

RESOLUTION NO. 68-2012

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, ESTABLISHING AN ALTERNATIVE PAYMENT PROCESS FOR FEES IN LIEU OF CONSTRUCTION OF PUBLIC AREA IMPROVEMENTS IN THE DOWNTOWN AREA.

WHEREAS, the City of Milwaukie requires under Subsection 19.304.5 and Subsection 19.703.3 of the Milwaukie Municipal Code that those who develop or redevelop property in the Milwaukie Downtown make certain public area requirement improvements within the public right-of-way; and

WHEREAS, the public area requirements were adopted to ensure the development of a consistent and high-quality public right-of-way that establishes a safe, comfortable, contiguous pedestrian-oriented environment with a unified urban design; and

WHEREAS, the redevelopment of the Milwaukie Downtown continues to be a high priority of the City; and

WHEREAS, during the last few years economic conditions have caused redevelopment to slow and some buildings in the Milwaukie Downtown are at less than full occupancy; and

WHEREAS, the imposition of public area requirements on certain development such as tenant improvements has been identified by some downtown property owners as an impediment to redevelopment efforts and the attraction of new businesses or the expansion of existing businesses; and

WHEREAS, amendment of the downtown zones has been initiated in the form of Land Use File # ZA 12-02, which is currently pending before the Planning Commission; and

WHEREAS, Council wishes to encourage redevelopment in downtown prior to the completion of the public process for review and decisions of planning matter ZA 12-02, by immediately providing an alternative means of satisfying the public area requirements.

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

Section 1. Any approved development in the Downtown Zones for which the City accepts a fee in lieu of construction of required transportation facility improvements pursuant to Subsection 19.706.2 of the Milwaukie Municipal Code, is eligible to enter into a written promissory note agreement with the City, to defer payment of the fee in lieu of construction for public improvements.

Section 2. The form of Promissory Note attached as Exhibit A to this Resolution shall be used for all such agreement authorized under this Resolution.

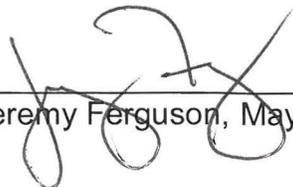
Section 3. The calculation of the required fee in lieu of construction pursuant to Subsection 19.706.2 of the Milwaukie Municipal Code may be amended by the City Council's action on the Planning Commission recommendation for Land Use File #ZA 12-02. Any amendments made by Land Use File #ZA 12-02 are to supersede the calculation of the fee in lieu of construction for which an applicant enters into a promissory note.

Section 4. The final decision of Land Use File #ZA 12-02 shall constitute the date upon which deferred payment of the fee in lieu of construction comes due.

Section 5. An applicant's execution of a promissory note agreement authorized by this Resolution shall constitute payment to the City of the fee in lieu of construction, so as to allow issuance of development permits pursuant to Subsection 19.706.3 of the Milwaukie Municipal Code.

Section 6. This resolution is effective immediately.

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



Jeremy Ferguson, Mayor

ATTEST:

APPROVED AS TO FORM:
Jordan Ramis PC



Pat DuVal, City Recorder



City Attorney

\$ _____

Date: _____

PROMISSORY NOTE

1. Applicant's Promise to Pay

FOR VALUE RECEIVED, I/we, _____, ("Applicant") promise to pay to the order of the City of Milwaukie ("City"), the amount of US \$ _____, owed to the City as a fee in lieu of construction of public area improvements, pursuant to Milwaukie City Code ("Code") Subsections 19.304.5 and 19.706. No interest is charged on the unpaid principal amount from the date of this Promissory Note ("Note") until payment in full.

Applicant's promise to pay is subject to the terms of potential amendment to the Code provisions that establish public area requirements for the Downtown zones. As noted in Section 2 of this Note, the City Council anticipates holding a hearing to consider code amendments to the Downtown zones. The nature and terms of these potential amendments are not yet known, and there is no guarantee that the City Council will even amend the Code.

However, should the Code be amended by action of the City Council which triggers the Applicant's obligation to pay pursuant to Section 2 of this Note, the amended terms supersede the current obligation provided that the amended terms reduce the applicable fee, and are to be applied in order to calculate the applicable fee in lieu that is owed by the Applicant.

2. Payments

Payment will be due in full on the day that the City Council's written decision on ZA 12-02 becomes final.

3. Applicant's Failure to Pay as Required

A. Default and Late Payment Charge

If Applicant does not pay the full amount on or before ten (10) days after the date payment is due, Applicant will be in default. If in default, a late payment charge of five percent (5%) of the payment amount or Fifteen Dollars and No/100 (\$15.00) whichever is greater, will be imposed for each month after the date payment is due. In addition, City may, at its option and without notifying Applicant, declare the unpaid principal amount of the Note due and immediately payable, and Applicant shall immediately pay the principal amount of the Note, time being of the essence of this Note.

B. No Waiver by City or Holder

Even if, at a time when Applicant is in default, City does not require immediate payment in full as described in Section 3A, City will still have the right to make Applicant pay immediately in full if Applicant is in default at a later time.

C. Payment of City's Costs

If City has required Applicant to pay immediately in full as described in this Section 3 or must collect this Note by law, City or holder will have the right to make Applicant pay all the costs and expenses necessary to collect this Note or enforce this Note, including reasonable attorney fees.

4. Obligations of Persons Under this Note

If more than one person signs this Note, each person is jointly and severally liable for all of the promises made in this Note, including the promise to pay the full amount owed. Any person who is a guarantor, surety, or endorser of this Note is also jointly and severally liable to pay the full amount owed. Any person who takes over these obligations, including the obligations of a guarantor, surety, or endorser of this Note, is also jointly and severally liable to keep all the promises made in this Note. City or holder may enforce its rights under this Note against each person as an individual or against Applicant as agreed. This means that any Applicant may be required to pay any and all amounts owed under this Note.

5. Waivers

Applicant, and any other person who has any obligations under this Note, hereby waive and renounce any and all exemption rights that any Applicant may have under or by virtue of the Constitution or laws of the State of Oregon, or any other State, or the United States of America, as against this debt or any renewal thereof.

Applicant, and any other person who has any obligations under this Note, also waive demand, protest, and notice of demand, protest, and non-payment.

6. Applicable Law

This Note and contract are to be construed in all respects by and according to the laws of the State of Oregon.

7. Secured and Unsecured Notes

Notes greater than ten thousand Dollars (\$10,000) will be secured by a Deed of Trust, which must be executed the same date this Note is executed.

Name of Applicant 1

Name of Applicant 2