

WORK SESSION

**MILWAUKIE CITY COUNCIL
WORK SESSION
NOVEMBER 6, 2012**

MILWAUKIE CITY HALL

Conference Room
10722 SE Main Street

A light dinner will be served

WORK SESSION – 5:00 P.M.

		<u>Presenter</u>	<u>Page #</u>
1.	5:00 p.m.	City Manager's Report	Bill Monahan
2.	5:30 p.m.	Milwaukie Poetry Series Annual Report	Tom Hogan 1
3.	5:45 p.m.	Public and Government Access Service Options	JoAnn Herrigel
4.	6:00 p.m.	Mural Program	Beth Ragel 3
5.	6:30 p.m.	Adjourn	

EXECUTIVE SESSION 6:30 P.M.

The City Council will meet in executive session immediately following adjournment of the work session 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.

Information

Executive Session: 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.

Public Notice

- The Council may vote in work session on non-legislative issues.
- The time listed for each discussion item is approximate. The actual time at which each item is considered may change due to the length of time devoted to the one previous to it.
- The Council requests that all pagers and cell phones be either set on silent mode or turned off during the meeting.
- The City of Milwaukie is committed to providing equal access to information and public meetings per the Americans with Disabilities (ADA). If you need special accommodations, please call 503.786.7502 or email ocr@ci.milwaukie.or.us at least 48 hours prior to the meeting.



Report to Milwaukie City Council
Milwaukie Poetry Series, Fifth Season, 2011-2012

From: Tom Hogan, Chair
Milwaukie Poetry Series

Date: October 25, 2012

This is a report to the Milwaukie City Council and City Manager regarding the Milwaukie Poetry Series and its Fifth Season, 2011-2012. What a stellar year it's been! Much thanks to the Milwaukie City Council and the City of Milwaukie for its ongoing support. Thanks also to the Ledding Library Director, Board and all the staff at the Library. Also thanks to the Milwaukie Poetry Committee for their hard work and support in putting on the events. It's wonderful teamwork.

The first priority is sponsoring the series of monthly poetry readings by established local poets of their own work. The readings are the second Wednesday of the month September through June and have become established in the poetry community as the evening of the MPS. There are so many wonderful local poets in the metropolitan area that we were able to schedule another terrific season. The readers for this last year were: Jessica Lamb, Maxine Scates, Clemens Starck, Jim Shugrue, Jennifer Richter, Laura Winter, Ron Talney, David Axelrod, Donna Henderson and Noel Hanlon. We have continued to expand the invitation to poets outside the metropolitan area. All of the readings were well attended with several at 'Standing Room Only.'

Part of the goal of the Series is to encourage participation and expand interest in poetry. It's really meant to be read out loud to an audience. Consequently we sponsored five Open Mic readings, which is an opportunity for people to read and share their own work or other people's poetry. Attendance is in the 15-25 person range with at least 10 readers each time. This included a Friends of William Stafford Birthday Celebration on January 21 as our Milwaukie event in the month-long celebration honoring his legacy. We also conducted an Open Mic during April to celebrate National Poetry Month and sponsored the fourth annual Poetry Picnic as part of Milwaukie Daze on July 28. This featured 10 readers and an appreciative audience. We also continued to partner with St. John the Evangelist in Milwaukie to sponsor Open Mic poetry readings on First Friday April through November as part of the Arts a la Carte.

Writing workshops are another goal of the Series. We sponsored one by Henry Hughes in August, by Willa Schneberg in February and by Oregon Poet Laureate Paulann Petersen in April as part of celebrating National Poetry Month. We plan to continue sponsoring workshops in the coming Season.

We continue to expand the publicity and e-mail invitations. We provide a broadside for each reading and feature the poet's work in the library. The Pond House is an excellent venue for

the readings and has been filled to capacity or nearly so for every reading, even on dark and stormy nights. The comments from both poets and patrons are very positive. One poet this past year said that, in his view, it is the “best reading series in the State.” A DVD is made of each reading and provided to the poet, the library and to cable access. We continue to develop the use of social media to publicize the Series and regularly attend such events as the semi-annual Oregon Literary Coalition. We also will begin to explore a possible need for larger venues, should that prove necessary.

We continued the relationship with Milwaukie High School and the Milwaukie Arts Academy. While there were not youth open mics this last year, this was due in large part to student turnover and class sizes increasing for the creative writing teacher. We sponsored a workshop by Paulann Petersen again this year at the Milwaukie Arts Academy to bring the Oregon Poet Laureate to the MAA. This workshop was top notch and attended by 42 students. We’ll continue to sponsor as many youth events as desired and partner with the MAA in whatever ways are desired and feasible.

The Series creates a video of each reading which is shown regularly on both Milwaukie Cable Access and Willamette Falls Cable. Thank you to the staff of WFTV. Many poets have told me they saw their reading or someone told them about seeing the reading on TV. Videos can be checked out at the Library.

The Sixth Season has begun with a reading by Ingrid Wendt on Sept. 12 and John Daniel on Oct. 10. Ursula Le Guin will be here November 14 and this season is another stellar one. The Committee has continued to receive increased interest and submissions from poets desiring to read in the Series in the future.

Financially we came in this year very close to budget with paying the honorariums, books for the library, sponsoring workshops, DVD creation and related expenses. We have done some fundraising and collected \$1,200 in donations which is in an account with the Friends. These funds were able to cover a small overage in the Ledding Library account. We continue to look for creative ways to help develop the Series.

We extend a grateful thanks to the City Council and the City of Milwaukie for its continued support of the MPS. Also thanks to the Ledding Library Director and staff for their support and to the Poetry Committee for its hard work and dedication. And finally to all the volunteers and supporters of the Series who come to participate in the various events. There is so much more that I could say! It’s a great honor to serve as the Project Coordinator. We anticipate continuing the readings as well as sponsoring the other items in this report. We also plan to participate as much as possible in arts consortiums in the community. Broadsides and schedules are attached. Thank you again!

Respectfully submitted,
Tom Hogan
Project Director

*When this book ends,
I will pull it inside-out like a sock
And throw it back in the library*

William Stafford, “Afternoon in the Stacks”



Agenda Item: WS. 4. Milwaukie
Mural Arts Program assessment
of discretionary review process
Meeting Date: 11-06-12

COUNCIL AGENDA ITEM SUMMARY

Issue/Agenda Title: Milwaukie Mural Arts Program assessment of discretionary review process

Prepared By: Beth Ragel, Community Services Program Coordinator

Dept. Head Approval: Bill Monahan, City Manager
Steve Butler, Planning Director

City Mgr. Approval: Bill Monahan, City Manager

ISSUE BEFORE THE COUNCIL

Provide guidance on establishing a mural review and permitting program in Milwaukie.

STAFF RECOMMENDATION

Since there are multiple groups waiting to install murals in Milwaukie, staff believes that moving forward with some program now is important. Staff recommends that Council direct staff to develop a two-track mural review and permitting program—one that is objective and handled through the Planning Department and one that is discretionary, provides grant funds and is handled by the staff liaison to the Milwaukie Arts Committee.

KEY FACTS & INFORMATION SUMMARY

If the City provides grant funding for a discretionary mural review and permitting program it would position the City as a patron of art and not just a regulator and reduce the risk of such a process being challenged.

OTHER ALTERNATIVES CONSIDERED

N/A

CITY COUNCIL GOALS

Council does not have a goal regarding public art but has established economic revitalization as a top goal. Studies have shown a correlation between public art and economic revitalization. City Council also has a goal to improve collaboration with the City's Boards, Commissions and Committees.

ATTACHMENT LIST

N/A

FISCAL NOTES

A new grant program for murals would require that the Council allocate funds from the City budget. The Milwaukie Arts Committee does not have any funding allocated for its use in the City's budget.



MILWAUKIE

Dogwood City of the West

To: City Council
Through: Bill Monahan, City Manager
From: Beth Ragel, Community Services Program Coordinator
Date: Oct 22, 2012 for Nov 6, 2012, Work Session
Subject: Milwaukie Mural Arts Program (MMAP) assessment of discretionary review process

ACTION REQUESTED

Provide guidance on next steps in establishing a mural program in Milwaukie—dubbed the “Milwaukie Mural Arts Program” or MMAP, by the Milwaukie Arts Committee.

This report will explain how a discretionary mural review process that reviews content may require additional programmatic elements to be most enforceable.

BACKGROUND INFORMATION

A. History of Prior Actions and Discussions

September 25, 2012: The Milwaukie Planning Commission held a public hearing and recommended approval of Zoning Text Amendments to the Sign Ordinance (File #ZA-12-01). The amended regulations, if adopted by City Council, will exclude public art murals from the definition of ‘sign’ in Subsection 14.04.030, Definitions in Title 14, Sign Ordinance. The Planning Commission’s role in municipal code amendments is to make a recommendation to the City Council for amendments that affect a land use regulation. The amendments to Title 14, Sign Ordinance, were the only land use regulations for which the Planning Commission was to make an official recommendation.

May 22, 2012: Beth Ragel, Community Services Program Coordinator, briefed the Planning Commission on the proposed Milwaukie Mural Arts Program at a work session.

April 3, 2012: Staff briefed City Council on community outreach and reported the results from the mural survey. Council directed staff to continue work on developing the MMAP program, including developing the code language to take to the Planning Commission for review.

September, 2011: City Council gave staff the approval to start public outreach and to begin drafting the MMAP program and code language.

2006: When the Planning Commission updated the Sign Code in 2006, the difficulty of permitting murals as signs was acknowledged as a problem yet to solve. Murals were not defined in the code and, as such, would be allowed only if they complied with sign code regulations—which would limit their allowed size.

B. Why Code Changes are Needed

This process of developing a mural program in Milwaukie was started about two years ago when the Milwaukie Arts Committee became aware that there were several groups that wanted to place murals in Milwaukie but found that City code did not define murals nor lay out a process by which murals could be permitted. It was determined that proposed murals would have to comply with sign code regulations instead and receive a sign permit.

Currently, staff is aware of five groups that desire to place murals in Milwaukie: The North Clackamas School District, Milwaukie High School, Dark Horse Comics, Spring Creek Coffee and the Kellogg Treatment Plant (on the back clarifiers along the park trail to mitigate graffiti/tagging that is occurring). The Arts Committee would also like to find a location for the historic mural painted by Larry Kangas that was located on the side of Chopstick's Express, which was removed by the property owner about two years ago. The Arts Committee believes that allowing groups like these to pursue murals would help make Milwaukie distinctive and highlight our niche businesses.

Under the City's current code, however, standards applying to murals are the same as those applying to signs. Murals must be permitted under the same standards as other wall signs, and are subject to the same size regulations, which limit sign face area to 20% of the total wall area in most zones. This limits the ability for murals to function as public art, since most murals use all or a significant percentage of the total wall area.¹

Given the limitations of permitting murals as signs, Council gave staff the approval to begin conducting community outreach and research in order to develop a program proposal. During this process, the Milwaukie Arts Committee had many discussions about the potential benefits and risks of allowing murals in Milwaukie. The Arts Committee came to the conclusion that a discretionary review process that would evaluate murals based on set criteria such as artistic merit and community support was most desirable. The effort to establish a review and permitting process was dubbed the "Milwaukie Mural Arts Program"—or MMAP.

¹ In 2006, the sign ordinance was revised to be consistent with court rulings regarding sign regulations and free speech protection. The key concept in the court rulings that necessitated the amendments is that the government cannot regulate signs based on their content. Instead, the regulations must be limited to physical aspects of the signs such as the time they are display, the places where they are displayed, and the manner in which they are displayed. The resulting amendments removed language that exempted, prohibited, or required different levels of review based on the message of the display or sign.

The permit exemption for murals was removed because it would require the evaluation of content for the presence of a written message and to determine if the display was a decoration or embellishment as opposed to being a standard sign. The amendments to remove content-based regulations in the sign code had to be accomplished expediently to avoid legal challenges, and staff did not have the time during the Sign Code update to explore alternatives to permitting murals.

The Milwaukie Arts Committee engaged in broad outreach for the MMAP, including a survey. The community expressed strong support for such a program and a discretionary review process that evaluates the content of a proposed mural.

As conceived, the MMAP proposed one review process and permitting path for murals—a discretionary review process. An ad hoc mural review committee would review the mural on set criteria and make a recommendation to the Milwaukie Arts Committee, who would make the final decision. The MMAP would allow approved murals to be placed in commercial and industrial zones and on community service use properties. Broadly, the review criteria suggested included artist merit, feasibility, context and demonstrated community support.

Article I, Section 8 of the Oregon constitution has been interpreted and applied in a way that provides particularly strong protections regarding free speech—in fact, more so than the First Amendment of the US Constitution. Therefore, jurisdictions in Oregon generally cannot regulate the content of signs or other features in the public realm. Regulation must be content neutral. For example, sign regulations may dictate the physical characteristics of the sign but may not review or regulate what the sign says.

Since staff was aware that reviewing content is generally problematic—and specifically, that reviewing the content of signs was deemed a violation of Article I, Section 8 of the Oregon constitution—staff proposed to also require a public art easement signed by the property owner, like done in Portland. This was determined to be a key feature of the proposed program, as the public art easement signed by the property owner was believed to be one way to mitigate the risk of free speech claims that could arise from the review of a mural’s content. The easement form was understood to provide legal coverage to the City in that if the mural was dedicated to the public, the City was acting as a patron of the art and not just a regulator.

Other jurisdictions in Oregon have faced the same challenge of wanting to allow murals while maintaining standard sign regulations. Staff identified two models in Oregon for permitting murals.

1) Discretionary Review of Murals—Murals as Public Art with Grant Funding

The basic components of this model are:

- The content of the mural is reviewed by an ad hoc committee that makes a recommendation to the Public Art Advisory Commission (advisory to Portland City Council), who makes the final decision.
- Murals are considered as works of public art. The mural is either on a public building or on a building where the owner grants a public art easement on the face of the wall.
- Public art is exempt from the regulations of the sign code.
- The mural must remain in place for 5 years.
- There cannot be compensation given or received for placement of the mural.
- An arts committee, acting on behalf of the government, has authority for reviewing and permitting a mural. A government may be allowed to evaluate content and style in selecting pieces of public art in a way that is not allowed under sign regulations.
- The program provides matching grant funds for murals. As such, the City is acting not only as a regulator of the art but as a patron.

Portland implemented this process in 2005 in response to legal challenges to its sign code—which had not exempted murals from sign regulations prior.ⁱ The resulting program is the Public Arts Mural Program, which is administered by the Regional Arts and Culture Council (RACC). The City of Beaverton adopted a similar approach for allowing murals in 2008.

To date, there has not been a legal challenge to this discretionary review process in either Portland or Beaverton.

2) Objective Review of Murals —Permit Program for Murals

Portland developed a second mechanism to allow murals in 2009 called “Original Art Murals” that is managed through their Bureau of Development Services (BDS) and is objective in nature. This program establishes a type of display called an Original Art Mural that is exempt from sign code regulations. Portland created this process as a streamlined alternative to the RACC Public Art Mural process.

The basic regulations for an Original Art Mural are:

- The content of the mural is *not* reviewed.
- The mural is a hand-produced work of art that is painted or tiled by hand onto a building.
- The mural cannot exceed 30 ft in height from grade.
- The mural must remain in place for 5 years.
- There cannot be compensation given or received for placement of the mural.
- The applicant pays a fee for the permit (around \$200.)

Staff has not discovered any other models in Oregon for permitting murals in a manner that complies, or attempts to comply, with requirements for content neutrality. In fact, during the process of conducting research to develop a mural program in Milwaukie, staff spoke with the City attorney at the City of Portland twice regarding their discretionary review process that is managed through RACC. The City of Portland’s attorney expressed confidence that their review process was defensible and that the public art easement form provided the needed legal coverage to justify reviewing content.

The table that follows is a side by side summary of the key features of Portland’s two mural permitting programs as they relate to the review of content. Again, the main difference between the two models in Portland is the level of discretionary review for permitting the mural. The Public Art Mural program (run by RACC) allows a high-degree of discretion for artistic merit and other subjective factors and is part of a matching grant program. It reviews content.

Key Features of Portland’s two Mural Permitting Programs as they relate to review of content

RACC Program—Discretionary Review/Grant Program	BDS Program—Objective Review
<ul style="list-style-type: none"> • Grant funding provided and City acts as patron not just regulator. • Content of mural is reviewed by committee and standards are somewhat subjective. • Public art easement form must be signed by building/property owner. • Compensation to building/property owner is prohibited. 	<ul style="list-style-type: none"> • Grant funding is not provided and a permit fee is assessed (about \$200.) • Content of mural is not reviewed and standards are objective. • No public art easement form is required. • Compensation to building/property owner is prohibited.

C. Current concerns regarding the enforceability of the Milwaukie Mural Arts Program (MMAP) review process:

Given the confidence expressed by the City of Portland’s attorney for their discretionary review process as coupled with the public art easement; and, given that this process had not been legally challenged in Portland or Beaverton; and, given that the community expressed strong support for a discretionary review process: staff developed draft code establishing a discretionary review and permitting process for murals in Milwaukie.

A draft proposal which focused on a one-track discretionary review and permitting process was presented to the Planning Commission on September 25, 2012. The Milwaukie Planning Commission held a public hearing and recommended excluding public art murals from the definition of ‘sign’ in Title 14. The Planning Commission was provided the draft code for reference, but their role and subsequent decision was confined to excluding public art murals from the definition of ‘sign’ in Title 14. Their role was not to review or recommend approval regarding the draft code language creating the program.

Shortly after presenting the draft program to Planning Commission, the City Attorney reviewed the draft MMAP code language and provided several comments, summarized as follows.

Implementing only objective review of murals limits the probability of legal challenge but would not provide the same level of discretion over what is allowed. Since the objective review would only look at and regulate physical features and not content, this may mean that murals that are objectionable to the community are permitted and placed in Milwaukie.

However, given the broad constitutional protections over free speech, implementing the discretionary mural review process could be challenged, causing the City to have to defend its program or not be able to enforce all or some of the program review requirements. While mural artists generally desire to work with a community to create a mural that is acceptable, and again, while this process has worked well in Portland since 2005, such a process could be challenged.

That said, there are some ways the City could both incentivize property owners and artists to comply with a discretionary review process as well as mitigate the risk of litigation resulting from a program which proposes to review the content of murals:

1. Like Portland, establish two options for permitting murals in Milwaukie. One would be objective, require a permit fee and be managed through the Planning Department. The second would be discretionary, provide some matching grant funding, and be managed by the staff liaison to the Milwaukie Arts Committee. With two permitting paths, applicants can choose which track they prefer, or, if denied within one track could potentially pursue the other track.
2. Provide grant funding for murals that will be reviewed through the discretionary track, which reviews content. The funding not only incentivizes the applicant toward choosing this track but provides some justification for the City to regulate content. In this case, the City is not acting solely as a regulator but also as a patron. Likewise, it is standard for a granting agency to establish review criteria and use discretion in judging if an applicant has met the set criteria.
3. Establish a comprehensive public art program in Milwaukie. If the City is positioned as a patron of the arts, generally, there is additional weight to the City's right to determine what its public art collection contains. In addition to a mural program, a comprehensive public art program could include the following:
 - o A percent for art ordinance and program to fund public art in the City;
 - o A vacant store front program that matches businesses with static art installations. (Spaceworks by the City of Tacoma is good example of such a program.)
 - o Dedicated staff to manage a public art program and to market and attract artists and creative businesses to Milwaukie.

CONCURRENCE

This report has been reviewed and concurred with by the following staff, with the comment as noted:

- Bill Monahan, City manager;
- Steve Butler, Planning Director;
- Ryan Marquardt, Senior Planner, and
- Tim Salyers, Code Compliance Coordinator.

The City's code compliance staff submitted the following comment: "The objective review process is preferred by code compliance staff as it provides the most assurance that the code can be properly and systematically enforced."

FISCAL IMPACT

If Council chooses to provide funds for a matching grant program, for murals that are processed through the discretionary review process, this would have a fiscal impact determined by the amount allocated.

WORK LOAD IMPACTS

Creating a two-track process will require some additional staff time in creating forms and updating the code. The objective permitting track will create some new work load for the Planning Department but is

straightforward and will require limited staff time. The level of review is similar to the administrative review for a typical sign permit, and the Planning Department typically handles 15-20 such permits each year. We do not anticipate more than 1-2 mural permit applications per year. As such, the mural permit process within the Planning Department will have low work load impacts.

The discretionary track, if coupled with a grant program, will require more staff time than the objective review process. It will establish a new grant program to be managed and will require coordination with an ad hoc review committee and the Milwaukie Arts Committee. The discretionary review process managed by the staff liaison to the Milwaukie Arts Committee will likely require moderate staff time depending on the complexity and number of mural applications processed through this track.

ALTERNATIVES

Since there are multiple groups waiting to install murals in Milwaukie, staff believes that moving forward with some program now is important. Staff recommends that Council direct staff to develop a two-track mural permitting program. This would require that Council determine an amount and allocate funding for a matching grant program for murals processed through the discretionary review track and direct staff to develop a permit track process to be managed through the Planning Department that reviews murals based on objective criteria and charges a permit fee.

Staff believes that the worst-case scenario of establishing a two track mural permitting program at this time is that, if an artist or property owner challenges the discretionary review process, the City can direct them to the objective permitting track that is handled through the Planning Department. This means that there is some risk that an artist or property owner may still be able to display a mural that the community finds objectionable, regardless of the review process established.

ATTACHMENTS

No attachments.

ⁱ In the early 1990s, the City of Portland required “painted wall signs” to meet the regulations of the sign code but exempted “painted wall decorations and painted wall highlights.” *Clear Channel Outdoor Inc. v. City of Portland*, 243 Or App 133 (2011). It defined “painted wall decorations” as “displays painted directly on a wall which are designed and intended as decorative or ornamental feature. Painted wall decorations do not contain text, numbers, registered trademarks, or registered logos.” *Id.* The trial court found that the City’s purpose of using this definition was to encourage art and to restrict commercial speech. *Id.* In 1997, the City temporarily abandoned enforcement of the sign/painted wall decoration distinction because it was concerned about constitutional issues. Clear Channel brought suit in 1998, seeking, among other things, “a declaration that the distinction in the sign code between ‘sign,’ ‘painted wall sign,’ and ‘painted wall decoration,’ as well as the city’s sign regulations...and the ‘city’s design review regulations * * * and the city’s design guidelines,’ violated the First and Fourteenth Amendments to the United States Constitution and Article I, Sections 8 and 20, of the Oregon Constitution, as ‘content-based, overbroad, vague, and discriminatory.” *Id.* The trial court granted Clear Channel’s motion for partial summary judgment on that issue. The City appealed, but then amended its sign code in 1998 to eliminate the challenged distinctions. It also repealed the “painted wall decoration” exemption from the sign code. These changes rendered the substantive appeal for that issue moot.