

REGULAR SESSION

AGENDA

MILWAUKIE CITY COUNCIL February 17, 2009

MILWAUKIE CITY HALL
10722 SE Main Street

2048th MEETING

REGULAR SESSION – 7:00 p.m.

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| 1. CALL TO ORDER
Pledge of Allegiance | |
| 2. PROCLAMATIONS, COMMENDATIONS, SPECIAL REPORTS, AND AWARDS | 1 |
| A. Light Rail Open House Announcement (Kenny Asher & JoAnn Herrigel) | 2 |
| 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> | 5 |
| A. City Council Work Session Minutes November 18, 2008 | 6 |
| B. Appoint Chris Wilson to Planning Commission – Resolution | 11 |
| C. Appoint David Janusz to Library Board– Resolution | 12 |
| D. Library Fine Amnesty Week April 12 – 18, 2009 – Resolution | 13 |
| E. Bid Award for Spring Park – Resolution | 15 |
| 4. AUDIENCE PARTICIPATION <i>(The Presiding Officer will call for statements from citizens regarding issues relating to the City. Pursuant to Section 2.04.140, Milwaukie Municipal Code, only issues that are "not on the agenda" may be raised. In addition, issues that await a Council decision and for which the record is closed may not be discussed. Persons wishing to address the Council shall first complete a comment card and return it to the City Recorder. Pursuant to Section 2.04.360, Milwaukie Municipal Code, "all remarks shall be directed to the whole Council, and the Presiding Officer may limit comments or refuse recognition if the remarks become irrelevant, repetitious, personal, impertinent, or slanderous." The Presiding Officer may limit the time permitted for presentations and may request that a spokesperson be selected for a group of persons wishing to speak.)</i> | |

5. **PUBLIC HEARING** *(Public Comment will be allowed on items appearing on this portion of the agenda following a brief staff report presenting the item and action requested. The Mayor may limit testimony.)*
 - A. **Motion to Consider Continuation of Amendments to Milwaukie Municipal Code (MMC) Section 19.321.7 and 19.321.3 – Ordinance (Mike Swanson)**

6. **OTHER BUSINESS** *(These items will be presented individually by staff or other appropriate individuals. A synopsis of each item together with a brief statement of the action being requested shall be made by those appearing on behalf of an agenda item.)* **18**
 - A. **Business Recycling Requirement – Ordinance, 2nd reading (JoAnn Herrigel)** **19**
 - B. **Milwaukie Municipal Code Amendments Chapters 1.01 & 1.04 – Ordinance (Bill Monahan)** **46**
 - C. **National Main Street Program Agreement – Resolution (Alex Campbell)** **54**
 - D. **Urban Renewal Feasibility Contract Approval – Resolution (Alex Campbell)** **69**
 - E. **Council Reports**

7. **INFORMATION**

8. **ADJOURNMENT**

Public Information

- Executive Session: The Milwaukie City Council will meet in executive session immediately following adjournment pursuant to ORS 192.660(2)(h) to consult with legal counsel concerning legal rights and duties regarding current litigation or litigation likely to be filed, and (i) performance evaluations of public officers and employees.
- All discussions are confidential and those present may disclose nothing from the Session. Representatives of the news media are allowed to attend Executive Sessions as provided by ORS 192.660(3) but must not disclose any information discussed. No Executive Session may be held for the purpose of taking any final action or making any final decision. Executive Sessions are closed to the public.
- For assistance/service per the Americans with Disabilities Act (ADA), please dial TDD 503.786.7555
- The Council requests that all pagers and cell phones be either set on silent mode or turned off during the meeting.

2.

PROCLAMATIONS,
COMMENDATIONS,
SPECIAL REPORTS,
AND AWARDS



To: Mayor and City Council

Through: Mike Swanson, City Manager

From: Kenneth Asher, Director of Community Development & Public Works
JoAnn Herrigel, Director of Community Services

Subject: Light Rail Open House Announcement

Date: February 5, 2009 for the February 17 Meeting

Action Requested

None. This item is to ensure council and public awareness about an upcoming Open House on the Portland-to-Milwaukie light rail project.

History of Prior Actions and Discussions

2007- 2008 - Various actions and discussions related to the South Corridor Phase 2 Light Rail Project, also called Portland-to-Milwaukie Light Rail, including adoption of a locally preferred alternative and an Umbrella Agreement with TriMet regarding transit improvements and expectations in the City of Milwaukie over the next ten years.

Background

It has been six months since the City of Milwaukie adopted a locally preferred alternative (LPA) for the Portland-to-Milwaukie light rail project, and longer than that since a large open format meeting was held to update Milwaukians on the project's status.

In the interval since the LPA adoption, TriMet prepared and submitted an application to the Federal Transit Administration (FTA) to enter the preliminary engineering (PE) phase of the project. TriMet had been hoping that the FTA would grant approval in November 2008, however the FTA has not yet acted on the project submittal and TriMet now expects it will be early March before the PE phase can officially commence. The

delay does not reflect FTA concern regarding the project, but rather is a result of the recent administration reorganization.

Despite this delay, various activities have been undertaken to advance the project, and these will be the basis of the upcoming Open House, scheduled for **March 4th at Rose Villa on River Road, beginning at 5:30 p.m.**

Staff is attempting to prepare information for the public in the following areas:

- Preliminary Engineering: What happens in this phase, which design decisions will be made, who's doing the work, how long will it last and how can the public track the progress.
- Final Environmental Impact Statement (FEIS): How does it build on the SDEIS published in 2008, how will it inform the design, when will mitigation commitments be made, how long will it take to be written, and who's doing the work.
- Willamette River Crossing: Much of TriMet's focus since the LPA adoption has been on the process to select a bridge type for the Willamette River crossing. This bridge will be the first of its kind in the US, carrying light rail, streetcar, buses, bikes and peds. Through a committee process and with the help of a strong consultant team, TriMet will have the bridge type options narrowed to one or two, by the time of the Open House. People will be able to learn more about the types and projected cost of this critical project element.
- Station and Park & Ride Planning: Even though design work has not yet begun on the stations or the park and rides, there have been discussions about possibilities at the Tacoma, Lake Road (Milwaukie) and Park Avenue stations, ranging from joint development and station area development to park and ride reconfiguration.
- Trolley Trail Coordination: The light rail project team has been working with North Clackamas Parks and Recreation District staff to ensure coordination between the two projects. Even though design work hasn't yet started on the light rail project, the Trolley Trail design is at about 60 percent, and more is beginning to be understood about the projects' co-location.
- Citizens Advisory Committee: The CAC that was assembled during the SDEIS has been expanded to guide the project through the rest of the design phases. Several people from Milwaukie and Oak Grove sit on this committee, which has continued to meet to consider issues. The Open House will provide the public with an opportunity to meet the CAC representatives and learn how to work with and through them to become informed

The City's Community Services and Community Development staff have been helping design and prepare for the Open House. This will be the first meeting of its kind in the Milwaukie area in at least a year's time. Staff is hopeful that the Mayor and City Councilors will attend, along with a sizeable turnout of Milwaukie citizens. Postcards announcing the open house were mailed to residents and businesses along the proposed alignment and to those on TriMet's project mailing list. The meeting has been

advertised in the Pilot and will be in Mike's Friday Memo, regular updates to the City's neighborhood email lists, and in the Clackamas Review. The Rose Villa location was selected to ensure that Oak Grove residents feel welcome and comfortable in attending, as the information will pertain to both Milwaukie and Oak Grove interests.

Concurrence

None, as no action is requested at this time.

Fiscal Impact

None, as no action is required at this time.

Work Load Impacts

Community Services and Community Development staff are supporting TriMet public involvement staff to an extent manageable within existing work plans.

Alternatives

None listed, as this is a discussion item only.

Attachments

None.

3.

CONSENT AGENDA

MINUTES

MILWAUKIE CITY COUNCIL WORK SESSION

NOVEMBER 18, 2008

Council President Loomis called the work session to order at 5:30 p.m. in the City Hall Conference Room.

Council Present: Councilors Deborah Barnes, Greg Chaimov, and Susan Stone.

Staff Present: City Manager Mike Swanson, City Attorney Bill Monahan

Board and Commission Interviews

The Council interviewed applicants for the Public Safety Advisory Committee, Citizens Utility Advisory Board, and Design and Landmarks Committee.

Milwaukie Relay for Life

Mary James, American Cancer Society, discussed the Milwaukie Relay for Life that would be held at Milwaukie High School and encouraged participation. The Relay had been held at LaSalle Catholic High School, but they were unable to hold it there this year because the school is getting a new track. They thought it was a perfect opportunity to move the relay to Milwaukie High School. They were hoping to hold the event either July 11 and 12 or July 18 and 19. They were waiting for City Council and School District approval. She was hoping that the City would be a relay sponsor.

Councilor Barnes asked what being a sponsor meant.

Mr. Mason, American Cancer Society, replied that they would look to the City for an in-kind donation. Sponsorship levels started at \$250. All sponsors would have their logo/name printed on all of relay materials and participation t-shirts.

Councilor Stone asked if the participants raised money.

Ms. James said each team consisted of 10-15 people and there was a registration fee, which covered the printing and t-shirt costs. Each person was asked to raise \$150, and most raised more. The relay was a 24-hour event from 10 a.m. Saturday until 10 a.m. on Sunday.

Councilor Barnes suggested coordinating the schedule of the relay and the Milwaukie Daze event to get more people involved.

Mr. Mason said they were behind and should have already had a site selected. There was no objection from them to coordinate, but they needed to have approval and figure out how to plan it as a dual event soon. In order to get sponsors they needed to have the date and location set.

Councilor Stone asked how participants there are.

Ms. James said the goal for this year was to have 25 teams and there are non-participants that came as well. Each event starts with a survivor walk.

Councilor Stone liked the idea of the City supporting the Relay.

Councilor Chaimov agreed it was an effort the City should be supporting. He thought the Mayor would be a good resource to figure out how to coordinate the 2 events as it would likely benefit both.

Councilor Loomis said he had spoken with MHS principal and he supported it.

Municipal Code Republication Project

City Attorney Monahan said there were a number of code provisions that had been accumulating over the past months that required modification to bring them up to compliance with direction that Council had given and errors that had been found and needed to be corrected. The amendments were in Section 2.04 and some relate specifically to the City Council. One issue was they wanted to make it easier for Council to excuse either the City Manager or City Attorney from a meeting. The language of the present code said that the City Council made that determination and they thought it made more sense to delegate that to the City Manager. Also, the code stated that City Department Heads would be required to attend and they wanted to make that discretionary. The code relating to the minutes talked about tape recording all open meetings and that was being done digitally so it made sense to make that up to date. There were some other nuances of record keeping that Ms. DuVal suggested would conform to her practices. Item 2.04.150 Discussion of Business, talked about the Council inviting comments on all matters for Council consideration and it clarified what items would be open for comment from the audience and talked about how the public hearings would be conducted following the regulations of the particular type of hearing. The change gave a little more guidance. Section 2.04.290 Standards and Practices recognized a change of the Oregon Government Standards and Practices Law to be Ethics Law. There would be more changes coming on Ethics, such as Conflict of Interest and other such items.

Ms. DuVal added the Code was first published in 1986 and had not been redone since that time. This effort would clean up obsolete language and make it a better looking code.

Mr. Monahan said if there were other code sections that came to the Council's mind staff would want to cover those in the coming months. He and Ms. DuVal went through the entire Code and identified sections that they felt needed to be revised. If there was code that was troubling to Council he would like to know and they would add those for consideration.

Councilor Stone asked if there was a list of those sections.

Ms. DuVal replied that she would send the list to Council.

Mr. Monahan added it was an all encompassing list. Almost every chapter needed attention.

Ms. DuVal said the Code is updated every 6 months. The November supplement just went out and the whole republication would be done in May and would be an ongoing project.

Councilor Stone asked about 2.04.130 Minutes, about the minutes being available to the public within a reasonable time. She asked if there was a way to define that time frame. Sometimes people get really frustrated that they do not have the minutes.

Ms. DuVal said the language came straight from the Open Meetings Law.

Councilor Stone asked if the Open Meetings Law defined what reasonable mean.

Mr. Monahan said it did not, but said that the City's minutes are available and on-line much quicker than the norm.

Councilor Chaimov had been dealing with another city in the county recently and was discouraged to find that his expectations were set to high for what he had hoped to find.

Ms. DuVal added when the streaming video goes live the action minutes would be available the following morning.

Councilor Stone said that would be so great. She also commented on Section 2.04.150 Discussion of Business – that was one thing that had frustrated her being on the Council when deliberating about an issue and they had heard the public comment and were in discussion and a question comes up. There could be someone in the audience that could help clarify it, but so many times Council cannot call on them. Did this allow for them to be able to call on people?

Mr. Monahan replied that the presiding officer always had the opportunity to accept additional testimony. He thought what often happened was that Council would be in a public hearing context and the public hearing will be closed and there would be someone who wanted to speak. Once you closed the public hearing it can always be reopened. It was just more tedious. It was a judgment call on Council's part and the code did not take away that ability.

Filing the Council Vacancy

City Attorney Monahan reviewed the process for filling the vacancy. Mr. Swanson asked him to take a look at the options available to the City Council to fill the vacancy that would occur by Jim Bernard's resignation. Chapter 10 of the City Charter guides Council. The Charter was written in a way to promote having a complete City Council to fill all 5 positions and operate as a complete Council. The language states that the City Council will fill a vacancy by a majority vote, shall appoint a qualified person to fill the vacancy until a person is elected to serve the remainder of the unexpired term. If the Council failed to appoint an individual within 30 days after the seat is vacant the City Manager is directed to call for an election, which did not solve the issue of filling the interim mayor position. If Mayor Bernard resigned prior to the first meeting in January the City would be able to have an election in May to fill out the remainder of the term from May until the end of 2010. The interim position was under Council's control. Council could start the process before the vacancy or wait until after the position was vacant. The person that would be appointed was anyone who would be qualified to serve in an elected office. They must be an elector of the State of Oregon and have resided within in the community for the prior 6 months.

Councilor Stone said the appointment to fill that vacancy was done by the Council and they had discretion to appoint someone from the outside of the Council or from within. What happens if someone on Council was appointed?

Mr. Monahan replied if someone was appointed from within Council then that individual vacated his or her seat on the City Council, which then gave 2 positions to have on the May ballot. He made that interpretation because he did not see anything in the City Charter that said that a council member could take

an interim position and retain the rights to their elected position. The Charter seemed to be striving for a full Council to do business.

Councilor Stone asked if it said in the Charter if someone was currently on the Council and was appointed to the Mayor position that they could return.

Mr. Monahan said he did not see anything that said one could return to his or her prior position. There was nothing that said a Councilor could be the Mayor and still retain the rights to his or her elected position.

Councilor Stone said for the sake of a scenario if a couple of people on Council ran for the Mayor spot only one could win so there would be 2 seats vacant?

Mr. Monahan replied running for the position did not require that a person vacate the seat. There were some charters in the state that did, but there was nothing in Milwaukie's Charter that said that. If 2-3 council members chose to run for Mayor the only person that would have to give up his or her seat would be Councilor elected as Mayor. If that happened we would have to start the process over again to fill that vacancy. There was nothing that prohibited someone from being appointed to be the interim mayor

Councilor Loomis asked the Council how they wanted to proceed. Did they want to wait for input from Mayor Bernard?

Mr. Monahan said the Mayor would not be involved in making the decision. It might be a more transparent and clean process if the Mayor were not involved in the discussion

Councilor Stone asked why he would not be involved if the decision was made prior to his resignation.

Mr. Monahan said if he were here he would have the right to participate. He was suggesting it was a more transparent process if he did not. The Charter says the remaining members shall make the appointment.

Councilor Chaimov felt they should start the process and accept applications.

Councilor Barnes said there were several people that contacted her and offered their services as interim mayor. They were very interested, and she thought it was good to appoint someone to fill in until the election so they had a clean vote of Milwaukie residents on the race.

City Attorney Monahan said nothing precluded Council from starting the process to solicit applications. At the meeting following Mayor Bernard's resignation Council could follow the process of requesting applications. Once the position was vacant they could follow the process of having an appointment. Votes of three members of the Council would be necessary. Council could create an application or come up with some guidelines so that someone could write an essay.

Ms. DuVal said there is an application and she can send it out to Council for review.

Mr. Monahan said if Council waited until January at the very first meeting it would follow the process of swearing in Councilors Loomis and Chaimov and then move to accept the resignation of the Mayor. Then Council would elect the Council President because the Charter said that when there is a new duly elected member of council there is a new election of Council President. The Council President would preside in the process to appoint the Mayor.

Consensus was Council would like to interview applicants at the December 16 Work Session.

Council President Loomis adjourned the work session at 6:45 p.m.

Pat DuVal, City Recorder

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, APPOINTING CHRISTOPHER WILSON TO THE MILWAUKIE PLANNING COMMISSION

WHEREAS, a vacancy exists on the Milwaukie Planning Commission; 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, Christopher Wilson possesses the necessary qualifications to serve on the Milwaukie Planning Commission.

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

SECTION 1: That Christopher Wilson is appointed to the Milwaukie Planning Commission by unanimous vote of the Milwaukie City Council on February 3, 2009.

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

SECTION 3: This resolution takes effect immediately upon passage.

Introduced and adopted by the City Council on February 17, 2009.

Jeremy Ferguson, Mayor

ATTEST:

APPROVED AS TO FORM:
Jordan Schrader Ramis PC

Pat DuVal, City Recorder

City Attorney

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, APPOINTING DAVID JANUSZ TO THE MILWAUKIE LEDDING LIBRARY BOARD

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

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

WHEREAS, David Janusz possesses the necessary qualifications to serve on the Milwaukie Ledding Library Board.

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

SECTION 1: That David Janusz is appointed to the Milwaukie Ledding Library Board by unanimous vote of the Milwaukie City Council on February 3, 2009.

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

SECTION 3: This resolution takes effect immediately upon passage.

Introduced and adopted by the City Council on February 17, 2009.

Jeremy Ferguson, Mayor

ATTEST:

APPROVED AS TO FORM:
Jordan Schrader Ramis PC

Pat DuVal, City Recorder

City Attorney

Resolution No. _____



To: Mayor and Council
From: Joe Sandfort, Library Director
Through: Mike Swanson, City Manager
Re: Library Fine Amnesty in Recognition of National Library Week
Date: January 30, 2009 for March 3, 2009 Regular Session

ACTION REQUESTED

Adopt a resolution amending Resolution 54-2008 establishing a fee schedule for the City by approving a Library Fine Amnesty for the week of April 12 – 18, 2009 in recognition of National Library Week.

BACKGROUND

The City Council annually adopts a resolution establishing a fee schedule for various City services. Included in the resolution are various fees and charges for the Library, including fines for overdue material. Resolution No. 54-2008, adopted on June 17, 2008 and effective on July 1, 2008 set the overdue fine for all material at \$0.25 per day with a maximum of \$3.00.

In recognition of National Library Week the Library proposes to waive \$0.50 of a patron's fine for each can or package of food that they donate. The food collected would then be distributed to the Oregon Food Bank for local distribution.

FINANCIAL IMPACT

There is no way to accurately predict the financial impact of the proposed fine amnesty. For the year ended June 30, 2008 the total fines collected amounted to \$58,546, or approximately \$1,126 per week. The amount budgeted was \$53,000.

RECOMMENDATION

Joe Sandfort, Library Director, recommends this action. It is a visible way in which to both recognize the City's Ledding Library and the contributions of the Library and its patrons to the community while helping those in need.

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, AMENDING RESOLUTION NO. 54-2008 BY ESTABLISHING A LIBRARY FINE AMNESTY WEEK FROM APRIL 12, 2009 THROUGH APRIL 18, 2009 IN RECOGNITION OF NATIONAL LIBRARY WEEK

WHEREAS, the City Council adopted Resolution No. 54-2008 on June 17, 2008 to be effective on July 1, 2008; and

WHEREAS, Resolution No. 54-2008 established a schedule of fees and charges for all City services, including overdue library fines in the amount of \$0.25 per day for all materials with a maximum of \$3.00; and

WHEREAS, April 12, 2009 through April 18, 2009 is National Library Week, and in recognition thereof the Library Director has proposed a waiver of a patron's accumulated library fines in the amount of \$0.50 for each can or package of food donated; and

WHEREAS, the food collected will be distributed to the Oregon Food Bank for distribution to those in need; and

WHEREAS, the fine waiver is for a limited period of time and is a visible way in which to demonstrate and recognize the Ledding Library's contributions to the community during National Library Week.

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

Section 1. That Resolution No. 54-2008 be amended to permit a waiver of a patron's accumulated overdue library fines in the amount of \$0.50 for each can or package of consumable food donated by the patron during the week of April 12, 2009 through April 18, 2009 in recognition of National Library Week.

Section 2. This Resolution is effective immediately.

Introduced and adopted by the City Council on March 3, 2009.

Jeremy Ferguson, Mayor

ATTEST:

APPROVED AS TO FORM:
Jordan Schrader Ramis PC

Pat DuVal, City Recorder

City Attorney



To: Mayor and City Council

Through: Mike Swanson, City Manager

From: Beth Ragel, Community Services Program Coordinator

Subject: Bid Award for Spring Park Construction

Date: February 17, 2009

Action Requested

Approve a resolution awarding a contract to Daneal Construction, Inc. for \$84,000 for construction of Spring Park, located at 1880 SE Sparrow Street in Milwaukie, and authorizing the City Manager to sign a Personal Services contract with this firm for these services.

History of Prior Actions and Discussions

January 2006: Council work session discussion regarding the Metro Open Spaces Bond measure. Staff report included a draft list of local share projects, one of which was Spring Park.

February 2006: Council approved a resolution supporting the list of local share projects to be funded by Metro's Open Space Bond measure proposed for the November 2006 ballot. Spring Park completion was on this list.

Background

On November 7, 2006, Metro area voters approved the Natural Areas, Parks and Streams Bond Measure. This bond measure allocated \$220 million to purchase and enhance parks and open spaces in the region. \$44 million of these funds were allocated to Local Governments in the region for local projects. Milwaukie's share of these "Local Share" funds is \$657,751. Staff developed a list of projects to be completed using these

funds which were reviewed by Council, the City's Park Board and the neighborhood leadership in 2006. Spring Park was on this list of approved projects for completion.

Over the last year Beth Ragel, Community Services Program Coordinator, has worked with landscape architect Pat Lando of Lando and Associates, to complete the design for Spring Park with input from the Island Station neighborhood district association and other City departments. Once the design was finalized, staff issued a Request for Proposals for construction of Spring Park on December 15, 2008. The City received nine proposals for the project by the January 16, 2009 deadline and Daneal Construction, Inc was the lowest bid. The proposals were reviewed by staff and the landscape designer and it was determined that Daneal Construction, Inc was the best choice given that they were the lowest bid and also have extensive experience in developing parks for local jurisdictions.

Concurrence

The Island Station neighborhood; the Community Services Director, North Clackamas Parks and Recreation maintenance staff; and the landscape designer for Spring Park support the award of the bid to Daneal Construction, Inc.

Fiscal Impact

\$\$84,000 to cover the Personal Services Contract for this project has been allocated in the 2008-2009 budget.

Work Load Impacts

The Community Services Program Coordinator will monitor the contract with the landscape firm and the North Clackamas Parks District. On-site project management will be done by Kevin Cayson, Maintenance Manager for the North Clackamas Parks and Recreation District.

Alternatives

Do not approve the resolution awarding this grant to the selected landscape firm.

Attachments

- Resolution

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, AWARDING A CONTRACT TO DANEAL CONSTRUCTION, INC. FOR \$85,000, FOR CONSTRUCTION OF SPRING PARK, LOCATED AT 1880 SE SPARROW STREET IN MILWAUKIE, AND AUTHORIZING THE CITY MANAGER TO SIGN A PERSONAL SERVICES AGREEMENT WITH THAT FIRM.

WHEREAS, the Metro Open Spaces measure allocated \$657,000 in local share funds to the City of Milwaukie for the acquisition of open space and development of parks; and

WHEREAS, the City solicited bids for construction of Spring Park through a formal bid process; and

WHEREAS, staff and the landscape designer, through review of the bids received, have determined that Daneal Construction, Inc best serves the needs of the City and this project ;

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

The contract for the construction of Spring Park, located at 1880 SE Sparrow Street in Milwaukie, be awarded to Daneal Construction, Inc and that the City Manager is authorized to sign a personal services agreement with that firm.

Introduced and adopted by the City Council on February 17, 2009.

This resolution is effective immediately.

Jeremy Ferguson, Mayor

ATTEST:

APPROVED AS TO FORM:
Jordan Schrader Ramis PC

Pat DuVal, City Recorder

City Attorney

Document1 (Last revised 09/18/07)

6.
OTHER BUSINESS



To: Mayor and City Council
Through: Mike Swanson, City Manager
From: JoAnn Herrigel, Community Services Director
Subject: Business Recycling Requirement Ordinance
Date: February 5, 2009

Action Requested

Adopt the ordinance amending Chapter 13.24 of the Milwaukie Municipal Code regarding the establishment of a Business Recycling Requirement for businesses in the City.

History of Prior Actions and Discussions

March 2008: City and Metro staff met with Council to discuss an ordinance being considered by Metro Council which would require local governments to pass Business Recycling Requirement ordinances.

December 16, 2009: Staff met with Council in work session to discuss implementation of a Business Recycling Requirement ordinance for the City of Milwaukie.

February 3, 2009: Council did a first reading of the attached ordinance after a 3-2 vote in favor of its adoption.

Background

The City of Milwaukie and Clackamas County have used an “opportunity” model for recycling in the business sector since the mid 1990s. Under this model, the City ensured that haulers provided recycling collection services to their commercial customers, but did not require those customers to recycle. In partnership with Metro, Milwaukie and other local governments provided educational materials and technical assistance to businesses who requested help with recycling and waste prevention.

Clear progress has been made as a result of these efforts, but businesses in the region still dispose of more than 100,000 tons of recyclable paper and containers annually. From 2003 to 2007, Metro and their local government partners explored options for increasing business recycling by convening public/private work groups and conducting stakeholder outreach. More than 1,000 people provided advice on approaches for increasing business recycling.

In November 2007, after reviewing the costs and benefits of potential approaches and input from Metro's Policy Advisory Committee (MPAC) and the Metro Solid Waste Advisory Committee (SWAC), the Metro Council chose to develop a required business recycling program for formal consideration. Metro councilors and staff met with local business associations and elected officials to explain the Business Recycling Requirements program, which requires local governments to require businesses to recycle all types of recyclable paper and certain containers such as plastic bottles, aluminum cans and glass.

Between February and August 2008, more than 300 business representatives and elected officials participated in these meetings (including the Milwaukie City Council and the North Clackamas Chamber of Commerce in March 2008). Overall, participants indicated that education and incentives are the best way to encourage businesses to recycle, but that requirements may be needed to make recycling a priority. Based on the regional input, the Metro Council adopted the Business Recycling Requirements program on September 18, 2008.

In February of 2008, anticipating the passage of the Metro ordinance, Milwaukie staff began coordinating with Clackamas County "Recycle At Work" staff to initiate a targeted recycling outreach and technical assistance campaign for the 800 or so commercial businesses in the City. Since the winter of 2008, County staff has contacted 250 of the City's businesses to provide information and assistance regarding commercial recycling.

In November 2008, City staff met with the franchised garbage haulers to discuss the Metro ordinance and its impact on Milwaukie commercial customers. The Metro ordinance requires that local governments adopt local ordinances to implement the Business Recycling Requirement by February 27, 2009. Staff walked through the potential components of a City ordinance with the haulers and developed a tentative schedule for its adoption and implementation.

In December 2008, staff met with Council to discuss proposed code language for the implementation of Milwaukie's Business Recycling Requirement. Staff then met with the garbage haulers on January 12 to review this same language. The haulers supported the language proposed in the attached ordinance.

Proposed Code Language

The proposed language modifies the current solid waste chapter in the following ways:

- 1) It adds a definition for “Businesses” under the definition section of this chapter, and
- 2) It inserts a new subsection, 13.24.045 Business Recycling Requirement that requires that businesses separate recyclables from other waste and provide signage and receptacles for collection of those recyclables.

Home based businesses would not be affected by this new language. However, the language does require that any landlord providing commercial space for commercial businesses and providing garbage service as a part of their lease, also provide recycling service, signage and receptacles.

Compliance

The compliance strategy for this program will be “assistance driven”. Staff and haulers will work with businesses to help them implement waste reduction and recycling programs using on-site assistance and education materials crafted to the individual business’ needs. Signage, receptacles and education materials will be provided to businesses by either the City (through County outreach staff) or the garbage haulers. Proof of compliance will not be based on quantitative measurement of business waste generation and recycling but rather on verification that Best Management Practices are in place and being used. Any compliance strategy employed by the City (or the County, as our agent) will be phased in over a 12 to 18 month period to allow businesses time to implement appropriate systems. The effective date of this code change is April 1, in order to allow time for information to be distributed to businesses and education to begin in the field.

Best Management Practices will include:

- Collection and recycling of, at least, paper, cardboard, glass and plastic bottles and metal cans. Collection of other materials would be encouraged.
- Regularly scheduled collection service for recyclables
- A two-sort system, with all materials mixed together but glass collected separately
- Provision of internal and external recycling collection containers
- Accurate and clear labeling of all collection containers
- Provision of educational materials and/or training for employees, tenants and janitorial staff (where appropriate)

Concurrence

The City's franchised haulers support the City staff's code amendment and schedule for implementation of the new ordinance. The County solid waste staff has reviewed the language and find it consistent with the County's and other local jurisdictions.

Fiscal Impact

A portion of the additional \$400,000 allocated by Metro toward the implementation of this program will be used by the County, on the City's behalf, toward business compliance assistance. No new funding needs are anticipated.

Work Load Impacts

None expected.

Attachments

- Ordinance adopting Code amendment
- Code language as amended

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, AMENDING CHAPTER 13.24 OF THE MILWAUKIE MUNICIPAL CODE TO ESTABLISH A BUSINESS RECYCLING REQUIREMENT PROGRAM.

WHEREAS, the City of Milwaukie historically has shown support for reduction of the amount of solid waste generated and disposed per capita by implementing source separation and recycling programs; and

WHEREAS, businesses annually generate almost half the region's garbage and dispose of more than 100,000 tons of paper and containers each year that could otherwise be recycled; and

WHEREAS, Metro, the regional government has adopted Ordinance No.08 1200, which amends Metro Code Chapter 5.10, Regional Solid Waste Management Plan, by adding provisions to implement a business recycling requirement;

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

Section 1. Section 13.24.020 is amended to insert the following definition:

"Business" means any entity of one or more persons, corporate or otherwise, engaged in commercial, professional, charitable, political, industrial, educational, or other activity that is non-residential in nature, including public bodies.

Section 2. A new section 13.24.045 Business Recycling Requirement is added which reads:

13.24.045 Business Recycling Requirement

All businesses within the City shall comply with waste prevention, recycling and composting requirements as set forth in this Chapter and the regulations promulgated hereunder.

- A. Businesses shall source separate all recyclable paper, cardboard, glass and plastic bottles and jars, and metal cans for reuse or recycling;
- B. Businesses shall ensure the provision of recycling receptacles for internal and/or external maintenance or work areas where recyclable materials are collected, stored, or both.
- C. Businesses shall post accurate signs that:
 - a. Describe the location where recyclable materials are collected, stored, or both;
 - b. Identify the materials the Business must source separate for reuse or recycling; and,
 - c. Provide recycling instructions.
- D. Persons providing garbage collection service to business tenants as part of their rental/lease, shall provide recycling collection systems enabling the business tenants to recycle in compliance with this chapter and any regulations promulgated hereunder.

Section 3. These amendments will take effect on April 1, 2009.

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

Read the second time and adopted by the City Council on _____.

Signed by the Mayor on _____.

Jeremy Ferguson, Mayor

ATTEST:

APPROVED AS TO FORM:
Jordan Schrader Ramis PC

Pat DuVal, City Recorder

City Attorney

Chapter 13.24 SOLID WASTE MANAGEMENT

Note:

* Prior ordinance history: Ords. 1752 and 1760.

13.24.010 Policy.

It is declared to be the public policy of the city of Milwaukie to regulate solid waste management service by:

- A. Insuring safe, economical, and comprehensive solid waste management service;
- B. Insuring service rates and charges that are just and reasonable and adequate to provide necessary public service;
- C. Prohibiting rate preferences and other discriminatory practices; and
- D. Providing technologically and economically feasible resource recovery by and through the franchisees. (Ord. 1955 § 1 (part), 2005)

13.24.020 Definitions.

The following definitions shall apply to this chapter:

“City” means the city of Milwaukie, Clackamas County, Oregon.

“City council” or “council” means city council of Milwaukie, Oregon.

In addition, for the purpose of this chapter, the following definitions shall be applicable:

“Allowable expenses” means those expenses that are known and measurable, calculated in accordance with Generally Accepted Accounting Principles (GAAP), not in excess of the fair market value of like services, and are reasonably and prudently incurred by the franchisee in the course of performing its obligations under this franchise. A narrative of allowable expenses shall be established by the city in its administrative rules.

“Bulky wastes” means large items of solid waste such as appliances, furniture, large auto parts, trees, branches greater than four (4) inches in diameter and thirty-six (36) inches in length, stumps and other oversize wastes

whose large size precludes or complicates their handling by normal collection, processing or disposal methods.

“Business” means any entity of one or more persons, corporate or otherwise, engaged in commercial, professional, charitable, political, industrial, educational, or other activity that is non-residential in nature, including public bodies.

“Commission” means the State of Oregon Environmental Quality Commission (EQC).

“Compensation” includes any type of consideration paid for service, including but not limited to, rent, the sale of recyclable materials, and any other direct or indirect provisions for payment of money, goods or benefits by property owners, tenants, members, licensees, and similar persons. It shall, also, include any exchange of services, including the hauling of solid waste and waste. Compensation includes the flow of consideration from the person owning or possessing the solid waste or waste to the person collecting, sorting, transporting, or disposing of solid waste or waste.

“Curbside,” as defined here, may also be called “curbside/roadside” and means a location within three (3) feet of public right-of-way. This does not allow the garbage or recycling receptacle to be placed on the inside of a fence or enclosure even if the receptacle is within three (3) feet of said road or roads. For residences on “flag lots”, private roads or driveways, “curbside/roadside” shall be the point where the private road or driveway intersects a city road, public access road, state road or federal road.

“Department” means the State of Oregon Department of Environmental Quality (DEQ).

“Disposal site” means land and facilities used for the disposal, handling or transfer of, or resource recovery from solid wastes, including but not limited to dumps, landfills, sludge lagoons, sludge treatment facilities, disposal sites for septic tank pumping or cesspool cleaning service, transfer stations, resource recovery facilities, incinerators for solid waste delivered by the public or by a solid waste collection service, composting plants and land and facilities previously used for solid waste disposal at a land disposal site; but the term does not include a facility subject to the permit requirements of ORS 468B.050; a landfill site which is used by the owner or person in control of the premises to dispose of soil, rock, concrete or other similar non-decomposable material, unless the site is used by the public either directly or through a solid waste collection service; or a site operated by a wrecker issued a certificate under ORS 822.110.

“Franchisee” means the person to whom a franchise is granted by the city council pursuant to this chapter. Such franchise shall grant exclusive rights to provide service and solid waste management service for compensation.

“Infectious waste” means biological waste, cultures and stocks, pathological wastes, and sharps, as defined in ORS 459.386 and 459.387.

“Person” means the state or a public or private corporation, cooperative, local government unit, public agency, individual, partnership, association, firm, trust, estate or any other legal entity.

“Placed for collection” means solid waste or recyclable material that has been placed by the customer for service by a franchisee under the requirements contained in this chapter.

“Processing” means an operation where collected, source separated, recyclable materials are sorted, graded, cleaned, densified or otherwise prepared for end use markets.

“Recyclable material” means any material or group of materials that can be collected and sold for recycling at a net cost equal to or less than the cost of collection and disposal of the same material.

“Resource recovery” means the process of obtaining useful material or energy resources from solid waste and includes:

1. “Energy recovery,” which means recovery in which all or a part of the solid waste materials are processed to utilize the heat content, or other forms of energy, of or from the material;
2. “Material recovery,” which means any process of obtaining from solid waste, by presegregation or otherwise, materials which still have useful physical or chemical properties and can be reused or recycled for some purpose;
3. “Recycling,” which means any process by which solid waste materials are transformed into new products in such a manner that the original products may lose their identity;
4. “Reuse,” which means the return of a commodity into the economic stream for use in the same kind of application as before without change in its identity.

“Solid waste” and “waste” are interchangeable. “Solid waste” means and includes all putrescible and nonputrescible waste, including but not limited to, garbage; compost; organic waste; yard debris; brush and branches; land clearing debris; sewer sludge; residential, commercial and industrial building demolition or

construction waste; discarded residential, commercial and industrial appliances, equipment and furniture; discarded, inoperable or abandoned vehicles or vehicle parts and vehicle tires; manure; feces; vegetable or animal solid and semi-solid waste and dead animals; and infectious waste. "Waste" means useless, unwanted or discarded materials. The fact that materials, which would otherwise come within the definition of solid waste, may, from time to time, have value and thus be utilized shall not remove them from the definition. The terms solid waste or waste do not include:

1. Environmentally hazardous wastes as defined in ORS 466.055;
2. Materials used for fertilizer or for other productive purposes on land in agricultural operations in the growing and harvesting of crops or the raising of fowl or animals;
3. Septic tank and cesspool pumping or chemical toilet waste;
4. Source separated, principal recyclable materials as defined in ORS 459A and the rules promulgated there under and under this chapter, which have been purchased or exchanged for fair market value, unless the city declares a site of uncollected principal recyclable materials to be public nuisance;
5. Applications of industrial sludges or industrial waste by-products authorized through a land use compatibility statement or management plan approval and that have been applied to agricultural lands according to accepted agronomic practices or accepted method approved by the land use compatibility statement or management plan, but not to exceed one hundred (100) dry tons per acre annually; stabilized municipal sewage sludge applied for accepted beneficial uses on land in agricultural, nonagricultural, or silvicultural operations; sludge-derived products applied for beneficial uses on land in landscaping projects.

"Solid waste collection service" or "service" means the collection, transportation or disposal of or resource recovery from solid wastes.

"Solid waste management" means the management of the accumulation, storage, collection, transfer, handling, compaction, transportation, treatment, processing and final disposal or utilization of solid waste and waste or resource recovery from solid waste and facilities necessary or convenient to those activities. The franchisee may contract with another person to provide service of any type under the franchisee's service franchise, but the franchisee shall remain ultimately responsible for solid waste and waste management in the franchisee's franchised service area.

"Source separate" means that the person who last uses recyclable material separates the recyclable material from solid waste.

“Special wastes” shall have the meaning given to them in the METRO code as now referenced at METRO Code Section 5.02.015(s), or as hereafter amended, or as provided in the city’s administrative rules. The collection of “special wastes” shall be controlled by this chapter and any rules adopted hereunder.

“Transfer station” means a fixed or mobile facility normally used as an adjunct of a solid waste collection and disposal system or resource recovery station between a collection route and a disposal site.

“Unallowable expenses” means any expenses not included in the definition of allowable expenses and:

1. Interest and amortization on the purchase of franchise routes or other routes or business opportunities;
2. Political and charitable contributions;
3. Federal, state, and local income taxes;
4. Loss on sale of assets;
5. Officer’s life insurance premiums;
6. Director fees;
7. Interest on the purchase of equipment or facilities to the extent that the purchase price exceeds the fair market value of the asset at the time of purchase;
8. Penalties and fines.

“Waste” means material that is no longer usable or wanted by the source of the material, which material is to be utilized or disposed by another person. For the purposes of this paragraph, “utilized” means the productive use of wastes through recycling, reuse, salvage, resource recovery, energy recovery or landfilling for reclamation, habilitation or rehabilitation of land.

“White goods” means kitchen or other large appliances which are bulky wastes.

“Yard debris” means and includes grass clippings, leaves, tree and shrub prunings of no greater than four (4) inches in diameter or similar yard and garden vegetation. Yard debris does not include such items as: dirt, sod, stumps, logs, tree and shrub prunings greater than four (4) inches in diameter, rocks, plastic,

animal waste or manure, cat litter, potting soil, prepared food wastes or nonputrescible material. (Ord. 1955 § 1 (part), 2005)

13.24.030 Enforcement officers—Access to and review of books and records.

A. The city manager shall enforce the provisions of this chapter, and his agents, including police officers and employees of the public works department, may enter any premises for the purpose of determining

compliance with the provisions and terms of this chapter. Such entry shall be upon permission of the occupant or upon warrant.

B. In order for the franchisees to perform services under this chapter, it may be necessary for a franchisee to disclose to city or city may otherwise acquire, a franchisee's confidential business or technical information. The city may make an inspection for such purposes upon at least twenty-four (24) hours' notice, during normal business hours, at an office of the franchisee located in the local metropolitan area. The city will receive and maintain in confidence all information and will prevent the disclosure of information to others except as required by law in connection with litigation. The city will not use information for any purpose other than in connection with the performance of services pursuant to this chapter.

The above shall not apply to any portion of information: (1) which was developed by the city and is in the city's possession prior to the city's first receipt thereof directly or indirectly from a franchisee; (2) which is now or hereafter becomes through no act or failure to act on the city's part generally available on a nonconfidential basis; (3) which was heretofore or hereafter furnished to a franchisee by others as a matter of right without restriction on disclosure; or (4) which is required by law to be publicly disclosed by the city. Information shall not be deemed to be within one of the foregoing exceptions if it is merely embraced by more general information available on a nonconfidential basis.

The city agrees that each of its employees, agents and subcontractors who participates in the performance of services or who has access to information is obligated in a manner consistent with this section. The obligations of this section shall survive the termination of any request for services and the termination of this chapter. (Ord. 1955 § 1 (part), 2005)

13.24.040 Franchise required and exceptions thereto.

A. Except as otherwise provided in this chapter, it is unlawful for any person other than the franchise holders under the provisions of this chapter, to provide or offer to provide solid waste management or collection service in the city for compensation.

B. Nothing in this franchise shall:

1. Prohibit a federal or state agency that collects, stores, transports or disposes of waste, solid waste or recyclable materials, or those who contract with such agencies to perform the service, but only insofar as the service is performed by or for the federal or state agency;

2. Prohibit any person in the city from hauling that person's own waste, solid waste or recyclable materials in a lawful manner; provided, however, that no person will be permitted to haul such waste, solid waste or recyclable material for any other person or firm. In the case of a residential dwelling unit (whether individually owned, nonowner occupied or grouped through an association or cooperative of property owners) any waste generated or produced is owned by the individual owner or occupant and not by the landlord, property owner, cooperative or association or property manager or agent of such person;

3. Prohibit a generator of source separated recyclable material from selling or exchanging such material to any person for fair market value for recycling or reuse;

4. Prohibit any person from transporting, disposing of or resource recovering, sewage sludge, septic pumpings and cesspool pumpings;

5. Prohibit any person licensed as a motor vehicle wrecker under ORS 822.110 et seq., from collecting, transporting, disposing of or utilizing motor vehicles or motor vehicle parts;

6. Prohibit any person transporting solid waste through the city that is not collected within the city;

7. Prohibit a contractor registered under ORS Chapter 701 from hauling waste created in connection with the demolition, construction or remodeling of a building or structure or in connection with land clearing and development. Such waste shall be hauled in equipment owned by the contractor and operated by the contractor's employees;

8. Prohibit the collection, transportation and reuse of repairable or cleanable discards by private charitable organizations regularly engaged in such business or activity including, without limitation, Salvation Army, Goodwill, St. Vincent De Paul, and similar organizations;

9. Prohibit a person from conducting an activity determined by the city manager to be a civic, community, benevolent or charitable program, providing that such activity does not include the collection of putrescible solid waste. The organization conducting such program shall comply with all applicable provisions of this chapter;

10. Prohibit a person from transporting or disposing of waste that is produced as an incidental part of the regular carrying on of the business but a person shall not provide collection service for any accumulated waste generated by a customer of that business;

11. Require franchisee to store, collect, transport, dispose of or resource recover any hazardous waste as defined by or pursuant to ORS Chapter 466; provided, however, that franchisee may engage in a separate business of handling such wastes separate and apart from this franchise and chapter. (Ord. 1955 § 1 (part), 2005)

13.24.045 Business Recycling Requirement

All businesses within the City shall comply with waste prevention, recycling and composting requirements as set forth in this Chapter and the regulations promulgated hereunder.

- A. Businesses shall source separate all recyclable paper, cardboard, glass and plastic bottles and jars, and metal cans for reuse or recycling;
- B. Businesses shall ensure the provision of recycling receptacles for internal and/or external maintenance or work areas where recyclable materials are collected, stored, or both.
- C. Businesses shall post accurate signs that:
 - a. Describe the location where recyclable materials are collected, stored, or both;
 - b. Identify the materials the Business must source separate for reuse or recycling; and,
 - c. Provide recycling instructions.
- D. Persons providing garbage collection service to business tenants as part of their rental/lease, shall provide recycling collection systems enabling the business tenants to recycle in compliance with this chapter and any regulations promulgated hereunder.

13.24.050 Adoption and revision of rules.

A. Under authority of the municipal code, the city manager is authorized to adopt rules, procedures and forms to implement provisions of this chapter that regulate the collection and disposal of solid waste, recycling and yard debris within the city.

B. Any rule adopted or revised according to the authority of the municipal code shall require a public review process. Not less than ten (10) nor more than thirty (30) days before such public review process, notice shall be given by publication in a newspaper of general local circulation. Such notice shall include the place, time and purpose of the public review process and the location at which copies of the full set of the proposed rules may be obtained.

C. During the public review, the solid waste coordinator shall hear testimony or receive written comment concerning the proposed rules. The city manager shall review the recommendations; taking into consideration the comments received during the public review process and shall either adopt the proposal, modify or reject it.

D. An interim rule may be adopted by the city manager or his designee without prior notice upon a finding that failure to act promptly will result in serious prejudice of the public interest of the affected parties, including the specific reasons for such prejudice. Any rule adopted pursuant to this subsection shall be effective for a period of not longer than one hundred eighty (180) days. (Ord. 1955 § 1 (part), 2005)

13.24.060 Sanitary and safety regulations.

Each franchisee shall comply with all state, federal, regional and city laws, rules and regulations relating to solid waste management service, as now or hereafter constituted. Violation shall be an offense against the city. Where enforcement action is not taken by any other agency, the city may exercise this authority in order to cure the violation. (Ord. 1955 § 1 (part), 2005)

13.24.070 Standards for collection and storage of solid wastes and recyclable materials.

A. Storage and collection of solid waste and recyclable materials shall not create vector production and sustenance, conditions for transmission of disease to man or animals, fire hazards or hazards to service or disposal workers or to the public. All solid wastes placed for collection shall be stored by the customer in a can (metal or heavy-duty plastic), cart, metal container or drop box, and such receptacles, other than drop boxes, must have tight-fitting covers and hand or mechanical bales to facilitate pickup. Extra volumes of solid waste that are in addition to the subscribed service, may be in heavy plastic bags that are securely tied at the top and which will accommodate the weight and volume of waste contained in them so that they do not break open upon being collected. The cleanliness of the grounds surrounding the solid waste and recyclable

materials storage area and of the receptacle for such materials shall be the responsibility of the customer. Solid waste containing putrescible materials shall be stored in closed containers.

B. Recyclable materials and yard debris shall be prepared by customers and placed at curbside for collection by a franchisee in accordance with rules and standards adopted under this chapter.

C. Customers shall provide a space for all cans, carts, containers or drop boxes, whether used for garbage or recycling, that has adequate and safe access for collection personnel and equipment. The space provided must also comply with the city development code.

D. Placement of receptacles for collection by a franchisee and requirements pertaining to weight limitations, type and quality, and contents of receptacles placed for collection by a franchisee shall be in accordance with rules and standards adopted under this chapter.

E. The temporary storage of solid waste is permitted without compliance with the requirements for solid waste disposal sites if the temporary storage is provided under safe and sanitary conditions. Temporary storage must comply with all relevant codes and chapters of the city. (Ord. 1955 § 1 (part), 2005)

13.24.080 Franchise requirements.

A. Each franchisee shall make available, for subscription, all levels of solid waste collection service for which the city sets rates, to every customer in its franchised geographic area, subject to the limitations in Section 13.24.150 for refusal of service. Collection of bulky wastes shall be made by special arrangement between franchisee and a customer. Each franchisee shall provide each of their new customers with city-approved written information on all solid waste and recycling collection services that are available and the rates for these services. The franchisee shall not intentionally provide solid waste collection service to customers in another franchisee's geographic area within the Milwaukie city limits except by arrangement with another franchisee under a subcontract. Customers shall be given written notice of any changes in service.

B. Each franchisee shall use proper and suitable equipment for the hauling, removal and transportation of solid waste. All equipment for transporting solid waste on public roadways within the city shall be covered and all equipment for handling the waste material shall be equipped with a metal body, watertight and drip proof to the greatest extent practicable. All equipment shall be kept clean at all times and sufficient equipment shall be kept on hand to properly and

adequately remove all solid waste, subject to the terms of this chapter, together with rules and standards adopted under this chapter.

C. Each franchisee shall make available solid waste management and collection service as defined in Section 13.24.020 of this chapter to customers in the city not less than once per week.

D. Each franchisee may subcontract with others to provide a portion of the service where the franchisee does not have the necessary equipment or service capability. Such a subcontract shall not relieve the franchisee of total responsibility for providing and maintaining service and from compliance with this chapter. The franchisee shall provide written notice to the city of its intention to subcontract any portion of the service prior to entering into such agreement, and provide the city with a copy of the agreement, which shall require city approval prior to the agreement becoming effective. The subcontractor shall comply with all provisions of this chapter.

E. Each franchisee shall provide the opportunity to recycle in accordance with Chapter 459A of Oregon Revised Statutes, together with the rules and regulations promulgated thereunder by the EQC, DEQ, METRO and the city.

F. Each franchisee shall permit inspection by the city of the franchisee's facilities, equipment and personnel at reasonable times.

G. Each franchisee shall comply with all laws relating to solid waste management service and shall not have a record of violations of law or chapters that would indicate an inability to satisfactorily perform the service being franchised.

H. Each franchisee shall submit a certificate of public liability insurance with a thirty (30) day notice of cancellation clause, acceptable to the city, which will cover its business operation including each vehicle operated by the franchisee. This coverage shall include contractual liability insurance. Coverage will include one million dollars (\$1,000,000.00) per occurrence and two million dollars (\$2,000,000.00) general annual aggregate. The insurance shall name city as an additional insured and shall require written notice to city thirty (30) days in advance of cancellation. If contractor hires a carrier

to make delivery, contractor shall ensure that the carrier complies with this subsection. The insurance shall indemnify and save the city harmless against liability or damage which may arise or occur from an injury to persons or property as a result of the franchisee's operation of the solid waste business.

I. Each franchisee shall comply with the hours of collection which may be set by rules and regulations under this chapter.

J. Each franchisee shall provide staff, equipment, transportation and disposal for waste collected at one annual collection event in the city. Expenses from this event shall be reported in annual financial reports as allowable expenses for services provided within the city. (Ord. 1955 § 1 (part), 2005)

13.24.090 Nonexclusive franchise.

A. No person shall do business in the collection and transport of solid waste generated within the city without a current, valid city franchise. A franchise to provide collection service for solid waste, recyclable materials and yard debris in a service area of the city shall be granted only after a determination of need for the service. The determination of need is the responsibility of the city council, which will seek the best balance of the following objectives:

1. To insure safe, efficient, economical and comprehensive solid waste service;
2. To avoid duplication of service that will cause inefficiency, excessive use of fuel, increased traffic, and greater wear on streets;
3. To provide service in areas of marginal return;
4. To promote and encourage recycling and resource recovery;
5. To improve the likelihood of the franchise holder making a reasonable profit and thereby encourage investment in modern equipment;
6. To cooperate with other governmental bodies by recognizing their service arrangements; and
7. To otherwise provide for the service in a manner appropriate to the public interest.

B. In granting a franchise renewal or a new franchise due to an annexation, termination, or revocation of a franchise, the council shall, in addition to the above, consider the following factors in selecting a new or replacement franchisee:

1. The candidate's prior service record in the same or a related industry and its professional relationships with other corporate entities and local, regional and/or state jurisdictions;
2. The candidate's financial ability to perform the obligations of a franchise holder;

3. The candidate's equipment and personnel available to meet current and future needs of a franchise holder;

4. The candidate's ability to provide all services to customers within the geographic boundaries of the designated franchise area, including every residential, multi-family and commercial customer;

5. The candidate's exercise of the burden of proof demonstrating a proposed franchise area is being or has been underserved by the existing or previous franchise holder; and

6. The candidate's good moral character as is relevant to a franchised provider's customer relations, namely any unpaid judgments against the applicant (whether doing business under the same or another name) and any judgments for civil fraud or for a crime of dishonesty.

C. Franchises granted by the city shall be nonexclusive, however it is understood that during the term of franchises granted under this chapter, the city shall not grant any other person a franchise for solid waste management unless there is a showing by the applicant of the need for such additional service in the proposed service area. As to such application(s) the council may consider whether a current franchisee is capable of providing the additional service. In evaluating whether a need exists for additional service, the city council may consider, among any other criteria deemed relevant by the city council, the following items:

1. An increase in the population of the city;

2. An extension of the boundaries of the city;

3. Intensive residential, commercial or industrial development within the boundaries of the city;

4. Changes in solid waste technology and/or recycling collection technology that could substantially improve collection service or reduce collection costs to residents of the city;

5. The effect that an additional franchise would have on each existing franchisee's ability to meet the city's service standards and maintain a fair return on its investment;

6. The number of existing collection franchisees or drop box service franchisees, as applicable, providing service in the area of the city in which the applicant wishes to provide service; and

7. Changes in federal or state laws, rules or regulations that substantially affect solid waste or recycling collection requirements. (Ord. 1955 § 1 (part), 2005)

13.24.100 Term of franchise.

A. A franchise to provide collection service for solid waste, recyclable materials and yard debris in a portion of the city shall be granted for a period of ten (10) years, beginning December 21, 2005.

B. The city shall review franchises annually to evaluate rates and may review customer service and franchisee performance issues.

C. Staff shall report to the council a comprehensive review of the rates. As part of this review, the city may review customer service, franchise performance and overall state of the franchise system based on the first sixty (60) months of the franchise term. As part of that review, at the request of a franchisee, staff may make a recommendation to renew or not renew, and the council may consider renewing that person's franchise for an additional five (5) years to be added to the end of the existing term for a total of ten (10) years. Any such extension shall be granted only after the notice to all interested parties and a public hearing.

D. Nothing in this section restricts the council from suspending, modifying or revoking the franchise for cause pursuant to Section 13.24.140 of this chapter.

E. A franchisee who desires to terminate its rights and obligations under a franchise, shall give not less than ninety (90) days' notice of its intent. Upon receipt of such notice the council shall initiate proceedings to consider applications by any other person for a franchise to serve the same area. (Ord. 1955 § 1 (part), 2005)

13.24.110 Notice request for franchise applications.

A. Prior to the end of a franchise term, notice that the city intends to solicit applications for solid waste franchises shall be published in a newspaper of general circulation within the city. Notice shall also be sent to all holders of Milwaukie solid waste franchises. The city manager or his designee may keep a list of interested persons who will also be provided notice.

B. The city manager shall establish forms and deadlines. (Ord. 1955 § 1 (part), 2005)

13.24.120 Description of franchise areas.

A city solid waste franchise service area shall include single unit residential customers and any multifamily residential, commercial and industrial customers within that service area. The service areas shall be determined by council resolution. The franchise areas and the franchisees serving such areas shall be indicated on a map entitled "Solid Waste Franchise Service Areas of the City of Milwaukie" (the "map"). A copy of the map shall be dated with the effective date of the council resolution and maintained in the office of the city manager. Amendments to the map may be made by council resolution, and copies of amendments shall be kept on file by the city recorder. (Ord. 1955 § 1 (part), 2005)

13.24.130 Transfer of franchise.

A. An assignment or transfer of a franchise shall include, but not be limited to:

1. A sale, exchange or other transfer of fifty (50) percent or more of franchisee's assets dedicated to service in the city;

2. A sale, exchange, or other transfer of fifty (50) percent or more of the outstanding common stock of a franchisee;

3. Any reorganization, consolidation, merger, recapitalization, voting trust, pooling agreement, escrow arrangement, liquidation or other transaction to which franchisee or any of its shareholders is a party which results in a change of ownership or control of fifty (50) percent or more of the value or voting rights in the stock of the franchisee; and

4. Any combination of the foregoing that has the effect of a transfer or change of ownership and control.

B. The franchisee shall provide no less than sixty (60) days' advance written notice to the city of any proposed transfer or assignment. Except as specifically authorized by the city, the franchisee shall not assign any of its rights or delegate or otherwise transfer any of its obligations to any other person without the prior consent of the city council. Any such assignment without the

consent of city council shall be void and any such attempted assignment shall constitute default and grounds for termination of the franchise.

C. If a franchisee requests the city's consent to transfer the franchise, the city shall act on such request within sixty (60) days of the receipt of the franchisee's written request together with all information, as set forth below, required for the city's action on the request. The city shall not unreasonably refuse to consent to an assignment of the franchise to a proposed assignee that has sufficient knowledge, experience, and financial resources so as to be able to meet, to the satisfaction of the city council, in its sole discretion, all obligations of the franchisee hereunder. An application to the city to consider a sale or other transfer of a franchise shall include the following:

1. A nonrefundable application fee of two thousand dollars (\$2000.00) payable at the time of application to the city in advance to defray the city's anticipated expenses and costs resulting from the franchisee's request;

2. Financial statements audited or reviewed by a certified public accountant of the proposed assignee's operations for the three (3) immediately preceding operating years together with any additional evidence of financial ability to perform its franchise obligations; and

3. A showing that the proposed assignee meets all city criteria for the grant of a franchise as are set out in Section 12.24.090 of this chapter. (Ord. 1955 § 1 (part), 2005)

13.24.140 Suspension, modifications or revocation of franchise.

A. The city council may suspend, modify or revoke the contract of a franchisee upon finding that the holder thereof has violated this chapter or ORS Chapter 459 or Chapter 459A, or any rule or regulation promulgated thereunder.

B. When the city receives information indicating a violation of this chapter, a written notice of such violation shall be provided to the franchisee. Such notice shall provide a description of the alleged violation, and shall provide a reasonable opportunity to correct the violation.

C. Upon receipt of the written notice, referred to in subsection B of this section, the franchisee shall have thirty (30) days from the date of mailing of the notice in which to comply or to request a public hearing before the city council. A request for a public hearing before the city council shall be made in writing and in the event a public hearing is held, the franchisee and other interested persons shall have a reasonable opportunity to present information and testimony in oral or written form.

D. The council shall adopt findings of fact and conclusions which will support or deny the alleged violation. The council may, on the basis of such findings, suspend, modify or revoke the franchise of said franchisee or condition such action upon continued compliance with this code. The franchisee shall comply with the time specified in the notice or with the order of the city council. (Ord. 1955 § 1 (part), 2005)

13.24.150 Interruption of service.

Each franchisee agrees, as a condition of their franchise, that whenever the city council finds that the failure of service or threatened failure of service would result in creation of an immediate and serious health hazard or serious public nuisance, the city council may, after a minimum of twenty-four (24) hours' actual notice to the franchisee and a public hearing if the franchisee requests it, provide or authorize another person to temporarily provide the service or to use and operate the land, facilities and equipment of the franchisee to provide emergency service. If a public hearing is requested by the franchisee, it may be held immediately by the city council after compliance with the minimum notice requirements for such meetings established by the Oregon Public Meetings Law. The city council shall return any seized property and business upon abatement of the actual or threatened interruption of service, and after payment to the city for any net cost incurred in the operation of the solid waste service. (Ord. 1955 § 1 (part), 2005)

13.24.160 Rates under this chapter.

A. The city council shall review and set rates on an annual basis by council resolution that considers the following goals:

1. Rates shall be established to the greatest extent practicable on a cost of service basis.

2. Rates shall be adequate to provide an expected operating margin for the subsequent rate year equal to ten (10) percent of composite franchise-wide gross revenues; however, the city shall not be required to change rates if the expected operating margin in the current year falls between eight (8) and twelve (12) percent of gross revenues. The ten (10) percent target, and the eight (8) to twelve (12) percent range of return on gross revenues is considered sufficient to reflect the level of business risk assumed by the franchisee, to allow investment in equipment, and to ensure quality collection service.

B. Accordingly, the city shall have the authority to commission audits, reviews, or analyses of franchisee annual reports to validate hauler submissions. The expected operating margin for the subsequent rate year shall incorporate projected and expected inflation factors, and the effect of known or expected increases or decreases in expenses or revenues prepared on a composite basis.

C. The rates charged by franchisees shall conform to the most current council rate resolution. Prior to implementation, the council must approve any interim rate for services not included in the current resolution.

D. If the haulers for the majority of the franchise areas within the city notify the city manager in writing that they believe a material change outside the franchisees' control has occurred, and the change will have an adverse effect on operating margins, such that current year operating margins will be less than seven (7) percent, a material change will be deemed to have occurred. At that time, the city may undertake any type of review it finds necessary to validate the existence of the material change and estimate its effect on the operating margin. If the results of the review are such that no rate adjustment is warranted, persons requesting the review shall reimburse the city for reasonable costs incurred during the investigation at the time the next payment of franchise fees is due.

E. If the city believes that a material change has occurred that will result in a current year operating margins falling under eight (8) percent or over twelve (12) percent, the city may undertake a supplementary rate review at its own expense.

F. A change in tipping fee at disposal facilities will be evaluated by the city to determine the effect upon rates and services. (Ord. 1955 § 1 (part), 2005)

13.24.170 Franchise fee.

A. For the privilege of using the city's streets and other facilities and for the purpose of defraying the city's regulatory expenses, each franchisee shall pay a franchise fee to the city equal to five (5) percent of cash receipts on residential service, commercial and drop box service, net of material sales revenue. For drop box service, disposal costs will be considered a pass through cost. The franchise fee shall be computed and collected on a calendar quarterly basis. The fee shall be paid by the franchisee not later than the last day of the month immediately following the end of the quarter. A franchise fee payment shall become delinquent if not paid by the last day of the month immediately following the end of the quarter. A simple interest charge of eighteen (18) percent shall be charged against the entire delinquent balance until the balance is paid.

B. At the time of payment of the quarterly fee, each franchisee shall file with the city manager a verified statement of quarterly cash receipts for the period covered by the tendered fee. Such statements shall be public records. Each franchisee shall maintain books and records disclosing the cash receipts derived from business conducted within the city, which shall be open at reasonable times for audit by the city manager or his designee. The city may require a uniform system of bookkeeping and record keeping to be used by all franchisees.

C. Material misrepresentation of cash receipts by a franchisee constitutes cause for revocation of the franchise.

D. The franchise fee imposed by this section is in addition to and not in lieu of any other fee, charge, or tax imposed by the city. The obligation to pay franchise fees on cash receipts generated from services performed under a city franchise shall survive termination of the franchise no matter how terminated.

E. The city council by resolution may change the amount and computation of franchise fees from time to time. The council, by resolution, may reallocate the franchise fee percentages for different customer groups, such as residential or commercial, if such a reallocation mitigates a cost of service disparity that is not fully corrected through the rate setting process. In order to do so, the city manager must be able to demonstrate that the composite rate of return among the franchisees is improved. Such a reallocation may not materially reduce the amount of total franchise fee revenue obtained by the city. (Ord. 1955 § 1 (part), 2005)

13.24.180 Payment for services and interruption or discontinuance of service.

A. Rules and regulations pertaining to billing sequences may be adopted pursuant to this chapter. Solid waste management service may be discontinued by any franchisee when payment for such service is delinquent for a period of thirty (30) days, and after giving ten (10) days' written notice of delinquency to the occupant of the premises. The franchisee shall not be required to resume service until the delinquency is paid and until a deposit equal to two (2) months' service is paid in advance. In the event service is discontinued for delinquency, the city shall be given a copy of the written notice of delinquency given by a franchisee to the occupant of the premises.

B. No franchisee shall terminate service to any or all of its customers under this chapter except in accordance with the provisions of this chapter. Service may be interrupted or terminated when:

1. The street or road access is unavoidably blocked through no fault of the franchisee or if there is no reasonable alternative route or routes to serve all or a portion of its customers; but in either event, the city shall not be liable for any such blocking of access; or

2. Adverse weather conditions render providing service unduly hazardous to persons or equipment providing such service or if such interruption or termination is caused by an "act of God" or a public enemy.

C. A franchisee shall have the right to establish, by agreement with individual customers in the city, the time or times when solid waste shall be gathered and collected, but such agreement shall not conflict with any rules adopted by the city. (Ord. 1955 § 1 (part), 2005)

13.24.190 Annexation of property to city.

If property is annexed by the city, the city and the franchisee shall comply with ORS 459.085(3). (Ord. 1955 § 1 (part), 2005)

13.24.200 Violations.

A. Without the consent of the owner or lessee, it is unlawful for any person to dispose of, place or deposit any waste, solid waste or recyclable materials in a container, drop box or other receptacle owned or leased by another person.

B. No unauthorized person shall take or remove any solid waste or recyclable materials placed for collection by a franchisee.

C. No person shall provide nor offer to provide solid waste management service in the city unless they are exempted under Section 13.24.040 of this chapter or unless they are a franchisee under this chapter.

D. No person shall violate any other provisions of this chapter or rules and regulations promulgated thereunder.

E. These violations shall be subject to the penalties set forth in Section 13.24.210 of this chapter. (Ord. 1955 § 1 (part), 2005)

13.24.210 Process for determining penalties.

A. Any person deemed to be in violation of any of the provisions of this Chapter, shall be charged with a civil infraction and cited into municipal court using the civil infraction procedures of Title I of the Milwaukie Municipal Code.

B. Any person violating any of the provisions of this chapter shall be deemed guilty of a civil infraction, and upon conviction thereof, shall be fined according to rules established under Chapter 1.12.010 of this code. Any nonfranchised person engaging in any of the activities franchised under this chapter for compensation, shall in addition be guilty of a civil infraction for each day of violation of the chapter and subject to an additional fine not exceeding one hundred (\$100.00) dollars for each and every day after the first day of such violation. (Ord. 1955 § 1 (part), 2005)



To: Mayor and City Council
Through: Mike Swanson, City Manager
From: Pat DuVal, City Recorder
Bill Monahan, City Attorney
Subject: Amendments to Milwaukie Municipal Code Title 1, Chapter 1.01, Code Adoption, and Chapter 1.04, General Provisions
Date: February 3, 2009 for February 17, 2009 Regular Session

Action Requested

Adopt an ordinance amending Milwaukie Municipal Code (MMC) Title 1, Chapters 1.01 Code Adoption, and Chapter 1.04, General Provisions.

History of Prior Actions

- March 1986, Ordinance 1591 adopted providing definitions and general rules of construction for the City Code.
- November 1986 Milwaukie Charter and ordinances first codified.
- November 18, 2008, work session update on project by City Attorney and City Recorder.

Background

At the City's request, the City Attorney's Office reviewed the current Code to identify areas that were out-of-date or otherwise might need to be changed. Former City Attorney Gary Firestone read the entire code at a basic level paying special attention to sections and chapters that appeared to have issues based on his experience with the City and knowledge of changes in the law over the years. As some time had elapsed since Mr. Firestone's, Mr. Monahan was asked for any additional comment on the initial Code review.

Because Chapters 1.01, Code Adoption, and 1.04, General Provisions, were adopted by Ordinance 1591 prior to the first codification in 1986, staff found a number of sections which have become obsolete or otherwise outdated. Attachment 1 goes into more detail of the amendments and why they are proposed, but essentially the

recommendations have to do with obsolescence, current practices, and recognition of technology.

The republication of the municipal code originally scheduled for May 2009 is being postponed to November 2009 to allow departments more time to bring amending ordinances before Council. This will be the first republication of the Milwaukie Municipal Code since it was first published in 1986. This effort, based on City Attorney recommendations, will clarify and update the code as well as improve current page numbering, formatting, and overall appearance of the document. Funds were budgeted in the 2008 – 2009 for the project, and staff will request that the funds for this project be carried over to the 2009 – 2020 budget.

Concurrence

The Engineering and Planning Departments and City Attorney's Office reviewed and commented on the amendments.

Fiscal Impact

Funds for the republication project were approved in fund 150-812-6020, contractual services, in the amount of \$10,000.

Work Load Impacts

Department time in reviewing Code sections, soliciting concurrence from affected departments, and City Attorney review.

Alternatives

Council may decide not to adopt the proposed amendments to MMC Chapters 1.01 and 1.04.

Attachments

1. Redline code sections and purpose for amendments
2. Proposed ordinance

Proposed Amendments to Chapter 1.01 and 1.04 and Rationale

1.01.050 Copies on file.

Copies of this code will be maintained ~~by all city departments~~ in all City facilities and copies available for public inspection will be maintained at the Ledding Library, the Office of the City Recorder, and on the City website ~~and the office of the city manager in City Hall.~~ (Ord 1614 (part), 1986)

Amend: Reflects current practice as many departments maintain their code copies electronically yet have a paper copy in the facility. This amendment acknowledges that a copy of the code may be more readily available in the City Recorder's office than the City Manager's office and that the code is current on the City's website.

1.01.060 Ordinances passed prior to code adoption.

~~The last ordinance included in the original code is Ordinance No. 1592, passed March 18, 1986. The following ordinances, passed subsequent to Ordinance No. 1592, but prior to adoption of this code, are adopted and made part of this code: Or Nos. 1597, 1601, 1606, 1608, 1610 and 1611 (Ord 1614 (part), 1986)~~ All ordinances passed after adoption of this code that amend the code or that have general and permanent effect shall be incorporated into this code. The City Recorder shall determine whether an ordinance is one that has general and permanent effect.

Amend: This section deals with the original transition to the code and is now out of date.

1.04.010 Definitions

A. "City" ~~and "town" each~~ means the City of Milwaukie, Oregon., ~~or the area within the territorial limits of the city, and such territory outside Milwaukie over which the city has jurisdiction or control by virtue of any Constitutional or statutory provisions.~~

Amend: The term "town" is not used in the code except in the context of "town center" where it does not have the defined meaning.

~~I. "Oath" includes an affirmation or declaration in all cases in which, by law, an affirmation may be substituted for an oath, and in such cases the words "swear" and "sworn" shall be equivalent to the words "affirm" and "affirmed."~~

Delete: The term "oath" is deleted because it is not used in the code.

K. "Person" ~~includes a natural person, joint venture, joint stock company, partnership, association, club, company, corporation, business, trust, organization, or the manager, lessee, agent, servant, officer or employee of any of them.~~ means a human being or any corporation, company, partnership, government entity, or association.

ATTACHMENT 1

Amend: The definition of "person" does not need to include managers, lessees, agents, servants, etc.

M. ~~"Preceding" and "following" means next before and next after, respectively.~~

Delete: Unnecessary.

P. ~~"Sidewalk" means that portion of a street between the curblines and the adjacent property line intended for the use of pedestrians.~~ is the improved surface intended for pedestrian use in or near a right-of-way and roughly parallel to a street within the right-of-way.

Amend: A sidewalk is part of the right-of-way, not part of what most people consider to be a street, because many streets in the City have no curbs and because some sidewalks can be on private property.

R. ~~"Street" includes all streets, highways, avenues, lanes, alleys, courts, places, squares, curbs, or other public ways in the city which have been or may hereafter be dedicated and open to public use, or such other public property so designated in any law of the state.~~ is the portion of any right-of-way intended for use for vehicular traffic.

Amend: The definition of "street" is overly broad. For example, a square is not a street. Further recommendation to add definition of right-of-way: "Right-of-way" is an area dedicated to the public for vehicular and/or pedestrian and/or bike travel.

Note: definitions were renumbered to acknowledge the deletion of two definitions and addition of one definition.

1.04.020 Title of office

Use of the title of any officer, employee, department, board, ~~or~~ commission, or committee means that officer, employee, department, board or commission of the city. (Ord. 1591 §2, 1986)

Amend: Acknowledges committees along with boards and commissions.

1.04.050 Acts by agents.

~~When an act is required by an ordinance, the same being such that it may be done as well as by an agent as by the principal, such requirement shall be construed to include all such acts performed by an authorized agent. (Ord. 1591 §5, 1986)~~

Delete: Arcane language and virtually meaningless. Probably intended to mean when the code imposes a requirement on some, the requirement is complied with by acts of an agent. That is the law with or without this provision.

1.04.060 ~~Prohibited acts include causing and permitting~~ Responsibility to prevent code violations on properties.

~~Whenever in the ordinances of the city any act or omission is made unlawful, it shall include causing, allowing, permitting, aiding, abetting, suffering or concealing the fact of such act or omission. (Ord 1591 §6, 1986) It is a violation~~

ATTACHMENT 1

of this code to cause, authorize, aid, abet, or intentionally conceal a violation of this code.

Amend: "Allowing" and "permitting" seem too low a standard for culpability, except in the context of allowing activities on a property that are a nuisance or other violation, and the person is in control of the property.

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, AMENDING MILWAUKIE MUNICIPAL CODE CHAPTERS 1.01, CODE ADOPTION, AND 1.04, GENERAL PROVISIONS

WHEREAS, the City is preparing a republication of its Municipal Code incorporating all general ordinances; and

WHEREAS, it includes general provisions for interpretation of the Code originally adopted by Ordinance 1591 on March 18, 1986; and

WHEREAS, it has been determined certain sections of Ordinance 1591 have become obsolete or are otherwise outdated;

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

Section 1. Section 1.01.050, Copies on File, is amended to read as follows:

1.01.050 Copies on File. Copies of this code will be maintained in all City facilities and copies available for public inspection will be maintained at the Ledding Library, the Office of the City Recorder, and on the City website.

Section 2. Section 1.01.060, Ordinances Passed Prior to Code Adoption, is amended to read as follows:

1.01.060 Ordinances Passed Prior to Code Adoption. All ordinances passed after adoption of this code that amend the code or that have general and permanent effect shall be incorporated into this code. The City Recorder shall determine whether an ordinance is one that has general and permanent effect.

Section 3. Section 1.04.010, Definitions, is amended to read as follows:

1.04.010 Definitions

The following words and phrases, whenever used in the ordinances of the city shall be construed as defined in this section unless from the context a different meaning is intended or unless a different meaning is specifically defined and more particularly directed to the use of such words and phrases:

- A. "City" means the City of Milwaukie, Oregon.
- B. "Council" means the City Council of the City. "All its members" or "all Councilors" means the total number of Councilors holding office.
- C. "County" means the county of Clackamas.
- D. "Day" means calendar day.

ATTACHMENT 2

E. "Law" denotes applicable federal law, the Constitution and statutes of the State of Oregon, the ordinances of the City of Milwaukie, and when appropriate, any and all rules and regulations which may be promulgated thereunder.

F. "May" is permissive.

G. "Month" means a calendar month.

H. "Must" and "shall" are each mandatory.

I. "Owner" applied to a building or land includes any part owner, joint owner, tenant in common, joint tenants, tenant by the entirety, of the whole or part of such building or land.

J. "Person" means a human being or any corporation, company, partnership, government entity, or association.

K. "Personal property" includes money, goods, chattels, things in action, and evidences of debt.

L. "Property" means and includes real and personal property.

M. "Real property" includes lands, tenements, and hereditaments.

N. "Right-of-way" is an area dedicated to the public for vehicular and/or pedestrian and/or bike travel.

O. "Sidewalk" is the improved surface intended for pedestrian use in or near a right-of-way and roughly parallel to a street within the right-of-way.

P. "Street" is the portion of any right-of-way intended for use for vehicular traffic.

Q. "Tenant" and "occupant" applied to a building or land include any person who occupies the whole or a part of such building or land whether alone or with others.

R. "Written" means and includes printed or machine readable form.

S. "Year" means calendar year.

Section 4. Section 1.04.020, Title of Office, is amended to read as follows:

Section 1.04.020, Title of Office. Use of the title of any officer, employee, department, board, commission, or committee mean that officer, employee, department, board, commission, or committee of the City.

Section 5. Section 1.04.050, Acts by Agents, is deleted.

Section 6. Section 1.04.060, Prohibited Acts Include Causing and Permitting, is amended to read:

Section 1.04.060, Responsibility to Prevent Code Violations on Properties. It is a violation of this code to cause, authorize, aid, abet, or intentionally conceal a violation of this code.

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

Read the second time and adopted by the City Council on _____.

ATTACHMENT 2

Signed by the Mayor on _____.

Jeremy Ferguson, Mayor

ATTEST:

APPROVED AS TO FORM:
Jordan Schrader Ramis PC

Pat DuVal, City Recorder

City Attorney



To: Mayor and City Council

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

From: Alex Campbell, Resource & Economic Development Specialist

Subject: National Main Street Program Agreement

Date: February 3, 2009 for February 17 Regular Session

Action Requested

Direct City Manager to sign IGA with Clackamas County formalizing the City's commitment to participate in the Main Street Program as an "exploring" Main Street.

History of Prior Actions and Discussions

May 2008: Council encouraged staff to support downtown business community efforts to self-organize.

Background

Over the past six months, staff has organized six meetings to facilitate communication with the downtown business community regarding City efforts and projects. Attendance has varied from five to twenty, but securing a commitment to concrete action has been challenging. Over the same time period, a Downtown Milwaukie Business Group (DMBG) has emerged. This group, initiated by Dr. Jesse Butler and Robin Gunderson of Happy Baskets, has been meeting once per month and is focused primarily on business-to-business networking. Both Community Development staff and Community Services staff have attended DMBG meetings.

Both of these approaches appear to have potential. (Staff is not aware of any meetings actually being held under the auspices of the Downtown Milwaukie Business Coalition,

the group referred to by Mr. Parecki in some press coverage of City issues.) However, notwithstanding the real energy and enthusiasm shown by the leaders/organizers of the DMBG, there does not yet appear to be a critical mass of downtown business operators interested in initiating a private sector-led downtown revitalization effort.

Also over the past six months, City staff has been working with the Clackamas County Main Street (CCMS) Program, and by extension, with the Oregon Main Street (OMS) Program. CCMS and OMS are both working to encourage local jurisdictions to pursue the Main Street Program approach, as developed by the National Historic Trust. The key concept of the approach is to work towards downtown revitalization by simultaneously addressing four areas: Organization; Promotion; Design; and Economic restructuring. This framework has been successfully implemented by thousands of cities around the U.S. (See attachment 1 for a summary of the Main Street Program.)

The State of Oregon and Clackamas County have recently taken steps to help re-establish “Main Street” programs in Oregon. The County, in particular, is making some technical resources available to local cities who are interested in participating.

The City of Milwaukie has opted to participate as an “exploring” Main Street community. The County is currently hiring consultant firms to work in several areas and will be making these consultants available to assist the City in developing a market analysis and updating the City’s inventory of historic properties in the downtown. The County and the State program are combining financial resources to assist localities in the County. The total value of consultant and training services the City will be able to access through this phase of the program is \$10,000 to \$15,000.

The market analysis will examine the “trade area” for downtown; describe “leakages” (expenditures flowing out of the community, that could be captured in downtown); define business opportunities; and help define a business retention/recruitment strategy. The consultant will need input from local businesses on their experience and perspective. In addition, an effective analysis will require some fine-grained survey work.

The market analysis will provide useful information as to the economic functionality and potential of the downtown area. The findings will be useful to City staff and City consultants as the next stages of work on the South Downtown planning project and urban renewal feasibility study.

The historic inventory work will be conducted with input from the Design & Landmarks Committee and could potentially include some architectural renderings of restoration opportunities.

The County will also be providing trainings – both on the Main Street approach and on specific retail strategies such as merchandising and window display.

The County has requested the City to formalize the City’s participation in the program. An agreement to participate is attached to this staff report.

Concurrence

Community Development staff are coordinating with the Planning Department regarding the program as a whole and especially in regard to the historic property inventory update. Staff have briefed downtown businesses and the DMBG on the general work plan.

Fiscal Impact

None.

Work Load Impacts

Carrying out the City portion of the Agreement can be accommodated within existing Community Development and Planning Department work plans. Moving to a higher level of participation would likely require either a significant commitment by downtown business representatives at a higher level of effort by City staff than is currently possible.

Alternatives

Council may wish to suggest some modifications to the Agreement as proposed.

Attachments

1. National Main Street background material
2. CCMS Program Agreement

Benefits of the Clackamas County Main Street Program



Preservationists/Historians

- Main Street Approach™ reinforces common goal of preservation
- Increases coalition
- Increases awareness of historic properties
- Public education
- Improved image
- Improved economic feasibility of preservation

Business Owners

- Image building and improvement
- Pride in downtown
- New/renewed/repeated exposure
- Increased variety of services
- Healthier economy generates new and more business opportunities
- Increased competition means more aggressive business styles tapping leakage
- Increased population, new costumers
- Improved image, creates new market
- Technical assistance and services

City Government

- Identifies and preserves downtown
- Increases tax base
- Increases tourism opportunities
- Increases property values
- Increased number of jobs
- Better goals and vision for downtown
- Healthier economy
- Better services available
- Positive perception of downtown and community
- Better relations between City Hall and private sector
- Impetus for public improvements and grant dollars
- Increased volunteer base for city
- Education resources for city leaders on planning and economic development
- Heritage preservation
- Help with parking issues
- Quality in main street public improvements

Property Owners

- Increased occupancy rates
- Reduced number of vacant storefronts
- Rent stability
- Increased property values
- Vandalism and crime deterrent
- Assistance with tax credits, grants, loan programs, design, and co-op maintenance
- Improved image of downtown
- Communication medium with other property owners
- New uses on upper floors

Local Residents/Consumers

- Enhanced marketplace
- Sense of pride in downtown
- Social and cultural activities
- Opportunities to keep families in town
- Sense of hometown community
- Historical awareness
- Opportunity to participate and volunteer
- Better communication within the community

Clackamas County Main Street Program



The Clackamas County Main Street Program, in conjunction with Oregon Main Street, will provide assistance, training, technical services, and resources to communities interested in preserving, revitalizing, and establishing their downtown commercial districts. The program is a locally driven process following the Main Street Approach™ which is a practical and comprehensive model that capitalizes on the unique assets of their downtown. The goal is to build high quality, livable, and sustainable communities that will grow Clackamas County's economy.



The Oregon Main Street program was reenacted in 2008 to rebuild and revitalize communities utilizing it's previous methods. The program is coordinated with the National Main Street Center, a division of the National Trust for Historic Preservation, state agencies, and state organizations. The Clackamas County and Oregon Main Street Programs will have a competitive process for Main Street designation and will provide designed services to communities learning about the Main Street Approach™ to those advancing their downtown program.



What's Inside:

- The Main Street Approach™
- Levels of Participation
- Why Downtowns are Important
- Benefits of Clackamas County Main Street Program



CONTACT

Jamie Johnk
Clackamas County Main Street
Coordinator

Clackamas County Business
and Economic Development
9101 SE Sunnybrook Blvd.
Clackamas, OR 97015

PH: 503.353-4413
jamiejoh@co.clackamas.or.us

Gary Van Huffel
Oregon Main Street Coordinator

Oregon Economic and Community
Development Department
775 Summer St. NE, Suite 200
Salem, OR 97301

PH: 503.986-0134
gary.vanhuffel@state.or.us



The Main Street Approach™

The Main Street Approach™ is a proven comprehensive approach to downtown commercial district revitalization. This approach has been implemented in over 1,800 cities and towns in 45 states across the nation. By fully integrating the program's four points into a practical downtown management strategy, a local program will produce fundamental changes in a community's economic base:

Organization involves building a Main Street™ framework that is well represented by business and property owners, citizens, public officials, chambers of commerce, and local economic development organizations; everyone working together to renew downtown. A strong organization provides the stability to build and maintain a long-term effort.

Promotion creates excitement in downtown. Street festivals, parades, retail events, and image development campaigns are some of the ways Main Street™ encourages customer traffic. Promotion involves marketing an enticing image to shoppers, investors, and visitors.

Design enhances the attractiveness of the business district. Historic building rehabilitation, street and alley clean-up, colorful banners, landscaping, and lighting all improve the physical image of the downtown as a quality place to shop, work, walk, invest in, and live. Design improvements result in a reinvestment of public and private dollars to downtown.

Economic Restructuring involves analyzing current market forces to develop long-term solutions. Recruiting new businesses, creatively converting unused space for new uses, and sharpening the competitiveness of Main Street's traditional merchants are examples of economic restructuring activities.

Meeting the Needs of Clackamas County Communities

The Clackamas County and Oregon Main Street Programs will provide assistance to all communities in Clackamas County whether they are just beginning to explore options for their downtown or seeking national recognition as a Main Street™ City. This will be accomplished with three levels of requirements, services, and community commitments. The services of the Clackamas County and Oregon Main Street Programs will be tailored to meet the specific or typical needs of communities at their particular stage of downtown revitalization. These levels include;

Exploring Downtown is for those communities that demonstrate an interest in revitalizing their downtowns and want to learn more about the Main Street Approach™.

Transforming Downtown is for communities who are committed to downtown revitalization using the Main Street Approach™ but need technical assistance to take them to the next level.

Performing Main Street is for those communities who were previously certified Nation Main Street cities and those communities with advanced downtown programs following the Main Street Approach.

Why is Downtown Important?

1. Downtown is the historic core of your community.

2. Your central business district includes unique shopping and service activities.

3. Downtown represents a vast amount of public and private investment.

4. Your downtown provides a sense of community and place.

5. Downtown is a reflection of how your community sees itself and is a critical factor in business retention and recruitment efforts.

6. Most of the businesses in a downtown are locally owned– keeping profit in town.

7. Your downtown represents a significant portion of the community's tax base. If this district declines, property will decrease tax burden on other parts of your community.

8. Downtown serves as an incubator for new businesses– the successes for tomorrow.

9. Downtown is usually a government center.

10. Downtown is often the largest employer in a community.

Levels of Participation

	Requirements	Services Provided	Community Commitment
Exploring Downtown	<ul style="list-style-type: none"> Doesn't have a dedicated Downtown Development Manager Interested in revitalizing the downtown including preserving historic buildings and other unique assets of the community Definable downtown or study area 	<ul style="list-style-type: none"> Regional Main Street Workshops and conferences Targeted assistance; <ul style="list-style-type: none"> -2 community assessments per region -1 design project per region Phone support Access to reference library and online resources Assist community with promotion of the program and local press releases Eligible for annual project recognition awards 	<ul style="list-style-type: none"> Submits a Letter of Intent committing to explore the Main Street Approach Completes a community assessment survey Designates staff or volunteer to coordinate with Clackamas County and Oregon Main Street staff and contractors Submits brief annual report on accomplishments, planning, work plans, and interest
Transforming Downtown	<ul style="list-style-type: none"> Complete a community application survey Demonstrates that the community has the support and leadership to participate in the Clackamas County Main Street program Has a full or part-time dedicated person for downtown revitalization programs Shows interest in revitalizing the downtown including preserving historic buildings and other unique assets of the community Has a defined downtown area Completed or committed to complete a historic inventory 	<ul style="list-style-type: none"> Regional or local Main Street Workshops and conferences Clackamas County Main Street Team Assessments Targeted technical assistance Compete for Oregon Main Street matching grants <ul style="list-style-type: none"> -Design and Technical Assistance -Façade improvements Team consultation for organizational, design, promotion, or economic restructuring Phone support Access to reference library and online resources Assistance with promotion and press releases Eligible for annual growth recognition awards Inclusion in Visit Oregon Main Street travel brochure List serve support network 	<ul style="list-style-type: none"> Pass a Resolution supporting entrance into the program Community commitment of minimum 20% dedicated staff person (and organization) for downtown revitalization program and Main Street implementation for 12 months Manager attends semi-annual Downtown Managers meetings Agree to receive support from the Performing Main Street mentoring program Enters into agreements with the Clackamas County Main Street program Submits annual progress reports and work plans
Performing Main Street	<ul style="list-style-type: none"> Submits Letter of Intent and application for Main Street Certification to County Coordinator Demonstrates commitment to the Main Street Approach, and meets Main Street criteria Demonstrates broad based community support for the application Work plans for Organization, Design, Promotion, and Economic Restructuring Designated/committed to complete historic district and/or comprehensive downtown design Meets schedule for certification or drop to Transforming Main Street level 	<ul style="list-style-type: none"> Regional or local Main Street Workshops and conferences Compete for Clackamas County and Oregon Main Street matching grants <ul style="list-style-type: none"> -Technical assistance -Matching façade grant Team consultation and assistance on comprehensive planning and action plans National Trust training for local boards and managers Phone and email support Access to reference library and online resources Eligible for annual achievement awards Inclusion in Visit Oregon Main Street travel brochure List serve support network 	<ul style="list-style-type: none"> Pass a Resolution supporting entrance into the program Commits to a dedicated Downtown manager and funding for revitalization and Main Street management for 3 year period Manager attends semi-annual Downtown Managers meetings Provides mentoring, response team, or community reviews for "Downtown" communities <ul style="list-style-type: none"> -Not to exceed 40 hrs/yr Contributes to programming and training in annual workshops Enters into agreement with the Clackamas County Main Street program Submits monthly and annual reports and annual County Main Street audits

ATTACHMENT 2

**Clackamas County Main Street Program
Community Requirements and Expectations**

AGREEMENT

Exploring Main Street

THIS AGREEMENT is entered into and executed by the Clackamas County Main Street Program, hereinafter referred to as CCMS, and the CITY of MILWAUKIE, hereinafter referred to as LOCAL PROGRAM on this _____ day of _____, 2009.

WHEREAS, CCMS has entered into a contract with Oregon Main Street (OMS) to provide technical expertise, training and services to designated Clackamas County communities;

WHEREAS, this AGREEMENT is for the purpose of setting forth the CCMS program requirements and expectations for the LOCAL PROGRAM, pursuant to its designation as a Exploring Main Street Community and pursuant to a contractual agreement with the OMS Program, so as to assist in the revitalization of the designated local Main Street district;

NOW THEREFORE, in consideration of the foregoing mutual covenants and agreements contained herein, the parties have agreed to do as follows:

SECTION 1. Definitions:

- o LOCAL PROGRAM shall mean the legal organization with the responsibility of carrying out the downtown revitalization efforts as stated in the application submitted for Program participation.
- o BOARD shall mean the Board of the LOCAL PROGRAM, as the same shall be duly and regularly constituted from time to time.

- CITY shall mean the municipality incorporated under Oregon statutes supporting the LOCAL PROGRAM.
- COORDINATOR shall mean the Policy and Program Coordinators for the Clackamas County and Oregon Main Street Programs or delegated designee who will be responsible for the services described in Section 2.0 herein.
- CONTRACTOR shall refer to those services contracted by CCMS or OMS to provide assistance, training, and support to the LOCAL PROGRAM.

SECTION 2. CCMS/OMS Assistance and Services:

CCMS/OMS through its assigned staff, agrees to provide their skill and expertise in the area of services offered. The extent of services will be mutually agreed upon by the Board of the LOCAL PROGRAM and CCMS/OMS. These services may include, but are not limited to the following:

- 2.1. Start-up Assistance
- 2.2. First year membership to the National Main Street Center
- 2.3. Historic Reconnaissance Level Survey
- 2.4. Retail Market Analysis
- 2.5. Retail Business Retention/Expansion/Recruitment Strategy
- 2.6. Committee planning assistance:
 - a. Marketing
 - b. Design
 - c. Organization
 - d. Economic Restructuring
- 2.7. Training/Workshops:
 - a. Local Representative Training
 - b. Board Training
 - c. Committee Training
 - d. Regional Trainings and Workshops
- 2.8. Assistance developing LOCAL PROGRAM Mission, Vision, Goals and Work Plan

- 2.9. Unlimited telephone consultation on local downtown issues
- 2.10. OMS List Serve access for designated LOCAL PROGRAM
- 2.11. Access to Main Street library
- 2.12. Inclusion in CCMS/OMS promotion materials including website, brochures and press releases
- 2.13. Additional technical assistance and services as deemed appropriate

SECTION 3. The LOCAL PROGRAM agrees to these Minimum Participation Standards:

- 3.1. Consider the Main Street Approach™ in the twelve (12) month period of participating in the CCMS program;
- 3.2. Complete and submit a Community Assessment Survey;
- 3.3. Designate a primary local contact for the duration of this Agreement, who will attend a minimum of one application workshop, regional workshop and/or the annual conference;
- 3.4. Within one (1) month of the terminations of this Agreement, the local contact will submit a brief report to the CCMS Coordinator outlining downtown accomplishments, planning progress, work plans, and interest to continue or advance in CCMS/OMS programs;
- 3.5. Participate in CCMS and OMS Program Assistance and Services (outlined in Section 2 of this AGREEMENT);
- 3.6. Participation in training sessions scheduled throughout the year is encouraged;
- 3.7. Maintain a current membership in the National Main Street Center;
- 3.8. Share information with other Main Street programs and be willing to mentor or assist developing CCMS/OMS local program if requested;
- 3.9. Work towards meeting the Ten Standards of Performance set by the National Trust of Historic Places outlined in Attachment A;
- 3.10. Assume full responsibility for all costs and expenses associated with the performance of the LOCAL PROGRAM and the performance of its rights and responsibilities under this AGREEMENT. The LOCAL

PROGRAM further acknowledges that CCMS and OMS are not responsible for any costs associated with their participation in the Main Street Program.

SECTION 4. Other Areas of Joint AGREEMENT:

- 4.1. The use of the CCMS and OMS name and logo must be pre-approved by the COORDINATOR;
- 4.2. Signs provided to the LOCAL PROGRAM by OMS are the property of the OMS program and shall be returned to OMS if the LOCAL PROGRAM is no longer participating in CCMS or OMS programs as outlined in Section 5 of this AGREEMENT;
- 4.3. The LOCAL PROGRAM is encouraged to publicly acknowledge affiliation with CCMS and OMS through appropriate materials including: public notices, stories, press releases, public presentations, in accordance with uses specified by the COORDINATOR. The LOCAL PROGRAM shall provide electronic or hard copies of any materials produced for the local Main Street program;
- 4.4. The LOCAL PROGRAM shall provide one (1) electronic and one (1) hard copy to the COORDINATOR of any study related to or affecting the LOCAL PROGRAM area.

SECTION 5. The PARTIES hereto otherwise agree as follows:

- 5.1. **TERM OF THE AGREEMENT.** The term of this AGREEMENT shall be for a period of one (1) year, beginning from the date of this AGREEMENT, unless terminated by conditions in Section 5.13.
- 5.2. **INDEMNIFICATION AND LIABILITY INSURANCE.** To the extent allowed by law, the LOCAL PROGRAM shall indemnify, defend, and hold harmless CCMS and OMS or its COORDINATOR(S), appointed representatives or designees from any damages that it may sustain through the negligence of the LOCAL PROGRAM pertaining to the

performance of this AGREEMENT. The LOCAL PROGRAM shall maintain such insurance to protect CCMS and OMS from claims that might arise out of or as a result of the LOCAL PROGRAM's operations pursuant to this AGREEMENT. The LOCAL PROGRAM will provide and maintain general liability, property damage, and workers compensation insurance, which shall be written for not less than any limits of liability required by law.

- 5.3. **TOTAL AGREEMENT.** This AGREEMENT contains the entire agreement between the parties superseding any prior or concurrent agreements as to the services being provided, and no oral or written terms or conditions which are not contained in this AGREEMENT shall be binding. This AGREEMENT may not be changed except by mutual agreement of the parties, reduced to writing and signed.
- 5.4. **ASSIGNMENT/TRANSFER/SUBCONTRACTING.** Except as contemplated by the AGREEMENT, the LOCAL PROGRAM shall not assign, transfer, convey, subcontract, or otherwise dispose of any duties or rights under this AGREEMENT without the prior specific written consent of CCMS. Any future successors of the LOCAL PROGRAM will be bound by the provisions of this AGREEMENT unless CCMS otherwise agrees in a specific written consent.
- 5.5. **COMPLIANCE WITH LAWS.** The LOCAL PROGRAM is not, and will not during the term of this AGREEMENT, be in violation of any laws, ordinances, regulations, rules, orders, judgments, decrees or other requirements imposed by any governmental authority to which it is subject, and will not fail to obtain any licenses, permits or other governmental authorizations necessary to carry out its duties hereunder.
- 5.6. **WAIVER.** A failure or delay in exercising any right with respect to this AGREEMENT will not be presumed to operate as a waiver unless otherwise stated in this AGREEMENT, and a single or partial exercise of any right will not be presumed to preclude any subsequent or further

exercise of that right, or the exercise of any other right.

- 5.7. **NOTICES.** Any notice, approval, request, authorization, direction or other communication under this AGREEMENT shall be given in writing and shall be deemed to have been delivered and given for all purposes
- (i) on the delivery date if delivered by electronic mail or by confirmed facsimile;
 - (ii) on the delivery date if delivered personally to the party to whom the same is directed;
 - (iii) one (1) business day after deposit with a commercial overnight carrier, with written verification of receipt; or
 - (iv) three (3) business days after the mailing date, whether or not actually received, if sent by U.S. mail, return receipt requested, postage and charges prepaid, or any other means of rapid mail delivery for which a receipt is available.

The notice address for the Parties shall be the address as set forth in this AGREEMENT, with the other relevant notice information, including the recipient for notice and, as applicable, such recipient's fax number or e-mail address, to be as reasonably identified by notifying Party. The CCMS and the LOCAL PROGRAM may, by notice given hereunder, designate any further or different addresses to which subsequent notices shall be sent.

- 5.8. **NON-DISCRIMINATION AND UNFAIR LABOR PRACTICES.** In connection with this AGREEMENT, the LOCAL PROGRAM shall not discriminate against an employee or applicant for employment with respect to hire, tenure, terms, conditions or privileges of employment, or a matter directly or indirectly related to employment because of race, color, religion, national origin, age, gender, height, weight, marital status or handicap.
- 5.9. **SEVERABILITY.** The invalidity or unenforceability of a particular provision of this AGREEMENT shall not affect the validity or enforceability of any other provision of this AGREEMENT, provided

that the principal intent of this AGREEMENT can be preserved.

- 5.10. **GOVERNING LAW AND JURISDICTION.** This AGREEMENT is made and entered into in the State of Oregon and shall in all respects be interpreted, enforced and governed under the laws of the State of Oregon. The parties agree that any legal actions concerning this AGREEMENT shall be brought in the Clackamas County Circuit Court in Clackamas County, Oregon, USA. The terms of this provision shall survive the termination of the cancellation of this AGREEMENT.
- 5.11. **NO EMPLOYMENT, PARTNERSHIP OR AGENCY RELATIONSHIP.** The CCMS Program is limited to furnishing its technical services to the LOCAL PROGRAM and thus nothing contained herein shall create any employer-employee relationship. Further, this AGREEMENT does not create a partnership relationship.
- 5.12. **NO THIRD PARTY BENEFICIARIES.** There are no express or implied third party beneficiaries to this AGREEMENT.
- 5.13. **TERMINATION OR CANCELLATION.**
- a. This AGREEMENT may be terminated by CCMS by providing written notice of default and termination to the LOCAL PROGRAM (“Notice of Default and Intent to Terminate”) upon the occurrence of any of the following events or conditions (“Event of Default”):
 - (i) any representation or covenant made by the LOCAL PROGRAM is determined by CCMS, in its reasonable judgment, to be incorrect at the time that such representation or covenant was made in any material respect, including, but not limited to, the Reports and compliance with laws as required under this AGREEMENT;
 - (ii) the LOCAL PROGRAM’s failure to comply with any of the covenants of this AGREEMENT; and
 - (iii) use of the program training, technical assistance, and resources provided pursuant to this AGREEMENT for purposes other than as set forth in this AGREEMENT.

- b. Notwithstanding the foregoing, LOCAL PROGRAM acknowledges that CCMS and OMS's performance of its obligations under this AGREEMENT is dependent upon the continued approval of funding and/or the continued receipt of county/state funding. In the event that Clackamas County, the State Legislature, the State Government or any State official, public body corporate, commission, authority, body or employees, or the federal government
- (i) takes any legislative or administrative action, which fails to provide, terminates or reduces the funding or programmatic support necessary for this AGREEMENT, or
 - (ii) takes any legislative or administrative action, which is unrelated to the source of funding or programmatic support for this AGREEMENT, but which affects the CCMS and OMS's ability to fund and administer the CCMS and/or OMS Program, then the CCMS may cancel this AGREEMENT by providing notice to the LOCAL PROGRAM of cancellation. Cancellation may be made effective immediately, upon delivery of notice to the LOCAL PROGRAM, or with such other time period as the CCMS, in its sole discretion, deems reasonable.
- c. In addition to the above, either party may terminate its obligations under this AGREEMENT without cause by giving the other party a 30-calendar day written notice of such termination.
- d. In the event that this AGREEMENT is terminated, neither the CCMS nor the LOCAL PROGRAM shall have any further obligation to perform under this AGREEMENT. The LOCAL PROGRAM shall, unless otherwise directed by the CCMS in writing, immediately take all reasonable steps to terminate operations under this AGREEMENT.

5.14. **MODIFICATION OF SERVICES.** CCMS reserves the right to modify services provided to the LOCAL PROGRAM as necessary.

5.15 **AUTHORITY TO EXECUTE THIS AGREEMENT.** The signatories below warrant that they are empowered to enter into this AGREEMENT.

Failure to sign and submit this AGREEMENT to the CCMS Program on or before _____, will result in the termination of the LOCAL PROGRAM participation in the CCMS and OMS Programs.

IN WITNESS WHEREOF, the parties have executed this AGREEMENT.

City of Milwaukie - MAIN STREET PROGRAM

BY: _____
(PRINT NAME) Date

Clackamas County Main Street Program

BY: _____
Date

National Trust for Historic Preservation / National Main Street Center

Ten Standards of Performance

1. Has broad-based community support for the commercial district revitalization process, with strong support from both the public and private sectors
2. Has developed vision and mission statements relevant to community conditions and to the local Main Street program's organizational stage
3. Has a comprehensive Main Street work plan with measurable objectives
4. Possesses an historic preservation ethic
5. Has an active board of directors and committees
6. Has an adequate operating budget
7. Has a paid professional program director
8. Conducts a program of on-going training for staff and volunteers
9. Reports key statistics
10. Is a current member of the National Main Street Network



To: Mayor and City Council

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

From: Alex Campbell, Resource & Economic Development Specialist

Subject: Urban Renewal Feasibility Study Contract

Date: February 4, 2009 for February 17 Regular Session

Action Requested

Approve contract with Tashman Johnson LLC for \$30,000 to execute an urban renewal feasibility study.

History of Prior Actions and Discussions

October 2008: Council directed staff to move forward and develop an urban renewal work plan, including contracting outside technical expertise.

June 2008: Council directed staff to look into urban renewal to support critical public infrastructure investments in downtown.

December 2007: Council directed staff to consider steps to re-balance the relative financial burden of downtown PAR/streetscape improvements.

Background

In Council's discussions of how best to deal with the financial burden of downtown PAR/streetscape improvement requirements, there has been clear direction to staff to seek a source of public funding to better balance the burden of these costs between the public and developers. Staff returned with information on the options available to the

City to develop such a source of revenue, including urban renewal. Council directed staff to move forward with more detailed examination of urban renewal potential.

The revenue mechanism that urban renewal makes possible—Tax Increment Financing (TIF)—relies on future changes in assessed value. A realistic and defensible method to developing an estimate of the TIF potential in the area requires technical understanding of both real estate market dynamics and the range of possible urban renewal projects that could shift those dynamics.

Therefore, City staff issues a request for proposals (RFP) for a feasibility study to develop a method for establishing revenue projections and make some initial projections. These projections will be developed for much of the eastern third of the City and will be developed by sub-area. This will allow the City to consider multiple potential configurations for an urban renewal area without having to go back and re-develop the financial baselines. The consultant will also review the initial list of possible projects that staff has previously shared with Council and suggest additional opportunities that ought to be considered. In addition, the contract includes consultant review of public education materials that would be developed by the City and the consultant's time to answer technical questions at stakeholder briefings.

Staff issued a formal RFP. Over 30 firms requested copies of the bid package, and seven made proposals. Staff believes all seven firms are capable of producing a good product. However, staff felt two firms had both excellent technical qualifications and demonstrated a good grasp of exactly what type of services the City required. Those two firms were interviewed and Tashman Johnson was selected based on the criteria described in the bid package (proposal content; understanding and proposed approach; proposer capabilities; and scope, fee, and schedule).

Although the work at this feasibility stage will be largely technical, staff does believe it is appropriate to initiate some stakeholder outreach. Staff believes key targets for briefings are the Budget Committee, the NDA Leadership, the PARB/Riverfront Board, Planning Commission, and the downtown business community. These briefings would include the kind of background/introduction to urban renewal staff already provided to Council this past fall and describe the technical work being undertaken as part of this feasibility study.

At the end of this phase, staff expects to return to Council with the key findings of the feasibility study and a proposal for a public involvement plan/campaign, likely in the June/July time-frame. The key technical information gathered in this phase will provide a starting point for a fact-based conversation about what urban renewal can and cannot achieve, and whether City Council wants to proceed with the drafting of an Urban Renewal plan for Council consideration in later 2009.

Concurrence

Community Development staff worked with both the Planning and Finance Directors on the development of the RFP. The Planning Department participated in the contractor selection process. The Community Services Director provided input on the stakeholder outreach agenda for this phase of work.

Fiscal Impact

Adequate funds for the feasibility study contract are available under the General Fund “economic development” line item.

Work Load Impacts

Community Development, Planning, and Community Services staff will support this work within existing work plans.

Alternatives

Direct staff to: re-issue the RFP for feasibility study services (possibly with a different scope); launch directly into Urban Renewal planning; or amend the contract to include additional elements of work.

Attachments

1. Request for Services
2. Resolution



REQUEST FOR PROPOSALS:

MILWAUKIE URBAN RENEWAL FEASIBILITY STUDY

The City of Milwaukie, Oregon, will receive sealed proposals until **4:00 PM, Friday, January 30, 2009** at Milwaukie Public Services Building, 6101 SE Johnson Creek Blvd., Milwaukie, OR 97206. An optional pre-proposal conference will be held at: City of Milwaukie City Hall, Second Floor Conference Room, 10722 SE Main Street, at 10:00 am, Friday, January 16, 2009. Sealed proposals are to be sent to Attn: Alex Campbell, Resource & Economic Development Specialist, at the 6101 SE Johnson Creek Blvd., Milwaukie, OR 97206 address. All proposals should be easily reproducible and recyclable.

General questions about this project may be directed to Alex Campbell at (503) 786-7608 or <campbella@ci.milwaukie.or.us>. Requests for interpretations shall be made in writing, no later than ten (10) days prior to the submission date. Any and all such interpretations will be mailed to all prospective proposers (at the respective address furnished for such purposes) not later than three (3) days prior to the submittal deadline.

SCHEDULE

RFP ADVERTISED	January 8, 2009
PRE-PROPOSAL MEETING	January 16, 2009
PROPOSAL SUBMITTALS	January 30, 2009
(POSSIBLE) INTERVIEWS WITH PROSPECTIVE TEAMS	February 9-13, 2009

SPECIFICATIONS

The City of Milwaukie, Oregon, hereafter referenced as “City”, is seeking the services of a qualified firm to provide technical support services. Contractor work will consist of technical memos and analysis to assist in the analysis of urban renewal feasibility and the development of a specific City of Milwaukie urban renewal presentation..

BACKGROUND

The City of Milwaukie activated an urban renewal agency, the “Milwaukie Redevelopment Commission,” to be governed by City Council itself in 1987. No urban renewal district has, as yet, been established. In fall 2008, the City of Milwaukie City Council directed staff to initiate feasibility work on an urban renewal district proposal, the primary focus of which would be downtown Milwaukie (essentially Main Street and 21st Avenue between Highway 224 and Lake Road).

Budgeted City resources for the project in the current fiscal year (ending June 30, 2009) are approximately \$30,000. The City recognizes that analysis behind “Deliverable 3,” in particular, could involve a very high level of effort. Therefore, proposers may wish to respond with a proposal for basic services to meet the requirements of the scope, with an offer of optional additional services for more intensive analysis.

PROJECT SCOPE

- A. Market analysis of renewal study area and revenue projections sufficient to document expected increment revenues.
- Study area includes approximately eastern 1/4 of City of Milwaukie, the largest potential urban renewal area. Analysis may be carried out by sub-areas (ie., if different assumptions for different land use zones are recommended). Entire analysis area is approximately 1,000 tax lots and 650 acres. City staff will define exact study area and provide basic tax lot data, including TAV, size, etc.; and provide a list of 10-15 significant development/ re-development opportunities that

would likely be realized in the urban renewal time-frame, given urban renewal projects.

- City, based on input provided by contractor, would select a method for projecting taxable assessed value (TAV) growth within the defined urban renewal area as a whole, or by sub-area.
- Method selected must be defensible as a basis in for analysis of plan financial feasibility.
- Deliverable 1. Technical memo providing suggested method or methods for projecting medium- to long- term average per annum TAV growth in the proposed urban renewal area. Memo will offer suggestion as to whether to develop one rate for the entire area, or different rates for sub-areas. Method may be based on pre-existing demographic and market data, and/or evaluation of current improvement/land value ratios and/or specific likely redevelopment scenarios provided by the City.
- Deliverable 2. Based on method selected by City, consultant to provide spreadsheet in electronic format of annual TAV growth over an assumed urban renewal area lifespan (i.e., projected urban renewal area TIF revenues) such that revenue potential could can be recalculated by the City based on alternative assumptions regarding boundaries and duration of the district

B. Review of possible urban renewal projects.

- City plans include an initial list of likely projects for consideration for inclusion within an urban renewal plan. That list would be provided to the consultant. In addition, the consultant will be provided with a 2003 downtown revitalization implementation plan and a 2005 investment strategy memo.
- Project list requires further study on two dimensions: total value of projects completed (i.e., maximize leverage of urban renewal funds with private sector and grant funds); and additional private sector investment stimulated.
- Deliverable 3. A memo that (1) prioritizes the key projects that are most likely to spur additional re-development; (2) suggests additional projects which should be considered; and (3) offers suggestions for refinement of City-provided project list.

C. Public involvement.

- City staff will develop public communications pieces and public involvement strategy. City staff will schedule, coordinate, and facilitate public communication of and discussion of proposed urban renewal feasibility study approach.
- Deliverable 4. Memo providing comments and suggestions on City-developed public communication materials.
- Deliverable 5. Attendance at 4-to-6 community stakeholder meetings. Consultant would be expected to make brief presentations and/or answer questions related to technical work performed, legal aspects of urban renewal, and similar technical matters.

TENTATIVE SCHEDULE

Notice-to-proceed:	February 18, 2009
Deliverable 1:	March 15, 2009
Deliverables 2 & 3:	April 30, 2009
Deliverable 4:	May 15, 2009
Deliverable 5:	May thru July, 2009

PROPOSAL CONTENTS

Respondents should include all elements. Total proposal should be no more than 10 pages. Proposers may attach 1-2 work samples (not included in page limit).

Cover Letter

A one-page cover letter shall be submitted containing the name and address of the corporation or business submitting the proposal and the name, address, telephone number and title of the person authorized to represent the bidder. Cover letter should be signed by legal representative of corporation or partnership or individual making proposal.

Understanding and Proposed Approach

A delineation of proposed services, project understanding, and the consultant’s approach to the project. Identify key challenges and issues to address.

Proposer Capabilities

This section should demonstrate specific capabilities for fulfilling the requirements according to similar previous experience. Specific examples of similar projects will be critical for evaluating this section. This section shall also provide information on the key individual(s) that will be assigned to this project, along with subconsultants and their roles in the project.

Scope, Schedule and Fee

This section shall describe the scope, proposed schedule, and estimated fee to provide the proposed services. Please detail fee schedule by hourly rate and number of hours per deliverable.

AWARD CRITERIA

The following criteria will be considered in evaluating all proposals. A major deficiency in any one category can disqualify a contractor.

1. Content 0-10 points

Submitted proposals must contain all items listed in “Proposal Contents”. Adherence to the RFP requirements and directions will be evaluated.

2. Understanding and Proposed Approach 0-20 points

The understanding and approach offered by the proposer will be evaluated in terms of its applicability to the requirements specified in this RFP. Include key issues to be resolved.

3. Proposer Capabilities 0-35 points

The experience of the proposed lead analyst or project manager in like projects and history of the company or individual will be considered.

4. Scope, Fee, and Schedule 0-35 points

All proposals will be evaluated on the scope, fee and schedule required to meet the requirements in this RFP.

TOTAL POINTS 0-100

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, DIRECTING THE CITY MANAGER TO SIGN A CONTRACT WITH TASHMAN JOHNSON LLC TO PROVIDE THE CITY WITH URBAN RENEWAL FEASIBILITY STUDY SERVICES.

WHEREAS, City of Milwaukie is interested in exploring the possibility of urban renewal to support projects defined in the Milwaukie Downtown and Riverfront Plan and additional supporting efforts, such as re-balancing the costs of downtown Public Area Requirements between the public and private developers; and

WHEREAS, The City staff and Council require additional technical support in order to accurately understand the economic and revenue potential of urban renewal in Milwaukie; and

WHEREAS, The City issued a Request for Proposals for urban renewal feasibility study services and determined that TASHMAN JOHNSON LLC offered the best proposal to perform those services;

NOW, THEREFORE, BE IT RESOLVED that the City Manager is directed to sign a professional services contract with TASHMAN JOHNSON to provide urban renewal feasibility study services in the amount not-to-exceed \$30,000.

Introduced and adopted by the City Council on February 17, 2009.

This resolution is effective on February 18, 2009.

Jeremy Ferguson, Mayor

ATTEST:

APPROVED AS TO FORM:
Jordan Schrader Ramis PC

Pat DuVal, City Recorder

City Attorney