City”), and William A. Monahan, the City Manager (“Monahan”).

RECITALS

The parties entered into an Employment Agreement, effective October 5, 2010, and desire to modify its terms and provisions by execution of this Amended and Restated Employment Agreement.

NOW, THEREFORE, in consideration of the mutual promises and covenants herein contained, and payment to the Employee for services provided, it is mutually agreed as follows:

TERMS AND CONDITIONS

Section 1: Term

A. This Agreement shall remain in full force and effect from October 18, 2010 until 11:59 p.m. October 17, 2016 or until terminated by the Employer or Employee as provided in Section 9 or 11 of this Agreement, whichever occurs first.

B. If Employer terminates this Agreement pursuant to Section 9 before 11:59 p.m. October 17, 2016 Employer shall pay Employee his Base Salary, as defined in Section 3(A), plus the value of all benefits for the remainder of the term of this Agreement. Payment shall be made in accordance with Section 10.

C. This Agreement may be renewed or extended past the termination date upon mutual agreement of the parties.

Section 2: Duties and Authority

A. Employer agrees to employ Employee as City Manager to perform the functions and duties specified by the City’s Charter, ordinances, resolutions, and to perform other legally permissible and proper duties and functions as the City Council may assign from time to time.

B. Employee, as a City Manager and as a member of the International City/County Management Association (ICMA), is subject to and shall abide by the ICMA Code of Ethics, as it may be amended from time to time.

C. Pursuant to the City’s Employment Policies and Procedures, Employee is considered a management employee.

Section 3: Compensation

A. Base Salary: Employer agrees to pay Employee an annual base salary of \$141,156.00, payable in installments at the same time that the other management employees of the Employer are paid.

B. This agreement shall be automatically amended to reflect any salary adjustments that are provided or required by the Employer's compensation policies.

C. Consideration by City Council shall be given on an annual basis to increase compensation with similar consideration as is given to Employer's other management employees.

D. As part of Employee's compensation, Employer shall provide Employee with unrestricted use of a cell phone, beginning on the Effective Date of this Addendum, for the term of this Agreement. Employee may select the make and model of cell phone to be used, subject to approval by Employer. Employer's approval shall not be withheld without good cause.

E. As part of Employee's compensation, Employer shall provide Employee with unrestricted use of a laptop computer or iPad, including wi-fi, broadband and internet connectivity, beginning on the Effective Date of this Addendum, for the term of this Agreement. Employee may select the make and model of laptop computer or iPad to be used, subject to approval by Employer. Employer's approval shall not be withheld without good cause.

Section 4: Health, Disability and Life Insurance Benefits

The Employer agrees to provide health care benefits consistent with those provided pursuant to the City's Employment Policies and Procedures including but not limited to medical, dental, vision, life, and long term disability with coverage equivalent to that provided to management personnel of the city.

Section 5: Vacation, Sick, and Military Leave

A. Upon commencing employment, the Employee shall be credited with sick and vacation leave as provided to all other employees. Beginning on the Effective Date of this Amended and Restated Employment Agreement, the Employee shall accrue 16.67 hours of vacation leave per month or 25 days per year. Maximum accrual rates for all leave shall be consistent with the City's Employment Policies and Procedures.

B. Employee's bank of accrued, unused vacation and sick leave hours, measured at the time this Amended and Restated Employment Agreement is executed, is not affected by this Amended and Restated Employment Agreement.

C. The Employee is entitled to accrue all unused leave, up to a maximum of 400 hours and in the event the Employee's employment is terminated, either voluntarily or involuntarily, the Employee shall be compensated for all accrued vacation time, to date.

D. The Employee shall be entitled to military reserve leave time pursuant to state law and City of Milwaukie policy.

E. The Employee shall annually be credited with 96 hours of administrative leave.

Section 6: Automobile

Employee shall furnish his own transportation for business purposes, the cost of which shall be borne by Employee.

Employer agrees to pay Employee, during the term of this Agreement and in addition to other salary and benefits herein provided, the sum of \$400.00 per month, payable monthly. The vehicle allowance is in lieu of standard mileage reimbursement for business related travel.

Section 7: Retirement

A. The Employer agrees to enroll Employee in the Oregon State Public Employees Retirement System (PERS) and to pay the employer's contribution. Employer shall also pay the six percent employee's contribution to PERS to be deposited in the retirement account, annuity, or fund to which the employee's contribution is to be provided under applicable law. Employee compensation will not be reduced as a result of the City's payment of employee contribution. Employer shall place an amount equal to the six percent contribution for the first 6 months waiting period for PERS in a deferred compensation plan of Employee's choice beginning the first month of employment.

B. Employee is eligible to receive deferred compensation at the same rate as other management employees from the date of hire.

Section 8: General Business Expenses

A. Employer agrees to pay for professional dues and subscriptions of the Employee necessary for continuation and full participation in national, regional, state, and local associations and organizations necessary and desirable for Employee's continued professional participation, growth, and advancement, as a city manager, and for the good of the Employer.

Employee is currently a practicing attorney licensed through the Oregon State Bar. Employee may, but is not required to as a condition of employment, maintain his status as an active member of the Oregon State Bar. Any expenses incurred by Employee to remain an active member of the Oregon State Bar shall be borne by Employee.

B. Employer acknowledges the value of having Employee participate and be directly involved in local civic clubs or organizations. Employer shall pay membership expenses and dues for those civic groups for which Employee determines his membership is beneficial to the City.

C. Employer shall provide Employee with a computer, software, fax/modem, Blackberry PDA (or similar device) required for Employee to perform the job and to maintain communication.

D. Payment of the expenses and provision of the equipment as provided in this Section is subject to approval through the City budget process.

E. Other business related expenses incurred by Employee not outlined in this Section may be reimbursed pursuant to the City's Employment Policies and Procedures.

Section 9: Termination

A. Termination Without Cause.

1. If the majority of the governing body votes to terminate or accept the resignation of the Employee at a duly authorized public meeting, unless the termination is for cause as provided under Subsection B.
2. If the Employer, citizens or legislature act to amend any provisions of the City's Charter pertaining to the role, powers, duties, authority, responsibilities of the Employee's position that substantially changes the form of government, the Employee shall have the right to declare that such amendments constitute termination without cause. However, Employee may declare that such amendments constitute a termination only if Employee also reasonably declares that such amendments result in a material negative change to Employee in Employee's employment with Employer, such as the duties to be performed, the conditions under which the duties are to be performed, or the compensation to be received for employment with Employer.
3. If the Employer reduces the base salary, compensation or any other financial benefit of the Employee, unless it is applied in no greater percentage than the average reduction of all department heads, Employee shall have the right to declare that the reduction constitutes a termination without cause.

B. Termination for Cause.

1. Employer may terminate Employee for cause as a result of violation of any of City's policies or directives, because of illegal action involving personal gain, violation of ICMA Code of Ethics or crimes of moral turpitude. Employee shall receive notice of any charges against him and possible sanctions being considered. Employee shall also be advised of the date and time when Employer will consider charges and possible sanction. He will be afforded an opportunity to refute the charges, either orally or in writing, before the Council, and to have representation of his choice at the hearing. Available options to Employer other

than termination include oral or written reprimand and suspension with pay. In addition to the above, grounds for removal include:

- (1) Incompetence, inefficiency or inattention to or dereliction of duty.
- (2) Dishonesty, intemperance, addiction to drugs or controlled substances, immoral conduct, insubordination or discourteous treatment of the public or fellow employees.
- (3) Any other willful failure of good conduct tending to injure the public service.
- (4) Neglect of duty and excessive absence.

Section 10: Severance

A. Severance shall be paid to the Employee when employment is terminated as defined in Section 9(A) only. If the Employee is terminated, the Employer shall provide a minimum severance payment equal to the unpaid salary and benefits for the balance of the term of the Agreement at the current rate of pay. This severance shall continue to be payable in installments at the same time that the other management employees of the Employer are paid unless otherwise agreed to in writing by the Employer and the Employee.

B. All severance under this Section 10 shall be paid only on or after the date Employee has a separation from service with the employer within the meaning of Treasury Regulation Section 1.409A-1(h), using none of the options in Treasury Regulation Section 1.409A-1(h), and no later than the last day of Employee's second taxable year following Employee's taxable year in which the separation from service occurs.

Section 11: Resignation

Employee may voluntarily terminate at any time with no less than 30 days notice unless the parties agree otherwise.

Section 12: Performance Evaluation

Employer shall annually review the performance of the Employee in June subject to a process, form, criteria, and format for the evaluation which shall be mutually agreed upon by the Employer and Employee. The process at a minimum shall include the opportunity for both parties to: (1) prepare a written evaluation, (2) meet and discuss the evaluation, and (3) present a written summary of the evaluation results. The final written evaluation should be completed and delivered to the Employee within 30 days of the evaluation meeting.

Section 13: Hours of Work

It is recognized that the Employee must devote a great deal of time outside the normal office hours on business for the Employer, and to that end Employee shall be allowed to establish an appropriate work schedule with the approval of the Council.

Section 14: Outside Activities

The employment provided for by this Agreement shall be the Employee's sole employment. Recognizing that certain outside consulting or teaching opportunities provide indirect benefits to the Employer and the community, the Employee may elect to accept limited teaching, consulting or other business opportunities with the understanding that such arrangements shall not constitute interference with nor a conflict of interest with his or her responsibilities under this Agreement. Employee must disclose to the City Council any such arrangements that may conflict with the best interests of the City.

Section 15: Residence

Employee agrees to establish residence within close proximity of the City which complies with the spirit and intent of the City's Charter. Employee's current residence in Tigard, Oregon meets the requirements of this Section.

Section 16: Indemnification

Beyond that required under Federal, State or Local Law, Employer shall defend, save harmless and indemnify Employee against any tort, professional liability claim or demand or other legal action, whether groundless or otherwise, arising out of an alleged act or omission occurring in the performance of Employee's duties as City Manager or resulting from the exercise of judgment or discretion in connection with the performance of program duties or responsibilities, unless the act or omission involved willful or wanton conduct. The Employee may request and the Employer shall not unreasonably refuse to provide independent legal representation at Employer's expense and Employer may not unreasonably withhold approval. Legal representation, provided by Employer for Employee, shall extend until a final determination of the legal action including any appeals brought by either party. The Employer shall indemnify employee against any and all losses, damages, judgments, interest, settlements, fines, court costs and other reasonable costs and expenses of legal proceedings including attorneys fees, and any other liabilities incurred by, imposed upon, or suffered by such Employee in connection with or resulting from any claim, action, suit, or proceeding, actual or threatened, arising out of or in connection with the performance of his or her duties. Any settlement of any claim must be made with prior approval of the Employer in order for indemnification, as provided in this Section, to be available. Employee recognizes that Employer shall have the right to compromise and unless the Employee is a party to the suit which Employee shall have a veto authority over the settlement, settle any claim or suit; unless, said compromise or settlement is of a personal nature to Employee. Further, Employer agrees to pay all reasonable litigation expenses of Employee throughout the pendency of any litigation to which the Employee is a party, witness or advisor to the Employer. Such expense payments shall continue beyond Employee's service to the Employer as long as litigation is pending. Further, Employer agrees to pay Employee reasonable consulting fees and travel expenses when Employee serves as a witness, advisor or consultant to Employer regarding pending litigation.

Section 17: Bonding

Employer shall bear the full cost of any fidelity or other bonds required of the Employee under any law or ordinance.

Section 18: Other Terms and Conditions of Employment

A. The Employer, only upon agreement with Employee, shall fix any such other terms and conditions of employment, as it may determine from time to time, relating to the performance of the Employee, provided such terms and conditions are not inconsistent with or in conflict with the provisions of this Agreement, the City Charter or any other law.

B. Except as otherwise provided in this Agreement, Employee is entitled to the same level of benefits that are enjoyed by other management level employees of Employer as provided in the Charter, ordinances, Employment Policies and Procedures or by practice.

C. In the absence of any specific provision in this Agreement, City Employment Policies and Procedures will apply.

Section 19: Notices

Notice pursuant to this Agreement shall be given by depositing in the custody of the United States Postal Service, postage prepaid, addressed as follows:

(1) EMPLOYER:

Mayor
10722 SE Main Street
Milwaukie, Oregon 97222

With a copy to Employer’s legal counsel.

(2) EMPLOYEE:

William A. Monahan
10248 SW Kent Court
Tigard, Oregon 97224

Alternatively, notice required pursuant to this Agreement may be personally served in the same manner as is applicable to civil judicial practice. Notice shall be deemed given as of the date of personal service or as the date of deposit of such written notice in the course of transmission in the United States Postal Service. Either party may change such addresses from time to time by providing written notice to the other in the manner set forth above.

Section 20: General Provisions

A. Integration. This Agreement sets forth and establishes the entire understanding between the Employer and the Employee relating to the employment of the Employee by the Employer. Any prior discussions or

representations by or between the parties are merged into and rendered null and void by this Agreement. The parties by mutual written agreement may amend any provision of this agreement during the life of the agreement. Such amendments shall be incorporated and made a part of this agreement.

B. Binding Effect. This agreement shall be binding on the Employer and the Employee as well as their heirs, assigns, executors, personal representatives and successors in interest, except that Employee may not assign this Agreement without the prior written consent of Employer, which consent may be withheld for any or no reason.

C. Effective Date. This Agreement shall become effective on October 5, 2010. This Amended and Restated Employment Agreement shall become effective on October 1, 2012.

D. Severability. The invalidity or partial invalidity of any portion of the Agreement will not affect the validity of other provisions. In the event that any provision of this Agreement is held to be invalid, the remaining provisions shall be deemed to be in full force and effect as if they have been executed by both parties subsequent to the expungement or judicial modification of the invalid provision.

E. Upon termination of this Agreement, Employee Administrator shall deliver all records, notes, data, memoranda, models, and equipment of any nature that are in Employee's possession or under his control and that are Employer's property or relate to Employer's business.

F. The failure of either party to enforce any provision of this Agreement shall not be construed as a waiver or limitation of that party's right to subsequently enforce and compel strict compliance with every provision of this Agreement.

Section 21. Confidentiality

A. Employee recognizes that Employer has and will have future plans, business affairs, employment, legal, and litigation matters, and other proprietary information that are valuable, special and unique assets of City and need to be protected from improper disclosure. Employee agrees not to, at any time or in any manner, either directly or indirectly, use any information for his own benefit, or divulge in any manner to any third party without the prior written consent of Employer. Employee will protect the information as strictly confidential. A violation of this paragraph shall be a material violation of this Agreement.

B. If it appears that Employee has disclosed (or has threatened to disclose) information in violation of this Agreement, Employer shall be entitled to an injunction to restrain Employee from disclosing, in whole or in part, such information, or from providing any services to any party to whom such information has been disclosed or may be disclosed. Employer shall not be prohibited by this provision from pursuing other remedies, including a claim for losses and damages.

C. The confidentiality provisions of this Agreement shall remain in full force and effect after the termination of this Agreement.

Section 22. Attorney Fees

In the event any action, suit, arbitration or other proceeding shall be instituted by either party to this Agreement to enforce any provision of this Agreement or any matter arising therefrom or to interpret any provision of this Agreement, including any proceeding to compel arbitration, the prevailing party shall be entitled to recover from the other a reasonable attorney fee to be determined by the Court or Arbitrator(s). In addition to recovery of a reasonable attorney fee, the prevailing party shall be entitled to recover from the other costs and disbursements, including all costs of Arbitration and the Arbitrator(s) fees, and expert witness fees, as fixed by the Court or tribunal in which the case is heard. In the event any such action, suit, arbitration or other proceeding is appealed to any higher court or courts, the prevailing party shall recover from the other a reasonable attorney fee for prosecuting or defending such appeal or appeals, in addition to the reasonable attorney fees in the lower court or courts or arbitration proceeding, such fee to be determined by the appellate court or lower court or arbitrator, as the appellate court may determine. In addition to recovery of a reasonable attorney fee on appeal, the prevailing party shall be entitled to recover from the other costs and disbursements and expert witness fees as fixed by the appellate court. All costs and disbursements which may be awarded pursuant to this paragraph shall bear interest at the maximum legal rate from the date they are incurred until the date they are paid by the losing party.

City

Monahan

City of Milwaukie

Mayor Jeremy Ferguson

William A. Monahan

Dated: _____

Dated: _____

APPROVED AS TO FORM:

City Attorney