ORDINANCE NO. 1981

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, AMENDING THE CITY OF MILWAUKIE COMPREHENSIVE PLAN LAND USE MAP 7 FROM LAND USE DESIGNATION "TOWN CENTER" TO "PUBLIC" AND AMENDING THE MILWAUKIE ZONING MAP FROM "LIMITED COMMERCIAL ZONE C-L" TO "DOWNTOWN OPEN SPACE" FOR TAX LOT 4600 ON CLACKAMAS COUNTY ASSESSOR'S MAP 1S 1E 35AA; AND DELETING THE PORTLAND TRACTION LINE FROM THE CITY LIST OF HISTORIC RESOURCES.

WHEREAS, the City of Milwaukie desires to review, amend, and revise its Comprehensive Plan and Zoning Ordinance on a regular basis; and

WHEREAS, the City of Milwaukie has applied for the changes described in land use files CPA-08-01, ZC-08-01 and HR-08-01 to enable the future redevelopment of the Milwaukie Riverfront Park; and

WHEREAS, the proposed changes are necessary steps toward revitalization of Milwaukie's Riverfront Park; and

WHEREAS, land use files CPA-08-01, ZC-08-01 and HR-08-01 have been reviewed by the Historic Milwaukie Neighborhood District Association, Milwaukie Riverfront Board, Milwaukie Design and Landmarks Committee, Metro, the Department of Land Conservation and Development, and other affected agencies; and

WHEREAS, land use files CPA-08-01, ZC-08-01 and HR-08-01 have been reviewed and recommended for adoption by the Planning Commission at a duly advertised Public Hearing on March 11, 2008, and;

WHEREAS, the City Council held a duly advertised Public Hearing on April 1, 2008; and

NOW, THEREFORE, THE CITY OF MILWAUKIE DOES ORDAIN AS FOLLOWS:

SECTION 1. THE PORTLAND TRACTION LINE IS DELETED FROM THE HISTORIC RECOURCE LIST. The section of the former Portland Traction Rail Line between Johnson Creek and Jefferson Street does not contain enough physical evidence of the rail line's presence to justify keeping the rail line on the City's list of historic resources, and, therefore, the Portland Traction Line is deleted from the City list of Historic Resources.

SECTION 2. FINDINGS. Findings of fact in support of the proposed amendments are adopted as part of this ordinance and attached as Exhibit A (Findings), and the City's Comprehensive Plan Land Use Map 7 is amended to change the land use designation "Town Center" to "Public" and the City's Zoning Map is amended from "Limited Commercial Zone C-L" to "Downtown Open Space" for Tax Lot 4600 on Clackamas County Assessor's Map 1S 1E 35AA.

SECTION 3. CONDITIONS OF APPROVAL. A condition of approval related to commemoration of the Portland Traction Line in the Riverfront Park is adopted as part of this ordinance and attached in Exhibit B (Condition of Approval).

Read the first time on April 1, 2008, and moved to a second reading by 4-0 vote of the City Council.

Read the second time and adopted by the City Council on 4/1, 2008.

Signed by the Mayor on 4/1/2008.

Susan Stone, Council President

Susan Stone, Council President

ATTEST:

Pat DuVal

Pat DuVal, City Recorder

APPROVED AS TO FORM:
Jordan Schrader Ramis PC

City Attorney

Exhibit A:
Findings in Support of Approval

Sections of the Milwaukie Comprehensive Plan and Milwaukie Municipal Code that are not addressed in these findings are found to not be applicable to the proposed map changes.

1. The City of Milwaukie (the "applicant"), represented by JoAnn Herrigel, has applied for a Comprehensive Plan Map Amendment (CPA-08-01), Zoning Map Change (ZC-08-01) and Historic Resource Review (HR-08-01). The applicant owns the properties for which the map changes have been proposed. The proposed map changes will allow the future development of the Milwaukie Riverfront Park.

2. The tax lots affected by the proposed map changes are Tax Lots 4600 and 3901 on Clackamas County Assessor's Map 1S 1E 35AA. The map change proposed by application CPA-08-01 is to change the Comprehensive Plan Designation on Tax Lot 4600 from Town Center (TC) to Public (P). The map change proposed by application ZC-08-01 is to change the Zoning Map on Tax Lot 4600 from Commercial Limited (CL) to Downtown Open Space (DOS). The map change proposed by application HR-08-01 is to remove the Unranked Historic Resource from the City's list of historic resources and remove the Historic Resource Overlay from Tax Lot 3901.

   The Milwaukie Riverfront Park, which contains the affected lots, is bordered on the north by Johnson Creek, on the west by the Willamette River, on the south by the Kellogg Sewage Treatment Plant site, and on the east by SE McLoughlin Boulevard / Highway 99E. Tax Lot 4600 is on the northern portion of the Milwaukie Riverfront Park next to Johnson Creek. Tax lot 3901 runs north to south from Johnson Creek to SE Jefferson Street on the eastern side of the park.

3. Chapter 2 – Plan Review and Amendment Process of the Milwaukie Comprehensive Plan (MCP) governs the procedures for amendments to the MCP. Land Use Applications CPA-08-01 and ZC-08-01 are consistent with this chapter as follows:

   A. Chapter 2, Objective #1, Policy #2 states:" The Planning Commission will hold at least one public hearing on any proposed modifications to the Plan and forward its recommendations to the City Council." On March 11, 2008, the Planning Commission held a public hearing and forwarded its recommendation to the City Council regarding land use files CPA-08-01, ZC-08-01, and HR-08-01. The City Council held a public hearing and adopted the changes proposed by these applications on April 1, 2008.

   B. Chapter 2, Objective #1, Policy #4 states: "Submit copies of proposed Plan changes to affected governmental units at the draft amendment stage and following final adoption of changes." The proposed Plan changes were referred to all affected governmental units on February 4, 2008. Following the adoption of final changes, notice will again be provided pursuant to State, Metro, and City of Milwaukie requirements.

   C. Chapter 2, Objective #1, Policy #6 states: "If the proposed amendment is quasi-judicial, notice of the requested change will be mailed to all residents within 400 feet of the property under consideration at least 30 days prior to the public hearing. Newspaper notice in accordance with the requirements for legislative plan amendments is also required."

All changes proposed by the applicant are Major Quasi-judicial. The notice procedures for Major Quasi-judicial hearings in MMC 19.1011.4(B) for providing newspaper notice, surrounding property owner notices, and a notice sign posted at the site were followed.

D. Chapter 2, Objective #1, Policy #7 states that all plan amendments be evaluated based on the criteria listed in that Policy. The proposed plan amendment meets these criteria as follows:

i) Conformance with the Comprehensive Plan, its goals, policies, and spirit

The proposed changes will rezone Tax Lot 4600 from CL to DOS and change its Comprehensive Plan designation from TC to P. It is necessary to change the zoning designation to allow development of the park outright, since parks and open space are not permitted outright in the CL zone. The change in the Comprehensive Plan Designation is necessary because the type of uses called for in areas designated TC are structures with mixed uses. The Public designation is the most appropriate one to allow a public Riverfront Park to be developed.

As demonstrated in these findings, the proposed Comprehensive Plan Map and Zone Map changes are directly supportive of many of the Comprehensive Plan's goals and policies. The proposed changes are clearly and explicitly in conformance with the applicable goals and policies, and meet the spirit of the Comprehensive Plan and its ancillary documents.

ii) Public need for the change

The change allows for the development of the Milwaukie Riverfront Park to better serve the City, its residents, visitors, and users of the Willamette River. Development of the park will provide an economic catalyst for downtown and Milwaukie as a whole. The proposed Riverfront Park is supported by the Milwaukie Downtown and Riverfront Plan, which is an ancillary document to the Comprehensive Plan, and supported by many elements within the Comprehensive Plan itself.

iii) Public need is best satisfied by this particular change

Implementation of the proposed Riverfront Park development requires the Comprehensive Plan and Zone Map changes proposed by these applications. This particular change is the best and most straightforward change that will allow for the park to be developed.

iv) The change will not adversely affect the health, safety, and welfare of the community

The proposed changes will not result in any direct action that would be inconsistent with this criterion. Development of the Riverfront Park has the support of many diverse groups within the community. The changes to allow a park will bring more people to the area and should increase the overall health, safety and welfare of the community.

v) The change is in conformance with applicable Statewide Planning Goals

The proposed change is in conformance with the applicable Statewide Planning Goals as follows:

Goal 1: Citizen Involvement. The development of the Riverfront Park plan and the corresponding proposed zone changes were the result of a broad public involvement effort.

Goal 2: Land Use Planning. The proposed change is in conformance with the land use planning goals and policies embodied in Milwaukie's Comprehensive Plan and the Milwaukie Downtown and Riverfront Plan.

Goal 5: Open Spaces, Scenic and Historic Spaces, and Natural Resources. The proposed changes will allow development of a park that preserves open spaces, protects natural resources through riparian zone restoration and enhancements, and improves the scenic quality of the Milwaukie riverfront area.

Goal 7: Areas Subject to Natural Disasters and Hazards. The proposed changes allow development of a park. The proposed park complies with this goal by providing a use that does not put intensive uses and structures near a flood hazard area and by providing native plantings to stabilize riverbanks and better absorb stormwater.

Goal 8: Recreational Needs. The proposed changes comply with this goal because they allow development of a park in downtown Milwaukie that will serve the recreational needs of various groups of users from Milwaukie and the surrounding area.

Goal 15: Willamette River Greenway. The proposed changes comply with this goal because they allow for development of a park that will increase views to and from the river, provide public access to the riverfront, and provide multiple forms of recreation focused on the river.

vi) The change is consistent with Metro Growth Management Functional Plan and applicable regional policies

The changes will allow for development of open space on the site that preserves and enhances the natural features of the site. This supports Metro's Title 3, Water Quality and Flood Management of the Metro Functional Plan. No other titles of the Functional Plan are applicable.

4. The proposed Comprehensive Plan Map Change and Zoning Map Change are consistent with the Milwaukie Comprehensive Plan as follows:

A. MCP Chapter 1 – Citizen Involvement. The development of the Riverfront Park and the associated map changes are the result of extensive public involvement. This involvement includes a declaration of cooperation for the Milwaukie Riverfront Park Project. Parties to this agreement included Celebrate Milwaukie, Inc., Johnson Creek Watershed Council, Friends of Kellogg Creek and nearby property owner. The Milwaukie Riverfront Park Board was appointed by the City Council to develop and monitor implementation of the Milwaukie Riverfront Park. The City has kept citizens involved and updated through numerous neighborhood district association meetings, discussions with the Riverfront Board and Parks Board, open houses, surveys, information in the City newsletter and its website. The public was properly notified of all public hearings pursuant to Milwaukie Municipal Code (MMC) Section 19.1011.4.

B. MCP Chapter 3 – Environment and Natural Resources.

i) Natural Hazards Element. The proposed park design includes native planting and re-vegetation projects along the Willamette River and Johnson Creek. These replanting will aide in bank stabilization and flood control. All future development of the Riverfront Park will comply with MMC Title 18, Flood Hazard Regulations. The map changes to allow development of Riverfront Park are consistent with this element.

ii) Open Spaces, Scenic Areas, and Natural Resources Element. The proposed park design will create a large, high quality open space in downtown Milwaukie and further utilize the river as a scenic resource for the City. Plantings and re-vegetation in the park will restore the park as an important natural resource for the City.

C. MCP Chapter 4 – Land Use.

i) Recreational Needs Element. The proposed park will better utilize an existing park site in the City. A redeveloped Riverfront Park will be a key asset to the City's livability and civic identity. The size and variety of programming proposed for the park will make it a diverse recreational facility. The development of the park will also increase opportunities for Riverfront Recreation.

ii) Willamette Greenway Element. Redevelopment of the Riverfront Park will increase views, interaction, and access to and from the Willamette River, and provide a public recreational use along the river.

5. MMC Chapter 19.900, Amendments, governs changes to the zoning map. The proposed Zone Map and Comprehensive Plan Map amendments are consistent with this chapter as follows:

A. MMC 19.901 allows amendments to the zoning map to be initiated by the City Council, Planning Commission, or by the application of a property owner. As owner of Tax Lot 4600, the City of Milwaukie has initiated this amendment application.

B. MMC 19.902 governs the procedures for processing amendments. The application is a zoning map amendment and has been processed in accordance with MMC 19.1011.4, Major Quasi-judicial review. Notice was provided to the Oregon Department of Land Conservation and Development on February 13, 2008. Notice was provided to Metro on February 19, 2008, and a functional plan analysis was provided to Metro 15 days prior to the final hearing on the proposed change.

C. MMC 19.903 provides requirements for zoning map amendments. The applicant's submittal contains all the information required by this subsection.

D. MMC 19.905 contains approval criteria for zoning map and text amendments. The proposed change complies with these criteria as follows:

i) MMC 19.905.1.A requires that the proposed amendment must conform to applicable Comprehensive Plan goals, policies and objectives and be consistent with the provisions of city ordinances, Metro urban growth management functional plan and applicable regional policies. As

described in Finding 3 above, the proposed zone change complies with this criterion.

ii) MMC 19.905.1.B requires that the anticipated development must meet the intent of the proposed zone, taking into consideration the following factors: site location and character of the area, the predominant land use pattern and density of the area, the potential for mitigation measures adequately addressing development effects, any expected changes in the development pattern for the area, the need for uses allowed by the proposed zone amendment, and the lack of suitable alternative sites already appropriately zoned for the intended use or uses. The planning commission and city council shall use its discretion to weigh these factors in determining the intent of the proposed zone.

The proposed zone change meets the intent of the proposed zone. MMC 19.312.2.E describes the characteristics of the Downtown Open Space zone. The description is: "The downtown open space zone is established to implement the "Public" designation of the Milwaukie comprehensive plan and to provide a specific zone to accommodate open space, park, and riverfront uses. The downtown open space zone is generally applied to lands that are in public ownership along the Willamette River, Kellogg Creek, Spring Creek, and Johnson Creek in the downtown area. The desired character for the downtown open space zone includes parkland, open space, and riverfront amenities."

The subject site is adjacent to other parcels that make up Riverfront Park and is bordered by the Willamette River, Johnson Creek and McLoughlin Boulevard. The character of the immediate area is recreation (boat ramp with parking) and open space (river bank, undeveloped, grassed and treed areas). The site zoned C-L has grass covered areas and a mitigation site related to McLoughlin Boulevard improvements. Across McLoughlin are commercial uses. The previous small-scale commercial uses (a tavern and antique shop) no longer exist and all of the adjacent area is now undeveloped. Commercial uses nearby are confined to the east side of McLoughlin Boulevard. Therefore, the rezone to DOS from C-L is compatible with the existing and adjacent uses as well as the "Public" comprehensive plan designation.

The development effects would primarily be from grading and additional traffic. The proposed park plan would decrease the overall amount of existing impervious surfaces within the park. Mitigation measures would be required through the permitting process to protect the creeks from erosion during construction. Water quality facilities located near the parking areas will address the effects of developing new impervious surfaces within the park. A traffic study would be conducted for the application for site development to determine the best way to manage traffic flows.

Because the proposal replaces open space with open space, no major changes to the existing development pattern within the park are expected. The site is currently developed with mitigation for impacts from the McLoughlin Boulevard road widening project with street landscaping, a sidewalk, a path and grass. The proposed development within the C-L site primarily includes adding grass, restoring the bank along Johnson Creek with native plant materials, and developing a portion of a paved trail and pathway that will lead to a paved overlook. The expected change would be limited to an expansion of existing park uses, which is currently not conforming for the C-L zone but is consistent with the planned land use and the adjacent public park use. No other changes to nearby development patterns would be expected that would not already be supported by the proposed zone change.

iii) MMC 19.905.1.C requires that the proposed amendment will meet or can be determined to reasonably meet applicable regional, state or federal regulations. No regional, state or federal regulations are anticipated to apply to the proposed rezone of the parcel from C-L to DOS. Therefore, the proposed amendment complies with this criterion.

iv) MMC 19.905.1.D requires that the proposed amendment demonstrates that existing or planned public facilities and services can accommodate anticipated development of the subject site without significantly restricting potential development within the affected service area.

According to Section 19.312 (E) in the Milwaukie Zoning Ordinance, "The downtown open space zone is established to implement the "Public" designation of the Milwaukie comprehensive plan and to provide a specific zone to accommodate open space, park, and riverfront uses." Anticipated future development of the park would be limited to parkland, open space, and riverfront amenities. Public facilities and services would be subject to less demand from development under the DOS zone than from development under the C-L zone. The main demands would be from operation of the entire Riverfront Park, and the specific impacts from the C-L site would be minimal or none as it is proposed to include trees, grass, and paved areas. Public services would therefore generally be limited to park maintenance.

Existing public facilities in the vicinity a high voltage PGE overhead powerline that runs the length of the park, water lines, and the Kellogg Waste Treatment Plant located south of Kellogg Creek. Public facilities will remain in their existing locations and the proposed rezone will not increase demand on these facilities. The park will include water quality facilities located near the boat ramp parking area and the proposed parking area near the waste treatment plant.

Therefore, current and future public facilities and services can accommodate anticipated development of the subject site as a result of this proposed rezone.

v) MMC 19.905.1.E requires that the proposed amendment is consistent with the functional classification, capacity, and level of service of the transportation system. A transportation impact analysis may be required subject to the provisions of Chapter 19.1400.

Highway 99 (McLoughlin Boulevard) borders Riverfront Park on the east side. The City's functional classification of this section of McLoughlin Boulevard is arterial. During a recent traffic analysis for this street, it was projected to be Level of Service E or better. Traffic operational findings, within the McLoughlin Boulevard Retrofit Project (McLoughlin Technical Memo #3, DKS Associates 2003), provide additional capacity and traffic impact analysis information relevant to the proposed amendment.

A transportation impact analysis is required if the proposed change meets the "threshold scoring" method described in the Transportation Design Manual. Because the proposed zone change is from a zoning designation that allows more intense uses to a zoning designation that allows less intense uses, a TIS is not required for this zone change.

6. Land Use Application HR-08-01 is a request to remove the Unranked Historic Resource from the City's list of historic resources and remove the Historic Resource Overlay from Tax Lot 3901. This tax lot is the former site of the Portland Traction Line Railway that ran between Portland and Oregon City, through Milwaukie. The tax lot is currently designated as an Unrankable Historic Resource. The procedures for deleting a landmark have been completed, as demonstrated below:

   A. MMC 19.323.4.A allows property owners to make an application for designation or deletion of an historic resource, and states that "the application shall be in such a form and detail as the planning director prescribes." The planning director requested the following information from the applicant: Cultural Resources Survey Form and a narrative describing how the proposal meets the evaluation criteria. The planning director did not require submission of the Cultural Resource Evaluation Form used by the in City 1988 to score potential historic resources. The review procedure for such an application is the Major Quasi-judicial review described in MMC 19.1011.4. The applicant, the City of Milwaukie, is the property owner. The Planning Commission held a public hearing on March 11, 2008, and the application has been processed per the requirements of MMC 19.1011.4.

   B. MMC 19.323.4.B requires the Planning Commission to conduct a public hearing, enter findings, and make a written recommendation to the City Council. The City Council's findings on this request are as follows:

      i) The 40 historic properties on the City's list that are ranked as "Significant" or "Contributing" were evaluated using a Cultural Resource Survey Form that was part of the 1988 Milwaukie Historic and Cultural Resources Inventory. The survey form has three categories of criteria: Historical Association, Architecture and Environment.

      In 2007, the City engaged Martha Richards, an historic preservation consultant with URS Corporation, to evaluate the Portland Traction Line. She was asked to use the Cultural Resources Survey Form and her best professional judgment to recommend a course of action for the City among three options: 1) designate the Portland Traction Line as Significant, 2) designate it as Contributing, or 3) remove it from the inventory list.

      ii) The consultant completed the Cultural Resource Survey Form, which provides basic facts and data about the rail line. The consultant also

produced a Statement of Significance for the property, which provides a narrative description of the history and features of the rail line.

The evaluation concluded that the Portland Traction Line was the first streetcar line in Portland, and as such played an important role in Milwaukie's early development. Unfortunately, little physical evidence of the line remains in the Riverfront Park area. The location of the Traction Line is "barely discernable" in the area with the Historic Resource Overlay. Ms. Richards' conclusion is that "although the streetcar line was an important transportation improvement for the residents of Milwaukie, not enough physical evidence remains in this vicinity to warrant its designation as an historic resource."

iii) MMC 19.323.3 Definitions describes that to be designated as a Contributing Historic Resource, "...an historic resource must receive a rating score level of fifty to sixty percent of the evaluation worksheet or score a high of ten in at least one of the categories of the evaluation worksheet."

The site was not evaluated according to this worksheet. At least 45 of the 86 points possible on the score sheet depend upon the physical state of the resource. Due to the unfortunate loss of most of the physical evidence of the Portland Traction Line, it is not possible for the property to reach 50% of the possible 86 points. Further, it is not likely that the resource would receive a score of 10 for its historical association with a person/group/organization, event, or a broad historical pattern. The City Council finds that despite the line's association with the early development of Milwaukie, this resource could most likely not meet the definition of a Contributing Historic Resource.

iv) The City Council finds, based on the above evaluation, that the Portland Traction Line, described as Tax Lot 3901 of Clackamas County Assessor's Map 1S 1E 35AA, be removed from the local list of historic resources and remove the Historic Resource overlay from this property. As a condition of approval, the City Council requires that at least one descriptive or interpretive sign, monument, or work of public art work relating to the historical presence of the Portland Traction Line be placed within the redeveloped Riverfront Park.

7. Notice of the proposed changes were given to the following agencies and persons: City of Milwaukie Engineering Department, Historic Milwaukie Neighborhood District Association (NDA), Clackamas County, Metro, Oregon Department of Transportation, Oregon Department of Land Conservation and Development, North Clackamas Parks and Recreation District, and the Milwaukie Design and Landmarks Committee. The following comments were received:

The Engineering Department commented that a transportation impact study is not required for the proposed zone change because the proposed zoning allows less intensive use of the site.

The Milwaukie Design and Landmarks Committee (DLC) commented on the removal of the Portland Traction Line site from the Historic Resource inventory. They are in favor of placing the Portland Traction Line permanently on the Historic Resource list. They also commented that they would support the removal of the designation if the leaders of the

park project and the park's designers will commit to and offer a more tangible demarcation of the line before the resource is altered. They proposed conditions for consideration by the Planning Commission that assure the Portland Traction Line will be commemorated on the area where the rail line once ran.

JoAnn Herrigel, on behalf of the Riverfront Board, commented that she and the Riverfront Board they concur with the DLC's comment that the Portland Traction Line should be commemorated within the Riverfront Park. The Riverfront Board prefers that there be flexibility as to final design of the park and how the Portland Traction line is commemorated.

No other comments were received.

Exhibit B:
Condition of Approval

1. Future development of the Milwaukie Riverfront Park that affects Tax Lot 3901 on Clackamas County Assessor's Map 1S 1E 35AA shall include placement of at least one descriptive or interpretive sign, monument, or work of public art relating to the historical presence of the Portland Traction Line. The sign, monument, or public work of art shall be placed within the Riverfront Park site, which is defined as south of Johnson Creek, north of Kellogg Creek, west of SE McLoughlin Boulevard, and east of the Willamette River.