



## AGENDA

### MILWAUKIE PLANNING COMMISSION Tuesday September 13, 2011, 6:30 PM

MILWAUKIE CITY HALL  
10722 SE MAIN STREET

- 1.0 Call to Order - Procedural Matters**
- 2.0 Planning Commission Minutes** – Motion Needed
  - 2.1 April 26, 2011 *continued from June 28, 2011*
  - 2.2 May 10, 2011 *continued from August 23, 2011*
  - 2.3 June 14, 2011
  - 2.4 June 28, 2011
  - 2.5 July 26, 2011
- 3.0 Information Items**
- 4.0 Audience Participation** – This is an opportunity for the public to comment on any item not on the agenda
- 5.0 Public Hearings** – Public hearings will follow the procedure listed on reverse
  - 5.1 Summary: Electronic Sign Code Amendments  
Applicant/Owner: City of Milwaukie  
File: ZA-11-02  
Staff Person: Ryan Marquardt
- 6.0 Worksession Items**
  - 6.1 Summary: Kellogg Bridge Story Pole discussion  
Staff Person: Susan Shanks
- 7.0 Planning Department Other Business/Updates**
- 8.0 Planning Commission Discussion Items** – This is an opportunity for comment or discussion for items not on the agenda.
- 9.0 Forecast for Future Meetings:**
  - September 27, 2011 1. Joint session with City Council: Residential Development Standards
  - October 11, 2011 1. Public Hearing: Water Master Plan *tentative*
  - October 25, 2011 1. Public Hearing: Kellogg Lake Light Rail Bridge *tentative*  
2. Public Hearing: Water Master Plan *tentative*

### Milwaukie Planning Commission Statement

The Planning Commission serves as an advisory body to, and a resource for, the City Council in land use matters. In this capacity, the mission of the Planning Commission is to articulate the Community's values and commitment to socially and environmentally responsible uses of its resources as reflected in the Comprehensive Plan

1. **PROCEDURAL MATTERS.** If you wish to speak at this meeting, please fill out a yellow card and give to planning staff. Please turn off all personal communication devices during meeting. For background information on agenda items, call the Planning Department at 503-786-7600 or email [planning@ci.milwaukie.or.us](mailto:planning@ci.milwaukie.or.us). Thank You.
2. **PLANNING COMMISSION MINUTES.** Approved PC Minutes can be found on the City website at [www.cityofmilwaukie.org](http://www.cityofmilwaukie.org)
3. **CITY COUNCIL MINUTES** City Council Minutes can be found on the City website at [www.cityofmilwaukie.org](http://www.cityofmilwaukie.org)
4. **FORECAST FOR FUTURE MEETING.** These items are tentatively scheduled, but may be rescheduled prior to the meeting date. Please contact staff with any questions you may have.
5. **TME LIMIT POLICY.** The Commission intends to end each meeting by 10:00pm. The Planning Commission will pause discussion of agenda items at 9:45pm to discuss whether to continue the agenda item to a future date or finish the agenda item.

#### **Public Hearing Procedure**

Those who wish to testify should come to the front podium, state his or her name and address for the record, and remain at the podium until the Chairperson has asked if there are any questions from the Commissioners.

1. **STAFF REPORT.** Each hearing starts with a brief review of the staff report by staff. The report lists the criteria for the land use action being considered, as well as a recommended decision with reasons for that recommendation.
2. **CORRESPONDENCE.** Staff will report any verbal or written correspondence that has been received since the Commission was presented with its meeting packet.
3. **APPLICANT'S PRESENTATION.**
4. **PUBLIC TESTIMONY IN SUPPORT.** Testimony from those in favor of the application.
5. **NEUTRAL PUBLIC TESTIMONY.** Comments or questions from interested persons who are neither in favor of nor opposed to the application.
6. **PUBLIC TESTIMONY IN OPPOSITION.** Testimony from those in opposition to the application.
7. **QUESTIONS FROM COMMISSIONERS.** The commission will have the opportunity to ask for clarification from staff, the applicant, or those who have already testified.
8. **REBUTTAL TESTIMONY FROM APPLICANT.** After all public testimony, the commission will take rebuttal testimony from the applicant.
9. **CLOSING OF PUBLIC HEARING.** The Chairperson will close the public portion of the hearing. The Commission will then enter into deliberation. From this point in the hearing the Commission will not receive any additional testimony from the audience, but may ask questions of anyone who has testified.
10. **COMMISSION DISCUSSION AND ACTION.** It is the Commission's intention to make a decision this evening on each issue on the agenda. Planning Commission decisions may be appealed to the City Council. If you wish to appeal a decision, please contact the Planning Department for information on the procedures and fees involved.
11. **MEETING CONTINUANCE.** Prior to the close of the first public hearing, *any person* may request an opportunity to present additional information at another time. If there is such a request, the Planning Commission will either continue the public hearing to a date certain, or leave the record open for at least seven days for additional written evidence, argument, or testimony. The Planning Commission may ask the applicant to consider granting an extension of the 120-day time period for making a decision if a delay in making a decision could impact the ability of the City to take final action on the application, including resolution of all local appeals.

*The City of Milwaukie will make reasonable accommodation for people with disabilities. Please notify us no less than five (5) business days prior to the meeting.*

#### **Milwaukie Planning Commission:**

Lisa Batey, Chair  
Nick Harris, Vice Chair  
Scott Churchill  
Chris Wilson  
Mark Gamba  
Russ Stoll

#### **Planning Department Staff:**

Katie Mangle, Planning Director  
Susan Shanks, Senior Planner  
Brett Kelder, Associate Planner  
Ryan Marquardt, Associate Planner  
Li Alligood, Assistant Planner  
Alicia Stoutenburg, Administrative Specialist II  
Paula Pinyerd, Hearings Reporter

**CITY OF MILWAUKIE**  
**PLANNING COMMISSION**  
**MINUTES**  
**Milwaukie City Hall**  
**10722 SE Main Street**  
**TUESDAY, April 26, 2011**  
**6:30 PM**

**COMMISSIONERS PRESENT**

Lisa Batey, Chair  
 Chris Wilson  
 Mark Gamba  
 Russ Stoll  
 Nick Harris, Vice Chair  
*Arrived during the worksession)*

**STAFF PRESENT**

Katie Mangle, Planning Director  
 Kenny Asher, Community Development and  
 Public Works Director  
 Brett Kelper, Associate Planner  
 Ryan Marquardt, Associate Planner  
 Jason Rice, Associate Engineer  
 Damien Hall, City Attorney

**COMMISSIONERS ABSENT**

Scott Churchill

**1.0 Call to Order – Procedural Matters**

Chair Batey called the meeting to order at 6:36 p.m. and read the conduct of meeting format into the record.

**2.0 Planning Commission Minutes**

2.1 February 8, 2011

2.2 February 22, 2011

**Chair Batey** postponed approval of the Planning Commission meeting minutes.

**3.0 Information Items**

**Katie Mangle, Planning Director**, announced that Vice Chair Harris would be arriving shortly.

**4.0 Audience Participation** – This is an opportunity for the public to comment on any item not on the agenda. There was none.

**5.0 Worksession Items**

5.1 Summary: Wastewater Master Plan (20 minutes)

Staff Person: Ryan Marquardt, Jason Rice

**Ryan Marquardt, Associate Planner**, stated that the Planning Commission and City Council would eventually be asked to adopt the Wastewater Master Plan (Master Plan) into the City's Comprehensive Plan as an ancillary document, providing more specific detail about the

42 wastewater services. He explained the relationship between the Comprehensive Plan and  
43 adopted master plans.

44

45 **Jason Rice, Associate Engineer**, presented the staff report via PowerPoint. He provided the  
46 background of the existing Master Plan and explained the need for the update. Key points of the  
47 project involved identifying and documenting the existing utility system as well as projects the  
48 City must do to remain current. These projects would then be built into the budget, which was a  
49 key aspect in having an adopted master plan. He reviewed the existing wastewater system and  
50 key projects needed for updating the system. He described the process involved for replacing  
51 existing clay pipes found throughout the city. No dramatic expansions were planned. The area  
52 between Milwaukie and I-205 would be sewerred following the Northeast Sewer Extension so no  
53 additional capacity was needed if the City chose to annex further out into that area.

54

55 **Mr. Marquardt** stated that staff hoped to return before the Commission on May 24<sup>th</sup> for a  
56 hearing to adopt the Master Plan and to ask the Commission for a recommendation to adopt the  
57 Master Plan into the Comprehensive Plan. The Master Plan would go onto the Council for the  
58 second meeting in June. The purpose of this worksession was to give the Commission a chance  
59 to ask questions and become comfortable with the document before staff returned in May.  
60 Adopting the Master Plan would enable the Engineering and Public Works Departments to  
61 budget and plan for capital improvements for maintaining the City's sewer system.

62

63 **Mr. Marquardt** and **Mr. Rice** responded to comments and questions from the Commission as  
64 follows:

- 65 • System Development Charges (SDCs) are generally associated with expansion. Milwaukie's  
66 expansion is limited, but the other component of SDCs regards expansions on the existing  
67 system. For example, if a lot was subdivided so that 2 homes were now on the system  
68 originally installed for one home. The new home would have somewhat of a buy in to the  
69 existing system, but also a component that buys additional capacity. These 2 components  
70 are calculated so when development occurred, the City would know how much to charge.  
71 The City plans for expansion in certain areas of town; however, at this point only one project  
72 really added capacity for which an SDC cost was calculated.
- 73 • The Harrison St project would replace the 24-in pipe with another 24-in pipe. The project to  
74 expand capacity was on Filbert St; that pipe was taking a lot of the sewerage from the

75 Brookside basin, and the main was becoming undersized. The project would extend the  
76 force main from 42<sup>nd</sup> Ave to 32<sup>nd</sup> Ave where capacity exists.

77 • The sewer pipe siphon under Johnson Creek was made of ductile iron with a concrete lining  
78 on the inside. If this needed replacing in the future, it could not be replaced with same the  
79 bursting method proposed on McLoughlin Ave. Consideration was being given to adding a  
80 lift station by the ODS Building and pumping it, and maybe attaching a pipe to the 17<sup>th</sup> Ave  
81 bridge to remove that pipe from the park. At this point, the pipe was only 35 years old and  
82 did not need to be replaced, but that option was being explored to remove the pipe from  
83 underneath the creek.

84

85 **Chair Batey** commented that having this matter come before the Commission was odd,  
86 because the Citizen's Utility Advisory Board (CUAB) and Council were already involved.  
87 Because of the policy questions to address, she asked that the CUAB minutes and minutes  
88 from the Council briefing regarding the Master Plan be provided in the hearing packet as well as  
89 any web links to the video of the relevant Council meetings.

90

91 **Mr. Marquardt** responded that while the Master Plan was more technical and without many  
92 policy issues, that was not always the case for all master plan documents. It was appropriate  
93 that the Commission review all master plans as the body that looked at long-range growth and  
94 planning within the city.

95

## 96 **6.0 Public Hearings**

97 6.1 Summary: Johnson Creek Confluence Restoration Project

98 Applicant: Johnson Creek Watershed Council (JCWC)/City of Milwaukie

99 Address: Johnson Creek and 17<sup>th</sup> Ave to mouth of Willamette River

100 File: WQR-11-01

101 Staff Person: Ryan Marquardt

102

103 **Chair Batey** called the hearing to order and read the conduct of minor quasi-judicial hearing  
104 format into the record.

105

106 **Mr. Marquardt** cited the applicable approval criteria of the Milwaukie Municipal Code as found  
107 in 6.1 Page 6 of the packet, which was entered into the record.

108

109 **Chair Batey** asked if any Commissioners had visited the site prior to the hearing.  
110 Commissioners Stoll, Wilson, and Gamba had visited the site. None had spoken to anyone at  
111 the site, nor had they noted anything different than what was indicated in the staff report for the  
112 application.

113  
114 **Commissioner Stoll** read a statement into the record as follows, "I am a dedicated volunteer  
115 with the Johnson Creek Watershed Council. In fact, this year, I have been nominated for a  
116 Riffle, but I have no financial relationship to the Johnson Creek Watershed Council and  
117 therefore have no conflict of interest that would prevent me from participating in this decision.  
118 As much as I support the Council and other watershed restoration efforts, my first responsibility  
119 here is to the City of Milwaukie and its citizens and what is best for our riverfront. Accordingly, I  
120 am not biased, and I am able to make an impartial decision based solely on application of the  
121 facts in the record to the applicable criteria."

122  
123 No other Commissioners declared any conflict of interest or ex parte contact and no members of  
124 the audience challenged any Commissioners' participation.

125  
126 **Mr. Marquardt** presented the staff report via PowerPoint. The application regarded a habitat  
127 restoration plan for the confluence area where Johnson Creek met the Willamette River. Staff  
128 recommended adoption of the plan with the recommended findings and conditions provided in  
129 the Commission's packet. No correspondence had been received nor objections noted. He  
130 noted the letter from ESA Adolphson dated February 28, 2011, was distributed to the Commission  
131 and was supposed to be part of Attachment 4. The letter regarded that firm's full review of the  
132 project. He clarified that the access plan to build a gravel road from 17<sup>th</sup> Ave for the equipment  
133 had been dropped, but deferred to the Applicant for further details.

134  
135 **Chair Batey** called for the Applicant's presentation.

136  
137 **Robin Jenkinson, Restoration Coordinator, Johnson Creek Watershed Council (JCWC),**  
138 **Project Manager, Johnson Creek Confluence Habitat Enhancement,** gave the applicant's  
139 presentation displaying several historical photos and maps of the site via PowerPoint, noting  
140 features that had changed over time. She reviewed the proposed project with these key  
141 comments:

- 142 • The placement of large wood structures or engineered logjams would provide cover and  
143 shelter for the threatened salmon species that used the confluence area. Such areas are  
144 very ecologically diverse and complex given the variety of creatures using it during different  
145 times of the year.
- 146 • Conceptual designs shown were at about 60%; the exact locations of the logjams would  
147 be determined once the structures went through final design after running the hydraulic  
148 models.
- 149 • The project would enhance the habitat for all the fish using the Willamette River. She  
150 described the different habitat features that would be created from the enhancements  
151 and the benefits provided specifically by Johnson Creek.
- 152 • A design build contract was signed with the engineering firm Inter-Fluve, Inc., who had  
153 subcontracted with Aquatic Contracting, LLC, a river restoration construction firm. Both firms  
154 specialize only in river restoration design and construction.
- 155 • She reviewed several pictures depicting before/after examples of habitat enhancement  
156 projects, including some done by Inter-Fluve. Key habitat features were described, including  
157 those created by the engineered log jams.
- 158 • The estimated construction cost, based on the 60% design, was about \$270,000. So far,  
159 secured funding came to about \$250,000 to \$260,000, and the pending funding looked very  
160 likely, so the project would be fully funded.
- 161 • The timeline involved primarily fundraising and doing pre-project monitoring. Samples were  
162 collected, high school classes helped with hydraulic complexity modeling, and aquatic  
163 surveys were conducted to be able to compare the before and after effects of the project.
- 164 • All funding may or may not be secured by May. The final design would be available in June,  
165 and an email modification would be made to the Army Corps permit for any final design  
166 changes from the 60%. The in-water work window was mid-July to the end of August. All  
167 construction should be completed by September. Revegetation would be carried out  
168 November through April with volunteer groups and the site would be included as part of the  
169 event held the first weekend in March, where revegetation is done throughout the watershed  
170 every year. Post project monitoring and reporting would document changes
- 171 • She confirmed that JCWC agreed with the City's findings and conditions and could provide  
172 final designs. A mitigation plan would be provided, though she was uncertain how extensive  
173 it would be.

- 174 • She clarified that JCWC decided that the access road option would not be a good idea. A  
175 shallow sewer pipe ran under Riverway Ln and Ronelle Sears, Stormwater Supervisor,  
176 suggested that placing big steel plates over that area to protect the pipe should be fine.  
177 • She added that a natural riffle would be constructed over the top of a City sewer pipe that  
178 stuck up out of the water, which was identified as a waterfall on the Riverfront Park Plan. If  
179 erosion continued, this could become a fish passage barrier. Large rocks and gravel would  
180 be placed over and around the pipe, integrating it into the project, while also helping to  
181 protect it. Hydraulic models would be used to size the rock and gravel to resist a minimum  
182 25-year event. The pipe carried more than 40% of the City's sewerage.

183

**Chair Batey:**

- 185 • Asked if replanting would be done where the access was taken from Riverway Ln once the  
186 equipment was gone.
- 187 • **Ms. Jenkinson** responded that the access was an existing access road for the PGE  
188 power lines and so would not need replanting.
  - 189 • Inquired about the removal of the concrete and wood structure along the riverside.
    - 190 • **Ms. Jenkinson** responded that JCWC did not have plans to move the traction line  
191 abutments unless a logjam was put there. Much of the stream bank was bedrock  
192 already, so removing the concrete would not really change the character of the stream  
193 bank nor improve the habitat that much. Although aesthetically, it would be nice to clear  
194 it out.
  - 195 • Asked how mussels were salvaged.
    - 196 • **Ms. Jenkinson** described how aquascopes were used to locate and salvage mussels.  
197 Those in the confluence area might be moved upstream, or relocated to their original  
198 location after the project was completed. JCWC had just received a large grant to do  
199 mussel monitoring throughout the basin.
    - 200 • She announced that JCWC also received the Metro Capital Grant in which they had  
201 partnered with the City to propose an interpretive overlook in Phase 1 of the Riverfront  
202 Park. Council believed this was essential to sharing the project with the public and  
203 encouraging interest in Johnson Creek.

204

205 **Chair Batey** called for public testimony in favor of, opposed, and neutral to the application.

206

207 **Gary Klein, Riverway Ln**, stated he was strongly in favor of the project. He provided a brief  
208 history of roads in the project area, noting the proposed access would be from a road on the  
209 ODS property and that PGE was also involved in helping with the project. It was great that the  
210 City was partnering on the project, which would be a starting point for the Riverfront Park. Metro  
211 would help with the north end of the park, which had to stay a natural habitat, and would go right  
212 along with what was being done in Johnson Creek.

213  
214 **Chair Batey** confirmed there was no further public testimony, comments from staff, or questions  
215 from the Commission.

216  
217 **Commissioner Gamba moved to adopt WQR-11-01 with the recommended findings and**  
218 **conditions. Vice Chair Harris seconded the motion, which passed unanimously.**

219  
220 **Chair Batey** read the rules of appeal into the record.

221  
222 The Planning Commission took a brief recess and reconvened at 8:08 p.m.

223  
224 6.2 Summary: Natural Resource Regulations Amendments *cont'd from 4/12/11*  
225 Applicant: City of Milwaukie  
226 File: ZA-11-01, CPA-11-01  
227 Staff Person: Brett Kolver

228  
229 **Chair Batey** stated that the Commission had been requested to reopen the public hearing on  
230 Code amendments discussed at hearings on March 22, and April 12, 2011. She called the  
231 hearing to order and provided each Commissioner the opportunity to state their intent to  
232 participate in, or abstain from, the hearing.

233  
234 **Commissioner Gamba** declared a potential conflict of interest. He owned property in the city,  
235 specifically 1.2 acres currently zoned residential and in the WQR. The Natural Resource  
236 Regulations Code and Map amendments under consideration could result in some increase or  
237 decrease in the value of his property; however, because any impact, if any, to the value of his  
238 property might not be significant, he did not have an actual conflict of interest and was not  
239 disqualified from participation in the proceedings.

240

241 **Vice Chair Harris** stated he was not present at the last meeting; however, he had reviewed the  
242 materials and was prepared to participate.

243

244 **Ms. Mangle** noted that **Commissioner Churchill** did feel he had a potential conflict of interest  
245 and chose not to participate in the hearing.

246

247 **Chair Batey** declared she had approximately 2/3 of an acre in the city that was not covered by  
248 natural resource protections but a significant portion was within the 100-ft buffer area. There  
249 was a potential impact to her property, but the impact, if any, would be very insignificant, and  
250 she did not feel it created a bias or an actual conflict of interest.

251

252 **Ms. Mangle** stated that no formal staff presentation would be provided, but staff would provide  
253 information during the Commission's deliberation of the issues in response to questions.

254

255 **Brett Kelder, Associate Planner**, noted the following 4 items had been received since the last  
256 meeting that were not included in the packet. Copies were distributed to the Commission and  
257 made available to the audience:

258 Exhibit 12: Handwritten note from Jean Baker received by staff on April 12, 2011, after the  
259 public testimony portion of the hearing was closed.

260 Exhibit 13: Email received from Christopher Burkett dated April 21, 2011.

261 Exhibit 14: Handwritten letter from Jean Baker dated April 25, 2011.

262 Exhibit 15: Email from Tonia Burns, Natural Resources Coordinator, North Clackamas Parks  
263 and Recreation District (NCPRD), dated April 26, 2011.

264

265 **Chair Batey** called for public testimony.

266

267 **Jean Baker, 2607 Monroe St, Milwaukie**, stated she opposed the section in the proposed  
268 ordinance that exempted for transportation, which meant light rail, roads, etc. It was not a good  
269 idea to hold the property owner to such a tight restraint on what they could do, while those who  
270 would be the biggest disrupters by building roads and bridges would not be held to the same  
271 engineering studies that the citizen would be; only a construction management plan (CMP)  
272 would be required. Why would a government entity be exempt from any thing to which a private  
273 citizen would be held?

- 274 • **Mr. Kelper** noted the reference was in Milwaukie Municipal Code (MMC) Section  
275 19.402.4.B.1(f), 5.1 Page 17 of the April 12<sup>th</sup> public meeting packet. A limited exemption  
276 exists for activities and improvements in existing public rights-of-way because a CMP  
277 would be required if there was more than 150 sq ft of disturbance. He did not believe  
278 there was a direct reference to transportation. The exemption meant that road projects  
279 or construction in the public right-of-way would not be subject to the rules, except for  
280 providing a CMP.
- 281 • In general, the entire zoning Code only applied to private property; those same zone  
282 standards did not apply to any public right-of-way.
- 283 • **Ms. Mangle** explained the difference was whether the activity occurred on privately  
284 owned tax lots, or within the right-of-way. Tax lots owned by public entities would be  
285 subject to the rules.
- 286 • **Mr. Kelper** noted that the Trolley Trail project was on privately owned tax lots, which  
287 was why the application from the NCPRD came to the Commission for consideration.  
288 Even though they were a public agency, they were operating on privately owned  
289 property.
- 290 • She remembered when an Environmental Impact Study was required for everything, and  
291 she did not think they were anymore. This seemed like a time for public rights-of-way to be  
292 subject to the same standard as private property.
- 293 • **Damien Hall, City Attorney**, explained that the City had the authority to regulate their  
294 own rights-of-way. It was typical that a city would provide a lot less regulation in a right-  
295 of-way. These facilities and roads were needed to access most every property in the  
296 city. The options to do that were either to carve out some sort of zone that only allowed  
297 roads and have that run throughout the city, or to require the dedication of right-of-way to  
298 limit where people could build and pave roads as a permitted use. It was a policy  
299 decision to be made.
- 300 • She noted that the one that could do the most damage had the least oversight and the least  
301 restriction, which was not what the community was looking for to protect the waterways and  
302 habitats. Big projects should be subject to oversight also. Allowing government to operate  
303 carte blanche was not the intent of the ordinance and she hoped that it would be changed.  
304
- 305 **Jason Howard, Land Use and Board Chair, JCWC**, stated he was on the Natural Resource  
306 Overlay Project Stakeholder Group and had been tracking Title 13 compliance among the  
307 jurisdictions within Johnson Creek. He made the following comments:

- 308 • He noted previous discussions about lowering the 150 sq ft threshold for boundary  
309 verification, but 150 sq ft was a very conservative measure that was protective of the  
310 resources. It was a good starting point and would be conducive in most scenarios.
- 311 • Regarding the 150 sq ft maximum allowed disturbance and the discussion for increasing  
312 that, he noted that the work, compromise, and rationale that had gone into the Title 13  
313 program accounted for development and resource values. The City's consideration of  
314 modifications, including merging of low and moderate HCAs, would definitely allow more  
315 disturbance. Compromising to allow more disturbance would move away from the intent of  
316 Metro's Title 13 program.
- 317 • As far as fees and permits, it was a good idea to incentivize or disincentivize by having a  
318 structured program away from the resources. Rather than entirely waiving the fees, he  
319 suggested that the Code/Plan be structured toward habitat-friendly or low impact  
320 development.

321

322 There being no further public comment, **Chair Batey** closed the public testimony portion of the  
323 hearing and called for Commission discussion.

324

325 **Commissioner Gamba:**

- 326 • Noting Ms. Baker's concern, he asked if there was an example of a WQR or HCA that was  
327 in the right-of-way.
- 328 • **Mr. Kelper** stated the Johnson Creek Watershed Council's (JCWC) confluence project  
329 was one example. The WQR area involved a protective buffer 50-ft from the edge of the  
330 water resource. There were places where the buffer area spilled out, perhaps where the  
331 stream crossed under or was close to a road, and technically covered the right-of-way.
- 332 • **Chair Batey** noted also that on the Gary Michael/Carolyn Tomei property, the edge of  
333 the street pavement was at least 25 ft, maybe 30 ft, from the edge of the right-of-way, so  
334 that 25 or 30 ft closest to the street was still in the HCA, which spilled into the public  
335 right-of-way.
- 336 • Stated this was an excellent example for Ms. Baker's argument, and suggested adding the  
337 issue, "Applicability to ROW" to the list.

338

339 **Chair Batey** agreed.

340

341 **Mr. Kelper** understood that the entire zoning Code was set up to apply to private property. He  
342 did not know the legalities of making a specific change in this one particular Code section to say  
343 that the rules applied to the right-of-way while the rules did not apply to the right-of-way  
344 anywhere else in the Zoning Code. The concern had been addressed somewhat by stating the  
345 activities were exempt, except for requiring a CMP. The idea was to keep with the spirit of the  
346 overall Zoning Code. If a project potentially had an impact, it would not necessarily need to go  
347 through a land use review, but would need to provide a plan stating how the resource would be  
348 protected, which the City would likely do as a matter of course anyway.

349  
350 **Ms. Mangle** suggested using “fee title property” versus “right-of-way”, rather than private  
351 property. The issue did not involve whether or not it was private property but whether or not it  
352 was a lot, which was where the zoning code was applied. Many other rules do apply to the right-  
353 of-way in terms of the public works and stormwater standards. The City only regulated trees  
354 currently in the right-of-way.

355  
356 **Chair Batey** explained that the Commission would discuss the issues listed by staff, add any  
357 others that were of concern, and get a sense, perhaps through a straw poll, about where the  
358 Commissioners stood on the issues and what additional information might be needed from staff  
359 to make a final determination.

360  
361 The following discussion items, identified by the Commission and listed on 6.2 Page 2 and 3 of  
362 the packet, were listed on a white board; added items shown in italics (included as Attachment  
363 1).

364  
365 **Ms. Mangle** noted that staff sought direction about how to modify the proposal with regard to  
366 these listed issues.

- 367  
368 1. 150 sq ft threshold *for minor encroachments*  
369 2. Limit division of high percentage resource properties  
370 3. Language = “possible” versus “feasible” versus “practicable”  
371 4. Home exemptions from HCA rules  
372 5. Tree removal  
373 6. Fee reductions for WQR/HCA applications  
374 7. Prohibitions

375 8. WQR categories

376 9. *Applicability to ROW*

377 10. *150 sq ft threshold for CMP requirements*

378 11. *Some oversight, but not too much regulation, of everyday gardening/landscaping/trees*

379 12. *Burden on property owners and property value*

380

381 Staff provided additional information regarding each item and the Commission discussed the  
382 issues as follows with key comments and concerns as noted:

383 [Note: Discussion is captured here as discussed during the meeting.]

384

385 **1. 150 sq ft threshold for minor encroachments**

386 **Mr. Kelper** distributed a comparison table, Exhibit 16, showing some “distance” triggers and  
387 “allowed disturbance” triggers that have been established in several other jurisdictions, as well  
388 the Metro Title 13 and Title 3 model codes along with a list that Milwaukie was doing. He  
389 explained that it was not an apples-to-apples comparison. He clarified they had discussed  
390 changing the 120 sq ft allowed disturbance for minor encroachments to 150 sq ft for uniformity;  
391 120 sq ft was similar to other jurisdictions and was in Metro’s model code. The exemption for  
392 minor encroachments was specific to HCAs only.

393

394 A brief discussion identified three separate issues regarding the 150 sq ft threshold, and the  
395 Commission agreed to address the threshold regarding when a construction management plan  
396 (CMP) was required. All three triggers, which concerned CMPs, allowed disturbance and minor  
397 encroachments, involved different policy issues although the threshold number might be the  
398 same. “*150 sq ft threshold for CMP*” was added to the list.

399

400 **10. 150 sq ft threshold for CMP requirements**

- 401 • As drafted, a CMP would be required if a 15 ft by 15 ft portion of lawn within a WQR or HCA  
402 was tilled up for a garden.
- 403 • Most other jurisdictions were not allowing any de minimus earth disturbance, though their  
404 definition of nonexempt activities was unknown.
- 405 • 150 sq ft was not a bad measurement because a 10 ft by 10 ft shed could be built in the city  
406 without having to go through a permitting process.
- 407 • One main issue was Item 4, home exemptions. If homeowners’ existing landscapes were  
408 exempt from the regulations, a 15 ft by 15 ft garden could be done without a CMP. For most

- 409 property owners, the home exemption was really where it began, and would be the place to  
410 start.
- 411 • **Mr. Kelper** noted the suggestion, along with the CMP, was to not charge a fee for reviewing  
412 it and address it as a Type I review to make it as easy as possible. In trying to protect the  
413 resource areas, the idea was to get people to show what they were doing to protect that  
414 area, and the 150 sq ft was a gross tool to keep the Code from becoming more complicated  
415 by addressing slope and other features.
  - 416 • That concept solved a lot of the issues. The concern about a complete exemption for  
417 homeowners was that someone who did not care could come into their back yard with a D9  
418 tractor and turn what was a slope into the creek into a new swimming pool.
    - 419 • People in Island Station living along the Willamette River have denuded their property,  
420 sprayed and killed everything. A homeowner's exemption for landscaped lawns was just  
421 something that gutted the whole rule.
  - 422 • **Mr. Kelper** stated the spirit of the exemption was to allow exemptions for existing  
423 residences up to the point where other permits would be required. Once 500 sq ft was  
424 disturbed, an erosion control permit would be required. The exemption did not extend to  
425 other areas the City would regulate.
  - 426 • The working group had not discussed an exemption for landscaping.
    - 427 • **Ms. Mangle** noted that was likely because such an exemption was not included in staff's  
428 earlier drafts. It would **directly** apply to an estimated 160 properties. An issue was how to  
429 track this over time and how the 10% of allowed reduction would be tracked, etc. It  
430 would be difficult to implement on the City's side and could create inequities among  
431 neighbors.
  - 432 • **Mr. Kelper** stated tree removal would be included in the exemption as presented in model  
433 code. Vegetation could be disturbed, including trees up to 10% of the HCA or a maximum of  
434 20,000 sq ft, whichever was less. The 10% disturbance was allowed for the life of the  
435 property, and not 10% per year. This was referenced in Section 3 B and in Section 3 E.5 of  
436 the model code Title 13.
    - 437 • Staff could adjust the model code if the Commission liked the idea, but not the provided  
438 limits.
  - 439 • It came down to the attitude of the people doing this, which could not be regulated; some  
440 people were good caretakers of their properties and others tried to use every loophole to do  
441 things that no one wanted to see happen.

- 442 • The fee exemption was a far better idea than a home exemption or a fee waiver for minor  
443 modifications and moving it down to a Type I review.
- 444 • Currently, if handled as a regular Type I application, there would be a fee. In adopting the  
445 amendments, the proposal was that no fees would be required for the CMP review and the  
446 Type I Natural Resource Management Plan to provide an incentive and make it easier to do.
- 447 • **Commissioner Stoll** noted he knew there would be bad landowners, but 500 to 700 parcels  
448 would be affected and they should have certain rights that should not be infringed on..

449

#### 450 **4. Home exemptions and 6. Fee reductions**

- 451 • **Chair Batey, Vice Chair Harris, and Commissioner Gamba** concurred that it was better to  
452 make it easy with no fee, but still have some review; and not create a home exemption.  
453 Make small type uses easy with as quick a review as possible and without a fee.
- 454 • **Commissioner Stoll** agreed with the fee reductions, but still wanted a home exemption. He  
455 could see working a little bit with the home exemptions to maybe restrict it slightly to prevent  
456 really bad behavior.
- 457 • **Commissioner Wilson** wanted both home exemptions and fee reductions.
- 458 • **Ms. Mangle** stated that in the proposal being presented to Council, no fees were proposed  
459 for the boundary verifications and the CMPs as an incentive and acknowledgment of the  
460 burden being added onto the property owners. Staff could not reduce or waive all the fees  
461 for Type II and Type III. According to policy, the City was not required to cover all its costs,  
462 but staff was asked not to shift all that cost onto the General Fund and the taxpayers.
- 463 • Type I tree removal, for example, needed to be specific, because different fiscal policies  
464 might apply the bigger fee. It did not mean it was less of a concern for the property  
465 owner, but Council would actually have to fund it at some point.

466

#### 467 **10. 150 sq ft threshold for CMP requirements**

- 468 • If a CMP was all that was needed, it was proposed to not require a fee and to have a quick  
469 staff turnaround. The question was if 150 sq ft was the right trigger for those parameters.
- 470 • **Mr. Kelper** verified that a CMP was all that was required if someone wanted to put in a  
471 garden or a similar minor disturbance in a resource area.
- 472 • If tilling the soil to raise food was the issue, should that be addressed through an exemption  
473 as opposed to changing the 150 sq ft threshold?
- 474 • **Ms. Mangle** verified Subsection 19.402 4(b) 0:50:54.6, Limited Exemptions, of the proposed  
475 Code (5.1 Page 16 of the April 12, 2011 packet) only listed the types of activities that only

476 triggered the CMP that otherwise would be exempt. Many other projects that also required  
477 Type II and Type III would also require a CMP. These were the kinds of projects that would  
478 be exempt but for the need to do a CMP. If there was something on the list that the  
479 Commission did not think should require a CMP, it could be moved to the outright  
480 exemptions list. However, that would mean that the City would not be able to address it at  
481 all.

482

483 **Ms. Mangle** added Item 11 to the list and advised the Commission to clarify their key objectives  
484 so staff could return with Code language.

485

486 **11. Some oversight, but not too much regulation, of everyday gardening/landscaping/  
487 trees and 5. Tree removal**

- 488 • Citizens in the watershed were being asked to do more, which was a goal everyone agreed  
489 on; de minimus for the existing homeowners would be great.
- 490 • Tree removal should be treated differently than earth disturbance, because the whole point  
491 was the canopy protection. Ripping up the lawn was less of concern than someone  
492 removing trees. Removing a tree and replacing it with a tree was the goal and the spirit of  
493 the concept to maintain the canopy.
- 494 • **Mr. Kever** stated when something was truly exempt, the City could not require anything  
495 else. If tree removal became exempt, it was up to the owner's discretion as to whether or  
496 not they planted a tree. The exempt tree removal in the proposed Code had no replanting  
497 requirement; however, if it fell into a Type I, there was some oversight as well as the  
498 accompanying requirement.
- 499 • Putting the tree removal in the same category as the 150 ft CMP threshold so no fees were  
500 required and the review was quick still provided oversight where replanting a tree could be  
501 required.
- 502 • The current tree removal part was pretty good; the measures about exemptions, what was  
503 Type I, all made sense.
- 504 • **Mr. Kever** clarified that trees under a 6-in diameter did not qualify as a tree per the  
505 definition; the current draft stated 4 in, but changing it to 6 in had been discussed.
- 506 • Even 4 in was a big exemption and would allow time to consider the [landscaping](#) before the  
507 tree got too mature.

- 508 • One purpose for maintaining the canopy, especially in the riparian area right along the  
509 watershed in the WQR, was mostly to shade the creek and keep the temperature down for  
510 the fish.
- 511 • That was addressed in the WQR. This project went beyond that; it was more about a tree  
512 canopy and bird habitat and other things, so it was not directly about shading the creek,  
513 which was covered.

514

515 The Commissioners all agreed Item 11 was a concern, though not all agreed on a solution. The  
516 Commission had mixed opinions about trees being included in some kind of exemption.

- 517 • The current exemption did allow 3 removals of trees per year from the nuisance species list;  
518 however, not all trees were on that list, like fruit trees.
- 519 • The Natural Resource Management Plan would work for a lot of properties, but it did  
520 presume that restoration was a goal, which would not be true for everybody.

521

## 522 **2. Limit division of high percentage resource properties**

- 523 • The chart on 5.1 Page 28 of the April 12 packet was a good concept if a small portion of  
524 HCA was on a property. The issue, which affected less than 30% of HCA properties, arose  
525 when a property was 90% HCA, for example, and large enough to be subdivided.
- 526 • For example, a 50,000 sq ft property could be subdivided 5 times, and since each lot  
527 would be covered with 100% of HCA, 50% of each lot could be disturbed. The result was  
528 that a decent piece of habitat could be turned into no habitat at all, because it was  
529 checker boarded and half of it was wiped out. To keep this from happening, restricting  
530 how much it could be subdivided when a property was predominately HCA was  
531 suggested.
- 532 • This change would not affect the chart, which worked for the rest of the city.
- 533 • The key point was contiguity. The concept of island biodiversity stated the smaller an  
534 area was, the smaller the chain of diversity of species, and this takes place at a very  
535 small level. So the larger the area that could be created, the bigger the diversity of  
536 species. As that area is divided up, they could no longer exist in that area.
- 537 • Originally, the concern was not to prevent developers from chopping up the area, but to  
538 address how the HCA was divided, so the 50% HCA across the 5 lots would have to be  
539 grouped together.
- 540 • There were many ways to address the issue; the point was to keep from turning a nice  
541 habitat into nonhabitat.

- 542 • The draft language for consideration, distributed by staff at the prior hearing, was good and  
543 addressed the point; however, it came with lots of caveats and would need further  
544 consideration and adjustments.
- 545 • Staff was not asked to research whether other cities had a similar code. One caveat with  
546 that draft language regarded whether prohibiting division of property with a very high  
547 percent of HCA was legal. Other consequences might need to be considered as better  
548 options might be available to address the concern, such as cluster development or  
549 addressing the contiguity issue.
- 550 • **Mr. Hall** stated Council had raised the issue of a potential taking, which was very site  
551 specific. A 90% threshold with 10% allowed to be developed was not a taking.
- 552 • General prohibition was a pretty blunt instrument policy-wise. There were concerns that  
553 too much HCA would be developed upon as a percentage, and a checkerboard of HCA  
554 would result from a subdivision. Policy-wise, this language did not seem to directly  
555 address either issue. It basically said that certain properties could not be subdivided. It  
556 did not incentivize a property owner to pursue clustering nor address the problem of a  
557 property being 89% HCA.
- 558 • Policy could be written so it was not such a blunt instrument. The Commission needed to  
559 define parameters they were comfortable with as far as when to apply the formula; what  
560 percentage to use as a trigger, such as for when a subdivision must address HCA  
561 contiguity area so a certain percentage remained in a protected tract, etc.
- 562 • Land division that created a resource tract would be ideal.

563

564 The Commission unanimously agreed keeping the contiguity of larger HCA parcels was a good  
565 idea.

566

### 567 **3. Language = “possible” versus “feasible” versus “practicable”**

- 568 • **Mr. Hall** explained there were 2 different issues. The model code used the term  
569 “practicable” but also defined the term; staff’s draft Code used the word “practicable” without  
570 defining it.
- 571 • Most people writing Code assume “practicable” is a synonym for “practical.” The  
572 dictionary defines “practicable” as “feasible”, which is a different standard than  
573 “practical.” He suggested replacing the word “practicable” with either “feasible” or  
574 “practical.”

- 575 • “Possible,” “feasible,” and “practicable” essentially meant, “could it be done”; “practical”  
576 is less restrictive, and basically meant, “would it be done”, such as if something would be  
577 really expensive; there was also a lower threshold or other considerations.
- 578 • **Chair Batey** understood “practicable” to be closer to “practical” but more of a threshold than  
579 “feasible” or “possible.”
- 580 • Metro’s definition of “practicable” in the Title 13 model code stated, “‘Practicable’ means  
581 available and capable of being done after taking into consideration cost, existing technology,  
582 and logistics in light of overall project purpose and probable impact on ecological functions.  
583 The practicability of a development option shall include consideration of the type of HCA that  
584 will be affected by the proposed development. For example, high HCAs have been so  
585 designated because they are areas that have been identified as having lower urban  
586 development value and higher valued habitat, so it should be more difficult to show that  
587 alternative development options that avoid the habitat are not practicable.” On the other  
588 hand, it talked about low HCAs, and it would be easier to show things are practicable if they  
589 have impacts on low HCAs.
- 590 • Retain “practicable” and include Metro’s definition in the proposed Code, but modify it to  
591 remove the distinctions between high and low HCAs. The type or character of an HCA could  
592 be discussed/referenced.
- 593 • **Ms. Mangle** expressed concern about the definition applying elsewhere in the Zoning Code.  
594 Staff tried to avoid having specific definitions in each chapter. If the definition was in the  
595 Natural Resource Areas chapter and not defined elsewhere in the Code, it would not impact  
596 the rest of the Code.
- 597 • Having a definition for “practicable” was a good idea, but it should serve a purpose  
598 broader than just this chapter.
- 599 • Metro’s definition of “practicable” was synonymous with “practical,” though more specific.

600

601 The Commission consented to use “practicable” as intended in the original model code and add  
602 a similar definition in the chapter.

603

604 **Chair Batey** added she did not care which word was used, but a definition and more  
605 consistency was needed. **Vice Chair Harris** agreed, adding he wanted it defined for the  
606 context. **Commissioner Stoll** concurred.

607

608 **7. Prohibitions**

- 609 • The issue was the underlying philosophy of the regulation calling out what could be done  
610 and then listing what is exempt, what has limited regulation, and what has more regulation;  
611 whatever is not listed is prohibited. The other option was to list what could not be done, and  
612 if the proposal is not listed, then it would be allowed.
- 613 • Everything not expressly prohibited should be allowed; if someone did damage in some  
614 unconceivable manner, then that would be added to the prohibited regulations.
- 615 • That was probably a good legal philosophy, but the proposed Code was not drafted in  
616 that way; drafting that list could take additional months of work.
- 617 • The underlying philosophy of the development code did not list prohibited activities, but  
618 rather permitted uses, conditionally permitted uses, and then everything was pretty much  
619 prohibited. How the draft Code was proposed was pretty standard.
- 620 • The Code was not drafted with the idea of enumerating all the bad things that people should  
621 not do; that would be a big rewrite.
- 622 • Pesticide use was not a disturbance, for example, and pesticide was not defined in the draft  
623 Code. It would be impossible to create such a list, which was as limitless as the imagination.
- 624 • **Mr. Kelper** noted Metro's Title 13 model code did not include this language; however,  
625 current WQR rules did include the same phrasing. Part of the intent with that language was  
626 to make it clearer that it could not be done, rather than simply assuming an activity was  
627 allowed if not found on the list. For example, if a use was not listed as an outright or  
628 conditional use in R -7, then it was prohibited; that was how the Code was set up. The intent  
629 was to capture and delineate the list of exemptions and identify the level of review.
- 630 • For instance, the language "or other activity" included tree removal, and if the tree  
631 removal description was not listed as an outright exempted or Type I review, then it  
632 could not be done. This did not make sense in light of the current Code. The property  
633 owner should at least be able to go to the Commission to make their case. The current  
634 Code version stated that Type III review included any tree removal that was not exempt  
635 or Type I, so that activity could be addressed.
- 636 • A similar provision was in the WQR Code, which had been in effect for 8 or 9 years and  
637 seemed to show not many people had been stopped from doing a lot of things they had  
638 wanted within that time; otherwise more people than Mr. Burkett would be objecting to the  
639 proposal.
- 640 • Should other exemptions or Type I review items be identified that people are concerned  
641 about? Although a philosophical difference existed, the Commission was actually affecting

642 things in the area already due to the lack a decision; rewriting the Code would only increase  
643 those impacts.

- 644 • The logical people to ask about whether more specific exemptions should be included were  
645 those in the working group and those who appeared at the hearings.
- 646 • Most property owners would probably say they would like as many exemptions as  
647 possible.
- 648 • Staff wanted input from them about where the draft Code was too restrictive.
- 649 • It was dependant on intent, which could not be regulated.
- 650 • **Commissioner Stoll** could not really list any additional exemptions at the moment, because  
651 the home exemption would cover a lot of it, but he would give it some thought.
- 652 • **Chair Batey** had not read the model code against Milwaukie's Code to know if there were  
653 other things that should be exempt.

654

655 **Chair Batey** suggested that each Commissioner contact Mr. Kelter with suggestions on  
656 exemptions. Only Commissioner Stoll wanted to reframe the Code language to reflect that what  
657 was not prohibited was allowed.

658

## 659 **8. WQR Categories**

- 660 • **Mr. Kelter** understood there were two components to this issue: one was the actual  
661 wording used and if the categories should be relabeled; the other was the possible creation  
662 of a new category or two to distinguish between properties not being cared for in addition to  
663 well cared for properties, even if they did not meet the highest ecological value.
- 664 • Properties that were well maintained, landscaped, and kept in good condition should be  
665 considered "good" as opposed to "degraded." An "ideal" category should be established, for  
666 those using native plantings and actively doing restoration. The opposite end needed to  
667 categorize those actively doing damage, and where enforcement would apply.
- 668 • The purpose of Table 19.402.11.C, found on 5.1 Page 27 of the April 12 packet, was solely  
669 for classifying and evaluating the property in the context of an application.
- 670 • When a project would result in some disturbance, specifically of the WQR area, the table  
671 was intended as a guide to show what mitigation is needed.
- 672 • While the wording was unfortunate, the intent was to provide a more technical evaluation  
673 of a property's status and the requirements should there be a disturbance. The fact that  
674 a property was well cared for did not change the mitigation requirements. This Code

675 would only be used if an applicant proposed impacts on a section of the property within a  
676 WQR.

- 677 • **Commissioner Stoll** noted it was important to administer the regulation in such a way that  
678 those who were good stewards would support the City. A lot of people did object to [the](#)  
679 [classification of their property as “degraded.”](#) He clarified that he would like to see both the  
680 approach and language changed. Mr. Burkett’s property had been described as “degraded,”  
681 which was not true. It was well maintained and the habitat was being improved. Comments  
682 were made about the language being demeaning.
- 683 • Only the “degraded” category in the chart had a specification about nonnative species. Why  
684 did “good” and “marginal” properties not have that threshold as well?
- 685 • **Mr. Kelper** responded that the idea was that any portion of a WQR area with at least  
686 10% nonnative species would fall into the “degraded” category, which was essentially  
687 having a lawn under the canopy. The categorizations came from the Metro Title 3 model  
688 code. Staff should check with Metro about changing or creating a different category to  
689 avoid falling out of Title 3 compliance.
- 690 • The ideas and values being put forward were what conditions represented a more ideal,  
691 self-sustaining WQR area. The intent was to have properties look more like the ODS  
692 property and less like Mr. Burkett’s property, thus reducing lawns in WQRs for  
693 applications requiring a Type II or higher review. The intent was not to require restoration  
694 without some development. It would not apply to the ongoing maintenance of existing  
695 landscaping.

696

697 Commissioner Wilson left the meeting at approximately 9:40 p.m.

698

- 699 • Having staff take a hard look at the whole table, how it was set up, and the language, would  
700 be a lot of work and would require additional help. This would be different than just trying to  
701 find kinder language.
- 702 • **Vice Chair Harris** noted one thing not listed was the second half of Item 6. Metro’s  
703 intentions were great; however, a property was appraised and taxes assessed with a well  
704 manicured and landscaped garden, and no process existed to reduce the assessment or  
705 taxes when a property was returned to riparian land that could never be used. The inability  
706 to divide or develop a property could result in a significant reduction in property value.
- 707 • Because taxes were not in the purview of the Commission, there might not be a way to  
708 address the concern. This was a huge oversight on the State’s part and on the parts of

709 Metro and Clackamas County. The HCAs and WQRs in general create this situation. He  
710 would not likely vote against habitat restoration, but it was very concerning.

- 711 • Item 12 “Burden on property owners and property value” was added to the list.
- 712 • Table 19.402.11.C was exactly what it should be for the intent of the Code.
- 713 • The language stating, “more than 10% surface covers by any nonnative species” could be  
714 going too far. Removing invasive species was good, but if it was not an invasive species or  
715 native, but an ornamental species, for example, which fostered habitats should be allowed.  
716 Native vegetation, which promoted water conservation, should be in the “ideal” category.
- 717 • **Mr. Hall** stated that native species were required to be planted when replanting bare and  
718 disturbed areas from development. He suggested the Commission could require that  
719 some percentage had to be native. Another requirement was that seeds be planted to  
720 provide 100% surface coverage, which could also be adjusted.
- 721 • People on the advisory group were much more qualified to talk about such details. Staff  
722 could possibly reassemble the group with Mart Hughes and Zack Perry and others who  
723 were more qualified.
- 724 • These were essentially the same standards the City had used for the past 8 years or so  
725 and was the model code. The language could be adjusted further, but it was really just  
726 continuing the existing policies.

727

728 **Chair Batey, Vice Chair Harris, and Commissioner Gamba** agreed to retain the WQR  
729 categories as presented; **Commissioner Stoll** wanted the categories changed.

730

731 After considering the hour in light of the Commission charter, the Commission consented to  
732 continue the meeting past 10:00 p.m.

733

#### 734 **1. 150 sq ft threshold for minor encroachments**

735 **Mr. Kelper** clarified that the comparison table, Exhibit 16, was intended to pull out some specific  
736 square footage numbers in the existing Code to see what they looked like internally. There were  
737 minor encroachments that only affect the HCA that were listed as exempt on 5.1 Page 17 of the  
738 April 12 packet. These were special exemptions within HCAs. The current proposal had minor  
739 encroachments up to 120 sq ft just in HCAs as exempt.

- 740 • Examples were provided of minor encroachments of an impervious surface such as  
741 accessory buildings, patios, walkways, retaining walls, and other similar features. 150 sq

- 742 ft came up as the trigger for a CMP; 120 sq ft for an HCA minor encroachment; and 150  
743 sq ft for a Type II WQR disturbance, which regarded Ms. Baker's bay window example.
- 744 • These thresholds were new; currently any disturbance had to go to the Commission. The  
745 idea was to be able to do a Type II for small impacts, even those within the WQR area,  
746 because that had been far too restrictive.
  - 747 • The 150 sq ft threshold was also used for the temporary disturbance allowed in HCAs.  
748 The model code had 200 sq ft, but because staff was working with 150 sq ft for  
749 everything else, it had been dropped to be more consistent. Other thresholds for allowed  
750 disturbance went up to 500 sq ft for alterations of existing structures that impact only  
751 HCAs, which was reflected in the table.
  - 752 • The table showed 150 sq ft or 500 sq ft as the thresholds, except for the 120 sq ft which  
753 they had talked about changing.
  - 754 • Eliminating the 120 sq ft metric made sense. Using 150 sq ft or another number for  
755 everything would avoid confusion.
  - 756 • The larger question was whether 150 sq ft was the right number for either sometimes  
757 requiring a CMP, or in other cases, if the standards for WQR disturbance could not be met,  
758 bumping the application from Type II to Type III.
    - 759 • Some who commented suggested this was a little low.
  - 760 • According to the chart, most of the area was taken from the model code and using 120 sq ft,  
761 but going to 200 sq ft for temporary disturbances.
    - 762 • Staff created several levels of exemption. Many other jurisdictions were not requiring a  
763 CMP for an activity on the exempt list.
- 764
- 765 All Commissioners agreed 150 sq ft should be the threshold for minor encroachments in HCAs.  
766
- 767 **Chair Batey** and **Vice Chair Harris** wanted to further consider the 150 sq ft threshold between  
768 a Type II to Type III review for WQR disturbance, while **Commissioners Gamba and Stoll**  
769 supported the 150 sq ft trigger.
- 770 • This particular Type II allowance was 150 sq ft maximum and going no closer to the  
771 protected water feature, which could be difficult if the entire property was covered.
  - 772 • Staff would return with a clear explanation about what constitutes Type II and Type III  
773 reviews, as well an alternative for the next hearing.

- 774 • **Commissioner Stoll** requested a sample CMP or a sample Natural Resource Management  
775 Plan that would be done by a typical citizen to understand what the citizens would be asked  
776 to do.

777

778 **10. 150 sq ft threshold for CMP requirements**

779 The Commission agreed to a 150 sq ft threshold for CMP as long as it was subject to Item 11.  
780 Some oversight, but not too much regulation, of everyday gardening/landscaping/trees.

781

782 **9. Applicability to ROW**

- 783 • **Vice Chair Harris** was not concerned about applicability to ROW, which was not considered  
784 in the rest of the Code. Engineering adhered to erosion standards already without these  
785 regulations.

- 786 • **Chair Batey** was concerned about undeveloped ROW. In most places, it would be a non-  
787 issue because the street improvements for an application triggering this ordinance would  
788 dictate what happened in the ROW anyway.

- 789 • One example was the proposed widening of the Harmony Rd section in the Three Creeks  
790 Area, which would kill a bunch of 200-year old oaks to speed up traffic by 30 seconds. Such  
791 proposals should come up for review if in Milwaukie.

- 792 • **Mr. Hall** explained that Engineering staff wants the flexibility to build a road where needed in  
793 order to access property. Standards exist to address natural resources, but it was really a  
794 policy decision of the City. Legally, the Commission could make a regulation on ROW.  
795 Generally, cities allow themselves more leeway regarding what they can do in the ROW due  
796 to the necessity of access.

- 797 • The exemption was specific to the physical public ROW, not who was acting in it. Those  
798 acting within the ROW were subject to many other regulations and staff would return  
799 with an explanation of those rules so the Commission could compare them with the  
800 proposal. Undeveloped ROW was a bit different.

- 801 • Someone from the Engineering Department could provide a sample scenario of what  
802 happened when someone wanted to work in the ROW.

803

804 **Chair Batey** and **Commissioners Stoll** and **Gamba** wanted more information so they could  
805 further consider applying the regulations to ROW. Vice Chair Harris opposed having the Natural  
806 Resource regulations apply to the ROW.

807

808 **Mr. Kelper** noted that as written, the ordinance discussed existing ROW, but not ROW resulting  
809 when a new road is created from a new partition or subdivision. Once the road is established,  
810 existing ROW would result and would be exempt, but the process of doing the subdivision would  
811 need to address any impacts.

812

## 813 **12. Burden on property owners and property value**

814 • **Vice Chair Harris** requested that staff get more information from the tax assessor.

815

816 **Chair Batey** asked that the packets be sent to the Commission 2 weeks prior to the hearing  
817 because it would be a lot of reading.

818

819 **Commissioner Gamba** moved to continue ZA-11-01 and CPA-11-01 to date certain of  
820 **June 14, 2011. Vice Chair Harris** seconded the motion, which passed unanimously.

821

## 822 **Attachments**

823 Attachment 1: Natural Resource Regulations Questions Chart, April 26, 2011 Planning  
824 Commission

825

## 826 **7.0 Planning Department Other Business/Updates**

827 7.1 Kellogg Bridge – Responses to questions from 3/17 meeting

828 **Ms. Mangle** noted the material in the packet was in response to some questions asked at the  
829 joint meeting with the DLC regarding the proposed light rail Kellogg Bridge. Another joint  
830 meeting was proposed to address other comments and questions, and enable the designers to  
831 show their progress and how they were responding to the more substantive comments. She  
832 would email the Commissioners about the proposed May 25 or June 1 date and they could  
833 respond with the date that worked best. The material was also provided to the DLC for their  
834 meeting being held tomorrow.

835

## 836 **8.0 Planning Commission Discussion Items**

837 There were none.

838

## 839 **9.0 Forecast for Future Meetings:**

840 May 10, 2011

1. Other Business/Updates: Team-building Training

841 2. Other Business/Updates: Residential Standards Project Update



**CITY OF MILWAUKIE**  
**PLANNING COMMISSION**  
**MINUTES**  
**Milwaukie City Hall**  
**10722 SE Main Street**  
**TUESDAY, May 10, 2011**  
**6:30 PM**

**COMMISSIONERS PRESENT**

Lisa Batey, Chair  
 Scott Churchill  
 Chris Wilson  
 Mark Gamba  
 Russ Stoll

**STAFF PRESENT**

Katie Mangle, Planning Director  
 Susan Shanks, Senior Planner  
 Damien Hall, City Attorney

**COMMISSIONERS ABSENT**

Nick Harris

**1.0 Call to Order – Procedural Matters**

Chair Batey called the meeting to order at 6:35 p.m. and read the conduct of meeting format into the record.

**2.0 Planning Commission Minutes**

2.1 February 8, 2011 *continued from 4/26/11*

**Commissioner Gamba** moved to approve the February 8, 2011, Planning Commission meeting minutes as presented. **Commissioner Wilson** seconded the motion, which passed 3-0-1, with Commissioner Churchill abstaining.

**Chair Batey** requested that Page 8 of the February 8, 2011, minutes be shared with City Council.

2.2 February 22, 2011 *continued from 4/26/11*

**Commissioner Wilson** moved to approve the February 22, 2011, Planning Commission meeting minutes as presented. **Commissioner Gamba** seconded the motion, which passed 3-0-1, with Commissioner Churchill abstaining.

2.3 March 17, 2011

**Commissioner Gamba** moved to approve the March 17, 2011, minutes for the Design & Landmarks Committee and Planning Commission joint session as presented. **Commissioner Churchill** seconded the motion, which passed 3-0-1, with Commissioner Wilson abstaining.

42 **3.0 Information Items**

43 **Katie Mangle, Planning Director**, noted that since the meeting will be a brief worksession, the  
44 minutes will be simple.

45

46 **Chair Batey** noted the meeting items will be taken out of order so that Commissioners Stoll and  
47 Harris can participate in the worksession.

48

49 **4.0 Audience Participation** –This is an opportunity for the public to comment on any item  
50 not on the agenda. There was none.

51

52 **5.0 Public Hearings** – None.

53

54 **6.0 Worksession Items**

55 This item was taken out of order.

56 6.1 Summary: Royalton Place

57 Staff Person: Susan Shanks

58

59 **Susan Shanks, Senior Planner**, explained the Royalton Place proposal to convert part of the  
60 building from independent living to assisted living and memory care. Ms. Shanks noted the  
61 timeliness of this proposal with regard to the Residential Development Standards project and  
62 how it is addressing the needs of Milwaukie’s aging population.

63

64 **Ms. Shanks** outlined 2 questions that were in the staff report for the Commission to consider.

- 65 • Under the current code the facility is not recognized as a single use facility, therefore  
66 different codes apply to different parts of the building which staff felt would be problematic  
67 over time.
- 68 • The question to consider tonight was, rather than having a portion being subject to  
69 conditional use (CU) standards and a portion being subject to community service use  
70 standards (CSU), could the Commission determine the whole facility as a community service  
71 use.
  - 72 ○ She noted that within the code, the Commission can be deem the facility as a single  
73 facility and use, and specifically that the Commission can determine that if a  
74 proposed use is similar to other CSUs, it can be considered a type of CSU.
  - 75 ○ This determination by the Commission did not involve assessing the merits of the

76 application, but rather how staff and the applicant should proceed with processing  
77 the application.

- 78 • She confirmed that there would be no significant exterior changes to the structure.

79

80 **Commissioner Gamba** agreed that the determination made sense, since the code is not  
81 keeping up and needs further refining.

82

83 **Chair Batey** noted the possibility of setting precedent. This facility is modest in size, but the  
84 code boundaries could be pushed in the future. She confirmed that both the CSU and  
85 conditional use codes give the Commission more discretion for setting conditions.

86

87 **Commissioner Gamba** asked about the difference between private and public institutions in  
88 the code, as the standards for nursing homes are different than those for private institutions,  
89 and what were those dividing lines.

- 90 • **Ms. Shanks** confirmed the CSU code has both private and public institutions, although the  
91 nursing and convalescent homes category doesn't distinguish between public or private.  
92 However, the difference between CSU and conditional use leads into the second question of  
93 which standards should be applied to this application.

- 94 • **The Commission** discussed the difference between CSU and conditional use standards. If  
95 the facility remained with the two different uses, should the solution be to require the facility  
96 to meet the higher CSU private institutions standards?

- 97 ○ **Ms. Shanks** confirmed that the facility is currently a conditional use, but with the  
98 addition of the memory care and assisted living facility, the CSU has to be added to  
99 the conditional use.

- 100 ○ **Ms. Mangle** reiterated that having the two different uses applied to different parts of  
101 the facility could make future modifications and such more difficult for everyone.

- 102 • **Commissioner Churchill** noted the concern about setting precedent to allow larger facilities  
103 in the future, but determining this case as a CSU seemed appropriate.

- 104 ○ **Ms. Shanks** confirmed that any of these types of facilities will still always need local  
105 review and approval regardless of State standards.

- 106 ○ **Damien Hall, City Attorney**, noted that setting precedent can be avoided by writing  
107 the findings to be very reliant on the facts of this scenario.

108           ○ **Ms. Shanks** reminded that since the facility would be 2/3 CSU and 1/3 CU, the CSU  
109           standards would be applied at the time of the hearing and so findings would be  
110           based on that.

111 **Chair Batey** confirmed that the Commission agreed on determining the whole facility as a CSU.

112

113 **Ms. Shanks** continued with the second question regarding how specific development standards  
114 will apply. The CSU code section has specific development standards for specific categories of  
115 uses, and very specific standards for nursing and convalescent homes, essentially having its  
116 own set of standards. She noted the comparison table in the staff report.

117 • **Commissioner Gamba** asked the reason for the different standards and why nursing  
118 homes are CSUs. Does it benefit the City or the applicant to have a separate category for  
119 nursing homes?

120           ○ Staff confirmed that nursing homes have more restrictive standards due to both  
121           safety considerations and traffic generation.

122 • Preferred the private institution standards because they are more restrictive in terms of the  
123 requirements around landscaping, etc., which would benefit both the residents and the  
124 neighbors.

125 • **Ms. Mangle** noted how this was a new experience for both the City and the Commission,  
126 and **Chair Batey** agreed that with the aging population, the City should expect more  
127 development of this kind and therefore the Code should address this issue better.

128 • **Commissioner Churchill** had concern in general about the potential for off-site hazards  
129 (e.g. someone could fall into a nearby creek), and so noted the need for the code specific to  
130 nursing homes. DHS regulation would not preclude safety hazards.

131           ○ **Lee Winn, Winn Architecture**, noted that that would only be a risk if the facility was  
132           not DHS approved and licensed. The City required DHS certification, so the facility is  
133           required to meet DHS requirements.

134           ▪ Flexibility in the code would benefit the applicant if the CSU category would  
135           allow the facility to grow and adjust over time depending on the needs of the  
136           population. DHS certification is required by the CSU but is not required for  
137           other forms of housing, i.e. retirement communities.

138           ○ **Commissioner Stoll** noted off-site hazards were a nonissue due to further state  
139           regulations and legal liability of the facilities if such incidents were to occur. The City  
140           doesn't need to over-regulate, and there are other factors to consider.

- 141           ○ **Mr. Winn** noted that the nursing/convalescent portion of the code will need to  
 142           change as many facilities are moving toward expanding services and continuing  
 143           care. However, as long as it is nursing / convalescent, licensing is required, but is  
 144           unclear about facilities under 15 units.
- 145           ○ **Commissioner Churchill** noted Bill Reed's project in Gladstone where he worked  
 146           around the requirements, created parcels, and developed a project that created a  
 147           situation where there were wandering issues off-site. Although the applicant's facility  
 148           has higher security standards for memory care, the City should consider allowable  
 149           locations from a planning perspective.
- 150           ○ **Ms. Shanks** summarized that institution standards will be applied at the time of the  
 151           hearing.
- 152       • **Chair Batey** shared a story she heard recently about memory care and clever solutions to  
 153       associated issues.
- 154       • **Mr. Winn** noted how rewarding this project has been for him and applauded the facility's  
 155       company with regard to care of this population. He also stated that precedent should be  
 156       considered as this population and the need for care facilities will continue to grow.

157

158       This item was taken out of order.

159           6.2     Training and team building

160                     Staff: Katie Mangle.

161       **Ms. Mangle** reminded of the training last August about effectiveness of public hearings.

162       Tonight's training would be more focused on the next level of training.

163

164       **Mr. Hall** reviewed the training materials, noting the specific topics that have been coming up  
 165       recently and will be in the near future with some current legislative projects. The purpose is to  
 166       ensure all interested parties have been considered and that the decision is defensible. He also  
 167       noted some public meeting law has changed since August.

168

169       **Mr. Hall** explained that the difference between quasi-judicial and legislative is that for a quasi-  
 170       judicial hearing, the Commission acts as an impartial judge, examining the legality and  
 171       consistency with the code. In a legislative hearing, the Commission is like Congress, writing law,  
 172       being lobbied, and allowed to have bias. He noted that where that line lies between legislative  
 173       and major quasi-judicial can be borderline; there can be instances where actions that fall under  
 174       the legislative criteria are actually quasi-judicial.

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**Commissioner Churchill** clarified with Mr. Hall that under both legislative and quasi-judicial, actual or potential conflicts of interest must be declared at each and every meeting. Also, the statute regarding conflicts of interest has not changed in the past few years.

**Mr. Hall** and the **Commission** further discussed the specifics of ex parte contact, biases, and conflicts of interest.

- The State’s Government Ethics Commission has changed to be more restrictive about potential conflicts of interest.
- Under legislative applications, ex parte contacts and biases are nonissues; however, there is a distinction between bias and conflict of interest, i.e. liking a proposal vs. a proposal being directly beneficial.
- How to balance bias in a legislative decision and ensuring that participants feel like the different issues were considered and weighed equally in the policy decision.
- If the proposed project is similarly situated, an exception to the conflict of interest applies in that if it affects everyone similarly, a Commissioner’s participation is allowed even if a proposal affects a Commissioner’s property, etc.
- Anything in the record can be used as evidence regarding how criteria are met or not met, including all written material and verbal comments made during the hearing.
- Contacts or conversations about potential applications should be avoided. If a contact is made, the information about the conversation should be described at the beginning of the hearing.
- Regarding upcoming light rail hearings as an example, public appearances are easily disclosed. Private conversations should be particularly avoided as procedural issues can be raised by the other person. Contacts should be limited to easily identifiable ones.
- Rule of necessity was noted; if a decision needs to be made by law, and all Commissioners were disqualified or abstained, all members would get reinstated and then the decision may be made.
- The bottom line is that the information used to make a decision needs to be in the record. Relevant conversations and off-line conversations between Commissioners should be disclosed. Making the disclosure is important in order to state that even with the contact, an unbiased decision can be made, and to ensure sure all of the Commissioners and participants have the same facts.

209 Regarding findings, Mr. Hall discussed the process of creating findings which were the  
210 mechanics of the decision made, based on facts and whether or not the application met the  
211 criteria, and noted the findings are the subject of any appeal, not anything else. When a  
212 decision results in denial, the criteria and rationale for that denial need to be clearly identified.  
213 He noted that if a tie vote results, the matter is not complete.

214  
215 With regard to public meetings law, Mr. Hall introduced a case from Lane County regarding  
216 requirements for public meetings, and what triggers those requirements. The Lane County case  
217 determined that although the public officials did not have quorum as a body in any one 'place,'  
218 they were deliberating an issue through linked meetings and emails in a way that crossed the  
219 line on public meeting law. Although the decision was not necessarily a precedent-setting  
220 decision, it was something to be cognizant of and careful about. Communications and questions  
221 should be directed to and through staff.

222

## 223 **7.0 Planning Department Other Business and Updates**

224 7.1 Residential Development Standards project update  
225 Staff: Katie Mangle

226 **Ms. Mangle** presented the update via PowerPoint, stating the reason, background, and  
227 outreach for the project. The public outreach included: a survey, noting general trends; personal  
228 interviews; open houses; focus groups; and Neighborhood District Association (NDA) meetings.  
229 She noted the successful turnout and constructive feedback. She reminded that is had been  
230 decided that the project would be guided by a steering committee rather than the Planning  
231 Commission, although the steering committee included one Commissioner. She would like to  
232 make sure that the communication bridge between the steering committee and the Commission  
233 continues to be clear.

234

235 **Ms. Mangle** hopes to have another workshop in late summer regarding the tougher design  
236 issues, as well as a few more steering committee meetings. Although there is a lot of work left to  
237 do, the plan was to wrap up the project by the end of the year. She reminded some prompts for  
238 this project were the house on Vernie Ave and Lake Rd, and the Columbia Care Services  
239 Balfour House, which she displayed the original proposal of to the group. She noted that there  
240 has not been a wholesale review of the housing development code since the 1960s or 1970s,  
241 which has left it with gaps.

242

243 She reviewed questions being addressed by staff and the steering committee in terms of what  
244 the focus of the code should be for both single and multifamily development. Currently there  
245 was a lack of compatibility between new and existing development. However, although many  
246 neighborhood communities have more consistent housing types, i.e. average ridge height, etc.,  
247 the results of the survey showed that Milwaukie residents value to eclectic nature of Milwaukie  
248 neighborhoods. The group was trying to find the balance between compatibility and eclecticism.  
249 Ms. Mangle reminded the group of the project and steering committee webpages which had a  
250 lot of valuable materials available. She also noted that the visual aspect of this project was  
251 important and staff had been working closely with the consultant Marcy McInnelly of Urbsworks,  
252 Inc.

253 **Commissioner Stoll** expressed interested in attending, but not participating, in one of the  
254 steering committee meetings.

255

256 This item was taken out of order.

257           7.2     Electronic Signs progress update  
258                     Staff: Katie Mangle

259 **Chair Batey** stated that she had done a public records request to ODOT regarding citations for  
260 the large electronic sign along McLoughlin Blvd just north of Hwy 224. She noted she finally got  
261 a response that ODOT had written 2 citations to 2 different companies. Apparently both  
262 companies claimed to not own the sign. However, there is not a way to enforce the citations.

263

264 **Ms. Mangle** reminded of the purpose of the electronic code changes was to address downtown  
265 signage and electronic billboard signs. The draft code should come to the Commission in June  
266 for a worksession. She noted that Commissioners Churchill and Gamba had met with the  
267 Historic Milwaukie Neighborhood District Association (NDA) to explain the downtown reader  
268 boards aspect of the project. She explained some research and resources with regard to other  
269 cities' regulations on LED billboards, and also a couple of reports by the Environmental  
270 Protection Agency (EPA) and AASHTO on sign regulation and outdoor advertising which focus  
271 on safety issues.

272

273 **Ms. Mangle** acknowledged that this project is to satisfy the need for this current issue, but that  
274 the entire sign code will need to be updated.

275

276           7.3     Natural Resource Table (*not on agenda*)

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**Ms. Mangle** noted the Commission's direction on the Natural Resource Regulation amendments project, and handed out the draft table created at the April 26, 2011 meeting.

**8.0 Planning Commission Discussion Items – None**

**9.0 Forecast for Future Meetings**

- |               |    |  |
|---------------|----|--|
| May 24, 2011  | 1. | Public Hearing: Wastewater Master Plan   |
|               | 2. | Worksession: Residential Development Standards project: Baseline (policy-neutral) code draft             |
| June 1, 2011  | 1. | Joint Session with Design and Landmarks Committee: Kellogg Lake Light Rail Bridge                        |
| June 14, 2011 | 1. | Public Hearing: ZA-11-01/CPA-11-01 Natural Resource Regulations Amendments <i>continued from 4/26/11</i> |

Meeting adjourned at 9:20 p.m.

Respectfully submitted,

Alicia Stoutenburg, Administrative Specialist II

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Lisa Batey, Chair

**CITY OF MILWAUKIE  
PLANNING COMMISSION  
MINUTES  
Milwaukie City Hall  
10722 SE Main Street  
TUESDAY, June 14, 2011  
6:30 PM**

**COMMISSIONERS PRESENT**

Lisa Batey, Chair  
Nick Harris, Vice Chair  
Chris Wilson  
Mark Gamba  
Russ Stoll

**STAFF PRESENT**

Katie Mangle, Planning Director  
Brett Kelper, Associate Planner  
Damien Hall, City Attorney

**COMMISSIONERS ABSENT**

Scott Churchill

**1.0 Call to Order – Procedural Matters**

Chair Batey called the meeting to order at 6:33 p.m. and read the conduct of meeting format into the record.

**2.0 Planning Commission Minutes**

2.1 April 12, 2011

**Commissioner Stoll moved to approve the April 12, 2011, Planning Commission minutes as presented. Commissioner Gamba seconded the motion, which passed unanimously.**

**3.0 Information Items – None.**

**4.0 Audience Participation** –This is an opportunity for the public to comment on any item not on the agenda. There was none.

**5.0 Public Hearings**

5.1 Summary: Natural Resources Regulation Amendments (cont'd from 4/26/11)

Applicant/Owner: City of Milwaukie

File: ZA-11-01, CPA-11-01

Staff Person: Brett Kelper

**Chair Batey** called the public hearing to order and read the conduct of legislative hearing format into the record, noting the circumstances leading to tonight’s continued hearing. She gave each Commissioner the opportunity to state their intent to participate in or abstain from the hearing.

42

43 **Chair Batey** declared a potential conflict of interest, stating she owned property in the city of  
44 Milwaukie, specifically 2/3 of an acre, currently zoned residential. The property was not in the  
45 Water Quality Resource (WQR) or Habitat Conservation Area (HCA), but a large part of it was  
46 within the 100-ft buffer zone. The Natural Resources Regulations Amendments under  
47 consideration could result in some increase or decrease in the value of her property; however,  
48 because the impact, if any, to the value of her property might not be significant, she did not have  
49 an actual conflict of interest and was not disqualified from participation in the proceedings.

50

51 **Commissioner Gamba** declared a potential conflict of interest, stating he owned a property in  
52 the city of Milwaukie, specifically 1.2 acres currently zoned R5 that fell entirely in the HCA. The  
53 Natural Resources Regulations Amendments under consideration could result in some increase  
54 or decrease in the value of his property; however, because the impact, if any, to the value of his  
55 property might not be significant, he did not have an actual conflict of interest and was not  
56 disqualified from participation in the proceedings.

57

58 **Katie Mangle, Planning Director**, stated that Commissioner Churchill had asked her to make  
59 clear that he had chosen to abstain from the entire hearings process because he believes he  
60 may have a potential conflict of interest, which was the reason he was not in attendance.

- 61 • She reminded this was the fourth hearing the Planning Commission had held on this  
62 proposal. The WQR Chapter of the Zoning Code already contained regulations that  
63 preserved the areas around creeks and wetlands. The purpose of this project was to  
64 improve those regulations while also adding additional regulations to address HCAs. Title 13  
65 of the Metro Functional Plan required that HCAs be addressed. Staff had worked on this for  
66 2 or 3 years, along with an advisory group that included natural resource advocates and  
67 property owners, to come up with the right balance for Milwaukie. Milwaukie's regulations  
68 had to address living in and protecting resources in existing developed urban areas rather  
69 than large greenfield development swaths.
- 70 • The proposed amendments would continue protecting the WQR areas, and also expand the  
71 swath of HCAs to a larger geographic area, adopt a local version of the Metro map, develop  
72 new regulations based on Metro Title 13 Model Code to apply to both HCAs and WQR  
73 areas, and develop policies that were smart, local, and flexible.
- 74 • The proposal would replace the WQR Code with the Natural Resources Chapter, make  
75 some small Comprehensive Plan amendments with regard to HCAs, change some Code

76 sections such as Chapter 19.201 Definitions to incorporate the ideas in the Natural  
 77 Resources section, remove the WQR maps from the Zoning Code, and adopt an  
 78 administrative map that would help keep the maps up to date.

79 • The Title 13 Model Code was important for source material for the package, but it was not  
 80 the only source material. The Title 3 Model Code was a main source for Milwaukie's WQR  
 81 chapter. The American Planning Association Smart Development Codes had been  
 82 referenced for how to craft the cluster development.

83

84 **Brett Kelder, Associate Planner**, reviewed the staff report, noting the three key issues for the  
 85 Planning Commission to consider:

- 86 • The current Code included a provision for allowing a Type II Review for small additions to an  
 87 existing house or structure in a WQR area unless the new addition went closer to the  
 88 protected water feature. The suggestion had been made to look into whether or not a small  
 89 exemption could be established to allow very small additions to go closer to a water feature.
- 90 • There had been discussion about properties with a high percent of coverage by either WQR  
 91 area, or more particularly HCA, and if there should be some restriction on dividing the  
 92 properties or some encouragement that the resource be maintained intact if there was land  
 93 division.
- 94 • A bigger theme was making sure adequate oversight and protection of the resources would  
 95 be provided without over regulating.
  - 96 • The current proposal provided allowances for people to maintain the landscaping they  
 97 already had onsite. Tree removal had also been called out as a concern, so both some  
 98 protections and exemptions were included.
  - 99 • Certain activities would be allowed outright without need for further review, regardless of  
 100 whether in a WQR or HCA area. Additional exceptions would allow for a little more  
 101 disturbance in the HCA areas only, which tend to be further away from the wetlands and  
 102 creeks.

103

104 **Chair Batey:**

- 105 • Noted that Type 1 review included 1:1 replacement and confirmed no replacement was  
 106 required for exempt tree removal.
- 107 • **Mr. Kelder** explained the idea was if it was exempt, one would not need to come into the  
 108 City, and the City would not necessarily know the tree was being removed. There was  
 109 nothing to tie the requirement to an outright exempt activity.

- 110 • Asked if it was true that those currently storing things on their property were allowed to keep  
111 doing so, but new people could not store junk in the HCA.
- 112 • **Mr. Kelper** responded that under the Prohibited Activities section, there were a couple  
113 clear prohibitions, one being storing uncontained hazardous materials outside, and  
114 another was the outside storage of materials unless it began before the date that the  
115 amendments came into effect. Historical aerial photos might be used, but it could be  
116 difficult to determine in every case if what was being stored had been there prior to the  
117 amendments, especially if it was a vehicle or something similar that could be fairly easily  
118 removed.
- 119 • Confirmed that nothing about the language would give somebody a pass on what would  
120 ordinarily be acted upon by Code Compliance because of restrictions in different parts of the  
121 Code.
- 122

123 **Commissioner Gamba:**

- 124 • Noted that an entire paragraph had been removed in the Comprehensive Plan, as noted on  
125 5.1 Page 129 of the packet, and a lot of that language was good.
- 126 • **Mr. Kelper** responded that at least 1/3 of the paragraph was fairly specific in its  
127 language, and it could be that some of those numbers or references were no longer  
128 accurate. They had looked at the section with an eye to removing some redundancies  
129 and trying to update the language.
- 130 • Commented the list of values had some value and did not necessarily need to be struck.
- 131 • **Ms. Mangle** responded that the intent was better described under the new paragraph on  
132 5.1 Page 128. A lot of language in the struck paragraph had to do with community  
133 identity, education, and recreation, and it seemed a bit sprawling in terms of the intent by  
134 blending cultural and ecological values.
- 135 • Stated some of the values included groundwater recharge and discharge, air quality, flood  
136 control, water quality, microclimate control, sedimentation control, and noise attenuation. He  
137 would not stop a vote over this, but leaving some of these values would be helpful as it  
138 informed future generations as to the intent of what the City was doing.
- 139 • **Ms. Mangle** said it seemed like a bit of a laundry list, but it was something staff could  
140 retain that would not affect other sections.
- 141

142 **Vice Chair Harris** believed expressing the City's values was important. He supported retaining  
143 the first two sentences.

144

145 **Mr. Kelper** stated the City had received the following additional written comments and material  
146 that were not included in the meeting packet with the staff report.

- 147 • The additional comments from Pat Russell had been forwarded via email and hard copies  
148 were distributed to the Commission. Additional copies were made available for anyone  
149 interested.
- 150 • Within the last several days, he had fielded a few calls; most sought information about the  
151 proposal.
- 152 • Jean Baker had some questions about particular items referenced in the Code,  
153 specifically the DEQ 303D list and 6th Field Hydrologic Unit Code.
- 154 • Steve Abel with Stoel Rives LLP which represented Precision Cast Parts called to make  
155 sure he understood the latest information about the proposal, and he did not think there  
156 were any issues that he needed to follow up on.
- 157 • Howard Oakes of Lovena Farms wanted to get a handle on what the proposed rules  
158 would mean for some of the things that would like to do on that property.
- 159 • The property was right on the edge of Johnson Creek. They were not currently in the  
160 city but had done a planned unit development through Clackamas County and were  
161 looking to annex to the city sometime in the very near future.
- 162 • Craig Lomnicki, 4420 SE Johnson Creek Blvd, was trying to understand what the yellow  
163 line shown on the map meant in the proposal. He did not have any resource on his  
164 property, but a significant chunk of his property was included within the 100-ft  
165 compliance trigger.

166

167 **Chair Batey** stated public testimony had been closed, but there were some people who wanted  
168 to testify. The Commission consented to reopen public testimony. It was requested that  
169 comments be kept to less than 5 minutes and to items that had been modified in the latest  
170 iteration.

171

172 **Chair Batey** called for public testimony in favor of, opposed, and neutral to the application.

173

174 **Jean Baker, 2607 Monroe St, Milwaukie**, stated she supported the ordinance and  
175 complimented the planners for their hard work and how they truly listened to the arguments.  
176 She also appreciated staff's accommodation and understanding the issue of building a small  
177 addition toward a water resource.

- 178 • One thing that could have been different was holding governments to the same  
179 requirements as citizens for the right-of-way. Without that, it appeared that the right to a  
180 hearing, reviews, and consideration of important things was lost. As there would be some  
181 big projects coming through in the future that would affect rights-of-way, there was a greater  
182 need to go back to the way it used to be with environmental impact statements. She did not  
183 want any government agency getting a carte blanche.
- 184 • She was puzzled as to whether or not the fees for some things would go down.
- 185 • She state, "The fact that a neighbor was not allowed to develop all the way to the water's  
186 edge provided certainty to surrounding properties and could improve their value." She was  
187 not sure anybody wanted to develop all the way to the water's edge. This came under the  
188 Fee Reductions section on Page 11 where staff was still gathering information about tax  
189 deferments for conservation easements. Such deferments involved a complicated process.
- 190 • The ordinance seemed to put some strong restrictions on some properties such that, if  
191 they came out of the County, it would automatically qualify for a change in conservation  
192 status.
- 193 • Overlay zones were still mentioned, although it appeared they were not going to be on a  
194 formal map, which was confusing.

195

196 **Mart Hughes, 3006 SE Washington St,** said he was a conservationist and environmental  
197 worker and has lived in the city of Milwaukie since 1981. He had been involved conservation  
198 issues as well as in Goal 5.

- 199 • He was concerned because he felt they ought to be expanding natural resources to a  
200 certain extent. However, he believed they needed to seek a middle ground in order to have  
201 good, solid conservation. As a conservationist, he did not think the City was going far  
202 enough, and he knew some people in the community thought the City was going too far.
- 203 • He believed staff had worked hard on the proposal to come up with a process and product  
204 that reflected the community's values. He supported the product before the Commission and  
205 encouraged that a decision that met the middle ground and rejected the extremes on both  
206 ends.

207

208 **Jim Labbe, Audubon Society of Portland,** stated the Audubon Society had been involved in  
209 the regional Goal 5 work and local implementation across the region for over 15 years. He  
210 urged the Commission to adopt the staff proposal and move forward. There were some issues  
211 with some of the recent changes especially around tree removal. It seemed like the longer this

212 went on, the more things were weakened from the Audubon Society's perspective, and it would  
213 be better to move the amendments forward to City Council.

- 214 • One concern regarded the issue of tree removal for dead or diseased trees. There was  
215 already a provision for a hazard, so if not a hazard, those trees provided some of the best  
216 cavity habitat for 30 species of cavity nesting birds in the Portland Metro area. Dead trees  
217 could actually have more habitat value than live trees for certain species.
- 218 • There was also concern about the removal of nonnative trees in a degraded water resource  
219 area. A nonnative tree could provide significant water resource functions in the form of  
220 shade, as well as nominal aquatic habitat benefits in terms of nutrient input. He suggested  
221 this be changed to invasive species which they wanted removed and were a negative  
222 element. In general, the attention toward promoting and maintaining natives in the HCAs  
223 was critical to the overall strategy, particularly in the riparian areas.

224

225 **Nancy Peterson, 4805 SE Robin Road, Oak Grove**, said she owned property that ran 200 ft  
226 along Kellogg Creek on the Milwaukie side off Brae St. She had purchased the property in 1989  
227 and had not been able to build on it. She had 3 large cedar trees that were 100 ft tall, and the  
228 neighbors would like her to remove them. She wanted to live in harmony with nature while not  
229 being in fear of falling branches. In order to build on this property, she wanted to know if she  
230 could restore it to what used to be called the picnic grounds on the Filinger Estate. She realized  
231 the floodplain would be a restriction, but not all the other added restrictions. She imagined her  
232 property was probably one of the few lands along the creek that had not been built on up to the  
233 present

234

235 **Ms. Mangle** suggested she call the Planning office and offered her business card. She noted  
236 that while some restrictions already existed in the Code, some would be lessened, such as the  
237 changes regarding tree removal.

238

239 **Steve Melnichuk, 4520 SE Ryan Ct**, said he has lived on Kellogg Creek for 35 years and was  
240 a former physicist with an oceanography background, including shoreline and estuary  
241 processes. He and his wife served on the advisory group for this project. He read his statement,  
242 "Homeowners Responses to the Natural Resource Project" dated June 14, 2011, into the  
243 record, which was distributed to the Commission and entered into the record as Exhibit 23. He  
244 complimented staff for the work that had been done, but more work was needed and they  
245 should keep people in mind.

246

247 **Corky Coreson, 3648 SE Licyntra Ln**, concurred with Mr. Melnichuk's comments. He noted he  
248 was completely unaware of what was going on until he received a letter from a fellow citizen and  
249 now wanted to be clear about his comments. He understood that the City had been required by  
250 Metro to meet certain standards including an exemption for a grandfather clause, so those who  
251 had lived there for a while would not be subject to some of the restrictions, but that the  
252 Commission had decided to not allow people to be grandfathered in.

- 253 • **Chair Batey** responded that was not exactly what was going on, but basically, nothing  
254 proposed would impose any obligations with the use and enjoyment of one's developed  
255 property.
- 256 • He replied it seemed that if he wanted to add on to his deck, change landscaping  
257 dramatically, or remove a small tree, any of these things would be subject to very substantial  
258 monetary interests on his part. He would have to pay a lot of money and go through a  
259 process to proceed with these items.
- 260 • **Chair Batey** clarified that was not the case with all the things he listed, but it depended  
261 on the situation on the property. Tree removal was exempt and that depended on the  
262 kind and size of the tree.
- 263 • He referenced 5.1 Page 8 Item 4 Exemption for Existing Residences, which stated that the  
264 Commission did not favor the grandfather clause. Item 2 stated, "The exemption would  
265 apply to most residential properties but not to all, unfairly setting one standard for properties  
266 developed prior to 2006 and another for infill development properties, so next door  
267 neighbors might have to follow different rules."
- 268 • He specifically opposed the logic of that statement if "unfairly" was used sincerely; that  
269 logic was upside down. Someone coming to the neighborhood could make a choice  
270 about whether or not they wanted to buy a house in a place with restrictions, but current  
271 residents felt sucker-punched.
- 272 • The rules were being changed after the fact, and many citizens would concur with his  
273 position

274

275 **Daniel Cassette, 2502 SE Lake Rd**, owned a large lot and a house about 200 ft from the creek  
276 on a private road that went down to Kellogg Lake. He knew nothing about this until he received  
277 a letter from the City. He also owned a duplex facing the church.

- 278 • He had been told that he could not build more than a 2,400 sq ft home, which restricted him  
279 from what he had planned for his retirement. He purchased his home in 1975 and planned

280 on building a 4-plex. The restriction to 2,400 sq ft would financially set him back, and who  
281 would pay for that? He had owned the property for years and had paid a lot of money in  
282 taxes over the years because of the duplex and the vacant land next to his home. It was not  
283 at all fair that the City was going beyond Metro's guidelines.

- 284 • **Chair Batey** clarified that the proposed Code did not address whether or not a 4-plex  
285 could be built.
- 286 • **Ms. Mangle** offered to speak to Mr. Cassette individually about his property to ensure he  
287 had the information he needed as several different parts of the Code applied to  
288 regulating the number of units, etc.

289  
290 **Nathan Hobson, 4004 SE Licynta Ln**, stated his property also abutted Kellogg Creek. He also  
291 owned an adjacent empty lot, purchased 8 or 9 years ago with the intent of using it as a garden,  
292 and one day building on it. Placing additional restrictions on that particular piece of property  
293 limited its value. It was currently being used as a garden, and if he did something bigger than 10  
294 ft x15 ft or 150 sq ft, a review would be required. The lot was 17,000 sq ft, and a 10 ft x15 ft  
295 section was nothing to put plants in. The property used to be overrun with blackberries, rocks,  
296 and bushes, but this ordinance changed what they could do with their property.

- 297 • Type I, II, and III Reviews all involved fees. He opposed in principle that the discussion of  
298 fees had not been as open as it could have been. Also, the value of properties on the creek  
299 would be affected by the ordinance. Like other property owners on the creek, he did not use  
300 fertilizer or remove trees and he left a huge buffer for the creek. The owners were just trying  
301 to manage their properties. He noted the huge cottonwood trees over the top of his house  
302 would have to come down one day, which would entail a big review process and a huge  
303 expense.
- 304 • It was important to understand that such ordinances impact every individual differently, and  
305 consideration must be given to ensure the regulations were appropriate for achieving the  
306 goal of having a clean, healthy habitat.

307  
308 **Chair Batey** closed the public testimony and called for a brief recess. The Planning  
309 Commission reconvened at 7:55 p.m.

310  
311 The Planning Commission deliberated on the following key issues with these comments:

312  
313 Homestead Exemption

314 **Commissioner Stoll** read the following statement into the record: "As we grow closer to a vote  
315 on the natural resources amendment, it's worthwhile to go back to the Metro Title 13 Model  
316 Ordinance to see where we started. After Sections 1 and 2 on the intent and applicability of the  
317 law comes Section 3, Exempt Uses and Conditioned Activities. This is right on Page 2.  
318 Paragraph B is worth reading in full, 'Where construction of a residence was completed before  
319 January 1, 2006, the owners or resident shall not be restricted from engaging in any  
320 development that was allowed prior to September 22, 2005, unless such development required  
321 obtaining a land use decision or a building, erosion control or grading permits.' While the dates  
322 are outdated, the concept is not. This is what is commonly known as the homeowner's  
323 exemption, and this is currently missing from our legislation. Note it does not exempt activities  
324 such as erosion control that were previously required. On Pages 3 and 4, Section 3E details  
325 limited types of development, redevelopment, operations, and improvements that are also  
326 exempt from the model legislation and lists a page and a half of common sense conditional  
327 activities that, when followed, will protect our watersheds. These protections of the people's  
328 traditional rights on their homesteads are right at the top of the model legislation, where they  
329 should be as the concept that a man's home is his castle is fundamental to our basic liberties,  
330 and in two pages of manuscript, our citizens will know all they need to know about the proposed  
331 legislation. Twenty or so years ago, the actor, Mr. T, bought an estate in Lake Forest, a tiny  
332 suburb of Chicago. He wasn't satisfied with his views of Lake Michigan, so he got out his chain  
333 saw and cut some 2 dozen stately old trees down. I think that the legislation as proposed  
334 without the homeowner's exemption and the expansive list of conditional uses seems to fear the  
335 citizens of Milwaukie as all potential Mr. Ts. Everything I have seen in my site visits including  
336 Kellogg Creek and volunteer work along Johnson Creek and Crystal Springs Creek indicates  
337 that residents place a high value on protecting the watersheds they are lucky enough to live on.  
338 In fact, pretty much since I graduated high school in 1969, I have seen steady progress is  
339 protecting the environment and a growing consensus, nearly unanimous in Oregon, that we all  
340 need to be good stewards. I believe Milwaukie's new regulations should include Section 3 from  
341 the model ordinance, and without it, it would be an unacceptable intrusion on the people's  
342 rights. I would vote no on such a proposal."

343  
344 **Chair Batey** noted that staff had circulated a purple sheet as a proposal to basically incorporate  
345 the Title 13 Model Code.

- 346 • **Mr. Kelper** stated the proposed language was drafted in response to Commissioner Stoll's  
347 request. Staff essentially took the 2 particular exemptions listed in the Model Code and tried

348 to find an appropriate place to put them in the proposed amendments. Staff inserted the  
349 language in Subsection 19.402.4 Exempt Activities and recognized they should create a  
350 special category; it did not really fit any limited exemptions within the HCA category,  
351 because that included the provision that if more than 150 sq ft was disturbed, a construction  
352 management plan was required. The idea was if the activity fit within the HCA category, it  
353 would be exempt.

354

355 **Commissioner Gamba** stated that in concept, the homestead exemption sounded good, but  
356 not when they started dealing with reality and details. Many other cities had code preexisting  
357 Title 13 that did not allow things like tree removal. Saying something was exempt except for  
358 what already existed only continued what Milwaukie was currently doing. Milwaukie had been  
359 behind the times as no tree ordinance existed. Things were allowed in Milwaukie that would not  
360 be allowed in the rest of the Metro area if the grandfather clause was adopted. They had done a  
361 pretty good job in specifically crafting something for the City that was not a rubber stamp for  
362 Metro. For the most part, they currently had the right balance.

363

364 **Chair Batey** observed that Milwaukie did not have a tree ordinance, yet it was something that  
365 was on the City Council's agenda to address in the next 10 years. Reading the list of  
366 exemptions, she considered they could be going too far. If both sides were a little unhappy, they  
367 were probably striking the right balance.

368

369 **Vice Chair Harris:**

- 370 • Agreed that when both sides were unhappy, the Commission might have found the right  
371 balance. He supported the spirit of the homeowner's exemption, but the practicality of it  
372 became disturbing. As he understood the supplemental information, there would be an  
373 exemption for erosion control, building permits, and grading permits, and that would be bad
- 374 • **Commissioner Stoll** clarified that if an erosion control permit was required before, it  
375 would still be required even with the exemption.
  - 376 • **Ms. Mangle** stated the best estimate of what would be allowed without any review would  
377 be tree removal, erecting a small shed, or new buildings that did not trigger a building  
378 permit or erosion control, regrading or land disturbance that did not trigger erosion  
379 control, and such things that could include significant vegetation removal.
  - 380 • Stated the potential extent of vegetation removal was something that had really struck him  
381 as well. He had been losing sleep contemplating whether or not they had found the right

382 balance. They had certainly worked a long way toward the balance, and they were close,  
383 but an exemption was not a balance. It was favoring rights over the environment.

384

385 **Commissioner Wilson** believed that staff and the Commission had found a balance.

386

387 **Chair Batey** stated that they had created some additional flexibility with the tree removal, but  
388 she recalled that the homeowner exception allowed any tree removal and the community was  
389 working to preserve oaks. There was a big consensus in Milwaukie about preserving the Three  
390 Creeks area and not have the oaks mowed down. It was disturbing to think that someone could  
391 cut down an old oak grove on their property. There were many good stewards in Milwaukie, but  
392 some were not very good stewards.

393

394 **Vice Chair Harris** moved for an up or down vote on the proposed homeowners'  
395 exemption amendment as provided on the distributed purple sheet. **Commissioner**  
396 **Gamba** seconded the motion, which failed 1 to 4 with **Commissioner Stoll** in favor.

397

398 Tree Removal

399 **Commissioner Gamba** said he was squirming about the allowance to remove 3 trees in the  
400 WQR; that was a huge compromise. In some areas, if 3 trees were removed, a whole city  
401 block's worth of shade would be uncovered. It was a huge nod to people like Mr. Burkett who  
402 wanted to landscape their property. They might have gone a little far that way, but he could live  
403 with it if everyone else was in favor.

404

405 **Chair Batey** stated they had a list of native plants and asked if they would also have a list of  
406 nuisance plants.

- 407 • **Ms. Mangle** answered 'yes'; the City referenced the City of Portland's plant list which  
408 included native and nuisance species.
- 409 • **Mr. Kelper** added that within the nuisance category, some were identified as requiring  
410 eradication. These were nuisance plants that had not yet become established, and if caught  
411 now, might not become so pervasive.

412

413 **Vice Chair Harris** asked how the 4-in breast height reference for tree removal was determined.

- 414 • **Ms. Mangle** replied that breast height was a common agriculture term.

- 415 • **Mr. Kelper** noted the definition in Section 19.201 for trees referred to the measurement  
416 piece in Section 19.202 which discussed measuring tree diameter. It stated, "Existing trees  
417 are measured at a height 4.5 ft above the mean ground level at the base of the tree." Other  
418 references to diameter at breast height were included in other parts of Section 19.402.
- 419 • **Commissioner Gamba** suggested including breast height in the Definitions and defining it  
420 as 4.5 ft.
- 421 • **Mr. Hall** suggested adding that 4.5 ft was sometimes referred to as breast height.

422

423 **Ms. Mangle** noted the Code section Commissioner Gamba referenced regarding the removal of  
424 3 trees was on 5.1 Page 34 under activities requiring Type I Review, 19.402.6.B.1.f, which  
425 would be the section to focus on if a change to that section was suggested.

426

427 **Vice Chair Harris** confirmed that the exemption for removing 3 or more nuisance trees was  
428 during any 12-month period.

429

430 **Commissioner Gamba** understood that 3 non-nuisance trees could be cut down per year  
431 within a Type I Review.

- 432 • **Mr. Kelper** clarified that 3, nonnative, nonnuisance trees could be cut down per year with  
433 the requirement for 1:1 replacement. Everything in the Type I category had the requirement  
434 for a 1:1 replacement unless the property owner could demonstrate that they planned ahead  
435 by planting a tree in advance or that not enough room existed to plant a tree in that area and  
436 expect it to be healthy.

437

438 **Chair Batey** reiterated that she thought they might be going too far. On the other hand, if the  
439 City was going to visit the question of a tree ordinance in the next few years, there would be an  
440 opportunity to revisit the issue at that juncture. It all depended on the size of the trees. If they  
441 were small caliper trees in a dense landscape, it was reasonable, but if they were the 3 biggest  
442 trees that shaded a whole area that was another story.

443

444 **Commissioner Gamba:**

- 445 • Asked if staff had the opportunity to deny a Type I Review if the trees were too big or  
446 important to the habitat.
- 447 • **Mr. Kelper** responded 'no', the point of the Type I Review was to establish very clear  
448 and objective standards that one either did or did not meet. There was no real room for

449 discretion, except in the replacement category where a bit of discretion was built in as far  
450 as whether or not requiring a replacement tree was important. The default was to require  
451 a replacement tree.

452 • **Ms. Mangle** stated if this was a concern, one alternative was to limit the size of trees  
453 that could be removed under this category and require others to go through Type III  
454 Review, which came before the Commission and had a lot of discretion. Another  
455 proposal was to limit the fee and not charge the normal Type III fee for that kind of  
456 review.

457

458 **Vice Chair Harris** asked if the tree was in a good WQR on a Type I Review, it would be pushed  
459 to the next level of review.

460 • **Mr. Kelver** responded 'yes', that if one did not qualify for that Type I Review, the next step  
461 was going to the Type III with the Commission.

462 • **Ms. Mangle** explained it would be a Type III Review as opposed to a Type II Review  
463 because staff felt that in those situations, the level of discretion that would be appropriate  
464 would be Commission-level discretion. Even during a Type II Review, staff was still limited to  
465 how much discretion they had. A Type III Review would enable the Commission to consider  
466 site situations, mitigation plans, etc.

467

468 **Commissioner Gamba:**

469 • Asked if the calculations could be done based on a percentage of canopy.

470 • **Chair Batey** noted that the Model Code referenced 10% canopy, so someone had  
471 envisioned measuring things that way.

472 • **Ms. Mangle** replied that she was uncertain, but she would look into that; she inquired if  
473 he meant measuring by canopy instead of caliper.

474 • Stated that 3 big trees on most properties would be the entire canopy over a creek area. He  
475 would be comfortable dropping the number of trees allowed to be removed down to 1 as 3  
476 seemed like a lot. One tree per year was still significant.

477 • **Mr. Kelver** commented that as proposed, the Type I tree removal option was not  
478 available in a good WQR area, which has about 80% tree canopy in place.

479 • Believed they should be more concerned about shade being removed from an area that did  
480 not have much shade as opposed to areas with a lot of shade.

- 481 • **Mr. Kelper** responded there were different ways to look at it. They could work to get  
482 minimal shade areas into a better condition, or protect the existing canopy in a high level  
483 resource from being threatened. It was a good ecological question.
- 484 • **Ms. Mangle** stated the key was that the Commission had to determine its objective. A  
485 Type I Review was a disincentive as a procedural step; anytime one had to deal with the  
486 City was a disincentive. The review would not guarantee the protection of trees; fewer  
487 applications might be submitted, but the ordinance would still allow for the removal of 3  
488 trees per year regardless of the condition of that specific environment.
- 489 • The Commission needed to decide where the line was in terms of City policy and where  
490 regulation was the best tool to set a boundary. Then staff could craft the language to fit  
491 that by either changing the number of trees or moving things around. There was a range  
492 of solutions depending on the objective.
- 493 • Was leaning toward either 1 tree or a percentage of canopy. He believed the percentage of  
494 canopy could be problematic for staff.
- 495 • **Chair Batey** agreed that percentage of canopy could be problematic. She noted that  
496 allowing the one tree to be removed was still in addition to removing those that were  
497 dead, diseased, dying or nuisance trees.
- 498 • Added it was 1 tree a year, so over a period of 3 years, one could still remove 3 trees if  
499 determined to cut down three trees.

500

501 **Vice Chair Harris** and **Commissioners Stoll** and **Wilson** consented to retain the language  
502 regarding the removal of 3 trees per year.

503

504 Practicable

505 **Chair Batey:**

- 506 • Stated her dilemma with the definition of 'practicable' was that it was really 2 definitions. It  
507 was saying that 'practicable' meant capable of being realized, which was more or less how it  
508 was defined in online law dictionaries, in which 'feasible' was used pretty synonymously.  
509 Then it referred to whether or not something was reasonable, and not whether or not it was  
510 capable of being realized.
- 511 • **Commissioner Gamba** read it differently, that reasonability was a further definition that  
512 further defined 'practicable' over 'feasible.'

- 513 • **Damien Hall, City Attorney**, agreed with the concept noted by Chair Batey, but did not  
514 see it as a problem. They were trying to find words to define a somewhat squishy  
515 concept.
- 516 • Enough terms were included to allow this and future Commissions to interpret the factual  
517 scenario before them. People with different views of what 'practicable' should mean  
518 within the context of the definition would have debates about what it meant, and it was  
519 not perfectly clear, but he did not know if they could get to perfect clarity.
- 520 • Foresaw struggling with this issue. There was a feasibility test and a reasonableness  
521 test; perhaps those 2 words should be used instead of 'practicable' which they were trying to  
522 make cover both pieces of ground.
- 523 • **Mr. Kelper** stated that as he went through replacing 'feasible' with 'practicable,' he  
524 questioned whether or not it was more or less okay for there to be squishiness or a bit of  
525 discretion in the context of where the replacement occurred.
- 526 • 'Practicable' was used 38 times in the Code. He reviewed a couple examples of the use  
527 of 'practicable' in the draft Code, including 19.402.9.B.6 on 5.1 Page 38 and  
528 19.402.12.B.2.a on 5.1 Page 52.

529

530 **Vice Chair Harris** also foresaw a small problem with the use of 'practicable,' but believed it  
531 would be beneficial in that it would spur conversation and prompt people to think outside the  
532 box.

533

534 **Commissioner Wilson** commented it was kind of in the spirit of that middle road the  
535 Commission was seeking and included the hard stuff and the squishy stuff.

- 536 • **Mr. Hall** added that one way to look at it was that it directed the decision-maker to consider  
537 that list before considering whether something was capable of being realized. It did not say  
538 what priority must be given to any one of those items in the list versus the capability of being  
539 realized, and it did not set a hierarchy of those considerations. From a legal standpoint, the  
540 City had to have a definition so that when a decision was made, the City could make  
541 adequate findings against that definition, so it could be a defensible decision.

542

543 **Chair Batey** agreed to let the issue go.

- 544 • She confirmed there were no other issues to address. She stated that she would like to  
545 restore the two sentences stricken from the Comprehensive Plan on 5.1 Page 129 as  
546 discussed earlier, and possibly move them to the previous page.

- 547       • **Ms. Mangle** also requested that in implementing this direction the Commission allow  
548       staff to make sure there was no duplication.  
549       • She confirmed that the extra section in the supplemental packet regarding lighting was  
550       now part of the proposal and did not need to be added.

551

552 **Vice Chair Harris moved to recommend adoption of the Natural Resource Regulation**  
553 **Amendments, File ZA-11-01 and CPA-11-01, with the restoration of the values that were**  
554 **stricken with the first two sentences of the paragraph on 5.1 Page 129 of the**  
555 **Comprehensive Plan. Commissioner Gamba seconded the motion, which passed 4 to 1**  
556 **with Commissioner Stoll opposing.**

557

558 **Ms. Mangle** explained that this decision was a recommendation to the City Council who would  
559 make the final decision after another public hearing scheduled to be held on July 5<sup>th</sup>. If the  
560 hearing was continued, it would be continued to August. She requested that one Commissioner  
561 attend the hearing to represent the Commission. Each Commissioner was able to participate as  
562 individuals as well, and if they did so, they should be clear they were participating as an  
563 individual as opposed to representing the whole Commission.

564

565 **6.0 Worksession Items – None.**

566

567 **7.0 Planning Department Other Business/Updates**

568 **Ms. Mangle** updated the Commission about the following 3 items:

- 569       • Another electronic sign application was being processed along the McLoughlin Blvd Corridor  
570       on Beta St. She learned about the new application right after reviewing the draft Sign Code  
571       that would be brought to the Commission worksession on June 28, 2011.
- 572       • **Mr. Kelper** explained the sign would be located on the roof of the Holman building, near  
573       the ODOT historic building, and oriented toward the north so southbound traffic on  
574       McLoughlin Blvd would see it.
- 575       • Carol Mayer-Reed from the TriMet light rail design team would be talking about walls and  
576       fences at the Design and Landmarks Committee's (DLC) regular meeting on June 22, 2011,  
577       at 6:30 p.m. at the Public Safety Building. Generally, these walls and fences of the whole  
578       Milwaukie area corridor most likely would not trigger land use review; but she encouraged  
579       the Commissioners to attend the meeting. The design team might also be talking a little bit  
580       more about the bridge. The DLC would also be talking about the Downtown Façade

581 Improvement Program. There were a lot of interesting things happening at the DLC  
582 presently.

583 • Kenny Asher, Community Development and Public Works Director, and she had a good  
584 worksession with City Council last week about the South Downtown Concept Plan. She  
585 distributed the staff report from that meeting to the Commission. Council directed staff to  
586 bring the Concept Plan back for adoption through a resolution, giving clear direction that  
587 was the vision that staff, through the light rail and land use planning, should be moving  
588 forward. Staff would hold a worksession with the Commission probably in August. At this  
589 point, Council was giving staff direction to go do Code and Comprehensive Plan  
590 amendments. It would require a big legislative hearing at some point. Right now, especially  
591 with the light rail assumptions, it was really important that everyone had the same vision of  
592 where the City was going. Until Council took action, the Concept Plan was nothing but paper  
593 on a shelf. Some property owners were already assuming that the Concept Plan was the  
594 vision and beginning to work toward that vision, which was getting awkward.

595

596 **Commissioner Wilson** asked if there were any changes from what Mr. Asher had presented to  
597 the Commission.

598 • **Ms. Mangle** replied it was the same vision, but there was now a document they did not have  
599 that night that elaborates on the process and details. She would send it to anyone  
600 interested. The document was also online and would be discussed at the August  
601 worksession.

602

### 603 **8.0 Planning Commission Discussion Items**

604 **Vice Chair Harris** clarified that the links he sent out about habitat architecture stemmed from  
605 Commissioner Churchill's questions about preventing bird damage on the Kellogg Bridge, which  
606 raised the question of what the City was doing to not damage the birds with the bridge design.  
607 Certainly, preventative measures would be wanted on the bearing plates to keep the birds from  
608 nesting in there, but perhaps some fairly low cost bird houses or a bird habitat could be included  
609 in the design. He also found it interesting that LED lighting greatly reduced bird strikes. Bat  
610 houses should also be considered. They were simple to make and bats reduce the insect  
611 population.

612

### 613 **9.0 Forecast for Future Meetings:**



648 Lisa Batey, Chair

**CITY OF MILWAUKIE**  
**PLANNING COMMISSION**  
**MINUTES**  
**Milwaukie City Hall**  
**10722 SE Main Street**  
**TUESDAY, June 28, 2011**  
**6:30 PM**

**COMMISSIONERS PRESENT**

Lisa Batey, Chair  
 Nick Harris, Vice Chair  
 Scott Churchill  
 Mark Gamba  
 Russ Stoll

**STAFF PRESENT**

Katie Mangle, Planning Director  
 Ryan Marquardt, Associate Planner  
 Damien Hall, City Attorney

**COMMISSIONERS ABSENT**

Chris Wilson

**1.0 Call to Order – Procedural Matters**

**Chair Batey** called the regular meeting to order at 6:35 p.m.

**2.0 Planning Commission Minutes**

2.1 April 26, 2011

**Chair Batey** corrected Line 115 on Page 4 to read, "...~~REF~~ **Riffle** Award..."

- She was also concerned that the discussion about the Natural Resource Regulations Amendments was done in a worksession format, which did not attribute the comments to specific speakers. She believed several parts were misleading in that they implied that some things were the consensus of the Planning Commission, when it was only the view of one or two people. She asked that everyone read Pages 12 and onward and send comments to Alicia Stoutenburg, Administrative Specialist II, so that a different version could be considered at a future meeting.

**Katie Mangle, Planning Director**, asked that the Commissioners send their comments by Friday, July 8, 2011.

**3.0 Information Items**

**Ms. Mangle** stated an online poll had been sent about what aspects of the Planning Commission notebooks they wanted to have available online, ones that were not needed as a paper version, but no one had responded. Staff would be resending the poll.

42 **4.0 Audience Participation** –This is an opportunity for the public to comment on any item  
43 not on the agenda. There was none.

44

45 **5.0 Joint Session Items**

46 5.1 City Council Study Session

47 Summary: Residential Development Standards

48 Staff Person: Katie Mangle

49 The Commission attended this joint worksession prior to the regularly scheduled Commission  
50 meeting.

51

52 **6.0 Worksession Items**

53 6.1 Summary: Draft Electronic Sign Code Amendment

54 Staff Person: Ryan Marquardt

55 **Ryan Marquardt, Associate Planner**, presented an overview of the draft Electronic Sign Code  
56 amendments via PowerPoint. He reviewed key points and answered questions from the  
57 Commission as follows:

- 58 • The objectives were to allow some limited electronic display signs in the downtown area,  
59 limit the size of electronic display signs outside of downtown, add controls for display type  
60 and brightness, coordinate the City's and ODOT's sign permit programs, and to keep the  
61 scope of the amendments somewhat limited in order to move quickly through the process.
- 62 • He reviewed the proposed size limits for display signs and displayed examples to  
63 visually illustrate the changes. He clarified that in downtown, the electronic sign portion  
64 would be limited to 25% of the sign face with a maximum of 20 sq ft.
- 65 • He reviewed the areas where electronic display signs would be allowed outside of  
66 downtown, where the electronic portion was also limited to 25% of the sign's size, but  
67 the overall size of that electronic portion could be up to 50 sq ft.
- 68 • Regarding illumination, the proposed limit was 5,000 NITs for the daytime and 500 NITS for  
69 the evening, a NIT being a surface brightness unit of measurement.
- 70 • The City did not have a way to measure NITs, but would ask sign companies to provide  
71 documentation regarding this at the time of the sign permit.
- 72 • Sign companies know about NITs, which are an industry standard. The City of Salem's  
73 comprehensive sign code uses NITs as a standard. Most jurisdictions dealing with  
74 electronic display signs use NITs and have different brightness allowances for day and

- 75           night time. Staff would be contacting the City of Salem to see how they measure and  
76           verify NITs.
- 77   • Regarding type of display, a static display sign could display one message for 10 to 15  
78   seconds and then change quickly to another message; it could not dissolve, fade, flash, or  
79   scroll to change the message.
    - 80   • Whether the fading type of transition drew the eye more than the quick, slide-to-slide  
81   transition proposed could be discussed further. He believed Salem's code allowed the  
82   dissolve, fade, flash, scroll types of transitions as long as they occurred in less than 2 to  
83   5 seconds.
    - 84   • ODOT standards did not have a lot to do with the type of display. Their regulations  
85   focused more on the type of message being displayed than on the manner in which it  
86   was being displayed. He would check to see if the ODOT sign regulations had anything  
87   about rate of change so that could be incorporated into the City's permit process.
  - 88   • The City's current Sign Code standard was no more than 1/2-footcandle of light trespass  
89   from a sign across the property line, and this standard would be in place whether it was an  
90   internally illuminated cabinet sign or an electronic display sign.
    - 91   • Light trespass to the right-of-way would have to be verified. The issue was glare, not  
92   traveling light.
  - 93   • The current Sign Code had regulations about revolving or changing signs, which referenced  
94   the old style of signs that used to spin around, and the regulation was that it could not  
95   change more than 6 times per minute, which was a 10-second rate of change. That 10-  
96   second standard had been applied to electronic display signs as well.
    - 97   • It was suggested that reducing the rate of change would make the sign less flashy while  
98   still getting the message out. Limiting the rate of change downtown to once per minute  
99   was preferable.
  - 100   • Regarding nonconforming signs, one provision would allow the addition of an electronic  
101   readerboard sign as long as the sign would not go any further out of conformance.
    - 102   • It was suggested that if one wanted to add an electronic readerboard, they should start  
103   moving that sign toward compliance.
  - 104   • If the Commission agreed with the proposed amendments, the earliest Commission hearing  
105   would probably be in late August, which would allow City Council to hear it in early October.  
106   Attachment 2 noted the draft schedule. Normally, after Council passed an ordinance, it  
107   would be 30 days before it took effect, but this could become effective immediately. This  
108   schedule would not jeopardize the fall hearing date for the '76 Station sign.

- 109 • At Council's worksession last week, it was stated that another LED billboard sign permit was  
110 submitted, and Council was very supportive of moving forward with Code amendments as  
111 quickly as possible.

112

113 **James Crawford, 12620 SW Foothill Dr, Portland, OR**, reminded that he had been trying to  
114 get a sign into conformance by amending the Sign Code with the support of the Commission.  
115 He discussed the following issues, describing how they related to the '76 Station sign as noted.

- 116 • Regarding the use of the word 'static', changing the message as proposed, but even every  
117 hour would not affect the gas station. In preparing the proposed changes, they were  
118 considering the downtown, and the signs the Commission wanted to achieve based on the  
119 downtown guidelines, such as avoiding flashing, changing text, etc.
- 120 • The Advantis Credit Union had a preexisting, nonconforming, reinstalled sign that cycled  
121 every 10 seconds with multiple messages. One stopped at the traffic light caught all of  
122 these messages with the timing of the lights. Part of how these scrolling, changing signs  
123 worked was to get as many messages as possible out there while someone was  
124 stopped at the light. Limiting changes to once every 5 minutes would be drivers only got  
125 one message at the light.
- 126 • This was different than something like the '76 Station, where the change in prices  
127 could be limited to every 6 hours, or something like a hotel where 'vacancy' or 'no  
128 vacancy' would be displayed.
- 129 • It seemed that static displays needed to be a longer duration, and a new definition was  
130 needed for the rotating Walgreens type of sign.
- 131 • Having a display duration of an hour could be a disincentive for electronic signs, and  
132 even billboard-type electric signs. Advertisers on the billboards would be severely  
133 limited in how often their ad could be cycled.
- 134 • A static display ought to be of a long enough duration that it would be unchanging to  
135 the average person waiting for a bus or at a light.
- 136 • The '76 Station sign was a static display, but 'automatic changing signs' in the  
137 definitions sounded more like the Walgreens store's sign. He understood this to be  
138 the Commission's intent for the downtown.
- 139 • Regarding sign brightness, reducing the signs from 5,000 NITs in the daytime to 500 NITs in  
140 the evening was a common standard. However, depending upon the color of the display, the  
141 perception of brightness and glare were different, as white appeared brighter than red, for  
142 example.

- 143 • Standardizing that the lettering had to be red would allow the 500 NITs standard to hold.  
144 When driving along McLoughlin Blvd/Hwy 99W, all the electric signs seemed to be red.
- 145 • Mr. Kanzo's '76 Station sign did not have controls to change the brightness of the sign. The  
146 change in brightness occurred either automatically or not at all.
- 147 • Amending the Sign Code as it applies broadly on McLoughlin Blvd in downtown could open  
148 it up to a different kind of sign than intended, such as the Walgreens type sign. Redefining  
149 what static and changeable text meant could be a better way of establishing the two  
150 standards, so what was good along Hwy 224 was different from what was good along  
151 McLoughlin Blvd and downtown.
- 152 • The '76 Station proposal was to be able to change a cabinet sign from either incandescent  
153 or fluorescent to more efficient LED lighting without being penalized.
- 154 • Under the current code, one could not technically illuminate the cabinet with LED  
155 lighting; it had to be illuminated with fluorescent or incandescent lighting. In addition, the  
156 current code would not allow one to rewire the sign in order to change out from  
157 fluorescent or incandescent lighting to LED.
- 158 • He clarified that the original '76 Station sign was 25 ft tall and had an am/pm minimart sign  
159 on top of the Arco sign. When they rebranded, the new sign eliminated all reference to the  
160 grocery store on the property and reduced the sign to 20 ft, so it was still more than the 15-ft  
161 maximum, but they were moving closer to conformance, as requested by the Commission.

162

163 Discussion by the Commission and staff regarding the draft electronic sign code amendment  
164 continued as follows:

- 165 • The proposed amendments would affect all existing signs. The current Sign Code stated  
166 that nonconforming signs were allowed to stay nonconforming, except for the changing [of  
167 lighting] and some safety related standards about not having signs rotate quickly. Currently,  
168 that nonconformity was not allowed to carry over, which remained the same in the draft  
169 proposal.
- 170 • Salem had different NIT levels for each color, and staff would speak with them to ascertain  
171 the reasoning behind that differentiation. If Milwaukie were to differentiate the amount of  
172 illumination based on color, they would probably consider trying to make all of the signs  
173 monochromatic.
- 174 • Areas were indicated in the industrial zones where display signs would be expressly allowed  
175 in the Sign Code. Billboards would be allowed where a really large building exists with 20%  
176 of the building face was large enough to have a billboard, or where a lot of property frontage

177 exists. Freestanding signs, such as billboards, require a lot of lineal street frontage. The roof  
178 sign exemption was more likely in the industrial zone. The last few billboard-type signs were  
179 permitted because enough frontage existed and the heights still fell within the maximum  
180 height limits. Properties zoned residential had restrictive sign allowances, so essentially,  
181 only a condominium or subdivision could put up a large, freestanding sign. The current Sign  
182 Code would not allow a billboard in a residential area, such as along Lake Rd. The market  
183 for potential billboards would be along Hwy 224, McLoughlin Blvd, and possibly in the  
184 Business Industrial Zone.

- 185 • Concern was expressed about focusing only on ODOT-controlled roads because billboards  
186 could be proposed in other areas, such as along King Rd, a high traffic road, and along the  
187 Lake Rd to Harmony Rd corridor, where people sit in traffic.
  - 188 • ODOT control might go away at some point, as the legislature was currently looking as  
189 some changes to ODOT's sign regulations. Milwaukie should rely mostly on its own  
190 regulations as far as what was allowed for size, height, etc., and not depend on the  
191 ODOT regulations to back them up.
- 192 • **Vice Chair Harris** supported increasing the time between text changes to 3 hours.
- 193 • **Chair Batey** favored requiring 6 hours between text changes, but was uncertain what was  
194 reasonable.
- 195 • Concern was expressed about taking away the inalienable right to use the sign as planned  
196 by limiting text changes to every 6 hours.
  - 197 • **Damien Hall, City Attorney**, replied that Milwaukie would not be the only jurisdiction to  
198 extend that time. ODOT rules did not allow any sign that flashed or changed with the  
199 caveat that they only regulate outdoor advertising signs that could be viewed from  
200 ODOT rights-of-way. He did not know where the threshold was of First Amendment  
201 speech versus distracting drivers, but he could make a good argument that they were  
202 not limiting people's First Amendment speech by allowing them to post whatever they  
203 wanted on the side of the road, but restricting the time schedule for change.
- 204 • Concern was voiced about the taking aspect when changing regulations for preexisting  
205 signs as the amendment could affect their income level. They could argue that they relied  
206 on the 10-second rule when building their sign. The amendments would greatly change the  
207 original calculations.
- 208 • **Mr. Hall** explained it would not be a taking of property in the classic sense as they still  
209 had a billboard and could still sell the space, and make economic use of that property,  
210 which in this case was the sign. When the Commission came to some consensus about

- 211 the policy, he could research existing case law to see whether First Amendment rights  
 212 would be impacted.
- 213 • Changing text might not be as distracting as changing graphics, but the City was not allowed  
 214 to regulate content or images. Only the time, place, and manner relative to the signs could  
 215 be regulated.
  - 216 • **Commissioners Churchill and Gamba** agreed with Vice Chair Harris' concept of limiting  
 217 changes to once every 3 hours.
  - 218 • **Vice Chair Harris** explained that a 3-hour change would allow a restaurant to change  
 219 between breakfast and lunch or lunch and dinner.
  - 220 • **Mr. Marquardt** agreed that was a logical suggestion; however, regulating on a 3-hour  
 221 cycle was difficult. With a 10-second change, staff could go out to see if it was 10  
 222 seconds, even once per day, could be check. While 3 hours was a fine time, it was more  
 223 difficult to enforce due to the multiple site visits needed to see if the text was changing.
  - 224 • 3 hours would be a long time period for signs showing the time and temperature. The  
 225 City could not differentiate time and temperature signs, because that would be  
 226 addressing content.
  - 227 • Perhaps different time durations for text changes could be applied to smaller signs.  
 228 Signs conveying time and temperature would fit within the smaller suggested size.
  - 229 • More research would be done regarding NITs and the relevancy of using that as a current  
 230 unit of measure. Sign companies would be contacted to see how readily they could provide  
 231 the NITs information during a sign permit process.
  - 232 • Further information was also requested about how whatever measure they decided upon  
 233 would be measured and enforced; not just the sign company's ability to provide the  
 234 measurement, but how the City would be able to measure it.
  - 235 • Staff would also explore whether certain signs were subject to international dark sky  
 236 standards. If hooding could be required on the sides, requiring it on top should be  
 237 allowed as well.

238  
 239 The Commission consented to move the Electronic Sign Code Amendments proposal forward.  
 240

## 241 **7.0 Planning Department Other Business/Updates**

242 **Ms. Mangle** announced that the Planning Commission meetings would start being videotaped  
 243 and cable broadcast the second meeting of July. This would help with the appeals process, and  
 244 enable the community to better understand what the Commission does and the decisions being

245 made. This option was included in the City's contract with Willamette Falls Television.

246

247 **8.0 Planning Commission Discussion Items**

248 **Chair Batey** understood the City received some money to do part of Riverfront Park and  
249 requested an update via email about this as well as when the Johnson Creek Confluence  
250 Restoration project would happen.

- 251 • **Ms. Mangle** explained that the grant was only for the northernmost aspect of the park. It  
252 could be phased, so even though outstanding issues exist, they did not need to be resolved  
253 for the northernmost area around Johnson Creek to be implemented. JoAnn Herrigel,  
254 Community Services Director, would present a briefing to the Commission.
- 255 • **Mr. Marquardt** added that the Johnson Creek Watershed Council was moving ahead with  
256 their permits in that area as well. They were trying to stay on track for working in July and  
257 August, but part of the problem was that the water levels were so high that a lot of the work  
258 would need to wait for a while.

259

260 **9.0 Forecast for Future Meetings:**

- |     |               |  |
|-----|---------------|--|
| 261 | July 12, 2011 | 1. TBD   |
| 262 | July 26, 2011 | 1. Public Hearing: Electronic Sign Code Amendment <i>tentative</i> |
| 263 |               | 2. Public Hearing: CSU-11-05 Royalton Place <i>tentative</i>       |

264 **Ms. Mangle** confirmed that no public hearing would be held on the Sign Code July 26. She noted  
265 no items were scheduled for the July 12 meeting.

266

267 **Vice President Harris moved to cancel the July 12, 2011 Planning Commission meeting.**  
268 **Commissioner Gamba seconded the motion, which passed unanimously.**

269

270 Meeting adjourned at 7:41 p.m.

271

272

273

Respectfully submitted,

274

275

276

277

278

Paula Pinyerd, ABC Transcription Services, Inc. for

- 279 Alicia Stoutenburg, Administrative Specialist II
- 280
- 281
- 282
- 283 \_\_\_\_\_
- 284 Lisa Batey, Chair

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8

**CITY OF MILWAUKIE  
PLANNING COMMISSION  
MINUTES  
Milwaukie City Hall  
10722 SE Main Street  
TUESDAY, July 26, 2011  
6:30 PM**

9 **COMMISSIONERS PRESENT**

10 Nick Harris, Vice Chair  
11 Scott Churchill  
12 Chris Wilson  
13 Mark Gamba  
14 Russ Stoll (*arrived during Agenda Item 5.1*)  
15

**STAFF PRESENT**

Susan Shanks, Senior Planner  
Ryan Marquardt, Associate Planner  
Justin Gericke, City Attorney

16 **COMMISSIONERS ABSENT**

17 Lisa Batey, Chair  
18

19 **1.0 Call to Order – Procedural Matters**

20 **Vice Chair Harris** called the meeting to order at 6:33 p.m. and read the conduct of meeting  
21 format into the record.  
22

23 **2.0 Planning Commission Minutes**

24 2.1 May 24, 2011

25 **Commissioner Churchill** moved to approve the May 24, 2011, Planning Commission  
26 meeting minutes as presented. **Commissioner Gamba** seconded the motion, which  
27 passed 3 to 0 to 2 with Commissioners Gamba and Wilson abstaining.  
28

29 **3.0 Information Items – None.**  
30

31 **4.0 Audience Participation** –This is an opportunity for the public to comment on any item  
32 not on the agenda. There was none.  
33

34 **5.0 Public Hearings**

35 5.1 Summary: Royalton Place

36 Applicant/Owner: Lee Winn

37 File: CSU-11-05

38 Staff Person: Ryan Marquardt

39 Commissioner Stoll arrived at this time.  
40

41 **Vice Chair Harris** called the public hearing to order and read the conduct of quasi-judicial  
42 hearing format into the record.

43

44 **Ryan Marquardt, Associate Planner**, cited the applicable approval criteria of the Milwaukie  
45 Municipal Code (MMC) as found on 5.1 Page 4 of the packet, which was entered into the  
46 record. Copies of the report were made available at the sign-in table.

47

48 **Vice Chair Harris** asked if any Commissioners wished to abstain or declare any ex parte  
49 contacts. None were declared.

50

51 **Vice Chair Harris**, and **Commissioners Churchill, Gamba, and Wilson** declared for the  
52 record that they had visited the site. No Commissioners however, declared a conflict of interest,  
53 bias or conclusion from a site visit. No Commissioners abstained and no Commissioner's  
54 participation was challenged by any member of the audience.

55

56 **Susan Shanks, Senior Planner**, noted that the Applicant was not yet present and confirmed  
57 with an audience member that he was en route.

58

59 **Ryan Marquardt, Associate Planner**, presented the staff report via PowerPoint. The proposal  
60 was to convert part of an existing senior and retirement living facility into a continuing care  
61 facility that would have assisted living and memory care components in addition to senior and  
62 retirement living facilities.

- 63 • The Engineering Department had commented that they would review the stormwater runoff  
64 for the site when the permit was reviewed. They also noted that the proposal would not  
65 increase the number of trips to the site; therefore, the public facility improvement section did  
66 not apply to the proposal.
- 67 • The Linwood NDA did submit a letter stating they did not have any objection or concern  
68 about the proposal but wanted to ensure that the City would look at the stormwater runoff,  
69 which would be evaluated as mentioned.
- 70 • The 120-day deadline for the application was October 10, so there was room for  
71 continuation, if needed.

72

73 **Commissioner Stoll** confirmed that as far as staff was concerned, the Applicant was 90%  
74 approvable, being substantially compliant with the relevant criteria.

75

76 **Commissioner Gamba** noted that the interior landscape buffer on the east and north property  
77 lines at mid-property were 2 ft, 6 in and 3 ft, 9 in respectively and did not meet the required 6-ft  
78 buffer.

79 • **Mr. Marquardt** replied this was an existing development and with no additions to the  
80 building, there was not enough construction to require the Applicant to meet that  
81 setback.

82 • He clarified that the bicycle parking would be looked at when the permits were reviewed  
83 for the development. It was one of the upgrades that was consistently considered when  
84 the City required upgrading nonconforming parking areas. However, it was not  
85 specifically addressed in the staff report. The bicycle parking would be strongly  
86 encouraged.

87 • **Ms. Shanks** clarified that the Code amendments recently adopted by City Council  
88 created the new development review application type, so in terms of reviewing the  
89 application through the land use process, the Commission was really approving the use.  
90 Another step would be carried out in the process at a more administrative level. The  
91 work being done to build the patio would trigger a small amount of parking  
92 improvements, but because it was nonconforming and because of the scope of work  
93 being done, staff could not require them to redo the entire parking lot or bring it up to  
94 code. Staff could ask the Applicant to improve the parking lot up to 10% of the permit  
95 value.

96 • **Mr. Marquardt** added that the Commission could direct staff to make sure bicycle  
97 parking was a top priority when reviewing the application.

98

99 **Commissioner Wilson:**

100 • Asked how the calculation for no change in trips was determined.

101 • **Mr. Marquardt** responded that on 5.1 Page 38, staff had requested the Applicant to  
102 provide some clarification on the occupancy loads before and after the project. Within  
103 the packet, the Applicant had specifically listed out the occupancy before which worked  
104 out to 98 persons, and after which worked out to be 93 persons, so the actual number of  
105 occupants was decreasing slightly. This was what was relied upon by the Engineering  
106 Director in making the determination.

- 107 • Stated it seemed the changes proposed were more labor-intensive, requiring more labor,  
108 employees, and visitation as people were not as independent.
- 109 • **Mr. Marquardt** replied that he did not know about the exact staffing levels and believed  
110 that would be a good question to ask the Applicant.
- 111 • **Commissioner Stoll** stated that even if they were off by 10 to 20%, they were only  
112 talking about 1 or 2 more parking spaces. The main difference is between the number of  
113 existing and proposed units.

114

115 **Commissioner Gamba** stated he had come up with 4 different totals from 4 different lists for  
116 the number of units.

- 117 • **Mr. Marquardt** clarified that he had confirmed with the Applicant that the material on  
118 Page 38 included their final numbers. The Applicant had not indicated an increase in  
119 staffing levels, but it was a fair question for the Applicant.

120

121 **Commissioner Wilson** asked if parking contingencies existed for things such as holidays for  
122 this type of facility, when more visitors might be expected; or did the Applicant have to work with  
123 the neighborhood to provide additional parking.

- 124 • **Mr. Marquardt** was not sure of the specifics of how it operated during such peak times.  
125 The parking ratios were applied based on the uses that were presented which could  
126 actually be under, and even over, what was needed.

- 127 • **Ms. Shanks** added that the Engineering Director and Engineering staff looked at the  
128 application carefully and had used the Institute of Transportation Engineers (ITE) Trip  
129 Generation manual in terms of comparing uses. The manual did not drill down to the  
130 number of units per se, but considered what the previous and proposed uses in a larger  
131 sense. Because no transportation impact study was required, Engineering used the  
132 appropriate tools at hand.

133

134 **Commissioner Stoll** noted that the aerial photo in the staff presentation presented a data point  
135 showing there was still a lot of parking left over. The picture looked like it was taken at about  
136 noon.

137

138 **Commissioner Gamba** added that he did not foresee parking being a huge issue.

139

140 **Commissioner Churchill** confirmed that the actual number of occupants would be 93 on Page  
141 38 of the proposal versus 85 for the current use.

- 142 • **Mr. Marquardt** clarified that the independent living facility was based on units and the  
143 memory care and assisted living was based on beds, so there was some crossover.

144

145 **Mr. Marquardt** noted that Attachment 1, which was distributed to the Commission, was  
146 basically just corrections to ensure the findings were in agreement with the numbers presented  
147 on Page 38, and that the parking calculations were correct with those numbers.

148

149 **Vice Chair Harris** confirmed that no correspondence had been received other than that  
150 included in the agenda materials. He called for the Applicant's presentation. The Applicant  
151 declined to make a presentation.

152

153 **Vice Chair Harris** called for public testimony in favor of, opposed, and neutral to the  
154 application.

155

156 **Margaret "Pepi" Anderson, 10080 SE 54th Ct**, asked if there was an increase in the security  
157 needed for a memory care unit, and if this type of unit would pose an issue for the community  
158 with people more apt to walk about the neighborhood when it was not particularly appropriate  
159 for them to do so. She asked if the purpose of the courtyard and fencing was to help secure the  
160 facility.

161

162 **Lee Winn, Applicant, 29179 SW Charlotte Ln, Wilsonville, OR**, responded that the memory  
163 care courtyard fence was 7-ft high and nonclimbable. The licensing through DHS required the  
164 security. The entry into the memory care area was keypad operated and tied into the fire alarm  
165 system for evacuation. It was a completely secured area. Boeing Property Management (BPM)  
166 had facilities all over the West Coast, and securing these facilities is what they did. The security  
167 requirements were based on the State requirements.

168

169 **Commissioner Churchill:**

- 170 • Asked if the Applicant had received support from the resident to the east of the property.
  - 171 • **Mr. Winn** responded he had not had any conversations with him.
  - 172 • **Mr. Marquardt** confirmed staff had not received any comments from the resident to the  
173 east after sending the 300-ft mailing notice.

- 174 • Pointed out that even though the landscaping buffer on the east edge was not part of the  
175 application, any concern by that neighbor should be addressed through buffering with  
176 landscaping material. If it was not an issue, he would let that rest.

177  
178 **Commissioner Gamba** noted there was a decent sized, red maple located where the patio was  
179 to go and asked if this would need to be removed.

- 180 • **Mr. Winn** responded yes, they planned to remove the maple.

181  
182 **Commissioner Wilson:**

- 183 • Asked if the parking lot had ever been full.
- 184 • **Mr. Winn** responded that since January when the process had been initiated, it had  
185 never been full. The majority of the residents did not drive. They also had their own bus  
186 and the public bus stopped there as well. He clarified that he was the architect for BPM,  
187 who was the owner, manager, and operator of the facility.
- 188 • Asked if there was a parking policy manual or some way of dealing with the need for more  
189 space during the holidays.
- 190 • **Mr. Winn** stated he was not aware of such a manual, but would ask BPM if they had a  
191 plan for increased parking needs during such times.

192  
193 **Vice Chair Harris** called for additional comments from staff.

194  
195 **Ms. Shanks** stated that with regard to Commissioners Churchill and Gamba's comments about  
196 buffering, because it was a CSU, there was a bit more leeway in terms of adding conditions to  
197 mitigate impacts. The CSU could allow the Commission to draw outside the boxes of the Off-  
198 Street Parking Code a bit if they felt it was warranted to make the use compatible with its  
199 neighbors. They had not received any comments that this was a real or perceived impact; the  
200 Parking Code was one piece of the puzzle and the CSU was another piece.

201  
202 **Commissioner Churchill** quoted from a letter submitted by the Linwood Neighborhood District  
203 Association (NDA), "The Linwood Ad Hoc Land Use Committee, Linwood Co-Chairs Lynn and  
204 Beth Kelland and Treasurer Dolly Macken-Hambright reviewed the application as sent to your  
205 office. After review, driving by, and discussion, we only have one concern, which is that it seems  
206 to be a great deal of build-out on a small piece of property. While we empathize with the  
207 property owners and their need to get the most 'bang for the buck', we also have some

208 concerns on how this may affect the livability of the most immediate surrounding neighbors." He  
209 explained that this was why he asked if there was a concern of the neighbor to the east, or for  
210 that matter, to the west, adjacent to the property. Since there were no written comments or  
211 Applicant challenges, he would probably let it rest.

212

213 **Commissioner Stoll** stated that in regard to the drainage, the drawing indicated it would not be  
214 simply a concrete path but permeable pavers, so they would not really be adding to the  
215 impermeable surfaces on the lot, which seemed to be in line with what the community wanted.

216

217 **Vice Chair Harris** confirmed that the Applicant had no rebuttal or additional comments in  
218 response to public testimony. He closed the public hearing at 7:08 p.m.

219

220 **Commissioner Wilson** asked if any signs were posted, such as lawn signs regarding this  
221 proposal.

222 • **Mr. Marquardt** responded that two signs were posted 14 days prior to the hearing,  
223 which were still up when he drove by this afternoon. Both were visible from King Rd.

224

225 **Commissioner Stoll** commented the facility sounded like it was a good neighbor and as such,  
226 he was in favor of approving their proposal.

227

228 **Commissioner Churchill** said that he did not have any major objections.

229

230 **Commissioner Gamba:**

- 231 • Did not have any objections. It looked like a good proposal, but he had two suggestions:
- 232 • He quoted the last sentence of the interior landscape buffer paragraph, "In addition,  
233 the required 40-ft on center shade trees planting at the right-of-way and interior  
234 buffers is not met." He requested that a few trees be planted, particularly on the  
235 right-of-way buffer. This would help shade the new patio, which was an advantage to  
236 the residents.
- 237 • He also requested that bicycle parking be a priority.
- 238 • **Ms. Shanks** asked if he was suggesting that trees be planted in the right-of-way or on  
239 private property as part of the perimeter landscaping.
- 240 • Stated he would love to see as many trees as possible, but having trees in the right-of-way  
241 made the most sense for the proposal because they would shade the patio.

242 • **Ms. Shanks** responded it could be more appropriate to have the trees in the right-of-way  
243 and it fell under a different Code, but the suggestion was well taken in terms of having  
244 trees be a priority and requiring the Applicant to come closer to conformance with  
245 parking lot landscaping. She hesitated to specify exactly where they should go, because  
246 things like stormwater could become an issue, but it was a good point.

247

248 **Commissioner Stoll** agreed it should be added as a priority for the Planning Department to  
249 look at the trees and the bicycle parking, and then exercise their good judgment.

250

251 **Commissioner Churchill** stated it could be added as a condition of approval essentially.

252 • **Ms. Shanks** suggested they could add a general condition to make these issues  
253 priorities. It could be that the money they could require the Applicant to spend on parking  
254 lot improvements was minimal, and could buy one tree. That number was not known yet.  
255 In addition, the CSU approval criteria were about balancing benefits against impacts. If  
256 there was an impact that could be mitigated by vegetation, that would be in a different  
257 slot. There was more flexibility in that direction than in adding more vegetation in the  
258 parking lot under the Off-Street Parking Code. It depended on what umbrella they  
259 wanted to put the condition under and what the Commission was trying to achieve.

260 • **Mr. Marquardt** clarified that Commissioner Gamba was reading from the Applicant's  
261 response to the parking standards in the Code. Staff did not address those in detail in  
262 the findings because when the future development permit was looked at, they looked at  
263 which aspects of the parking area were nonconforming and attempted to bring those into  
264 conformance. The bicycle parking and the 40-ft tree issue were both parking lot  
265 nonconformities. It would be appropriate to recommend adding something to Condition  
266 1B that staff should prioritize bicycle parking and tree planting along perimeter  
267 landscaping to bring the parking area closer to conformance.

268

269 **Commissioner Churchill:**

270 • Asked if staff had a photograph of the area to the east to see if any landscape buffering  
271 existed.

272 • **Mr. Marquardt** did not believe they had such a photograph.

273 • **Commissioner Gamba** believed there were a couple of big trees there, but they were  
274 on their property.

- 275 • **Mr. Winn** explained that the entry into the site had a large landscape buffer at the front  
 276 end of the entry, which was a big planter strip. When it went back into the parking areas,  
 277 a fence ran all the way back to where the property turned to the east, and there was  
 278 planting all along that edge along the fence.
- 279 • Was most interested in the buffer between the west side of the structure and the residence  
 280 to the west.
- 281 • **Mr. Winn** responded there were fairly large trees along that edge, and a retaining wall  
 282 where the grade changed. There was planting all the way along that edge.

283

284 **Commissioner Stoll** agreed that the bicycle parking and trees should be a staff priority in  
 285 determining what changes should be made when doing the parking. He would hate to  
 286 micromanage the staff on this. The priority was getting some bicycle parking and more trees  
 287 along the right-of-way.

288

289 **Ms. Shanks** suggested amending Condition 1B on 5.1 Page 12 to state, "The Applicant shall  
 290 bring the existing parking area closer to conformance. The cost of bringing the parking area  
 291 closer to conformance will be per MMC 19.602.5.B. The areas to be brought closer to  
 292 conformance will be identified by the Planning Director using MMC 19.602.5.C ***with priority  
 293 given to adding trees along the site's perimeter and bicycle parking per Planning  
 294 Commission direction.***"

295

296 **Commissioner Gamba** moved to approve **CSU-11-05** adopting the recommended findings  
 297 and conditions of approval found in Attachments 1 and 2 with the slight change in 1B, as  
 298 stated above. **Commissioner Stoll** seconded the motion, which passed unanimously.

299

300 **Vice Chair Harris** read the rules of appeal into the record.

301

## 302 **6.0 Worksession Items**

303 6.1 Summary: Riverfront Park update

304 Staff Person: JoAnn Herrigel

305 **JoAnn Herrigel, Community Services Director**, presented the Riverfront Park update via  
 306 PowerPoint providing a brief overview of Riverfront Park and the proposed amenities. She  
 307 distributed a color brochure titled, "Help make Milwaukie Riverfront Park a reality," which  
 308 featured key elements of the proposed park, as well as a 1-page handout with the overall

309 Riverfront Park Development Site Plan (Figure 2) on one side and a specific site plan of Klein  
310 Point (Sheet C2) on the other side. She reviewed the key points of her memo, dated July 18,  
311 2011, with additional comments as follows:

- 312 • They were still waiting for the US Army Corps of Engineers (Corps) to issue a permit. There  
313 had been 2 or 3 inquiries from the Corps, National Oceanic and Atmospheric Administration  
314 (NOAA) National Marine Fisheries Service and lately Department of Environmental Quality  
315 (DEQ) about whether or not the plan had been changed since submission. In each case, a  
316 response was submitted that the plan had not been changed and should be reviewed as  
317 originally submitted. Still, there was neither a permit in hand nor any indication of when a  
318 permit would be forthcoming. She suggested meeting with the reviewers to go over the plan  
319 to see if they had specific questions.
- 320 • Regarding access on McLoughlin Blvd, she was awaiting further decisions regarding  
321 wastewater rates and the use of the riverfront site before pursuing discussion about whether  
322 this access was adequate for the sewage treatment trucks.
  - 323 • They had talked with engineers from Clackamas County and Oregon Department of  
324 Transportation (ODOT) 5 or 6 months ago about the possibility of putting some kind a  
325 transponder on the wastewater trucks so they might trigger a longer light at the  
326 intersection, allowing them more time to exit the access out onto McLoughlin Blvd safely.  
327 No action had taken place yet, because they could not get anybody from Water  
328 Environmental Services (WES) to come to the table to discuss the actuality of installing  
329 the transponders on trucks.
- 330 • The Klein Point funding was an exciting update. Noting Figure 2, she explained that in  
331 January they had partnered with the Johnson Creek Watershed Council (JCWC) to submit  
332 an application to Metro under the Nature in Neighborhoods capital grant program to do 3  
333 things:
  - 334 • Build Klein Point, which did not require Corps final approval, because it was at a  
335 higher elevation and did go down toward the water or have anything sticking out into  
336 the water. This was estimated to cost about \$213,000.
  - 337 • Create a riffle over a sewer pipe that crossed Johnson Creek. The City owned the  
338 pipe, and the JCWC was interested in putting some kind of a natural rock  
339 configuration around the pipe so it did not create such a dam for the water and would  
340 be more of a natural habitat.
  - 341 • Create a manufactured root wad system that JCWC would be building.

- 342 • These particular projects of the Johnson Creek Confluence Project were being funded  
343 because they are on government land, which was a requirement of the grant through  
344 Metro.
- 345 • As far as the Klein Point project, one whole area would be recontoured to create a gentle  
346 slope from the upper level by McLoughlin Blvd down toward Klein Point.
- 347 • An entranceway would be built with a formalized sign reading, "Welcome to  
348 Milwaukie Riverfront Park."
- 349 • A concrete pathway would be built going down the hill and another pathway going  
350 out to Klein Point. The area was partly in the Water Quality Resource (WQR) area,  
351 so the materials used on the accessway needed to be permeable to the greatest  
352 extent possible. For the grant, Metro would like it to be ADA accessible and relatively  
353 formal, not just a gravel path.
- 354 • The Kleins, who donated the property, have asked that a large oak tree on the site  
355 be maintained. The City would probably hire an arborist as part of the design team to  
356 monitor the health of the tree.
- 357 • When the plaza is built with the retaining wall and railing for people to look down  
358 at the confluence project, the work would need to be done and materials moved  
359 in by foot with wheelbarrows. They did not want heavy equipment near the site  
360 because of danger to the oak tree by compacting the soil, ruining the roots or  
361 hitting the tree with a piece of equipment.
- 362 • Interpretive signs would be put in. The 3 things they wanted to draw attention to in  
363 the area was the confluence project; the Trolley Trail segment, which used to go over  
364 Johnson Creek; and that it was called Klein Point for the Kleins' donation. The  
365 Planners would need to review everything to ensure it met Code and was  
366 appropriate for the site.
- 367 • Completion of the final design was anticipated after the first week of August. They  
368 needed to review the design with the Riverfront Board and the Kleins, and then submit it  
369 to Planning for review. They hoped to have a request for proposals out for contractors by  
370 the end of August. Klein Point could possibly be built by the end of September or further  
371 into the fall if things got complicated.
- 372 • The Johnson Creek Confluence Project would start the second week in August, so the  
373 projects would overlap a bit, but would not necessarily be in the way of each other. The  
374 confluence project would have most of its equipment and most of the movement to north of  
375 the creek, and Klein Point would be mostly uphill and south of the creek.

- 376 • She responded to comments and questions from the Commission with these comments:
- 377 • The pervious concrete such as that used on the Logus Road Project might meet both
- 378 required standards for the pathway. They would have to look into the cost of the material
- 379 and whether or not others had said it was a good use for a property such as this. They
- 380 were considering both asphalt and concrete.
- 381 • The paths in the sculpture garden were compacted granite, which was ADA
- 382 compliant. Once the landscape designers were involved, they could show them the
- 383 preferred options.
- 384 • Moving the entrance was not necessarily an advantage so much as a requirement.
- 385 Referring to the map in the distributed brochure, she demonstrated that if the boat ramp
- 386 were moved to where Number 5 was instead of up by Number 6, the ramp could not
- 387 actually be accessed logistically from the current Washington St entrance. She
- 388 described how the boat ramp would have to be configured if the entrance were not
- 389 changed.
- 390 • The issue was trying to fit many amenities in a very small parcel.
- 391 • The entrance issue had been discussed for 5 years, and about 5 or 6 different
- 392 designs had been considered.
- 393 • There would not be a light at the new entrance. The harbor lanes would enable traffic to
- 394 get into the park from either direction. The issue was whether the trucks had enough
- 395 time to exit the site, which was why the elongation of the red light had been discussed.
- 396 • If only the sewage trucks triggered the elongation of the red light, people with
- 397 underpowered vehicles or large boats were at their own peril. This had been a
- 398 discussion as well. The Riverfront Board did not necessarily want transponders on
- 399 anything, but suggested the light somehow be triggered by some kind of sensor
- 400 mechanism in the accessway. They had not gotten far enough in the discussion to
- 401 know whether that was acceptable to either WES or ODOT.
- 402 • The entrance itself would not be signaled. ODOT stated that 75 vehicles per hour were
- 403 required to enter that western side of the property in order to warrant a light. Right now,
- 404 there was a maximum of 50 to 100 per day, but not per hour. The number would change
- 405 drastically with a newly configured boat ramp.
- 406 • A sloping beach area would be next to the nonmotorized boat ramp. There had been
- 407 lengthy discussion about this matter. There used to be a zigzag area that allowed people
- 408 to get down to the beach. In the pre-application meetings, the Corps, NOAA Fisheries,
- 409 and DEQ discussed decreasing any access to the river edge because it all needed to be

- 410 revegetated, and they wanted to keep people away from that area. They were asked to  
411 remove any additional access to the river by foot, so that was removed when it was  
412 submitted to the Corps.
- 413 • At the Planning Commission hearings in May 2010, it was strongly encouraged that a  
414 nonmotorized boat ramp of some type be put back in, or failing that find alternatives  
415 for access to the water by nonmotorized boats. Some options included lowering one  
416 of the forks of the water ramp so it was 6-in as opposed to 18-in off the water and  
417 having a similar access ramp in a different area that was also lower to the water. The  
418 options raised concerns from motorized boaters and those funding motorized boater  
419 facilities about the interaction between nonmotorized and motor boaters. It was one  
420 of those puzzles of trying to make everybody happy in a small parcel.
  - 421 • She indicated an area where putting anything in was frowned upon and another area  
422 that was the only place anyone was allowed to access the water by foot. This area  
423 was sort of a cascading boulder area and did not necessarily have plants in it.  
424 Although it had been suggested that eliminating that access would be better, they  
425 had maintained it through the design to date.
  - 426 • 18 months seemed like a long time for the Corps to consider the proposal; however, the  
427 light rail bridge on the Willamette River and the South Waterfront project were in line  
428 ahead of the Riverfront Park permits, and only one or two people were actually reviewing  
429 all of this at each of the agencies.
  - 430 • She encouraged anyone interested in more information to call her personally or attend any  
431 of the Riverfront Board meetings which are held the third Wednesday of every month.

- 432
- 433 **7.0 Planning Department Other Business/Updates**
- 434 7.1 Planning Commission Notebook Replacement Pages – May Supplement for the Land  
435 Use and Development Review project updates
- 436 **Ms. Shanks** explained that the Commissioners should take everything out of Title 19 and  
437 replace it with the supplement. This was the final hardcopy form of the changes made with the  
438 Code tune-up project. She thanked Chair Batey, Commissioner Gamba, and the entire  
439 Commission for doing the work with staff. She asked that any questions be directed to her as  
440 Marcia Hamley, Administrative Specialist II, who usually handled these matters had been out of  
441 the office. If any Commissioners wanted to bring their updates and books in, staff would take  
442 care of it for them. The update was in the packet; however, certain Commissioners had  
443 requested electronic copies only, so had not received the hard copy in the packet.

- 444 • She summarized the Milwaukie High School readerboard sign issue and gave an update on  
445 its progress. Staff had been contacted recently by the High School's District project  
446 manager, Dan Golden, stating they now had the funds to build the proposed sign. Staff  
447 reminded him that it would need to be built as proposed and approved, in terms of the  
448 limitations on how quickly the message changed, the height, size, etc. It was possible that  
449 the sign would be built this summer. Brett Kolver, Associate Planner, could answer any  
450 questions regarding the issue, as he was the Planner that handled that land use application  
451 and was more up to speed on the actual decision.

452

#### 453 **8.0 Planning Commission Discussion Items**

454 There were none.

455

#### 456 **9.0 Forecast for Future Meetings:**

- |                     |  |
|---------------------|--|
| 457 August 9, 2011  | 1. Worksession: South Downtown Concept Plan                                    |
| 458                 | 2. Worksession: Commercial Core Enhancement Program                            |
| 459 August 23, 2011 | 1. Public Hearing: CPA-10-01 North Clackamas Park Master Plan <i>tentative</i> |
| 460                 | 2. Public Hearing: Electronic Sign Code Amendments                             |

461 **Ms. Shanks** noted some changes had been made since the agenda was published:

- 462 • The South Downtown Concept Plan worksession was rescheduled from August 9 to August  
463 23, 2011, and the worksession on the Commercial Core Enhancement Program was  
464 rescheduled from August 9 to September 13.
- 465 • On August 9, Kenny Asher, Community Development and Public Works Director, would  
466 come to the Commission to discuss the baseball site and the TGM grant received to do  
467 some land use and transportation planning in the area along McLoughlin Blvd/Hwy 99E and  
468 close to the Tacoma St light rail station that was actually in the city.
- 469 • The public hearing on the Electronic Sign Code Amendments was rescheduled from August  
470 23 to September 13, 2011.
- 471 • The public hearing on the North Clackamas Park Master Plan was tentative. The  
472 Commission would learn at the August 9 meeting if that hearing would actually happen on  
473 that date.

474

475 Meeting adjourned at 8:03 p.m.

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Respectfully submitted,

Paula Pinyerd, ABC Transcription Services, Inc. for  
Alicia Stoutenburg, Administrative Specialist II

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Lisa Batey, Chair



# MILWAUKIE

*Dogwood City of the West*

**To:** Planning Commission

**Through:** Katie Mangle, Planning Director

**From:** Ryan Marquardt, Associate Planner

**Date:** September 6, 2011, for September 13, 2011, Public Hearing

**Subject:** **File:** ZA-11-02, Sign Code Amendments: Electronic Display Signs

**File Type:** Zoning Ordinance Amendment

**Applicant:** City of Milwaukie

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## **ACTION REQUESTED**

Recommend approval of File #ZA-11-02 to the Milwaukie City Council with the Ordinance, Findings of Approval, and Amendments found in Attachment 1.

## **BACKGROUND INFORMATION**

The City of Milwaukie proposes amendments to Milwaukie Municipal Code Title 14, Sign Ordinance, to address the issue of electronic display signs. Electronic display signs are signs that display sign copy or messages electronically by bulbs, light emitting diodes (LEDs), or other sources of illumination. The goals of the amendments are to make limited allowance for electronic display signs in areas of downtown Milwaukie, and to limit the maximum allowed size of electronic display signs in areas outside of downtown. Other amendments are proposed that address the brightness, style of display, and rate of message change.

### **A. History of Prior Planning Commission Actions and Discussions**

The proposed amendments were undertaken at the request of the Planning Commission. At the meetings listed below, the Planning Commission has directed staff to amend the code to make allowance for electronic display signs downtown, to address the addition of electronic display signs to nonconforming signs, to facilitate the use of LED lighting, and to limit the size of electronic display signs outside of downtown.

- **June 28, 2011:** Planning Commission held a worksession to discuss a first draft of sign ordinance amendments and directed staff to initiate an application to amend the sign ordinance.

- **April 26, 2011:** The Planning Director gave a brief update regarding the status of the sign code update project.
- **March 2011:** City Council and Planning Commission discussed topic of sign code amendments at the annual joint worksession.
- **February 8, 2011:** Planning Commission discussed sign code amendments related to AP-10-01 (below) and large LED signs. The Commission directed staff to add restrictions to large LED signs along highways to the scope of work.
- **October 12, 2010:** Planning Commission hears appeal (AP-10-01) on whether MMC Title 14 Sign Ordinance allows electronic readerboard signs downtown. The Commission requested that staff prepare code amendments to allow limited readerboard signs along McLoughlin Blvd in downtown.

## B. Proposal

The proposed amendments are designed to meet two goals established by the Planning Commission and supported by the City Council: allow some electronic display signs in downtown, and impose new limits for electronic display signs in commercial areas. The specific amendments to the sign ordinance are shown in underline/strikeout Attachment 1, Exhibit B. The commentary in Attachment 2 provides further explanation of the purpose and intent of the amendments. The major issues being addressed by the amendments are summarized below. The proposal does not include any changes to the types of signs allowed (e.g., roof signs, freestanding signs, wall signs) or to the allowed size and placement of those signs.

### 1) Electronic Display Signs in Downtown Zones

Currently, electronic display signs are not permitted in the downtown zone. The proposed amendments would allow electronic display signs downtown under the following conditions:

- The property must have frontage on McLoughlin Blvd, and the sign must be oriented toward McLoughlin Blvd;
- The size is limited to the lesser of 25% of the total sign face or 20 sq ft;
- The electronic display sign is part of a larger sign face and is not a standalone sign.

The intent of this amendment is to allow business owners along a heavily traveled street to have visible and attractive modern signage that allows for the sign's message to easily be changed, but to do so in a way that limits impacts to adjacent properties and the traveling public.

### 2) Electronic Display Signs in Commercial and Industrial Areas

Currently, electronic display signs are permitted in the commercial and industrial zones outside of downtown. There are no limits to the size of electronic display signs in these zones aside from the general size limits that apply to all signage, regardless of whether it is an electronic display sign or not.

The proposed amendments would limit the size of an electronic display sign to the lesser of 50 sq ft or 25% of the total sign face if it is part of a larger sign. Similar to

the downtown zone, the electronic display sign must be part of a larger sign face and not a standalone sign

### 3) Rate of Change for Electronic Display Signs

The current sign ordinance limits changes in copy for an electronic display sign to no more than once every 10 seconds. The proposed amendments would limit electronic display signs of 20 sq ft or less to changes no more than once every 15 seconds, and electronic display signs of more than 20 sq ft to changes no more than once every 3 hours.

### 4) Illumination and Shielding

The current sign ordinance does not have illumination standards specific to electronic display signs. The proposed amendments would limit the illumination of an electronic display sign to no more than 0.3 foot-candles above the ambient light levels. The distance where this measurement would be taken increases with the overall size of the sign. Electronic display signs would also be required to include a mechanism that automatically adjusts the brightness of the sign. An additional provision in the proposed amendments would require a sign's brightness to be lowered if the Planning Director finds that its illumination poses a traffic hazard.

Measures to prevent light pollution are also included in the proposed amendments. Externally illuminated signs larger than 100 square feet in size would be required to have light sources with 90 degree cutoffs to ensure that light is not directed upward.

### 5) Other Related Amendments

Other sections that would be modified by the proposed amendments are described below.

- Under the current policy, there is no relationship between the City and ODOT's permitting processes, even when each is reviewing the same sign at the same time. The City must approve a sign permit if it meets City standards, even if staff is aware that ODOT is planning to issue a citation.  
  
A new provision would allow the City to coordinate its issuance of a sign permit with ODOT's process for reviewing signs along state highways. At the Planning Director's discretion, the City could require an applicant provide a statement from ODOT regarding whether a sign requires ODOT approval, and if so, include a preliminary assessment of the approvability of the sign. The City would be able to withhold issuance of a sign permit if it believes ODOT may not be able to approve the sign.
- Currently, nonconforming signs are not allowed to be altered or replaced unless they come into conformance with the current sign standards. A new provision would allow an electronic display sign to be added to an existing nonconforming sign if doing so does not cause the sign to go further out of conformance.
- Currently, the sign code does not clearly address LED technology. Therefore, staff has had to apply standards developed for incandescent and fluorescent bulbs to LED panels. A new provision would specifically allow LEDs, and other lighting technology not currently listed in the sign ordinance, to serve as internal or exterior illumination for a sign.

- Currently the sign code restricts “moving” signs, but new sign types create a need for more specificity regarding this policy. New regulations would prohibit flashing, scrolling, moving, or video displays.
- In the current sign ordinance electronic display signs and signs with physically moving components are grouped together in one category, and regulated the same way (prohibited). The proposed amendments would clarify that these two types of signs are regulated separately.
- Multiple definitions would be added or amended in relation to the other proposed amendments.

### **C. Public Notice**

Staff has used multiple forms of public outreach to inform stakeholders about these amendments. Excerpts from these outreach efforts are included as Attachment 3 – Public Outreach Materials.

- Historic Milwaukie Neighborhood District Association (NDA) meeting, March 2011: Commissioners Churchill and Gamba presented the proposal regarding allowing electronic display signs downtown.
- Hearing Notices posted on August 12, 2011 on the City of Milwaukie’s home page, and at City Hall, the Ledding Library, Public Safety Building, and Public Works Facility.
- The Public Affairs Coordinator sent a press release on August 9, 2011 announcing the proposed amendments and the date of the Planning Commission’s initial public hearing.
- Email was sent on August 12, 2011 to representatives from sign installation companies, advertising companies, owners of existing and proposed electronic display signs, and the Portland Metropolitan Association of Realtors. The email included links to a draft version of the code and public notices, and invited the recipients to contact staff to discuss the proposal.
- Email was sent on August 15, 2011 to the Milwaukie NDA Chairs and Land Use Committee members with information about the proposed code amendments.
- Measure 56 Notice sent on August 19, 2011 to owners of property in the Commercial General, Commercial Limited, Community Shopping Commercial, Business Industrial, and Manufacturing zones. The notice was also sent to owners of property with frontage on McLoughlin Blvd in the downtown zones, and the North Clackamas School District. In all, over 400 Measure 56 notices were mailed.
- Phone contact with approximately 5 businesses in the North Industrial Area in mid/late August 2011 to inform businesses of the proposal and solicit comments. The outreach was done in conjunction with outreach on the effort to build a minor league baseball stadium on current ODOT property in the industrial area.

Staff has received input from multiple parties resulting from this outreach. The comments and discussions are presented in the “Key Issues” and “Public Comments” sections of this report. Staff believes that there has been an appropriate amount of outreach given the limited scope and desired timeframe for adoption of the proposed amendments.

## KEY ISSUES

Staff has identified the following issues in the proposed amendments. These are issues that we believe warrant consideration by the Planning Commission before a recommendation is made to City Council on the amendments.

### A. Are the maximum sizes for electronic display signs appropriate?

The proposed regulations would allow electronic display signs only as part of another sign face and not as standalone signs by themselves. The proposed size limitations for electronic display signs are:

- Downtown: the lesser of 25% of the sign area or 20 sq ft
- Commercial and Industrial areas: 25% of the sign area or 50 sq ft

In the downtown area, the electronic display sign portion of a sign face would be limited to less than 20 sq ft in size if the total sign face is less than 80 sq ft. Signs that are larger than 80 sq ft would be restricted to no more than 20 sq ft for an electronic display sign and would be limited to having less than 25% of their sign area as an electronic display sign.

In commercial and industrial areas, the electronic display sign portion of a sign face would be limited to less than 50 sq ft in size if the total sign face is less than 200 sq ft. Signs that are larger than 200 sq ft would be restricted no more than 50 sq ft for an electronic display sign and would be limited to having less than 25% of their sign area as an electronic display sign. Please see Attachment 4 – Sign Examples, for examples of signs that would and would not be allowed under the proposed regulations.

Staff believes these regulations provide a reasonable allowance for businesses to have electronic display signs, while ensuring that the electronic display sign is not the predominant feature of the sign. The relatively small maximum size for electronic display signs downtown is consistent with the smaller scale, pedestrian oriented nature of the downtown area. There are benefits to electronic display signs in that they allow messages to be easily and safely changed, and that they can be more aesthetically pleasing than internally illuminated readerboard signs with manually-changed letters. Balanced with these benefits, however, is the potential for electronic display signs to be distracting and overbearing. The proposed size limits work with the other limits on brightness and copy change to ensure that electronic display signs retain the benefits described above without being overly distracting or attention-getting.

### B. Are the proposed delay times between changes of copy on an electronic display sign appropriate?

The proposed amendments include limits on how frequently and electronic display sign can change copy. Signs at or under 20 sq ft in area could change copy no more than once every 15 seconds. Signs greater than 20 sq ft in size could change copy no more than once every 3 hours. The current allowance for changes of copy is no more than once every 10 seconds.

Three stakeholders have expressed concern over the more restrictive regulations, stating that the longer delay times diminish the usefulness of the sign to the sign's owner beyond what is reasonable to make a sign safe and non-distracting. In the downtown zones, vehicles and pedestrians are likely to see 2-3 different messages on the sign regardless of

whether the hold time is 10 or 15 seconds. The current rate of change has not generated any noticeably unsafe conditions for travelers.

For larger signs outside of downtown, the commenters have noted that a person traveling by a sign is able to observe the sign for a minute or less. Assuming that the basis of the hold time is to prevent distractions to travelers, a 3 hours hold time is no more effective than a 1-2 minute hold time.

Staff recommends that the Planning Commission modify the proposal and keep the current 10 second hold time for signs of 20 sq ft or less. Staff also recommends that the Planning Commission consider lowering the hold time for signs larger than 20 sq ft to a hold time of 2 minutes.

### **C. Are the standards being applied nonconforming signs appropriate?**

Nonconforming signs are signs that do not conform to any sign ordinance standard. Nonconforming signs are not typically required to come into conformance with the current standards unless the sign is significantly altered or replaced entirely.

The proposed amendments would allow owners of nonconforming signs to add an electronic display sign so long as the addition would not bring the sign any further out of conformance. Staff believes this is a fairly generous allowance, since under the current policy this kind of alteration would typically require a sign to come into conformance with *all* current standards. The proposed allowance is intended to help sign owners convert manual readerboard signs to electronic display signs, since the electronic display signs have a nicer appearance and are safer and easier to operate.

The proposed amendments would also change a specific requirement for nonconforming signs to ensure that the new policies limiting moving and flashing signs also apply to existing electronic signs. The current requirement is that nonconforming signs comply with standards that prohibit flashing signs, rotation signs, and other signs that are specifically prohibited in Subsection 14.12.020. The intent of this regulation is to prohibit signs that are unsafe and distracting, regardless of a sign's nonconforming status. The proposed amendments add to this policy, specifying that nonconforming signs could not have electronic display signs that have copy that flashes, scrolls, travels, or has video display; and that nonconforming signs could not have electronic display signs that exceed the current illumination standards or required hold times for change of copy.

The intent of these proposed amendments is to ensure that all signs, whether they are new or nonconforming, comply with standards that prevent bright and distracting signage. These new policies will have limited impact on existing electronic display signs downtown or at Oak Street Square, particularly if the required hold time for signs less than 20 sq ft in size does not change. This section may have a more of an impact for existing and proposed large electronic display signs on McLoughlin Blvd; these signs are currently subject to a 10 second hold time and limited illumination regulations.

The Planning Commission directed staff early in the amendments process to make allowance for adding an electronic display signs to existing nonconforming signs, though not all Commissioners were in support of the idea. The Planning Commission may also opt to have nonconforming signs subject to the hold times and illumination standards that were in effect at the time a sign permit is applied for. However, staff recommends that compliance with these standards should be required since they are basic safety-related

requirements and compliance can be obtained by adjusting settings on the sign as opposed to requiring physical alteration of the sign size or height.

## CONCLUSIONS

The staff recommends that the Planning Commission vote to recommend that City Council approve the proposed zoning text amendment, File #ZA-11-02, as presented in Attachment 1. The amendments would modify the regulations for electronic display signs to allow them in parts of downtown Milwaukie and limit their size in commercial and industrial areas outside of downtown.

## CODE AUTHORITY AND DECISION-MAKING PROCESS

The proposal is subject to the following provisions of the Milwaukie Zoning Ordinance, which is Title 19 of the Milwaukie Municipal Code (MMC).

- Subsection 19.902.5, Zoning Text Amendments

This application is subject to Type V review, which requires the Planning Commission to make a recommendation to City Council on the proposed legislative amendments.

The Commission has 4 decision-making options as follows.

- A. Forward a recommendation to City Council to approve the proposed amendments and ordinance as proposed.
- B. Forward a recommendation to City Council to approve the proposed amendments and ordinance with modifications.
- C. Continue the hearing to further evaluate the proposed amendments and ordinance.
- D. Forward a recommendation to City Council to deny the proposed amendments and ordinance.

Because this is a legislative proposal, there is no deadline by which the City must make a final decision on the application. However, bringing this code project to a conclusion in the near future due to an October sentencing hearing related to File #AP-10-01 and to allow staff to devote resources to other projects that City Council has directed staff to work on.

## COMMENTS

Notice of the proposed changes was given to parties listed in Attachment 3 – Public Outreach. The following is a summary of the comments received by the City. See Attachment 5 for further details.

- **Lee Holzman, Reliable Credit Union:** Reliable Credit has an existing electronic display sign at the corner of Harrison Street and McLoughlin Blvd. They are opposed to increasing the change copy time from 10 to 15 seconds. While requiring 10 seconds already limits the effectiveness of the sign, increasing to 15 seconds would further limit its effectiveness, and they do not believe the additional 5 seconds would provide any safety or aesthetic benefit.

**Staff Response:** Staff concurs with Mr. Holzman’s comment and recommends leaving Planning Commission consider leaving the hold time for signs under 20 sq ft in area unchanged.

- **Howard Dietrich, North Industrial property owner:** Businesses should be allowed to convert existing signs to LED signs of the same size; not allowing this will be an incentive to keep older signs. The costs of installing an LED sign will naturally limit the size of these signs, even if some of them are larger than the 50 sq ft limit being proposed. He drew a distinction between business signage and billboard advertising, and suggested recent code amendments in Beaverton as a model. (Comment received via phone conversation and not included in Attachment 5)

**Staff Response:** We appreciate the sentiment that replacement of an existing sign with an electronic display sign of the same size should be allowed, though it goes against the policy direction given by the Planning Commission. Cost is a limitation on the size of what may be affordable for a particular business owner, though it is clearly not an insurmountable limit. The City cannot legally use on-site vs. off-site sign content as a way to limit the size of electronic display signs. Staff has not found information about Beaverton’s sign code updates.

- **Melissa Hayden, Security Signs Inc.:** Suggest hold times of 4-8 seconds; higher percentage allowances (50-80%) with no maximum size; opposed to shielding requirements; and in favor of allowing electronic display signs for schools and religious institutions.

**Staff Response:** The decision about the appropriate hold times is open for Planning Commission’s discussion, and may range from the current proposal, to what staff has suggested above, to the suggestion put forth by Ms. Hayden. The Planning Commission has made it clear that area limitations are needed, and may consider less restrictive area limitations if desired. The photos in Attachment 3 may help in this consideration. Staff has removed the shielding requirement referenced in the comment for the proposed amendments. Staff agrees that electronic display signs can be beneficial for schools and religious institutions, and such an allowance may be appropriate. Such a change would affect many properties in the city. Staff believes that appropriate outreach would be needed before considering this change, and is concerned that this would delay the project. Staff suggests that this topic be incorporated into a future update to the sign ordinance.

- **Sonya Kazen, ODOT:** Commented regarding recent rule changes to ODOT’s outdoor advertising sign permit requirements, and suggested that a requirement be added to facilitate coordination and compliance between local permits and the ODOT permit requirements.

**Staff Response:** Staff has added language that coordinates issuance of City permits when a permit is also required by ODOT. Staff has consulted with staff from ODOT on this issue and is comfortable that the proposed language is acceptable to ODOT staff and does not overlap areas of regulation.

- **Terra Fisher, Daktronics, Inc.:** Noted that electronic billboards can be beneficial for broadcasting emergency and safety information; suggest that all existing billboards located along state-regulated highways be subject only to the regulations recently passed by the state; hold times for signs should be 10 seconds for all signs regardless of size and the proposed hold times are overly restrictive; proposed brightness limitations are appropriate for billboard sized signs but may allow overly-bright smaller electronic display signs, and

suggests considering ISA standards; there should not be additional size restrictions on electronic display signs apart from the size restrictions that apply to signs generally; if size limits are imposed, the limit should be 50% rather than 25% and there should not be a maximum size.

**Staff Response:** Staff has recommended that the Planning Commission consider lowering the hold times for electronic display signs. Staff does recognize that electronic display signs do have benefits, though they should be considered along with the aesthetic and safety impacts of electronic display signs. Staff believes that the proposed size limits are a reasonable allowance for electronic display signs, and the Planning Commission can consider increasing this allowance if they see fit. Staff appreciates the suggestions regarding illumination standards and has modified the proposed regulations from what was presented in an earlier draft based on these comments.

- **James Carpentier, International Sign Association:** The proposed hold times are restrictive beyond what is necessary for ensuring that signs are not distracting, and suggests keeping the current 10 second hold times; the illumination limitations are a good step, though they do not adequately measure illumination for small signs – suggestions for appropriate measurement distances were included; suggests that the 25% area and 50 sq ft limits are too restrictive, and would propose an allowance of 50% of the sign area as it is more in line with regulations from other jurisdictions; opposed to the shielding requirement for internally illuminated signs; believes that electronic display signs are an effective way to increase business revenues, which in turn is a benefit for the city.

**Staff Response:** See the staff responses about regarding hold time comments and sign size limitations. Staff has appreciated the suggested illumination measurement standards and has incorporated them into the proposed code. Staff has also changed the shielding requirement that was proposed in an earlier draft of the code. Staff appreciates the benefit that an electronic display sign can bring to a business and strives to craft regulations that allow this type of signage while ensuring that the sign is appropriate for Milwaukee.

## ATTACHMENTS

1. Draft Ordinance
  - Exhibit A: Recommended Findings in Support of Approval
  - Exhibit B: Proposed Amendments to Title 14, Sign Ordinance (Underline/Strikeout Version)
  - Exhibit C: Proposed Amendments to Title 14, Sign Ordinance (Clean Version)
2. Commentary and Underline/Strikeout Edits to Title 14, Sign Ordinance
3. Public Outreach Materials
4. Photographs of Signs with Electronic Display Signs
5. Comments Received

**ORDINANCE NO. \_\_\_\_\_****AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, AMENDING TITLE 14, SIGN ORDINANCE; TO REVISE STANDARDS AND REGULATIONS RELATED TO ELECTRONIC DISPLAY SIGNS (FILE #ZA-11-02).**

**WHEREAS**, the City wishes to enable properties to have signage that is attractive and appropriate while preventing unsafe and unattractive signs; and

**WHEREAS**, the City has become aware of regulations that prohibit electronic signs with changeable copy in areas of downtown; and

**WHEREAS**, the City desires to place reasonable size limits on electronic signs with changeable copy in commercial and industrial areas of the city; and

**WHEREAS**, the City Council and Planning Commission directed staff to prepare amendments to address regulations related to electronic signs with changeable copy; and

**WHEREAS**, notification of the amendments has been provided on the city website, at city facilities, through a press release, to neighborhood leaders, to affected stakeholders, and to parties who own property affected by the proposed amendments; and

**WHEREAS**, the Planning Commission and City Council have held duly advertised public hearings on the amendments, with notice provided per the requirements of the Milwaukie Municipal Code and Oregon Revised Statutes; and

**WHEREAS**, the City finds that the amendments should be effective as immediately as possible to prevent the installation of unsafe signs;

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

Section 1. Findings. Findings of fact in support of the proposed amendments are attached as Exhibit A.

Section 2. Title 14, Sign Ordinance Text Amendment. The Sign Ordinance is amended as described in Exhibit B (underline/strikeout version) and Exhibit C (clean version).

Section 3: Emergency Declared. This ordinance is necessary for the immediate preservation of the peace, health and safety of the City and shall take effect immediately upon passage. Signs are visible from City streets and proper regulation is needed to assure public safety.

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 Ramis PC

\_\_\_\_\_  
Pat DuVal, City Recorder

\_\_\_\_\_  
City Attorney

Document2 (Last revised 2/6/2008)

**Recommended Findings in Support of Approval  
Land Use File ZA-11-02**

1. The City of Milwaukie proposes to amend regulations in Title 14, Sign Ordinance, of the Milwaukie Municipal Code (MMC) The land use application for these amendments are ZA-11-02.
2. The purpose of the proposed code amendments is to address the topic of electronic display signs. Specifically, the proposed amendments would allow electronic display signs in limited area of downtown; limit the maximum size of electronic display signs in commercial and industrial areas outside of downtown, control the illumination and manner of display for electronic display signs, and coordinate review of Milwaukie's sign permit process with the Oregon Department of Transportation's Outdoor Advertising Sign program
3. The proposed amendments are subject to the following provisions of the MMC:
  - MMC Subsection 19.902.5, Zoning Text Amendments
  - MMC Subsection 19.1008, Type V Review Legislative Actions
4. Sections of the Milwaukie Municipal Code or Comprehensive Plan not addressed in these findings are found to be not applicable to the decision on this land use application.
5. Compliance with MMC Subsection 19.902.5, Zoning Text Amendments:

MMC Subsection 19.902.5.B states that Changes to the Milwaukie Municipal Code described by Subsection 19.902.2.B may be approved if the following criteria are met:

- A. *The proposed amendment is consistent with other provisions of the Milwaukie Municipal Code.*

The Planning Commission finds that the proposed amendments are consistent with other provisions of the Milwaukie Municipal Code. No conflicts have been identified with the proposed amendments to Title 14 affecting electronic display signs and any other provisions of the Milwaukie Municipal Code.

- B. *The proposed amendment is consistent with the goals and policies of the Comprehensive Plan.*

The Planning Commission finds that the proposed amendments are consistent with the following portions of the Comprehensive Plan:

Chapter 4 – Land Use

**ECONOMIC BASE AND INDUSTRIAL/ COMMERCIAL LAND USE ELEMENT**  
Objective #11 — Commercial Land Use: Highway Oriented Center; (3) Development  
and signage orientation, design, and lighting shall not produce adverse impacts upon adjacent residential areas.

The Planning Commission finds that the proposed amendments help to minimize the impacts created by electronic readerboard signage by limiting the overall size, type of display, and illumination allowed for electronic readerboard signs.

Objective #13 — McLoughlin Boulevard: “To provide for limited highway service uses along McLoughlin Boulevard while improving the visual and pedestrian-oriented linkages between downtown and the Willamette River, and making McLoughlin Blvd. more attractive.”

The Planning Commission finds that the proposed amendments allow signage that is appropriate for highway service uses along McLoughlin Blvd and allowing for replacement of dated signage with attractive, new, and up-to-date signage.

#### NEIGHBORHOOD ELEMENT

Goal Statement: To preserve and reinforce the stability and diversity of the City’s neighborhoods in order to attract and retain long-term residents and ensure the City’s residential quality and livability.

The Planning Commission finds that the proposed amendments support this goal. Areas where electronic readerboard signs are allowed in Milwaukie are often in close proximity to residential neighborhoods. The proposed amendments help to limit the scale and impacts of such signs to ensure that these areas maintain a good residential quality and a high degree of livability.

#### Chapter 5- Transportation/Public Facilities/Energy Conservation TRANSPORTATION ELEMENT

Goal 2, Safety: Develop and maintain a safe and secure transportation system.

The Planning Commission finds that the regulations would help to ensure signage that is not distracting or unsafe to persons traveling in the right-of-way.

- C. *The proposed amendment is consistent with the Metro Urban Growth Management Functional Plan and relevant regional policies.*

The Planning Commission finds that there are no portions of the Metro Urban Growth Management Functional Plan or other regional policies that address signage.

- D. *The proposed amendment is consistent with relevant State statutes and administrative rules, including the Statewide Planning Goals and Transportation Planning Rule.*

The Planning Commission finds that the proposed amendments are consistent with Oregon Revised Statute 377 and Oregon Administrative Rule 734 in that they promote coordination between state requirements for permitting outdoor advertising signs and Milwaukie’s sign permitting. No other provisions of state statutes or rules have been identified as being applicable to the proposed amendments.

- E. *The proposed amendment is consistent with relevant federal regulations*

The Planning Commission finds that there are no relevant federal regulations except those implemented by state statutes for signage along roadways that are applicable to the proposed amendments.

6. Compliance with MMC Subsection 19.1008, Type V Review:

- A. Type V Public Notice. The Planning Director notified the City's Neighborhood District Associations on August 15, 2011. On August 12, 2011, 30 days prior to the Planning Commission's first hearing on the amendments, staff posted information about the amendments on the City's website and at 4 City facilities that are open to the public. Notice of the proposed amendments were sent to Metro and to the Department of Land Conservation and Development on July 6, 2011. A Measure 56 Notice was sent on August 19, 2011 to property owners for whom the proposed regulations would have an impact on the types of signs allowed.

The Planning Commission finds that the requirements of MMC 19.1008.3 are met.

- B. Type V Decision Authority; Recommendation and Decision. The Planning Commission conducted a public hearing on September 13, 2011 and prepared a recommendation to City Council. City Council will review the Commission's recommendation at a public hearing. City Council finds that the requirements of MMC 19.1008. 4 and 5 are met.

7. The proposed amendments were referred to various City departments, governmental agencies, neighborhood district associations (NDA), and stakeholders for review and comment. They were discussed at several Planning Commission and City Council meetings. Additionally, the most up-to-date draft of the proposed code amendments and commentary document was posted on the City's web site starting on August 12, 2011. Public comments received, including any City responses, are summarized in the staff report.

## TITLE 14 SIGNS

### CHAPTER 14.04 GENERAL PROVISIONS

#### 14.04.020 PURPOSE

The Council of the City of Milwaukie, Oregon, finds and declares that it is necessary to regulate the design, quality of materials, construction, installation, maintenance, electrification, illumination, type, size, number, and location of all signs visible from a right-of-way or lot under other ownership in order to:

- A. Protect the health, safety, property and welfare of the public;
- B. Promote the neat, clean, orderly and attractive appearance of the community;
- C. Provide for the safe installation and maintenance of signs;
- D. (Repealed by Ord. 1965);
- E. Preserve and enhance the unique scenic beauty of Milwaukie;
- F. Accommodate the need of sign installers while avoiding nuisances to nearby properties;
- G. Ensure safe construction, location, installation, and maintenance of signs;
- H. Prevent proliferation of sign clutter;
- I. Minimize distractions for motorists on public highways and streets; ~~and,~~
- J. Regulate solely on the basis of time, place, and manner of a sign, not on its content. ~~and,~~
- K. Coordinate review of where multiple agencies have review authority for a sign permit.

#### 14.04.030 DEFINITIONS

The following words and phrases where used in this chapter shall, for the purposes of this chapter, have the meanings respectively ascribed to them in this section:

“Dissolve” means the changing of an electronic display by means of varying light intensity or pattern, where one display gradually appears to dissipate or lose legibility simultaneously with the gradual appearance and legibility of a subsequent display.

“Fade” means the changing of an electronic display by means of varying light intensity, where one display gradually reduces intensity to the point of being illegible or imperceptible and the subsequent display gradually increases intensity to the point of being legible or capable of being perceived.

“Prohibited electronic display” means any part of the message or display on an electronic display sign that utilizes the following methods of presentation:

“Flash” means sudden or intermittent electrical illumination.

“Scroll” means the changing of an electronic display by the apparent movement of the visual image, such that a new visual image appears to ascend and descend, or appear and disappear from the margins of the sign in a continuous or unfurling movement.

“Travel” means the changing of an electronic display by the apparent horizontal movement of the visual image.

## Proposed Code Amendment

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“Video display” means providing an electronic display in horizontal or vertical formats to create continuously moving images.

~~Sign, Changing (Automatic). “Changing sign (automatic)” means a sign in which the display on the sign face is changed by motors, clockwork, or other mechanical means; or by electric or electronic means, including changes in color or intensity of lights.~~

Sign, Electronic Display. “Electronic display sign” means a sign or portion of a sign on which the message or display is created by bulbs, light emitting diodes, liquid crystal displays, plasma display panels, pixel or sub-pixel technology, or other similar technology.

~~Sign, Moving. “Moving sign” means a signs with a visible moving part or visible mechanical movement, including signs which move in the wind or forced air, or by motors, clockwork, or other mechanical means.~~

Sign, Outdoor Advertising. “Outdoor advertising sign” means a sign that meets the definition of Oregon Revised Statute 377.710(2).

“State highway” means the entire width between the boundary lines of every state highway as defined in ORS 366.005, including but not limited to the Interstate System and the federal-aid primary system.

## CHAPTER 14.08 ADMINISTRATION AND ENFORCEMENT

### 14.08.100 Signs Visible from State Highways

A proposed sign that would be visible from a state highway may require a permit from the Oregon Department of Transportation. The Planning Director may require an applicant for a sign that would be visible from a state highway to submit documentation from the Oregon Department of Transportation regarding whether the proposed sign is considered an outdoor advertising sign that requires a permit from the Oregon Department of Transportation and whether the site is legal for an outdoor advertising sign. The Planning Director may withhold issuance of the permit if there is not conclusive evidence that the sign could be approved or could be conditioned to be approved by the Oregon Department of Transportation.

## CHAPTER 14.12 SIGNS PROHIBITED OR EXEMPTED

### 14.12.020 PROHIBITED SIGNS

It is unlawful for any person to install, display or maintain, and no permit shall be issued for the installation, display or maintenance of, any sign or advertising structure falling within any of the following descriptions:

- A. ~~Moving signs that change more frequently than once every 10 seconds, revolving signs that rotate at more than 6 revolutions per minute, or signs that move in the wind or by forced air, or flashing signs, or any other sign with a visible moving part or visible mechanical movement, including signs which move in the wind or move or change electrically or electronically. These signs are prohibited in order to prevent unduly distracting or hazardous conditions to motorists, cyclists, or pedestrians. Automatic changing signs that change no more than once every 10 seconds, and revolving signs that revolve at 6 revolutions per minute or less, are exempt from this prohibition. Switching the power for illuminated signs on and off 4 or fewer times in one day does not constitute a flashing sign.~~
- R. Electronic display signs that display message or copy using any prohibited electronic display methods, as defined in Section 14.04.030.

## CHAPTER 14.16 SIGN DISTRICTS

### 14.16.060 DOWNTOWN ZONES

No sign shall be installed or maintained in the DC, DS, DO, DR and DOS Zones, except as allowed under Section 14.12.010 Exempted Signs, or as otherwise noted in this section.

#### H. Illumination

Illuminated signs may be permitted subject to the following:

1. Signs with opaque letters or symbols that are backlit, having a light source behind the opaque area and not directly visible from in front of the sign, are permitted.
2. Par spot or reflective-type bulbs may be used for indirect illumination of the display surface if properly shielded from direct glare onto streets.
3. Awning signs shall not be internally illuminated. Features on an awning sign may be externally illuminated subject to review by the Design and Landmarks Committee, per Section 19.1011 Design Review Meetings, and approval by the Planning Commission, per Section 19.1006 Type III review, according to the following criteria:
  - a. Sign lighting should be designed as an integral component of the building and sign composition.
  - b. Sign lighting should be designed primarily for the enhancement of the pedestrian environment along adjacent streets and open spaces.
  - c. Lighting should contribute to a sign that is architecturally compatible with the character of the area.
4. Sign illumination shall be directed away from, and not be reflected upon, adjacent premises.
5. Internally illuminated cabinet signs are discouraged in the downtown zones. Internal illumination of cabinet signs may be permitted subject to review by the Design and Landmarks Committee, per Section 19.1011 Design Review Meetings, and approval by the Planning Commission, per Section 19.1006 Type III review, according to the following criteria:
  - a. The sign should be a unique design that responds to the Milwaukie Downtown Design Guidelines.
  - b. The sign copy should be lighter than the sign background.
  - c. The sign background should use a predominance of dark color or be opaque when the light source is on.
6. Electronic display signs are permitted for properties that have frontage on SE McLoughlin Blvd. subject to the following standards:
  - a. An electronic display sign may be included only as part of a larger sign and the electronic display portion of the sign and is subject to the more restrictive of the following size limitations:
    - (1) 25% of the size of the sign face that contains the electronic display sign, abuts the electronic display sign, or is on the same sign structure as the electronic display sign.
    - (2) 20 square feet.

## Proposed Code Amendment

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- b. An electronic display sign shall be primarily visible from and oriented toward SE McLoughlin Blvd, and not toward any other street on which the property has frontage.
- c. Illumination for an electronic display sign is subject to the standards of Section 14.24.020.G.1.
- d. The manner of display on electronic display signs shall comply with the standards in Section 14.24.020.G.3.
- e. Incorporating an electronic display sign within an existing non-conforming sign is allowed subject to the regulations of Section 14.28.020.A.3.b.

## CHAPTER 14.24 SIGN CONSTRUCTION, MAINTENANCE, AND LIGHTING

### 14.24.020 SIGN LIGHTING

- A. All lamps or bulbs exposed to direct view shall be limited to 25 watts or less capacity.
- B. When neon tubing is employed on the exterior or ~~inferior~~ interior of a sign, the capacity of such tubing shall not exceed 300 milliamperes rating for white tubing nor 100 milliamperes rating for colored tubing.
- C. When fluorescent tubes are used for interior illumination of a sign, such illumination shall not exceed illumination equivalent to 800 milliamperes rating tubes behind a Plexiglas face with tubes spaced at least 9 inches apart, center to center.
- D. Lighting from any sign may not directly, or indirectly from reflection, cause illumination on other properties in excess of 0.5 foot candles of light.
- E. In the event of a conflict between the standards in this section and a specific standard in the regulations for a sign district, the sign district regulations shall prevail.
- F. Other types of illumination not described by Subsections 14.24.020.A-C, such as light emitting diodes and other similar technology, are allowed for interior or exterior illumination of a sign if all other regulations of Title 14 are met.
- G. Electronic display signs are allowed in the Commercial sign district (Section 14.16.040), the Manufacturing sign district (Section 14.16.050), subject to the standards below. Electronic display signs are allowed in the Downtown sign district per Subsection 14.16.060.H.6 and the standards below.

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**Proposed Code Amendment**


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1. Illumination.

- a. An electronic display sign may not have an illumination intensity of more than 0.3 foot candles over ambient light, measured at the distance specified by the following calculation:

$$\text{Measurement distance} = \sqrt{(\text{sign face area} \times 100)}$$

The measurement shall be taken as the difference in illumination between the electronic display sign turned off and the electronic display sign displaying either a solid white screen for multicolor displays or a solid single-color screen for single-color display. To the degree practicable, the measuring device shall be parallel to the plane of the sign face and the measurement shall be made from a location that is perpendicular the plane of the sign face. The specified distance shall be the shortest straight-line distance to the sign face, including horizontal and vertical distance from the sign if the sign is elevated.

- b. The sign shall have a mechanism that automatically adjusts the illumination level to comply with the standards in Subsection 14.24.020.G.1.a.
- c. In addition to the standards of Subsection 14.24.020.G.1.a., no electronic display sign shall be brighter than necessary for clear and adequate visibility, or of such brilliance or intensity as to present a hazard to persons traveling in the right of way. Upon notice by the Planning Director that a sign is out of compliance with these standards, the owner or operator of an electronic display sign shall immediately adjust the illumination of the sign.
2. Size. An electronic display sign in the Commercial sign district or Manufacturing sign district may be included only as part of a larger sign and the electronic display portion of the sign and is subject to the more restrictive of the size limitations below. Size regulations for signs in the downtown sign district are as described in Subsection 14.16.060.H.6.
- a. 25% of the size of the sign face that contains the electronic display sign, abuts the electronic display sign, or is on the same sign structure as the electronic display sign.
- b. 50 square feet.
3. Display.

- a. The message or copy on an electronic display sign with an area of 20 square feet or less is allowed to change no more than once every 15 seconds. The change in message or copy may occur instantaneously or may fade or dissolve with a transition time of no more than 2 seconds between each separate message or display.
- b. The message or copy on an electronic display sign with an area of more than 20 square feet is allowed to change no more than once every 3 hours. The change in message or copy is required fade or dissolve with a transition time of no more than 2 seconds between each separate message or display.

H. Shielding.

The purpose of the regulations below is to prevent light pollution from illuminated signs into the sky. The light source for externally illuminated signs with a sign face of 100 square feet

**Proposed Code Amendment**

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or more shall have a cutoff angle of 90 degrees or greater to ensure that lighting is not directed upward.

**CHAPTER 14.28 REMOVAL OF SIGNS IN VIOLATION**

**14.28.020 NONCONFORMING SIGN**

A. Time Limit

1. Except as provided in Subsection 14.28.020.A.4, signs that were in compliance with applicable regulations when installed; but that become nonconforming as a result of adoption, modification, or applicability of the City's sign regulations; may remain in place for 10 years after the date they became nonconforming but shall be removed or brought into compliance on or before 10 years plus 1 day of the date they became nonconforming.
2. (Repealed by Ord. 1965)
3. Any sign which is structurally altered, relocated, or replaced shall immediately be brought into conformance with all of the provisions of this chapter- , with the following exceptions:
  - a. A nonconforming sign in all zones may be maintained or undergo a change of copy or image without complying with the requirements of this chapter.
  - b. The inclusion of an electronic display sign within the existing display area of a non-conforming sign is allowed if the addition of the electronic message sign does not cause the sign to go further out of conformance
4. The following provisions of this code relating to flashing signs, par spot lights, revolving beacons, revolving signs, banners, streamers, strings of lights, and temporary signs are applicable to all signs, notwithstanding Subsection 14.28.020.A.1: Subsections 14.12.020.A, 14.12.020.C, 14.12.020.D, 14.12.020.R, and 14.24.020.G.1. Compliance with these subsections is required regardless of any prior legal nonconforming status of the sign.

## TITLE 14 SIGNS

### CHAPTER 14.04 GENERAL PROVISIONS

#### 14.04.020 PURPOSE

The Council of the City of Milwaukie, Oregon, finds and declares that it is necessary to regulate the design, quality of materials, construction, installation, maintenance, electrification, illumination, type, size, number, and location of all signs visible from a right-of-way or lot under other ownership in order to:

- A. Protect the health, safety, property and welfare of the public;
- B. Promote the neat, clean, orderly and attractive appearance of the community;
- C. Provide for the safe installation and maintenance of signs;
- D. (Repealed by Ord. 1965);
- E. Preserve and enhance the unique scenic beauty of Milwaukie;
- F. Accommodate the need of sign installers while avoiding nuisances to nearby properties;
- G. Ensure safe construction, location, installation, and maintenance of signs;
- H. Prevent proliferation of sign clutter;
- I. Minimize distractions for motorists on public highways and streets;
- J. Regulate solely on the basis of time, place, and manner of a sign, not on its content and,
- K. Coordinate review of where multiple agencies have review authority for a sign permit.

#### 14.04.030 DEFINITIONS

The following words and phrases where used in this chapter shall, for the purposes of this chapter, have the meanings respectively ascribed to them in this section:

“Dissolve” means the changing of an electronic display by means of varying light intensity or pattern, where one display gradually appears to dissipate or lose legibility simultaneously with the gradual appearance and legibility of a subsequent display.

“Fade” means the changing of an electronic display by means of varying light intensity, where one display gradually reduces intensity to the point of being illegible or imperceptible and the subsequent display gradually increases intensity to the point of being legible or capable of being perceived.

“Prohibited electronic display” means any part of the message or display on an electronic display sign that utilizes the following methods of presentation:

“Flash” means sudden or intermittent electrical illumination.

“Scroll” means the changing of an electronic display by the apparent movement of the visual image, such that a new visual image appears to ascend and descend, or appear and disappear from the margins of the sign in a continuous or unfurling movement.

“Travel” means the changing of an electronic display by the apparent horizontal movement of the visual image.

## **Proposed Code Amendment**

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“Video display” means providing an electronic display in horizontal or vertical formats to create continuously moving images.

Sign, Electronic Display. “Electronic display sign” means a sign or portion of a sign on which the message or display is created by bulbs, light emitting diodes, liquid crystal displays, plasma display panels, pixel or sub-pixel technology, or other similar technology.

Sign, Moving. “Moving sign” means a signs with a visible moving part or visible mechanical movement, including signs which move in the wind or forced air, or by motors, clockwork, or other mechanical means.

Sign, Outdoor Advertising. “Outdoor advertising sign” means a sign that meets the definition of Oregon Revised Statute 377.710(2).

“State highway” means the entire width between the boundary lines of every state highway as defined in ORS 366.005, including but not limited to the Interstate System and the federal-aid primary system.

### **CHAPTER 14.08 ADMINISTRATION AND ENFORCEMENT**

#### **14.08.100 Signs Visible from State Highways**

A proposed sign that would be visible from a state highway may require a permit from the Oregon Department of Transportation. The Planning Director may require an applicant for a sign that would be visible from a state highway to submit documentation from the Oregon Department of Transportation regarding whether the proposed sign is considered an outdoor advertising sign that requires a permit from the Oregon Department of Transportation and whether the site is legal for an outdoor advertising sign. The Planning Director may withhold issuance of the permit if there is not conclusive evidence that the sign could be approved or could be conditioned to be approved by the Oregon Department of Transportation.

### **CHAPTER 14.12 SIGNS PROHIBITED OR EXEMPTED**

#### **14.12.020 PROHIBITED SIGNS**

It is unlawful for any person to install, display or maintain, and no permit shall be issued for the installation, display or maintenance of, any sign or advertising structure falling within any of the following descriptions:

- A. Moving signs that change more frequently than once every 10 seconds, revolving signs that rotate at more than 6 revolutions per minute, or signs that move in the wind or by forced air. These signs are prohibited in order to prevent unduly distracting or hazardous conditions to motorists, cyclists, or pedestrians.
- R. Electronic display signs that display message or copy using any prohibited electronic display methods, as defined in Section 14.04.030.

### **CHAPTER 14.16 SIGN DISTRICTS**

#### **14.16.060 DOWNTOWN ZONES**

No sign shall be installed or maintained in the DC, DS, DO, DR and DOS Zones, except as allowed under Section 14.12.010 Exempted Signs, or as otherwise noted in this section.

#### **H. Illumination**

Illuminated signs may be permitted subject to the following:

**Proposed Code Amendment**

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1. Signs with opaque letters or symbols that are backlit, having a light source behind the opaque area and not directly visible from in front of the sign, are permitted.
2. Par spot or reflective-type bulbs may be used for indirect illumination of the display surface if properly shielded from direct glare onto streets.
3. Awning signs shall not be internally illuminated. Features on an awning sign may be externally illuminated subject to review by the Design and Landmarks Committee, per Section 19.1011 Design Review Meetings, and approval by the Planning Commission, per Section 19.1006 Type III review, according to the following criteria:
  - a. Sign lighting should be designed as an integral component of the building and sign composition.
  - b. Sign lighting should be designed primarily for the enhancement of the pedestrian environment along adjacent streets and open spaces.
  - c. Lighting should contribute to a sign that is architecturally compatible with the character of the area.
4. Sign illumination shall be directed away from, and not be reflected upon, adjacent premises.
5. Internally illuminated cabinet signs are discouraged in the downtown zones. Internal illumination of cabinet signs may be permitted subject to review by the Design and Landmarks Committee, per Section 19.1011 Design Review Meetings, and approval by the Planning Commission, per Section 19.1006 Type III review, according to the following criteria:
  - a. The sign should be a unique design that responds to the Milwaukie Downtown Design Guidelines.
  - b. The sign copy should be lighter than the sign background.
  - c. The sign background should use a predominance of dark color or be opaque when the light source is on.
6. Electronic display signs are permitted for properties that have frontage on SE McLoughlin Blvd. subject to the following standards:
  - a. An electronic display sign may be included only as part of a larger sign and the electronic display portion of the sign and is subject to the more restrictive of the following size limitations:
    - (1) 25% of the size of the sign face that contains the electronic display sign, abuts the electronic display sign, or is on the same sign structure as the electronic display sign.
    - (2) 20 square feet.
  - b. An electronic display sign shall be primarily visible from and oriented toward SE McLoughlin Blvd, and not toward any other street on which the property has frontage.
  - c. Illumination for an electronic display sign is subject to the standards of Section 14.24.020.G.1.
  - d. The manner of display on electronic display signs shall comply with the standards in Section 14.24.020.G.3.

## **Proposed Code Amendment**

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- e. Incorporating an electronic display sign within an existing non-conforming sign is allowed subject to the regulations of Section 14.28.020.A.3.b.

### **CHAPTER 14.24 SIGN CONSTRUCTION, MAINTENANCE, AND LIGHTING**

#### **14.24.020 SIGN LIGHTING**

- A. All lamps or bulbs exposed to direct view shall be limited to 25 watts or less capacity.
- B. When neon tubing is employed on the exterior or interior of a sign, the capacity of such tubing shall not exceed 300 milliamperes rating for white tubing nor 100 milliamperes rating for colored tubing.
- C. When fluorescent tubes are used for interior illumination of a sign, such illumination shall not exceed illumination equivalent to 800 milliamperes rating tubes behind a Plexiglas face with tubes spaced at least 9 inches apart, center to center.
- D. Lighting from any sign may not directly, or indirectly from reflection, cause illumination on other properties in excess of 0.5 foot candles of light.
- E. In the event of a conflict between the standards in this section and a specific standard in the regulations for a sign district, the sign district regulations shall prevail.
- F. Other types of illumination not described by Subsections 14.24.020.A-C, such as light emitting diodes and other similar technology, are allowed for interior or exterior illumination of a sign if all other regulations of Title 14 are met.
- G. Electronic display signs are allowed in the Commercial sign district (Section 14.16.040), the Manufacturing sign district (Section 14.16.050), subject to the standards below. Electronic display signs are allowed in the Downtown sign district per Subsection 14.16.060.H.6 and the standards below.

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**Proposed Code Amendment**

## 1. Illumination.

- a. An electronic display sign may not have an illumination intensity of more than 0.3 foot candles over ambient light, measured at the distance specified by the following calculation:

$$\text{Measurement distance} = \sqrt{(\text{sign face area} \times 100)}$$

The measurement shall be taken as the difference in illumination between the electronic display sign turned off and the electronic display sign displaying either a solid white screen for multicolor displays or a solid single-color screen for single-color display. To the degree practicable, the measuring device shall be parallel to the plane of the sign face and the measurement shall be made from a location that is perpendicular to the plane of the sign face. The specified distance shall be the shortest straight-line distance to the sign face, including horizontal and vertical distance from the sign if the sign is elevated.

- b. The sign shall have a mechanism that automatically adjusts the illumination level to comply with the standards in Subsection 14.24.020.G.1.a.
- c. In addition to the standards of Subsection 14.24.020.G.1.a., no electronic display sign shall be brighter than necessary for clear and adequate visibility, or of such brilliance or intensity as to present a hazard to persons traveling in the right of way. Upon notice by the Planning Director that a sign is out of compliance with these standards, the owner or operator of an electronic display sign shall immediately adjust the illumination of the sign.
2. Size. An electronic display sign in the Commercial sign district or Manufacturing sign district may be included only as part of a larger sign and the electronic display portion of the sign and is subject to the more restrictive of the size limitations below. Size regulations for signs in the downtown sign district are as described in Subsection 14.16.060.H.6.
- a. 25% of the size of the sign face that contains the electronic display sign, abuts the electronic display sign, or is on the same sign structure as the electronic display sign.
- b. 50 square feet.
3. Display.
- a. The message or copy on an electronic display sign with an area of 20 square feet or less is allowed to change no more than once every 15 seconds. The change in message or copy may occur instantaneously or may fade or dissolve with a transition time of no more than 2 seconds between each separate message or display.
- b. The message or copy on an electronic display sign with an area of more than 20 square feet is allowed to change no more than once every 3 hours. The change in message or copy is required fade or dissolve with a transition time of no more than 2 seconds between each separate message or display.

## H. Shielding.

The purpose of the regulations below is to prevent light pollution from illuminated signs into the sky. The light source for externally illuminated signs with a sign face of 100 square feet

## Proposed Code Amendment

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or more shall have a cutoff angle of 90 degrees or greater to ensure that lighting is not directed upward.

### CHAPTER 14.28 REMOVAL OF SIGNS IN VIOLATION

#### 14.28.020 NONCONFORMING SIGN

##### A. Time Limit

1. Except as provided in Subsection 14.28.020.A.4, signs that were in compliance with applicable regulations when installed; but that become nonconforming as a result of adoption, modification, or applicability of the City's sign regulations; may remain in place for 10 years after the date they became nonconforming but shall be removed or brought into compliance on or before 10 years plus 1 day of the date they became nonconforming.
2. (Repealed by Ord. 1965)
3. Any sign which is structurally altered, relocated, or replaced shall immediately be brought into conformance with all of the provisions of this chapter , with the following exceptions:
  - a. A nonconforming sign in all zones may be maintained or undergo a change of copy or image without complying with the requirements of this chapter.
  - b. The inclusion of an electronic display sign within the existing display area of a nonconforming sign is allowed if the addition of the electronic message sign does not cause the sign to go further out of conformance
4. The following provisions of this code are applicable to all signs: Subsections 14.12.020.A, 14.12.020.C, 14.12.020.D, 14.12.020.R, and 14.24.020.G.1. Compliance with these subsections is required regardless of any prior legal nonconforming status of the sign.

## Sign Code Updates for Electronic Display Signs

THIS DRAFT INCLUDES ONLY CHAPTERS AND SECTIONS OF CODE WITH PROPOSED AMENDMENTS AND SOME SURROUNDING SECTIONS FOR CONTEXT. CODE SECTIONS NOT INCLUDED IN THIS DRAFT WOULD NOT BE AMENDED.

### 14.04.020 PURPOSE

K. Include inter-jurisdictional coordination to the purpose section.

### 14.04.030 DEFINITIONS

"Dissolve" - new definition, describes one method that is allowed for larger electronic display signs to switch between messages.

"Fade" - new definition, describes a second method that is allowed for larger electronic display signs to switch between messages.

"Prohibited electronic display" - new definition, describes manners of display on an electronic display sign that are prohibited. The manners of display listed in this section are based on definitions within Salem's code.

Sign, Changing (Automatic). - a definition proposed for deletion. This definition included signs that have physical moving parts or signs that had electronic messages. New definitions for 'moving sign' and 'electronic display sign' are proposed with the goal of better describing each type of sign.

Sign, Electronic Display. - new definition, intended to cover broad array of electronic signs, LEDs readerboards etc.

Sign, Moving. - new definition, focused on signs that have physically moving parts; based on a portion of the definition for 'changing sign' proposed for deletion.

Sign, Outdoor Advertising - new definition, clarifies that this term, when used in the Milwaukie Municipal Code, refers to the definition established in the ORS.

"State highway" - new definition added for coordination with the ODOT outdoor advertising sign rule. Definition is lifted from ORS 337.

### 14.08.100 SIGNS VISIBLE FROM STATE HIGHWAYS

New section of code in the administrative provisions, and applies to all signs - not just LED signs. It allows the Planning Director to have the applicant submit documentation from ODOT for any sign visible from a state highway about whether the sign is an outdoor advertising sign and whether the site is legal for an outdoor advertising sign. It also allows the Planning Director to withhold issuance of a city sign permit unless it is clear that the sign could be approved by ODOT.

## Proposed Code Amendment with Commentary

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### 14.12.020 PROHIBITED SIGNS

- A. Moving signs ... amendments to existing prohibition, but limits this subsection to signs that physically move. Portions dealing with electronic changing is covered in the new prohibition in "R".
- R. Prohibition that says electronic display signs cannot use any of the prohibits manners of display. This would be a blanket rule for signs downtown and in other parts of the city.

### 14.16.060 DOWNTOWN ZONES

#### H. Illumination

- 6. This is a new subsection that sets the location and size regulations for allowing electronic display signs downtown. Electronic display signs would be allowed along McLoughlin Blvd, and would need to be oriented toward that right of way. The electronic display sign would be allowed as part of a larger permitted sign, rather than a standalone sign, and the size limit is the lesser of 20 sq ft or 25% of the overall sign face. These signs would be approvable through staff review of a sign permit, and would not require public notice or discretionary review by the Design and Landmark Committee or Planning Commission.

### 14.24.020 SIGN LIGHTING

- F. Helps to clarify that other lighting technology not specifically mentioned in the code (i.e., other than incandescent, fluorescent, and neon) can be used for interior or exterior sign lighting, so long as the other regulations of the chapter are met.
- G. Allows electronic display signs are allowed in the Commercial and Manufacturing sign districts, and downtown per Subsection 14.16.060.H.6, so long as they meet the standards in this section.
  - 1. Illumination levels.
    - a. The proposed illumination limits are consistent with literature provided to staff by the International Sign Association. The standards that ODOT recently adopted for their regulation of digital billboards is based on this methodology.
    - b. An automatic adjustment mechanism is required to keep the sign's illumination level consistent with the illumination standards.
    - c. This standard is allows the Planning Director discretion to require a sign's illumination level, even if it complies with subsection 'a', to be lowered if it presents a safety hazard or is unduly distracting.

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**Proposed Code Amendment with Commentary**

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2. Size - electronic display sign would be allowed as part of a larger permitted sign, rather than a standalone sign, and the proposed size limitations for an electronic display sign are the lesser of 25% of the size of the sign face OR 50 square feet.
  3. Display - electronic display signs that are 20 sq ft in size or less can change copy no more than once every 15 seconds. Electronic display signs that are over 20 sq ft can change copy no more than once every 3 hours. Smaller signs may switch instantaneously between messages or use a fade or dissolve effect to transition between messages. Larger signs are required to use a fade or dissolve effect. Staff from Salem suggested this as a way to make changes in message less distracting.
- H. Shielding - these requirements would require measure to prevent light pollution for larger sign sizes. This applies only to larger signs with exterior illumination and requires that externally illuminated signs must have their lights oriented horizontally or lower.

**14.28.020 NONCONFORMING SIGN**

3. Revisions to this section of code. Same basic policy as the current code, with the additional exemption that an electronic display sign can be added if it does not cause the sign to go further out of conformance.
4. Added sign illumination standards as standards that all signs need to comply with, regardless of whether they are/were non-conforming.

**Proposed Code Amendment with Commentary**

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THIS DRAFT INCLUDES ONLY CHAPTERS AND SECTIONS OF CODE WITH PROPOSED AMENDMENTS AND SOME SURROUNDING SECTIONS FOR CONTEXT. CODE SECTIONS NOT INCLUDED IN THIS DRAFT WOULD NOT BE AMENDED.

**TITLE 14 SIGNS**

**CHAPTER 14.04 GENERAL PROVISIONS**

**14.04.010 TITLE**

This chapter shall be known and may be cited as the “Sign Ordinance of the City of Milwaukie, Oregon.”

**14.04.020 PURPOSE**

The Council of the City of Milwaukie, Oregon, finds and declares that it is necessary to regulate the design, quality of materials, construction, installation, maintenance, electrification, illumination, type, size, number, and location of all signs visible from a right-of-way or lot under other ownership in order to:

- A. Protect the health, safety, property and welfare of the public;
- B. Promote the neat, clean, orderly and attractive appearance of the community;
- C. Provide for the safe installation and maintenance of signs;
- D. (Repealed by Ord. 1965);
- E. Preserve and enhance the unique scenic beauty of Milwaukie;
- F. Accommodate the need of sign installers while avoiding nuisances to nearby properties;
- G. Ensure safe construction, location, installation, and maintenance of signs;
- H. Prevent proliferation of sign clutter;
- I. Minimize distractions for motorists on public highways and streets; ~~and~~,
- J. Regulate solely on the basis of time, place, and manner of a sign, not on its content ~~and~~,
- K. Coordinate review of where multiple agencies have review authority for a sign permit.

**14.04.030 DEFINITIONS**

The following words and phrases where used in this chapter shall, for the purposes of this chapter, have the meanings respectively ascribed to them in this section:

“Dissolve” means the changing of an electronic display by means of varying light intensity or pattern, where one display gradually appears to dissipate or lose legibility simultaneously with the gradual appearance and legibility of a subsequent display.

“Fade” means the changing of an electronic display by means of varying light intensity, where one display gradually reduces intensity to the point of being illegible or imperceptible and the subsequent display gradually increases intensity to the point of being legible or capable of being perceived.

“Prohibited electronic display” means any part of the message or display on an electronic display sign that utilizes the following methods of presentation:

## Proposed Code Amendment with Commentary

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"Flash" means sudden or intermittent electrical illumination.

"Scroll" means the changing of an electronic display by the apparent movement of the visual image, such that a new visual image appears to ascend and descend, or appear and disappear from the margins of the sign in a continuous or unfurling movement.

"Travel" means the changing of an electronic display by the apparent horizontal movement of the visual image.

"Video display" means providing an electronic display in horizontal or vertical formats to create continuously moving images.

~~Sign, Changing (Automatic). "Changing sign (automatic)" means a sign in which the display on the sign face is changed by motors, clockwork, or other mechanical means; or by electric or electronic means, including changes in color or intensity of lights.~~

Sign, Electronic Display. "Electronic display sign" means a sign or portion of a sign on which the message or display is created by bulbs, light emitting diodes, liquid crystal displays, plasma display panels, pixel or sub-pixel technology, or other similar technology.

Sign, Moving. "Moving sign" means a signs with a visible moving part or visible mechanical movement, including signs which move in the wind or forced air, or by motors, clockwork, or other mechanical means.

Sign, Outdoor Advertising. "Outdoor advertising sign" means a sign that meets the definition of Oregon Revised Statute 377.710(2).

"State highway" means the entire width between the boundary lines of every state highway as defined in ORS 366.005, including but not limited to the Interstate System and the federal-aid primary system.

## CHAPTER 14.08 ADMINISTRATION AND ENFORCEMENT

### **14.08.100 Signs Visible from State Highways**

A proposed sign that would be visible from a state highway may require a permit from the Oregon Department of Transportation. The Planning Director may require an applicant for a sign that would be visible from a state highway to submit documentation from the Oregon Department of Transportation regarding whether the proposed sign is considered an outdoor advertising sign that requires a permit from the Oregon Department of Transportation and whether the site is legal for an outdoor advertising sign. The Planning Director may withhold issuance of the permit if there is not conclusive evidence that the sign could be approved or could be conditioned to be approved by the Oregon Department of Transportation.

## CHAPTER 14.12 SIGNS PROHIBITED OR EXEMPTED

### **14.12.020 PROHIBITED SIGNS**

It is unlawful for any person to install, display or maintain, and no permit shall be issued for the installation, display or maintenance of, any sign or advertising structure falling within any of the following descriptions:

- A. Moving signs that change more frequently than once every 10 seconds, revolving signs that rotate at more than 6 revolutions per minute, or signs that move in the wind or by forced air, or flashing signs, or any other sign with a visible moving part or visible mechanical movement, including signs which move in the wind or move or change electrically or

## Proposed Code Amendment with Commentary

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~~electronically. These signs are prohibited in order to prevent unduly distracting or hazardous conditions to motorists, cyclists, or pedestrians. Automatic changing signs that change no more than once every 10 seconds, and revolving signs that revolve at 6 revolutions per minute or less, are exempt from this prohibition. Switching the power for illuminated signs on and off 4 or fewer times in one day does not constitute a flashing sign.~~

- R. Electronic display signs that display message or copy using any prohibited electronic display methods, as defined in Section 14.04.030.

## CHAPTER 14.16 SIGN DISTRICTS

### 14.16.060 DOWNTOWN ZONES

No sign shall be installed or maintained in the DC, DS, DO, DR and DOS Zones, except as allowed under Section 14.12.010 Exempted Signs, or as otherwise noted in this section.

#### H. Illumination

Illuminated signs may be permitted subject to the following:

1. Signs with opaque letters or symbols that are backlit, having a light source behind the opaque area and not directly visible from in front of the sign, are permitted.
2. Par spot or reflective-type bulbs may be used for indirect illumination of the display surface if properly shielded from direct glare onto streets.
3. Awning signs shall not be internally illuminated. Features on an awning sign may be externally illuminated subject to review by the Design and Landmarks Committee, per Section 19.1011 Design Review Meetings, and approval by the Planning Commission, per Section 19.1006 Type III review, according to the following criteria:
  - a. Sign lighting should be designed as an integral component of the building and sign composition.
  - b. Sign lighting should be designed primarily for the enhancement of the pedestrian environment along adjacent streets and open spaces.
  - c. Lighting should contribute to a sign that is architecturally compatible with the character of the area.
4. Sign illumination shall be directed away from, and not be reflected upon, adjacent premises.
5. Internally illuminated cabinet signs are discouraged in the downtown zones. Internal illumination of cabinet signs may be permitted subject to review by the Design and Landmarks Committee, per Section 19.1011 Design Review Meetings, and approval by the Planning Commission, per Section 19.1006 Type III review, according to the following criteria:
  - a. The sign should be a unique design that responds to the Milwaukie Downtown Design Guidelines.
  - b. The sign copy should be lighter than the sign background.
  - c. The sign background should use a predominance of dark color or be opaque when the light source is on.
6. Electronic display signs are permitted for properties that have frontage on SE McLoughlin Blvd. subject to the following standards:

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**Proposed Code Amendment with Commentary**


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- a. An electronic display sign may be included only as part of a larger sign and the electronic display portion of the sign and is subject to the more restrictive of the following size limitations:
  - (1) 25% of the size of the sign face that contains the electronic display sign, abuts the electronic display sign, or is on the same sign structure as the electronic display sign.
  - (2) 20 square feet.
- b. An electronic display sign shall be primarily visible from and oriented toward SE McLoughlin Blvd, and not toward any other street on which the property has frontage.
- c. Illumination for an electronic display sign is subject to the standards of Section 14.24.020.G.1.
- d. The manner of display on electronic display signs shall comply with the standards in Section 14.24.020.G.3.
- e. Incorporating an electronic display sign within an existing non-conforming sign is allowed subject to the regulations of Section 14.28.020.A.3.b.

## **CHAPTER 14.24 SIGN CONSTRUCTION, MAINTENANCE, AND LIGHTING**

### **14.24.020 SIGN LIGHTING**

- A. All lamps or bulbs exposed to direct view shall be limited to 25 watts or less capacity.
- B. When neon tubing is employed on the exterior or ~~inferior~~ interior of a sign, the capacity of such tubing shall not exceed 300 milliamperes rating for white tubing nor 100 milliamperes rating for colored tubing.
- C. When fluorescent tubes are used for interior illumination of a sign, such illumination shall not exceed illumination equivalent to 800 milliamperes rating tubes behind a Plexiglas face with tubes spaced at least 9 inches apart, center to center.
- D. Lighting from any sign may not directly, or indirectly from reflection, cause illumination on other properties in excess of 0.5 foot candles of light.
- E. In the event of a conflict between the standards in this section and a specific standard in the regulations for a sign district, the sign district regulations shall prevail.
- F. Other types of illumination not described by Subsections 14.24.020.A-C, such as light emitting diodes and other similar technology, are allowed for interior or exterior illumination of a sign if all other regulations of Title 14 are met.
- G. Electronic display signs are allowed in the Commercial sign district (Section 14.16.040), the Manufacturing sign district (Section 14.16.050), subject to the standards below. Electronic display signs are allowed in the Downtown sign district per Subsection 14.16.060.H.6 and the standards below.

## Proposed Code Amendment with Commentary

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### 1. Illumination.

- a. An electronic display sign may not have an illumination intensity of more than 0.3 foot candles over ambient light, measured at the distance specified by the following calculation:

$$\text{Measurement distance} = \sqrt{\text{sign face area} \times 100}$$

The measurement shall be taken as the difference in illumination between the electronic display sign turned off and the electronic display sign displaying either a solid white screen for multicolor displays or a solid single-color screen for single-color display. To the degree practicable, the measuring device shall be parallel to the plane of the sign face and the measurement shall be made from a location that is perpendicular the plane of the sign face. The specified distance shall be the shortest straight-line distance to the sign face, including horizontal and vertical distance from the sign if the sign is elevated.

- b. The sign shall have a mechanism that automatically adjusts the illumination level to comply with the standards in Subsection 14.24.020.G.1.a.
- c. In addition to the standards of Subsection 14.24.020.G.1.a., no electronic display sign shall be brighter than necessary for clear and adequate visibility, or of such brilliance or intensity as to present a hazard to persons traveling in the right of way. Upon notice by the Planning Director that a sign is out of compliance with these standards, the owner or operator of an electronic display sign shall immediately adjust the illumination of the sign.
2. Size. An electronic display sign in the Commercial sign district or Manufacturing sign district may be included only as part of a larger sign and the electronic display portion of the sign and is subject to the more restrictive of the size limitations below. Size regulations for signs in the downtown sign district are as described in Subsection 14.16.060.H.6.

- a. 25% of the size of the sign face that contains the electronic display sign, abuts the electronic display sign, or is on the same sign structure as the electronic display sign.
- b. 50 square feet.

### 3. Display.

- a. The message or copy on an electronic display sign with an area of 20 square feet or less is allowed to change no more than once every 15 seconds. The change in message or copy may occur instantaneously or may fade or dissolve with a transition time of no more than 2 seconds between each separate message or display.
- b. The message or copy on an electronic display sign with an area of more than 20 square feet is allowed to change no more than once every 3 hours. The change in message or copy is required fade or dissolve with a transition time of no more than 2 seconds between each separate message or display.

### H. Shielding.

The purpose of the regulations below is to prevent light pollution from illuminated signs into the sky. The light source for externally illuminated signs with a sign face of 100 square feet

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**Proposed Code Amendment with Commentary**

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or more shall have a cutoff angle of 90 degrees or greater to ensure that lighting is not directed upward.

## **CHAPTER 14.28 REMOVAL OF SIGNS IN VIOLATION**

### **14.28.020 NONCONFORMING SIGN**

#### **A. Time Limit**

1. Except as provided in Subsection 14.28.020.A.4, signs that were in compliance with applicable regulations when installed; but that become nonconforming as a result of adoption, modification, or applicability of the City's sign regulations; may remain in place for 10 years after the date they became nonconforming but shall be removed or brought into compliance on or before 10 years plus 1 day of the date they became nonconforming.
2. (Repealed by Ord. 1965)
3. Any sign which is structurally altered, relocated, or replaced shall immediately be brought into conformance with all of the provisions of this chapter- with the following exceptions:
  - a. A nonconforming sign in all zones may be maintained or undergo a change of copy or image without complying with the requirements of this chapter.
  - b. The inclusion of an electronic display sign within the existing display area of a non-conforming sign is allowed if the addition of the electronic message sign does not cause the sign to go further out of conformance
4. ~~The following provisions of this code relating to flashing signs, par spot lights, revolving beacons, revolving signs, banners, streamers, strings of lights, and temporary signs are applicable to all signs, notwithstanding Subsection 14.28.020.A.1: Subsections 14.12.020.A, 14.12.020.C, 14.12.020.D, 14.12.020.R, and 14.24.020.G.1. Compliance with these subsections is required regardless of any prior legal nonconforming status of the sign.~~

#### **B. Notice**

For legally established nonconforming signs that are approaching the end of the 10-year period during which they may be maintained under Subsection 14.28.020.A.1, the City Manager may provide additional notice in anticipation of the date the sign will be required to be removed or made to conform.

## Index of Outreach Materials

1. **City of Milwaukie website on Electronic Display Sign Amendments** – posted online starting August 9, 2011, updated August 12, 2011, on city home page for several weeks
2. **General Public Notice** – posted August 12, 2011 on webpage and at City Hall, Ledding Library, Public Safety Building, and Public Works Facility
3. **Notice to Neighborhood District Associations** – sent August 15, 2011
4. **One-page Project Flyer** – sent with NDA email
5. **Press Release** – sent by Public Affairs Coordinator on August 9, 2011
6. **Email to Stakeholders** – sent to interested stakeholders on August 12, 2011
7. **Measure 56 Notice** – sent August 19, 2011 to properties that would be affected by proposed regulations

# ATTACHMENT 3.1

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» [Planning Commission requests code amendments for electronic signage and billboards](#)



## *Planning Commission requests code amendments for electronic signage and billboards*

## Planning Meetings



The Milwaukie Planning Commission asked staff to prepare a package of code amendments to accomplish two things: loosen the strict rules regarding signage along McLoughlin Boulevard in the Downtown area, and add new rules to put parameters around electronic billboards in other commercial and industrial areas.

The Planning Commission will hold a public hearing on the amendments on Tuesday, Sept. 13, 2011, in City Hall Chambers, at 6:30 p.m. More information about the

[Planning Commission](#)  
Tue, Sep 13th 6:30pm  
City Hall Council Chambers

[Residential Development Standards Steering Committee](#)  
Wed, Sep 21st 5:00pm  
City Hall Conference Room

[Planning Commission](#)  
Tue, Sep 27th 6:30pm  
City Hall Council Chambers

[view all public meetings](#)

hearing is available in the notice available at the bottom of this page.

The amendments recognize that downtown properties fronting McLoughlin Boulevard are different than those closer to Main Street, so the amendments will allow properties along McLoughlin to install small electronic reader board signs. These are currently prohibited throughout downtown.

The amendments pertaining to electronic billboards limit their size and clarify how the City regulates moving and electronic signs. The proposed amendments recommend capping the size of electronic billboards at 50 square feet, or at 25% of the billboard's total size. Additionally, the amendments stipulate how bright the electronic display can be, how long messages should be displayed for before rotating, and prohibit video displays and flashing or scrolling text. The full text of draft code amendments is available in the link at the bottom of this page.

Please contact Ryan Marquardt, Associate Planner, at 503-786-7658 or [marquardtr@ci.milwaukie.or.us](mailto:marquardtr@ci.milwaukie.or.us) if you have questions or want additional information about the amendments.

**Supporting Documents**

-  Draft Code Amendments - August 1, 2011
-  Planning Commission Hearing Notice - September 13, 2011

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- Local Attractions
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- Photo Gallery
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- Boards and Commissions

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- Business Registration Application
- Economic Development
- Purchase a Parking Permit

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- Community Services
- Engineering
- Finance
- Fire
- Human Resources
- Information Systems
- Library
- Maps / GIS
- Municipal Court
- Planning
- Police
- Public Works

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- Online Library Catalog
- Purchase a Parking Permit
- Request a Public Record
- Schedule an Inspection
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POSTED FRIDAY,  
AUGUST 12, 2011

## NOTICE OF PUBLIC HEARING

### Amendments to Regulations for Electronic Display Signs

The **Milwaukie Planning Commission** will hold a public hearing on **Tuesday, September 13, 2011, at 6:30 p.m.**, at the Milwaukie City Hall, 10722 SE Main Street, to consider a proposal initiated by the City of Milwaukie for recommendation on Zoning Text Amendments (File #ZA-11-02). The land use regulations being considered affect rules for electronic display signs.

#### Summary of Proposed Changes

- **Downtown:** Allow electronic display signs for properties in the downtown zones that have frontage on McLoughlin Blvd. The maximum allowed size for electronic display signs downtown would be 25% of the total sign area or 20 square feet, whichever is less. Electronic display signs are not currently allowed anywhere in the downtown zones.
- **Commercial and Industrial Areas:** Establish limits on the size of electronic display signs in commercial and manufacturing areas. The maximum allowed size for electronic display signs downtown would be 25% of the total sign area or 50 square feet, whichever is less. Currently, there are no size limitations for electronic display signs aside from the general size limits applicable to all signs.
- Limit how frequently an electronic display sign can change copy. Electronic display signs at or under 20 square feet in area could change copy once every 15 seconds. Larger signs could change copy once every 3 hours.
- Establish limits on the illumination level of electronic display signs.
- Allow electronic display signs to only display copy or messages that do not flash, include video, or include moving text or images.
- Require shielding to prevent light pollution for new illuminated signs over 50 square feet in area.
- Allow an electronic display sign to be added to an existing sign without requiring the existing sign to comply with all current height and size regulations.

**To learn more about a proposal:** Call the staff contact listed below. The staff report on the proposal will also be available for public viewing after 8 a.m. on Wednesday, **September 7, 2011**, at the Planning Department, 6101 SE Johnson Creek Blvd; Ledding Library, 10660 SE 21st Ave; City Hall, 10722 SE Main St; and online at <http://www.ci.milwaukie.or.us/meetings>. Copies of information in the file can be obtained for a reasonable fee. Copies of applicable City ordinances and the Comprehensive Plan are also available for review at the locations listed above.

**To comment on a proposal:** You are invited to attend this hearing or submit comments in writing before the meeting time. You may send written comments in advance to the staff contact listed below, or you may submit your comments in person at the hearing. If you want to present verbal testimony, either pro, con, or to raise questions, you will be invited to speak following the applicant's testimony.

**Failure to raise an issue with sufficient specificity, and accompanied by statements or evidence sufficient to afford the responsible parties an opportunity to respond to the issue, will preclude any appeal on that issue to the Land Use Board of Appeals (LUBA).**

If you have any questions, please contact Ryan Marquardt in the Planning Department at (503) 786-7658 or [marquardt@ci.milwaukie.or.us](mailto:marquardt@ci.milwaukie.or.us).

*The City of Milwaukie is committed to providing equal access to information and public meetings per the Americans with Disabilities Act (ADA). If you need special accommodations, please call 503-786-7600 at least 48 hours prior to the meeting.*

**Marquardt, Ryan**

---

**From:** Wheeler, Grady  
**Sent:** Monday, August 15, 2011 5:00 PM  
**To:** 'chantelle@markgamba.com'; 'dlasch@comcast.net'; 'dollym-h@hotmail.com';  
'donnartb@comcast.net'; 'evenstar@hevanet.com'; 'garymic@gmail.com';  
'LinwoodNA@msn.com'; 'maryking@spiritone.com'; 'MattRinker@hotmail.com';  
'paul.hawkins@daimler.com'; 'pemczum@comcast.net'; 'pepi.anderson6@gmail.com';  
'ray1bryan2@gmail.com'; 'ronanddebby@juno.com'; 'saltriversucker1@comcast.net';  
'sarah@thegardensmith.com'; 'wdrendel1@aol.com'; Marquardt, Ryan  
**Subject:** Milwaukie Planning Department Information

Hello Neighborhood Leaders and Land Use Chairs,

Associate Planner Ryan Marquardt and I put together this information regarding the proposed zoning amendments for electronic signage and billboards in the City.

We hope this format presents the information in a straight-forward manner. Please share with those you think would be interested.



Billboard and  
electronic signage

Thanks,

Grady

**Grady C. Wheeler**  
**Public Affairs Coordinator**

City of Milwaukie  
10722 SE Main St. | Milwaukie, OR 97222  
T 503.786.7503 | C 503.593.6190

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# Electric Sign Code Amendments Project

PLANNING DEPARTMENT - PROJECT MANAGER RYAN MARQUARDT - (503) 786-7658



The Milwaukie Planning Commission has asked staff to prepare a package of code amendments to accomplish two things: loosen the strict rules regarding signage along McLoughlin Boulevard in the Downtown area, and add new rules to put parameters around electronic billboards in other commercial and industrial areas.

The Planning Commission will hold a public hearing on the amendments on Tuesday, Sept. 13, 2011, in City Hall Chambers, at 6:30 p.m.

The amendments recognize that downtown properties fronting McLoughlin Boulevard are different than those closer to Main Street, so the amendments will allow properties along McLoughlin to install small electronic reader board signs. These are currently prohibited throughout downtown.

The amendments pertaining to electronic billboards limit their size and clarify how the

City regulates moving and electronic signs. The proposed amendments recommend capping the size of electronic billboards at 50 square feet, or at 25% of the billboard's total size. Additionally, the amendments stipulate how bright the electronic display can be, how long messages should be displayed for before rotating, and prohibit video displays and flashing or scrolling text.

For more information regarding these proposed amendments, please visit the "Electronic Signage Amendments" project page on the Planning Department's portion of the City's website - [www.cityofmilwaukie.org](http://www.cityofmilwaukie.org).

### CONTACT INFORMATION

Associate Planner Ryan Marquardt  
 P) (503) 786-7658  
 E) [marquardtr@ci.milwaukie.or.us](mailto:marquardtr@ci.milwaukie.or.us)

**Marquardt, Ryan**

---

**From:** Wheeler, Grady  
**Sent:** Tuesday, August 09, 2011 1:17 PM  
**Subject:** Milwaukie Press Release: Planning Commission requests zoning amendments for electronic signage and billboards



August 9, 2011  
Contact: Grady Wheeler: (503) 786-7503

PRESS RELEASE

**Planning Commission requests code amendments for electronic signage and billboards**

The Milwaukie Planning Commission asked staff to prepare a package of code amendments to accomplish two things: loosen the strict rules regarding signage along McLoughlin Boulevard in the Downtown area, and add new rules to put parameters around electronic billboards in other commercial and industrial areas.

The Planning Commission will hold a public hearing on the amendments on Tuesday, Sept. 13, 2011, in City Hall Chambers, at 6:30 p.m.

The amendments recognize that downtown properties fronting McLoughlin Boulevard are different than those closer to Main Street, so the amendments will allow properties along McLoughlin to install small electronic reader board signs. These are currently prohibited throughout downtown.

The amendments pertaining to electronic billboards limit their size and clarify how the City regulates moving and electronic signs. The proposed amendments recommend capping the size of electronic billboards at 50 square feet, or at 25% of the billboard's total size. Additionally, the amendments stipulate how bright the electronic display can be, how long messages should be displayed for before rotating, and prohibit video displays and flashing or scrolling text.

###

**Grady C. Wheeler**

**Public Affairs Coordinator**

City of Milwaukie  
10722 SE Main St. | Milwaukie, OR 97222  
T 503.786.7503 | C 503.593.6190

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**Marquardt, Ryan**

---

**From:** Marquardt, Ryan  
**Sent:** Friday, August 12, 2011 3:58 PM  
**To:** Marquardt, Ryan  
**Cc:** Mangle, Katie  
**Subject:** Milwaukie Sign Ordinance amendments - electronic display signs

**Greetings!** This email is to inform you about proposed amendments to the Milwaukie Municipal Code related to regulation of electronic display signs, such as readerboard signs and electronic billboards. This email is being sent to persons within the sign industry, owners or operators of electronic display signs in Milwaukie, and other interested persons. We consider you to be key stakeholders in this amendment process, and want to inform you about the project and invite you to comment on the proposed amendments.

Information about the project is online at <http://www.ci.milwaukie.or.us/planning/planning-commission-requests-code-amendments-electronic-signage-and-billboards>, including a full draft of the proposed amendments. I welcome any comments, questions, and suggestions you have regarding the proposed amendments.

A public hearing on these amendments is scheduled before the Milwaukie Planning Commission on **September 13, 2011**. Planning Commission meetings start at 6:30 pm and are held on the second floor of City Hall at 10722 SE Main Street. You are welcome to attend and/or present testimony. Comments received by September 1, 2011 will be included in the materials sent to the Planning Commission before the hearing. The materials for the meeting will be available on-line at <http://www.ci.milwaukie.or.us/planning/planning-commission-2> starting at 8 AM on September 7, 2011. The amendments would not be effective until adopted by City Council at a yet to be scheduled public hearing, likely in October 2011.

This project has been discussed by the Planning Commission on three prior occasions. Materials from these meetings are available on line at:

- June 28, 2011: <http://www.ci.milwaukie.or.us/planning/planning-commission-36>
- April 26, 2011: <http://www.ci.milwaukie.or.us/planning/planning-commission-32>
- February 8, 2011: <http://www.ci.milwaukie.or.us/planning/planning-commission-27>

Please feel free to contact me about this project. I welcome the chance to discuss it with you.

Sincerely,

Ryan Marquardt, AICP  
Associate Planner  
City of Milwaukie  
6101 SE Johnson Creek Blvd.  
Milwaukie, OR 97206  
(p) 503-786-7658  
(f) 503-774-8236  
(e) [MarquardtR@ci.milwaukie.or.us](mailto:MarquardtR@ci.milwaukie.or.us)

**THIS IS TO NOTIFY YOU THAT THE CITY IS CONSIDERING ADOPTION OF LAND USE REGULATIONS THAT MAY AFFECT THE PERMISSIBLE USES OF YOUR PROPERTY**

(Land Use File #ZA-11-02)



**MILWAUKIE**  
*Dogwood City of the West*

**The proposed changes only affect rules for electronic display signs. No changes are proposed to the zoning designation or land uses allowed on your property.**

**Why is the City sending this notice?**

State law requires the City to inform you about proposed changes to land use regulations that may affect what you can do on your property.

You are receiving this notice because you are the owner of:

- Property in the Downtown zones with frontage on McLoughlin Blvd,
- Property in the Manufacturing or Business Industrial zone, and/or;
- Property in the Commercial General, Commercial Limited, Community Shopping Commercial Zone.

**Why is the City proposing to change its land use regulations?**



The land use regulations being considered affect rules for electronic display signs, such as the one pictured at left.

The major topics for the proposed regulations are:

- To make allowance for electronic display signs in downtown Milwaukie along McLoughlin Blvd. These signs are not currently allowed anywhere in downtown.
- To limit the size of electronic display signs in commercial and manufacturing zones. The proposed limits would allow reasonably sized electronic display signs, while prohibiting overly large electronic display signs.
- To limit the brightness and frequency of message changes on electronic display signs. These regulations ensure that electronic display signs do not present a traffic safety hazard.

### Summary of Proposed Changes

- **Downtown:** Allow electronic display signs for properties in the downtown zones that have frontage on McLoughlin Blvd. The maximum allowed size for electronic display signs downtown would be 25% of the total sign area or 20 square feet, whichever is less. Electronic display signs are not currently allowed anywhere in the downtown zones.
- **Commercial and Industrial Areas:** Establish limits on the size of electronic display signs in commercial and manufacturing areas. The maximum allowed size for electronic display signs downtown would be 25% of the total sign area or 50 square feet, whichever is less. Currently, there are no size limitations for electronic display signs aside from the general size limits applicable to all signs.
- Limit how frequently an electronic display sign can change copy. Electronic display signs at or under 20 square feet in area could change copy once every 15 seconds. Larger signs could change copy once every 3 hours.
- Establish limits on the illumination level of electronic display signs.
- Allow electronic display signs to only display copy or messages that do not flash, include video, or include moving text or images.
- Require shielding to prevent light pollution for new illuminated signs over 50 square feet in area.
- Allow an electronic display sign to be added to an existing sign without requiring the existing sign to comply with all current height and size regulations.

#### **How to learn more about the proposed regulations.**

The proposed regulations, all supporting documents, and all applicable City ordinances are available at the Johnson Creek Facility (address at bottom of page) or online at: <http://www.cityofmilwaukie.org/planning/electronic-display-sign-amendments>. Copies of these are available for review at the Johnson Creek Facility at no cost, and copies can be obtained at a reasonable cost.

#### **Public Hearing information.**

The Milwaukie Planning Commission will hold a public hearing on the proposed changes (Land Use File #ZA-11-02) at the date, time, and location listed below:

**Date:** Tuesday, September 13, 2011  
**Time:** 6:30 PM  
**Location:** Milwaukie City Hall – 10722 SE Main Street – Council Chambers, 2nd floor

The materials provided to the Planning Commission for the hearing will be available at 8:00 a.m. on Wednesday, **September 7, 2011**, at the Planning Department, Ledding Library (local information shelf), City Hall (10722 SE Main St), and online at <http://www.ci.milwaukie.or.us/planning/planning-commission-2>. If the Planning Commission recommends approval, the proposed regulations will be considered for adoption by the Milwaukie City Council at a future public hearing.

You are invited to submit comments in writing in advance of the hearings, attend the hearings and/or submit written comments or present verbal testimony at any of the hearings.

Contact Info: Ryan Marquardt, Associate Planner  
Planning Department; 6101 SE Johnson Creek Blvd; Milwaukie, OR 97206  
Email: [marquardtr@ci.milwaukie.or.us](mailto:marquardtr@ci.milwaukie.or.us)  
Phone: 503-786-7658

*The City of Milwaukie will make reasonable accommodation for people with disabilities. Please notify us no less than five (5) business days prior to the meeting.*

## Examples of Electronic Message Signs

Types of businesses and organizations that commonly use electronic message signs:

### Churches

Electronic message portion of total sign is approximately 60%

This sign is approximately 32 sq. ft. excluding the brick monument)



Electronic message portion of total sign is approximately 70%



### Schools

Electronic message portion of total sign is approximately 42%

This sign is approximately 36 sq. ft. The message portion is approximately 15 sq. ft.



### **Civic – coming events**

Electronic message portion of total sign is approximately 35%

This sign is approximately 72 sq. ft. The message portion is approximately 24 sq. ft.



### **Theaters – plays and music events**

Electronic message portion of total sign is approximately 40%

(The sign is not incorporated into the overall signage but is a separate sign)



### **Clubs and Athletic Facilities**

Electronic message portion of total sign is approximately 60%

(The sign is not incorporated into the overall signage but is a separate sign, dimensionally larger than the monument base or balance of the sign.)

The overall sign area is approximately 44 sq. ft. The electronic message sign is approximately 26 sq. ft.



**Gas Stations – Pricing information**

Electronic message portion of total sign  
Is approximately 20%

This is the applicant’s sign. The overall  
sign area is approximately 63.5 sq. ft.  
The electronic display area is approximately  
12.5 sq. ft.



Electronic message portion of total sign  
Is approximately 17%



Electronic message portion of total sign  
Is approximately 14%

(Note that as the total sign area  
increases, the percentage of electronic  
display area decreases).

This sign also post the price of diesel fuel.



### Large Shopping Center Monuments

Electronic message portion of total sign  
Is approximately 22%

(The sign is not incorporated into the overall signage but is a separate sign, dimensionally larger (width and thickness) than the monument base or balance of the sign.)



### Retail Strip Malls

Electronic message portion of total sign  
Is approximately 31%



### Stand Alone Retailers

Electronic message portion of total sign  
Is approximately 32%



### Combination Sign

#### Motels and Hotels

Electronic message portion of total sign  
Is approximately 45%



#### Retail Centers

Electronic message portion of total sign  
Is approximately 26%



#### Small Retail Strip Centers

Electronic message portion of total sign  
Is approximately 64%

(The sign is not well incorporated into the overall signage but is a separate sign, dimensionally larger than the other signs below.)



### Stand Alone Businesses

Electronic message portion of total sign  
Is approximately 32%

(Note background is bright white and sign is wider than the signs below).



### Stand Along Retailers

Electronic message portion of total sign  
Is approximately 26%

(Note white background color).



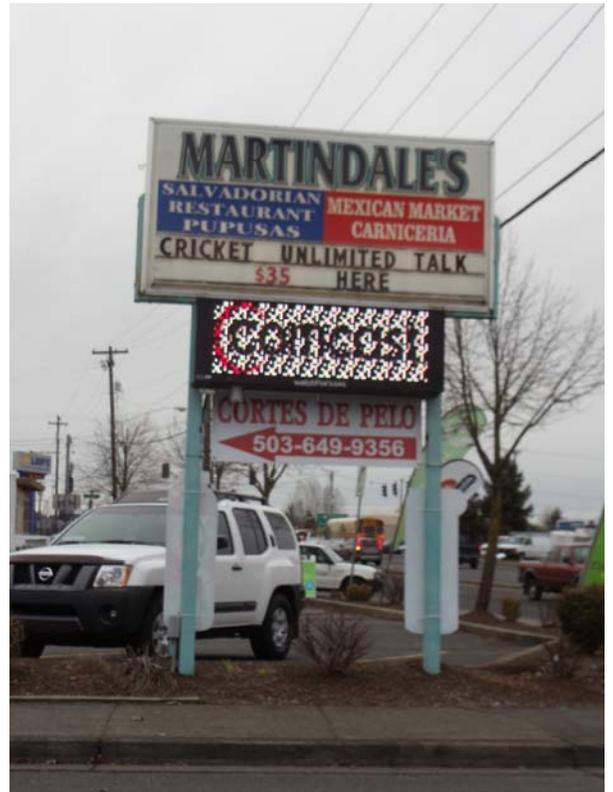
### Building Material / Construction

Electronic message portion of total sign  
Is approximately 40%



### Retailers – Promotional Sales

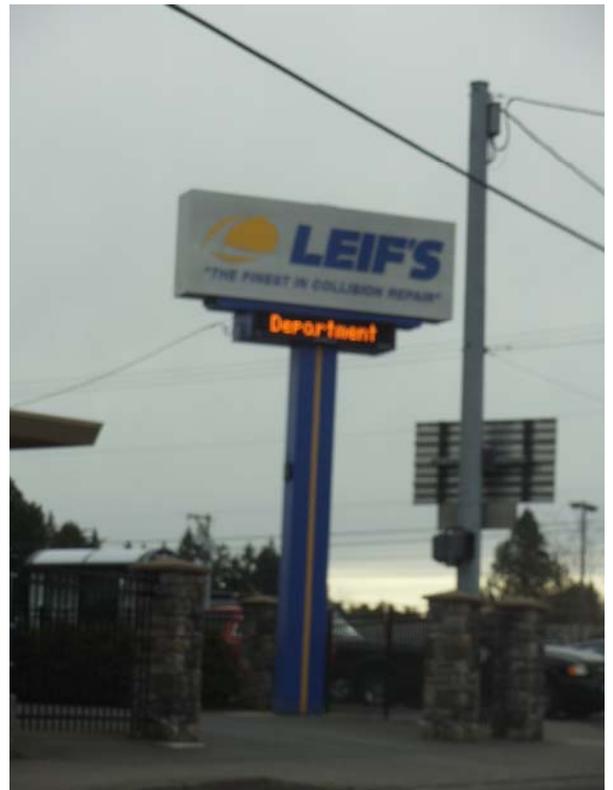
Electronic message portion of total sign  
Is approximately 25% excluding temporary  
sign below and characters mounted to posts.



### Body Shops – scrolling message.

Electronic message portion of total sign  
Is approximately 16%

(Note: Smallness of electronic message  
requires a scrolling message).



### **Bars, Taverns and Restaurants**

Electronic message portion of total sign is approximately 25%, excluding lottery sign area.



### **Banks and Credit Unions**

Electronic message portion of total sign is approximately 12%

Often limited to time and temperature but can include changes messages about Interest rates, etc.





August 29, 2011

City of Milwaukie  
Planning Commission  
10722 SE Main St  
Milwaukie, Oregon

***Regarding: Proposed Sign Code Amendments***

Dear Commission Members:

First I would like to express my appreciation on behalf of Security Signs for providing us with an opportunity to submit comments on your planning committee's recommendations. While Security Signs fully supports the intent of the project, many of the proposed sign changes will be detrimental to local business and the city as a whole.

My comments are as follows:

***Electronic Message Center Hold Time Requirements:***

Oregon State currently regulates billboards on highways at an 8 second hold, other jurisdictions (Washington County, City of Vancouver) have hold times of only 4 seconds. In comparison to other jurisdictions a 3 hour hold time is overly restrictive. I would support a 4 second hold for your smaller signs and an 8 second hold for your signs over 20sf.

***Electronic Message Center Area Limitations:***

Restricting the area of EMC to a percentage is a great way to encourage dynamic and multi functioning signs. The proposed code restricts an EMC to only 25% of the overall sign allowance. I would suggest increasing this to 50% of the sign area, compare it to jurisdictions like Clackamas County with their 80% restriction. I would also suggest deletion of the maximum area as the percentage limitation already prevents overly large signs from being installed.

***Shielding:***

I understand the desire for Dark Sky Standards in your sign code, however, signs are not a major contributor to overall light pollution. Signs are designed to allow effective viewing of a message, not to illuminate the surrounding area. I also have concerns on

the vague standards for the proposed shielding and its effectiveness. The aesthetics of requiring a 2' projection of an umbrella above larger signs, will have an impact on the overall look of the sign as well as an expensive impact on the construction of the sign. The proposed requirements for dimming switches will be much more effective against light pollution than the shielding. The shielding will also lead to some very strange looking signs in your city.

*Allow EMCs for Churches and Schools:*

While the sign code is on the table I would highly recommend extending your EMC allowances to non-conforming uses in residential zones, specifically for churches and schools. A message centers at the road is a great way for schools to connect with parents and the community at large. Allowing them to change their message electronically facilitates ease of use as well as a more pleasing sign that your typical manual message center with plastic letters.

Thank you again for providing us with this opportunity to provide input and perspective as a company which does business in Milwaukie.

Sincerely

A handwritten signature in cursive script that reads "Melissa Hayden". The signature is written in dark ink and is positioned below the word "Sincerely".

Melissa Hayden  
Security Signs  
Project Manager  
503 546 7114

**Marquardt, Ryan**

---

**From:** Lee M. Holzman <lmholzman@reliablecredit.com>  
**Sent:** Wednesday, August 24, 2011 4:29 PM  
**To:** Marquardt, Ryan  
**Cc:** 'Lee M. Holzman'; 'Irwin Holzman'  
**Subject:** electronic display signs

Ryan,

Nice chatting with you today regarding the proposed changes to the regulations regarding electronic display signs. Reliable Credit Association, Inc. ("RC") has enjoyed the use of an electronic display sign at 10690 SE McLoughlin Blvd in downtown Milwaukie for approximately 10 years (Far West Federal Savings & Loan operated a similar sign in our current location for many years prior). The sign has had a positive impact on our business.

RC opposes increasing the change copy time from 10 to 15 seconds. While requiring 10 seconds already limits the effectiveness of the sign, increasing to 15 seconds would further limit its effectiveness, and we doubt that the additional 5 seconds would provide benefit to any party.

Thank you for your consideration. If you have any questions, comments, or concerns please do not hesitate to contact me.

Lee Holzman  
Reliable Credit Association, Inc.  
503-462-3073  
503-462-3040 (Fax)

Confidentiality Notice: The information in this e-mail is for the intended recipient and should not be read by or distributed to anyone else. If you are not the intended recipient, please notify me via e-mail, delete this e-mail and destroy any hard copies.



# Oregon

John A. Kitzhaber, M.D., Governor

## Department of Transportation

Region 1 Headquarters  
123 NW Flanders  
Portland, OR, 97209-4012  
Phone: (503) 731-8200  
Fax: (503) 731-8259

FILE CODE: 5032

August 29, 2011

City of Milwaukie  
6101 SE Johnson Creek Blvd  
Milwaukie, OR 97206

Attn: Ryan Marquardt, Associate Planner

Ryan – I sent the proposed code to Wendy Elstun, Outdoor Advertising Program, ODOT Right of Way. She provided the following information:

As to LED Outdoor Advertising Signs (OAS) requirements, ODOT sign regulations overall are less restrictive than those proposed by the City of Milwaukie.

However, the state has specific light emissions requirements that are calculated from a specified distance based on sign size, the City's proposed code does not include this requirement. If the "proposed OAS" would meet the City of Milwaukie requirements regarding LED and the States light emission requirements then it would be allowed. This comment is specific to LED OAS criteria and all other regulations for OAS such as spacing to other OAS, Purchase Sites, Scenic Areas-Byways and the requirement to provide an eligible relocation credit still must be met.

SB 639 which allows LED OAS(Digital Billboards) was passed by the last legislative session and becomes law September 29th. Here is the temporary OAR that was filed with the Oregon Transportation Commission on August 18th. It goes into effect September 29<sup>th</sup>, the same day as the new regulations.



734-060-0007.pdf  
(17 KB)



sb0639.en.pdf (48  
KB)

It appears that these regulations pertain only to Outdoor Advertising Signs (OAS), which are defined as signs that advertise off-premise businesses or activities. These regulations are in effect for McLoughlin Blvd./OR 99E. If signs meet the OAS definition, then an ODOT permit is required for installation.

- If the City sign code does not currently have an ODOT permit requirement for Outdoor Advertising Signs which are visible from a state highway, I recommend you add this to your code to facilitate coordination and compliance.

You might want to contact Wendy directly to "talk signs", as the City might want to consider applying the ODOT specs for sign light emissions for all signs on OR 99E or at locations Citywide. She can be reached at: [wendy.s.elstun@odot.state.or.us](mailto:wendy.s.elstun@odot.state.or.us) or 503.986.3650.

Sonya Kazen, Sr. Planner  
503.731.8282

Cc: Wendy Elstun, Outdoor Advertising Program, ODOT Right of Way

August 31, 2011

City of Milwaukie  
Attn: Planning Commission  
10722 SE Main Street  
Milwaukie, OR 97222

**Re: Proposed sign ordinance changes**

Members of the Planning Commission:

Daktronics would like to provide the following comments in reference to the proposed ordinance amending Milwaukie's Sign Code. We would like to also use this letter as a chance to express our support of the proposed amendments and comments offered by the International Sign Association (ISA).

It is our understanding that the Planning Commission has requested amendments regulating electronic billboards within Milwaukie's commercial and industrial districts, in light of the recent state statute implementation permitting such signs. The proposed amendments, however, seek to provide essentially a de facto prohibition on such signs, and increase restrictions on business signs that have previously permitted within the city for some time.

**Electronic Billboards**

The proposed regulations really don't address electronic billboards, other than by adding in regulations that would restrict the area of electronic display signs so much as to effectively prohibit their use as electronic billboards.

Electronic billboards are very beneficial for businesses, including local businesses. They can broadcast AMBER Alerts, weather updates, dangerous fugitive warnings, homeland security updates, and community events at a moment's notice to large numbers of people. For example, within 15 minutes of the interstate bridge collapse in Minnesota, electronic billboards were notifying drivers and rerouting traffic. In Kansas City, electronic billboards help law enforcement officers apprehend dangerous criminals. The effectiveness of this program has inspired law enforcement personnel nationwide to turn to electronic billboards to help catch criminals.

We are aware that that city doesn't differentiate between on and off-premises. Therefore, we would simply suggest that all existing billboards located along state-regulated highways be subject to the regulations recently passed by the state.

**Static Message Duration Requirements for Automatic Changeable Copy Signs**

Currently, the city permits automatic changeable copy signs and moving signs to change once every 10 seconds. The proposed regulations seek to continue to allow moving signs to rotate once every 10 seconds, but then seek to limit electronic display signs to change only once every 15 seconds (for signs under 20 square feet) or once every three hours (for signs over 20 square feet). Electronic billboards, which were the entire reason for the proposed regulations, would be all but prohibited, as the smallest



standard-sized billboards are over 200 square feet, and the proposed limitations seek to only permit such signs at a maximum area of 50 square feet.

First, the city currently allows electronic display signs to change once every ten seconds. Such limitations, albeit more restrictive than most jurisdictions that permit electronic display signs, sufficiently regulate electronic display signs to ensure that businesses can pass on their messages in a timely manner while ensuring the adverse effects of unacceptable uses, such as flashing, are avoided. Therefore, there is no need to implement more restrictive regulations.

There is a common rule-of-thumb in sign regulation that can be paraphrased as follows: Regulations should be no more restrictive than necessary to adequately regulate signage. Municipalities throughout the nation, numerous states (including Oregon) and the Federal Highway Administration, all permit and effectively regulate these signs at hold times less than what Milwaukie is proposing. Therefore, there is no reason to place such restrictive regulations on these signs.

Rather than requiring that electronic display signs change once every 15 seconds or three hours, such signs should be subject to the existing regulations permitting such signs to change once every 10 seconds.

#### **Brightness Limitations**

We would like to applaud the city for considering regulations for brightness similar to those passed by the state. However, the regulations implemented by the state are intended for electronic billboards that are much larger than what the city is seeking to implement. As a result, the regulations seeking measurement of all signs smaller than 300 square feet at a distance of 150 feet have the potential to yield overly bright signs, especially since the largest permitted sign size is only 50 square feet.

The 0.3 foot candle measurement is intended to be measured from typical sign-to-viewer distances. For small business signs, that sign-to-viewer distance is much closer. Therefore, measurements need to be taken from closer to the display to ensure appropriate brightness.

The standards ISA has suggested were written by the same gentleman who wrote the standard from which the state regulations are based. However, ISA's proposed standards are intended to be applied to a broad spectrum sign sizes instead of standard billboard sizes.

#### **Area Limitations**

Electronic display signs differ from traditionally illuminated signs only in their ability to display multiple messages in a timely and effective manner. Therefore, such signs should be subject to the same area limitations that are applied to other signs of the same design (i.e. wall, freestanding, etc.).

However, if the city is insistent on area limitations, rather than a 25% area limitation, we would suggest 50 %, as such a percentage is more in line with municipalities throughout the nation that have implemented area limitations. Additionally, we suggested deletion of the maximum area of 50 square feet, as the percentage limitation adequately prevents overly large signs from being installed.

We would urge the Planning Commission to consider the amendments proposed by ISA.

Daktronics, Inc. is the world leader in the design and manufacture of electronic display systems. Daktronics offers many products, including commercial electronic display signs and digital billboards. We are committed to providing information and aiding regulatory entities in drafting appropriate regulations for electronic display signs.

Please let me know if you have any questions or concerns

Sincerely,



Terra Fisher  
Signage Legislation  
605-691-1285



INTERNATIONAL SIGN ASSOCIATION

September 1, 2011

City of Milwaukie  
 Attn: Planning Commission  
 10722 SE Main Street  
 Milwaukie, OR 97222

**Re: Proposed sign ordinance changes**

To Whom It May Concern;

I am submitting this letter on behalf of the Northwest Sign Council (NWSC) and the International Sign Association. The NWSC represents the interests of the sign industry in Oregon, Idaho, Washington, Alaska, Montana and Wyoming. The NWSC is organized for the mutual benefit of its member sign companies, sign-related companies, with respect to on-premises signage. The NWSC is an important stakeholder that is actively involved with sign legislation issues. The International Sign Association (ISA) represents 27 sign manufacturers and related industries in the state of Oregon.

We would like to provide the following comments in reference to the proposed ordinance amending Milwaukie's Sign Code. We hope you find the following letter, as well as the accompanying documents, beneficial.

We appreciate the city for its consideration of amendments relating to electronic display signs. However, we would like to suggest that the city reconsider some of the proposed usage regulation, as they seem to be a deviation from existing, adequate regulations.

**Static Message Duration Requirements**

Currently, the city permits automatic changeable copy signs (which are essentially electronic display signs) and moving signs to change (or rotate) once every 10 seconds. The proposed regulations seek to continue to allow moving signs to rotate once every 10 seconds, but then seek to limit electronic display signs (automatic changeable copy signs under a new name) to changing only once every 15 seconds (for signs under 20 square feet) or once every three hours (for signs over 20 square feet). First, the city currently allows electronic display signs to change once every ten seconds. Such limitations, albeit more restrictive than most jurisdictions that permit electronic display signs, sufficiently regulate electronic display signs to ensure that businesses can pass on their messages in a timely manner while ensuring the adverse effects of unacceptable uses, such as flashing, are avoided. Therefore, there is no need to implement more restrictive regulations.

Regulations that separate usage by size are generally implemented to take into account the fact that smaller signs are too small to display an entire message in a single frame. Such regulations are typically put into place that allow smaller signs to change once every couple of seconds or utilize movement, because they are aware that hold times more than a couple of seconds long would prevent these smaller signs from displaying complete messages (for instance, Abilene, Texas permits

1001 N. FAIRFAX STREET, SUITE 301 ALEXANDRIA, VA 22314  
 (703) 836-4012 TEL (703) 836-8353 FAX  
 INFO@SIGNS.ORG

WWW.SIGNS.ORG



INTERNATIONAL SIGN ASSOCIATION

animation on signs smaller than 70 square feet, but requires an eight-second hold time on signs larger than 70 square feet). A 15-second hold time for these small signs will not allow for small sign owners to pass on their messages in multiple frames, and therefore, does not satisfy the rationale for differing hold times.

Electronic display signs have been studied for more than 30 years and have NEVER been found to be hazardous. Reputable organizations such as Virginia Tech Transportation Institute and even the Federal Highway Administration itself have found digital signs to be appropriate along our nation's roadways at hold times far less than once every three hours or 15 seconds. Therefore, there is no reason to place such restrictive regulations on these signs.

Rather than requiring that electronic display signs change once every 15 seconds or three hours, such signs should be subject to the existing regulations permitting such signs to change once every 10 seconds.

#### **Brightness Limitations**

We would like to applaud the city for considering regulations for brightness similar to those passed by the state. However, the regulations implemented by the state are intended for digital billboards that are much larger than what the city is seeking to implement. As a result, the regulations seeking measurement of all signs smaller than 300 square feet at a distance of 150 feet have the potential to yield some VERY bright signs.

The 0.3 foot candle measurement is intended to be measured from typical sign-to-viewer distances. For small business signs, that sign-to-viewer distance is much closer. Therefore, measurements need to be taken from closer to the display to ensure appropriate brightness.

The standards we suggested in our accompanying changes were written by the same gentleman who wrote the standard from which the state regulations are based. However, our proposed standards are intended to be applied to smaller signs instead of larger displays. We have provided a brief synopsis of the 0.3 foot candles standard, as applied to on-premise (business) signs, accompanying this letter.

#### **Area Limitations**

Electronic display signs differ from traditionally illuminated signs only in their ability to display multiple messages in a timely and effective manner. Therefore, such signs should be subject to the same area limitations that are applied to other signs of the same design (i.e. wall, freestanding, etc.).

However, if the city is insistent on area limitations, rather than a 25% area limitation, we would suggest 50 %, as such a percentage is more in line with municipalities throughout the nation that have implemented area limitations. Additionally, we suggested deletion of the maximum area of 50 square feet, as the percentage limitation adequately prevents overly large signs from being installed.



INTERNATIONAL SIGN ASSOCIATION

### **Shielding**

The ordinance proposes to require a shield on the top of the sign face that projects 2' from the face. We believe that signs are not a major contributor to light pollution. Signs are not designed to illuminate areas such as parking lot fixtures or street lights. Signs are illuminated sufficiently to allow for safe and effective viewing of the message. In addition, the application of this proposed regulation from a design perspective will be a challenge. Therefore, we believe that the proposed 2' shield on the top of each sign face is not reasonable or justified. We recommend that this section be eliminated from the proposed code.

### **Economic Consideration**

When considering amendments regarding this valuable technology, local regulators should be aware that overly restricting electronic display signs can negatively affect business owners' well being, and ultimately inhibit the community's economic well being. The Small Business Administration estimates that businesses can raise their revenue anywhere from 15 to 150 percent with an electronic display sign. Such an increase in business not only positively impacts business owners it also positively impacts their communities by increasing tax base. In a struggling economy, small and large businesses alike need a cost-effective advertising medium that has been proven to work.

Accompanying this letter you will find suggested changes that, we feel, would be more conducive to business and sign-owner needs. We would urge the Planning Commission to consider an amendment to the proposed language that would allow for these suggested changes.

ISA and the Northwest Sign Council are committed to providing information and aiding regulatory entities in drafting appropriate regulations for electronic display signs.

Please do not hesitate to contact me any questions.

We appreciate your consideration of our recommendations.

Sincerely,

James Carpentier AICP  
Manager State and Local Government Relations  
[James.carpentier@signs.org](mailto:James.carpentier@signs.org)  
Phone: 480-773-3756

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## TITLE 14 SIGNS

### CHAPTER 14.04 GENERAL PROVISIONS

#### 14.04.010 TITLE

This chapter shall be known and may be cited as the “Sign Ordinance of the City of Milwaukie, Oregon.”

#### 14.04.020 PURPOSE

The Council of the City of Milwaukie, Oregon, finds and declares that it is necessary to regulate the design, quality of materials, construction, installation, maintenance, electrification, illumination, type, size, number, and location of all signs visible from a right-of-way or lot under other ownership in order to:

- A. Protect the health, safety, property and welfare of the public;
- B. Promote the neat, clean, orderly and attractive appearance of the community;
- C. Provide for the safe installation and maintenance of signs;
- D. (Repealed by Ord. 1965);
- E. Preserve and enhance the unique scenic beauty of Milwaukie;
- F. Accommodate the need of sign installers while avoiding nuisances to nearby properties;
- G. Ensure safe construction, location, installation, and maintenance of signs;
- H. Prevent proliferation of sign clutter;
- I. Minimize distractions for motorists on public highways and streets; and,
- J. Regulate solely on the basis of time, place, and manner of a sign, not on its content. and,
- K. Coordinate review of where multiple agencies have review authority for a sign permit.

#### 14.04.030 DEFINITIONS

The following words and phrases where used in this chapter shall, for the purposes of this chapter, have the meanings respectively ascribed to them in this section:

“Dissolve” means the changing of an electronic display by means of varying light intensity or pattern, where one display gradually appears to dissipate or lose legibility simultaneously with the gradual appearance and legibility of a subsequent display.

“Fade” means the changing of an electronic display by means of varying light intensity, where one display gradually reduces intensity to the point of being illegible or imperceptible and the subsequent display gradually increases intensity to the point of being legible or capable of being perceived.

“Prohibited electronic display” means any part of the message or display on an electronic display sign that utilizes the following methods of presentation:

“Flash” means sudden or intermittent electrical illumination.

Red underlines (underlines) denote NWSC & ISA proposed additions to the draft sign code.  
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“Scroll” means the changing of an electronic display by the apparent movement of the visual image, such that a new visual image appears to ascend and descend, or appear and disappear from the margins of the sign in a continuous or unfurling movement.

“Travel” means the changing of an electronic display by the apparent horizontal movement of the visual image.

“Video display” means providing an electronic display in horizontal or vertical formats to create continuously moving images.

~~Sign, Changing (Automatic). “Changing sign (automatic)” means a sign in which the display on the sign face is changed by motors, clockwork, or other mechanical means; or by electric or electronic means, including changes in color or intensity of lights.~~

Sign, Electronic Display. “Electronic display sign” means a sign or portion of a sign ~~capable of displaying words, symbols, figures or images that can be electronically or mechanically changed by remote or automatic means on which the message or display is created by bulbs, light emitting diodes, liquid crystal displays, plasma display panels, pixel or sub-pixel technology, or other similar technology.~~

Sign, Moving. “Moving sign” means a signs with a visible moving part or visible mechanical movement, including signs which move in the wind or forced air, or by motors, clockwork, or other mechanical means.

“State highway” means the entire width between the boundary lines of every state highway as defined in ORS 366.005, including but not limited to the Interstate System and the federal-aid primary system.

## **CHAPTER 14.08 ADMINISTRATION AND ENFORCEMENT**

### **14.08.100 Signs Visible from State Highways**

A proposed sign that would be visible from a state highway may require a permit from the Oregon Department of Transportation. The Planning Director may require an applicant for a sign that would be visible from a state highway to submit documentation from the Oregon Department of Transportation regarding whether the site is legal for an outdoor advertising sign, and whether the proposed sign is considered an outdoor advertising sign that requires a permit from the Oregon Department of Transportation. The Planning Director may withhold issuance of the permit if there is not conclusive evidence that the sign could be approved or could be conditioned to be approved by the Oregon Department of Transportation.

## **CHAPTER 14.12 SIGNS PROHIBITED OR EXEMPTED**

### **14.12.020 PROHIBITED SIGNS**

It is unlawful for any person to install, display or maintain, and no permit shall be issued for the installation, display or maintenance of, any sign or advertising structure falling within any of the following descriptions:

- A. Moving signs that change more frequently than once every 10 seconds, revolving signs that rotate at more than 6 revolutions per minute, or signs that move in the wind or by forced air, or flashing signs, or any other sign with a visible moving part or visible mechanical movement, including signs which move in the wind or move or change electrically or electronically. These signs are prohibited in order to prevent unduly distracting or

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~~hazardous conditions to motorists, cyclists, or pedestrians. Automatic changing signs that change no more than once every 10 seconds, and revolving signs that revolve at 6 revolutions per minute or less, are exempt from this prohibition. Switching the power for illuminated signs on and off 4 or fewer times in one day does not constitute a flashing sign.~~

R. Electronic display signs that display message or copy using any prohibited electronic display methods, as defined in Section 14.04.030.

## CHAPTER 14.16 SIGN DISTRICTS

### 14.16.060 DOWNTOWN ZONES

No sign shall be installed or maintained in the DC, DS, DO, DR and DOS Zones, except as allowed under Section 14.12.010 Exempted Signs, or as otherwise noted in this section.

#### H. Illumination

Illuminated signs may be permitted subject to the following:

1. Signs with opaque letters or symbols that are backlit, having a light source behind the opaque area and not directly visible from in front of the sign, are permitted.
2. Par spot or reflective-type bulbs may be used for indirect illumination of the display surface if properly shielded from direct glare onto streets.
3. Awning signs shall not be internally illuminated. Features on an awning sign may be externally illuminated subject to review by the Design and Landmarks Committee, per Section 19.1011 Design Review Meetings, and approval by the Planning Commission, per Section 19.1006 Type III review, according to the following criteria:
  - a. Sign lighting should be designed as an integral component of the building and sign composition.
  - b. Sign lighting should be designed primarily for the enhancement of the pedestrian environment along adjacent streets and open spaces.
  - c. Lighting should contribute to a sign that is architecturally compatible with the character of the area.
4. Sign illumination shall be directed away from, and not be reflected upon, adjacent premises.
5. Internally illuminated cabinet signs are discouraged in the downtown zones. Internal illumination of cabinet signs may be permitted subject to review by the Design and Landmarks Committee, per Section 19.1011 Design Review Meetings, and approval by the Planning Commission, per Section 19.1006 Type III review, according to the following criteria:
  - a. The sign should be a unique design that responds to the Milwaukie Downtown Design Guidelines.
  - b. The sign copy should be lighter than the sign background.
  - c. The sign background should use a predominance of dark color or be opaque when the light source is on.
6. Electronic display signs are permitted for properties that have frontage on SE McLoughlin Blvd. subject to the following standards:

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- a. An electronic display sign is subject to the more restrictive of the following size limitations: Switching the power for illuminated signs on and off 4 or fewer times in one day does not constitute a flashing sign.
  - (1) 25% of the size of the sign face that contains the electronic display sign, abuts the electronic display sign, or is on the same sign structure as the electronic display sign.
  - (2) 20 square feet.
- b. An electronic display sign shall be primarily visible from and oriented toward SE McLoughlin Blvd, and not toward any other street on which the property has frontage.
- c. Illumination for an electronic display sign is subject to the standards of Section 14.24.020.G.1.
- d. The manner of display on electronic display signs shall comply with the standards in Section 14.24.020.G.3.
- e. Incorporating an electronic display sign within an existing non-conforming sign is allowed subject to the regulations of Section 14.28.020.A.3.b.

## **CHAPTER 14.24 SIGN CONSTRUCTION, MAINTENANCE, AND LIGHTING**

### **14.24.020 SIGN LIGHTING**

- A. All lamps or bulbs exposed to direct view shall be limited to 25 watts or less capacity.
- B. When neon tubing is employed on the exterior or inferior interior of a sign, the capacity of such tubing shall not exceed 300 milliamperes rating for white tubing nor 100 milliamperes rating for colored tubing.
- C. When fluorescent tubes are used for interior illumination of a sign, such illumination shall not exceed illumination equivalent to 800 milliamperes rating tubes behind a Plexiglas face with tubes spaced at least 9 inches apart, center to center.
- D. Lighting from any sign may not directly, or indirectly from reflection, cause illumination on other properties in excess of 0.5 foot candles of light.
- E. In the event of a conflict between the standards in this section and a specific standard in the regulations for a sign district, the sign district regulations shall prevail.
- F. Other types of illumination not described by Subsections 14.24.020.A-C, such as light emitting diodes and other similar technology, are allowed for interior or exterior illumination of a sign if all other regulations of Title 14 are met.
- G. Electronic display signs are allowed in the Commercial sign district (Section 14.16.040), the Manufacturing sign district (Section 14.16.050), subject to the standards below. Electronic display signs are allowed in the Downtown sign district per Subsection 14.16.060.H.6 and the standards below.
  1. Illumination.
    - a. An electronic display sign may not have an illumination intensity of more than 0.3 foot candles over ambient light, measured at the distance specified in Table 14.24.020.G.1.a.

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**Table 19.24.020.G.1.a Distance Electronic Display Signs**

**Display Area of Electronic Display      Distance for Measurement**

**Sign**

300 square feet or less

150 feet

301– 378 square feet

200 feet

Over 378 square feet

250 feet

<u>Table 19.24.020.G.1.a Distance Electronic Display Signs</u>	
<u>Area of Sign</u>	<u>Measurement</u>
<u>sq. ft.</u>	<u>Distance (ft.)</u>
<u>10</u>	<u>32</u>
<u>15</u>	<u>39</u>
<u>20</u>	<u>45</u>
<u>25</u>	<u>50</u>
<u>30</u>	<u>55</u>
<u>35</u>	<u>59</u>
<u>40</u>	<u>63</u>
<u>45</u>	<u>67</u>
<u>50</u>	<u>71</u>
<u>55</u>	<u>74</u>
<u>60</u>	<u>77</u>
<u>65</u>	<u>81</u>
<u>70</u>	<u>84</u>
<u>75</u>	<u>87</u>
<u>80</u>	<u>89</u>
<u>85</u>	<u>92</u>
<u>90</u>	<u>95</u>
<u>95</u>	<u>97</u>
<u>100</u>	<u>100</u>

\* For signs with an area in square feet other than those specifically listed in the table (i.e., 12 sq ft, 400 sq ft, etc), the measurement distance may be calculated with the following formula:

$$\text{Measurement Distance} = \sqrt{\text{Area of Sign Sq. Ft.} \times 100}$$

To the degree practicable, the measuring device shall be parallel to the plane of the sign face and the measurement shall be made from a location that is perpendicular the plane of the sign face. The specified distance shall be the shortest straight-line distance to the sign face, including horizontal and vertical distance from the sign if the sign is elevated.

- b. The sign shall have a mechanism that automatically adjusts the illumination level to comply with the standards in Subsection 14.24.020.G.1.a.
- c. In addition to the standards of Subsection 14.24.020.G.1.a., no electronic display sign shall be brighter than necessary for clear and adequate visibility, or of such brilliance or intensity as to present a hazard to persons traveling in the right of

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way. Upon notice by the Planning Director that a sign is out of compliance with these standards, the owner or operator of an electronic display sign shall immediately adjust the illumination of the sign.

2. Size. An electronic display sign in the Commercial sign district or Manufacturing sign district shall not exceed 50% of the allowed sign area for the sign type on which the electronic display sign is placed (i.e. If the electronic display sign is a freestanding sign, it shall be subject to 50% of the area restrictions for freestanding signs in that sign district. If the electronic display sign is a wall sign, it shall be subject to 50% of the area restrictions for wall signs in that sign district.) is subject to the more restrictive of the size limitations below. Size regulations for signs in the downtown sign district are as described in Subsection 14.16.060.H.6.

~~An electronic display sign that is not part of a larger sign face or abutting another sign face is subject to the limitation of Subsection 14.24.020.G.2.b unless other portions of this title have a more restrictive allowance for sign area.~~

~~a. 25% of the size of the sign face that contains the electronic display sign, abuts the electronic display sign, or is on the same sign structure as the electronic display sign.~~

~~b. 50 square feet.~~

3. Display.

a. The message or copy on an electronic display sign with an area of 20 square feet or less is allowed to change no more than once every 15 10 seconds. The change in message or copy may occur instantaneously or may fade or dissolve with a transition time of no more than 2 seconds between each separate message or display.

~~b. The message or copy on an electronic display sign with an area of more than 20 square feet is allowed to change no more than once every 3 hours. The change in message or copy may occur instantaneously or may fade or dissolve with a transition time of no more than 2 seconds between each separate message or display.~~

#### H. Shielding.

The purpose of the regulations below is to prevent light pollution from illuminated signs into the sky. These regulations apply to any sign face greater than [50-100] square feet with interior or exterior illumination.

1. Internally illuminated signs shall contain a shield placed at the top of the sign face that projects at least 2 feet horizontally from the sign face. If other regulations do not allow a shield to project 2 feet from the sign face, the shield shall extend to the maximum amount allowed. Shielding is not required if portions of a structure above the sign screen the sign in a manner consistent with the purpose of these regulations.

2. The light source for externally illuminated signs shall have a cutoff angle of 90 degrees or greater to ensure that lighting is not directed upward.

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#### **14.28.020 NONCONFORMING SIGN**

##### A. Time Limit

1. Except as provided in Subsection 14.28.020.A.4, signs that were in compliance with applicable regulations when installed; but that become nonconforming as a result of adoption, modification, or applicability of the City's sign regulations; may remain in place for 10 years after the date they became nonconforming but shall be removed or brought into compliance on or before 10 years plus 1 day of the date they became nonconforming.
2. (Repealed by Ord. 1965)
3. Any sign which is structurally altered, relocated, or replaced shall immediately be brought into conformance with all of the provisions of this chapter, with the following exceptions:
  - a. A nonconforming sign in all zones may be maintained or undergo a change of copy or image without complying with the requirements of this chapter.
  - b. The inclusion of an electronic display sign within the existing display area of a non-conforming sign is allowed if the addition of the electronic message sign does not cause the sign to go further out of conformance
4. The following provisions of this code relating to flashing signs, par spot lights, revolving beacons, revolving signs, banners, streamers, strings of lights, and temporary signs are applicable to all signs, notwithstanding Subsection 14.28.020.A.1: Subsections 14.12.020.A, 14.12.020.C, 14.12.020.D, 14.12.020.R, and 14.24.020.G.1. Compliance with these subsections is required regardless of any prior legal nonconforming status of the sign.

##### B. Notice

For legally established nonconforming signs that are approaching the end of the 10-year period during which they may be maintained under Subsection 14.28.020.A.1, the City Manager may provide additional notice in anticipation of the date the sign will be required to be removed or made to conform.

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## TITLE 14 SIGNS

### CHAPTER 14.04 GENERAL PROVISIONS

#### 14.04.010 TITLE

This chapter shall be known and may be cited as the "Sign Ordinance of the City of Milwaukie, Oregon."

#### 14.04.020 PURPOSE

The Council of the City of Milwaukie, Oregon, finds and declares that it is necessary to regulate the design, quality of materials, construction, installation, maintenance, electrification, illumination, type, size, number, and location of all signs visible from a right-of-way or lot under other ownership in order to:

- A. Protect the health, safety, property and welfare of the public;
- B. Promote the neat, clean, orderly and attractive appearance of the community;
- C. Provide for the safe installation and maintenance of signs;
- D. (Repealed by Ord. 1965);
- E. Preserve and enhance the unique scenic beauty of Milwaukie;
- F. Accommodate the need of sign installers while avoiding nuisances to nearby properties;
- G. Ensure safe construction, location, installation, and maintenance of signs;
- H. Prevent proliferation of sign clutter;
- I. Minimize distractions for motorists on public highways and streets; and,
- J. Regulate solely on the basis of time, place, and manner of a sign, not on its content. and,
- K. Coordinate review of where multiple agencies have review authority for a sign permit.

#### 14.04.030 DEFINITIONS

The following words and phrases where used in this chapter shall, for the purposes of this chapter, have the meanings respectively ascribed to them in this section:

"Dissolve" means the changing of an electronic display by means of varying light intensity or pattern, where one display gradually appears to dissipate or lose legibility simultaneously with the gradual appearance and legibility of a subsequent display.

"Fade" means the changing of an electronic display by means of varying light intensity, where one display gradually reduces intensity to the point of being illegible or imperceptible and the subsequent display gradually increases intensity to the point of being legible or capable of being perceived.

"Prohibited electronic display" means any part of the message or display on an electronic display sign that utilizes the following methods of presentation:

"Flash" means sudden or intermittent electrical illumination.

"Scroll" means the changing of an electronic display by the apparent movement of the visual image, such that a new visual image appears to ascend and descend, or appear and disappear from the margins of the sign in a continuous or unfurling movement.

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“Travel” means the changing of an electronic display by the apparent horizontal movement of the visual image.

“Video display” means providing an electronic display in horizontal or vertical formats to create continuously moving images.

~~Sign, Changing (Automatic). “Changing sign (automatic)” means a sign in which the display on the sign face is changed by motors, clockwork, or other mechanical means; or by electric or electronic means, including changes in color or intensity of lights.~~

Sign, Electronic Display. “Electronic display sign” means a sign or portion of a sign capable of displaying words, symbols, figures or images that can be electronically or mechanically changed by remote or automatic means.

Sign, Moving. “Moving sign” means a signs with a visible moving part or visible mechanical movement, including signs which move in the wind or forced air, or by motors, clockwork, or other mechanical means.

“State highway” means the entire width between the boundary lines of every state highway as defined in ORS 366.005, including but not limited to the Interstate System and the federal-aid primary system.

## CHAPTER 14.08 ADMINISTRATION AND ENFORCEMENT

### **14.08.100 Signs Visible from State Highways**

A proposed sign that would be visible from a state highway may require a permit from the Oregon Department of Transportation. The Planning Director may require an applicant for a sign that would be visible from a state highway to submit documentation from the Oregon Department of Transportation regarding whether the site is legal for an outdoor advertising sign, and whether the proposed sign is considered an outdoor advertising sign that requires a permit from the Oregon Department of Transportation. The Planning Director may withhold issuance of the permit if there is not conclusive evidence that the sign could be approved or could be conditioned to be approved by the Oregon Department of Transportation.

## CHAPTER 14.12 SIGNS PROHIBITED OR EXEMPTED

### **14.12.020 PROHIBITED SIGNS**

It is unlawful for any person to install, display or maintain, and no permit shall be issued for the installation, display or maintenance of, any sign or advertising structure falling within any of the following descriptions:

- A. Moving signs that change more frequently than once every 10 seconds, revolving signs that rotate at more than 6 revolutions per minute, or signs that move in the wind or by forced air, or flashing signs, or any other sign with a visible moving part or visible mechanical movement, including signs which move in the wind or move or change electrically or electronically. These signs are prohibited in order to prevent unduly distracting or hazardous conditions to motorists, cyclists, or pedestrians. ~~Automatic changing signs that change no more than once every 10 seconds, and revolving signs that revolve at 6 revolutions per minute or less, are exempt from this prohibition. Switching the power for illuminated signs on and off 4 or fewer times in one day does not constitute a flashing sign.~~
- R. Electronic display signs that display message or copy using any prohibited electronic display methods, as defined in Section 14.04.030.

Black underlines (underlines) denote NWSC & ISA recommended additions to the existing code.  
 Black strikethroughs (~~strikethroughs~~) denote NWSC & ISA recommended deletions to the existing code.

## CHAPTER 14.16 SIGN DISTRICTS

### 14.16.060 DOWNTOWN ZONES

No sign shall be installed or maintained in the DC, DS, DO, DR and DOS Zones, except as allowed under Section 14.12.010 Exempted Signs, or as otherwise noted in this section.

#### H. Illumination

Illuminated signs may be permitted subject to the following:

1. Signs with opaque letters or symbols that are backlit, having a light source behind the opaque area and not directly visible from in front of the sign, are permitted.
2. Par spot or reflective-type bulbs may be used for indirect illumination of the display surface if properly shielded from direct glare onto streets.
3. Awning signs shall not be internally illuminated. Features on an awning sign may be externally illuminated subject to review by the Design and Landmarks Committee, per Section 19.1011 Design Review Meetings, and approval by the Planning Commission, per Section 19.1006 Type III review, according to the following criteria:
  - a. Sign lighting should be designed as an integral component of the building and sign composition.
  - b. Sign lighting should be designed primarily for the enhancement of the pedestrian environment along adjacent streets and open spaces.
  - c. Lighting should contribute to a sign that is architecturally compatible with the character of the area.
4. Sign illumination shall be directed away from, and not be reflected upon, adjacent premises.
5. Internally illuminated cabinet signs are discouraged in the downtown zones. Internal illumination of cabinet signs may be permitted subject to review by the Design and Landmarks Committee, per Section 19.1011 Design Review Meetings, and approval by the Planning Commission, per Section 19.1006 Type III review, according to the following criteria:
  - a. The sign should be a unique design that responds to the Milwaukie Downtown Design Guidelines.
  - b. The sign copy should be lighter than the sign background.
  - c. The sign background should use a predominance of dark color or be opaque when the light source is on.
6. Electronic display signs are permitted for properties that have frontage on SE McLoughlin Blvd. subject to the following standards:
  - a. An electronic display sign is subject to the more restrictive of the following size limitations: Switching the power for illuminated signs on and off 4 or fewer times in one day does not constitute a flashing sign.
    - (1) 25% of the size of the sign face that contains the electronic display sign, abuts the electronic display sign, or is on the same sign structure as the electronic display sign.
    - (2) 20 square feet.

Black underlines (underlines) denote NWSC & ISA recommended additions to the existing code.  
 Black strikethroughs (~~strikethroughs~~) denote NWSC & ISA recommended deletions to the existing code.

- b. An electronic display sign shall be primarily visible from and oriented toward SE McLoughlin Blvd, and not toward any other street on which the property has frontage.
- c. Illumination for an electronic display sign is subject to the standards of Section 14.24.020.G.1.
- d. The manner of display on electronic display signs shall comply with the standards in Section 14.24.020.G.3.
- e. Incorporating an electronic display sign within an existing non-conforming sign is allowed subject to the regulations of Section 14.28.020.A.3.b.

**CHAPTER 14.24 SIGN CONSTRUCTION, MAINTENANCE, AND LIGHTING**

**14.24.020 SIGN LIGHTING**

- A. All lamps or bulbs exposed to direct view shall be limited to 25 watts or less capacity.
- B. When neon tubing is employed on the exterior or inferior interior of a sign, the capacity of such tubing shall not exceed 300 milliamperes rating for white tubing nor 100 milliamperes rating for colored tubing.
- C. When fluorescent tubes are used for interior illumination of a sign, such illumination shall not exceed illumination equivalent to 800 milliamperes rating tubes behind a Plexiglas face with tubes spaced at least 9 inches apart, center to center.
- D. Lighting from any sign may not directly, or indirectly from reflection, cause illumination on other properties in excess of 0.5 foot candles of light.
- E. In the event of a conflict between the standards in this section and a specific standard in the regulations for a sign district, the sign district regulations shall prevail.
- F. Other types of illumination not described by Subsections 14.24.020.A-C, such as light emitting diodes and other similar technology, are allowed for interior or exterior illumination of a sign if all other regulations of Title 14 are met.
- G. Electronic display signs are allowed in the Commercial sign district (Section 14.16.040), the Manufacturing sign district (Section 14.16.050), subject to the standards below. Electronic display signs are allowed in the Downtown sign district per Subsection 14.16.060.H.6 and the standards below.

1. Illumination.

- a. An electronic display sign may not have an illumination intensity of more than 0.3 foot candles over ambient light, measured at the distance specified in Table 14.24.020.G.1.a

<u>Area of Sign</u> sq. ft.	<u>Measurement</u> Distance (ft.)
<u>10</u>	<u>32</u>
<u>15</u>	<u>39</u>
<u>20</u>	<u>45</u>
<u>25</u>	<u>50</u>
<u>30</u>	<u>55</u>

Black underlines (underlines) denote NWSC & ISA recommended additions to the existing code.

Black strikethroughs (~~strikethroughs~~) denote NWSC & ISA recommended deletions to the existing code.

<u>35</u>	<u>59</u>
<u>40</u>	<u>63</u>
<u>45</u>	<u>67</u>
<u>50</u>	<u>71</u>
<u>55</u>	<u>74</u>
<u>60</u>	<u>77</u>
<u>65</u>	<u>81</u>
<u>70</u>	<u>84</u>
<u>75</u>	<u>87</u>
<u>80</u>	<u>89</u>
<u>85</u>	<u>92</u>
<u>90</u>	<u>95</u>
<u>95</u>	<u>97</u>
<u>100</u>	<u>100</u>

\* For signs with an area in square feet other than those specifically listed in the table (i.e., 12 sq ft, 400 sq ft, etc), the measurement distance may be calculated with the following formula:

$$\text{Measurement Distance} = \sqrt{\text{Area of Sign Sq. Ft.} \times 100}$$

To the degree practicable, the measuring device shall be parallel to the plane of the sign face and the measurement shall be made from a location that is perpendicular the plane of the sign face. The specified distance shall be the shortest straight-line distance to the sign face, including horizontal and vertical distance from the sign if the sign is elevated.

- b. The sign shall have a mechanism that automatically adjusts the illumination level to comply with the standards in Subsection 14.24.020.G.1.a.
  - c. In addition to the standards of Subsection 14.24.020.G.1.a., no electronic display sign shall be brighter than necessary for clear and adequate visibility, or of such brilliance or intensity as to present a hazard to persons traveling in the right of way. Upon notice by the Planning Director that a sign is out of compliance with these standards, the owner or operator of an electronic display sign shall immediately adjust the illumination of the sign.
2. Size. An electronic display sign in the Commercial sign district or Manufacturing sign district shall not exceed 50% of the allowed sign area for the sign type on which the electronic display sign is placed (i.e. If the electronic display sign is a freestanding sign, it shall be subject to 50% of the area restrictions for freestanding signs in that sign district. If the electronic display sign is a wall sign, it shall be subject to 50% of the area restrictions for wall signs in that sign district.) Size regulations for signs in the downtown sign district are as described in Subsection 14.16.060.H.6.
  3. Display.
    - a. The message or copy on an electronic display sign is allowed to change no more than once every 10 seconds. The change in message or copy may occur instantaneously or may fade or dissolve with a transition time of no more than 2 seconds between each separate message or display.

H. Shielding.

Black underlines (underlines) denote NWSC & ISA recommended additions to the existing code.  
Black strikethroughs (~~strikethroughs~~) denote NWSC & ISA recommended deletions to the existing code.

~~The purpose of the regulations below is to prevent light pollution from illuminated signs into the sky. These regulations apply to any sign face greater than [50-100] square feet with interior or exterior illumination.~~

- ~~1. Internally illuminated signs shall contain a shield placed at the top of the sign face that projects at least 2 feet horizontally from the sign face. If other regulations do not allow a shield to project 2 feet from the sign face, the shield shall extend to the maximum amount allowed. Shielding is not required if portions of a structure above the sign screen the sign in a manner consistent with the purpose of these regulations.~~
- ~~2. The light source for externally illuminated signs shall have a cutoff angle of 90 degrees or greater to ensure that lighting is not directed upward.~~

## CHAPTER 14.28 REMOVAL OF SIGNS IN VIOLATION

### 14.28.020 NONCONFORMING SIGN

#### A. Time Limit

1. Except as provided in Subsection 14.28.020.A.4, signs that were in compliance with applicable regulations when installed; but that become nonconforming as a result of adoption, modification, or applicability of the City's sign regulations; may remain in place for 10 years after the date they became nonconforming but shall be removed or brought into compliance on or before 10 years plus 1 day of the date they became nonconforming.
2. (Repealed by Ord. 1965)
3. Any sign which is structurally altered, relocated, or replaced shall immediately be brought into conformance with all of the provisions of this chapter, with the following exceptions:
  - a. A nonconforming sign in all zones may be maintained or undergo a change of copy or image without complying with the requirements of this chapter.
- b. The inclusion of an electronic display sign within the existing display area of a non-conforming sign is allowed if the addition of the electronic message sign does not cause the sign to go further out of conformance
4. The following provisions of this code relating to flashing signs, par spot lights, revolving beacons, revolving signs, banners, streamers, strings of lights, and temporary signs are applicable to all signs, notwithstanding Subsection 14.28.020.A.1: Subsections 14.12.020.A, 14.12.020.C, 14.12.020.D, 14.12.020.R, and 14.24.020.G.1. Compliance with these subsections is required regardless of any prior legal nonconforming status of the sign.

#### B. Notice

For legally established nonconforming signs that are approaching the end of the 10-year period during which they may be maintained under Subsection 14.28.020.A.1, the City Manager may provide additional notice in anticipation of the date the sign will be required to be removed or made to conform.



# Memorandum

**From:** Ryan Marquardt  
**Date:** September 6, 2011  
**Re:** Comments Received for ZA-11-02

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These written comments from Dan Dhruva, Clear Channel Outdoor, were received after the deadline for completion of the staff report. The comments are not referenced or responded to in the staff report.



September 2, 2011

City of Milwaukie  
Att: Planning Commission  
10722 SE Main St  
Milwaukie, OR 97222

**RECEIVED**

**SEP 06 2011**

CITY OF MILWAUKIE  
PLANNING DEPARTMENT

RE: Proposed changes for Electronic Display Signs

Members of the Planning Commission:

ClearChannel Outdoor and our predecessors have operated our business in the Portland metro area for close to 100 years, we currently employ 28 local residents at our facility. Over the decades our industry has progressed through the use of different technologies: manual posting with paste, hand painting, silk screening & printing on paper, and printing on vinyl. With the recent adoption of SB 639 we are now poised to utilize digital technology in the State of Oregon that complies with the formal guidance from the Federal Highway Administration (see the 2007 FHWA Memo attached).

The proposed sign ordinance changes for the city of Milwaukie will prohibit the use of LED technology amongst Outdoor Advertising companies and subsequently deny the city of the many benefits that are inherent with electronic billboards. LED signs provide critical time savings in the display of public safety and emergency messages, i.e. amber alerts, missing persons alerts, and tsunami warnings. Please see the attached letters received from the Salem Police Department, the FBI, the U.S. Marshals, the Department of Homeland Security, and The National Center for Missing and Exploited Children. Also included is an email from our Branch President in Minneapolis, MN that was sent out after a bridge collapsed there in 2007 and a copy of the message that was displayed on the signs.

Another advantage to electronic billboards that you may not be aware of is the increased ability for sign companies to provide space for public service. Digital technology eliminates the need for production costs which expands the number of organizations that would be able to make use of such programs. Please see the letters for support for digital billboards from the March of Dimes, American Cancer Society, and Cascade Aids Project.

The proposed code changes limit the area of a sign that can be converted to digital technology to 25%. This is unnecessary and inconsistent with State and Federal guidelines. The standard for outdoor advertising is 100% of a sign face in order to provide a seamless message presentation.



The proposed static message duration requirements are inconsistent between automatic changeable copy signs and electronic display signs. Differentiating the turn rates between these types of signs and further delineating the change rate for electronic display signs based on a size greater than 20 square feet is needless and unsubstantiated by any particular methodology.

The code currently allows for 10 second change rates which is already more restrictive than State and Federal guidelines of 8 seconds. This adequately addresses any concerns that digital signs will violate the prohibition of intermittent, flashing, or moving lights.

Lastly we feel it necessary to point out that the transition to this new technology allowing businesses and sign companies to upgrade to better and more efficient lighting should mirror the city's desire to move in a more sustainable direction. Also, prohibiting the use would impact future development such as the movement to bring a minor league baseball team to the area, whose park would benefit greatly from digital signage.

ClearChannel Outdoor is highly interested in working together with the city of Milwaukie to draft sign ordinance regulations that will benefit all parties involved and serve as a solid, forward thinking, guideline for signage in the future.

Regards,

A handwritten signature in blue ink, appearing to read 'Dan Dhruva', is positioned above the typed name.

Dan Dhruva  
VP Real Estate and Public Affairs  
ClearChannel Outdoor - Portland



U.S. Department  
of Transportation  
Federal Highway  
Administration

# Memorandum

Subject: **INFORMATION:** Guidance on  
Off-Premise Changeable Message Signs

Date: September 25, 2007

From: Original signed by:  
Gloria M. Shepherd  
Associate Administrator for  
Planning, Environment, and Realty

In Reply Refer To:  
HEPR -20

To: Division Administrators  
Attn: Division Realty Professionals

## Purpose

The purpose of this memorandum is to provide guidance to Division offices concerning off-premises changeable message signs adjacent to routes subject to requirements for effective control under the Highway Beautification Act (HBA) codified at 23 U.S.C. 131. It clarifies the application of the Federal Highway Administration (FHWA) July 17, 1996 memorandum on this subject. This office may provide further guidance in the future as a result of additional information received through safety research, stakeholder input, and other sources.

Pursuant to 23 CFR 750.705, a State DOT is required to obtain FHWA Division approval of any changes to its laws, regulations, and procedures to implement the requirements of its outdoor advertising control program. A State DOT should request and Division offices should provide a determination as to whether the State should allow off-premises changeable electronic variable message signs (CEVMS) adjacent to controlled routes, as required by our delegation of responsibilities under 23 CFR 750.705(j). Those Divisions that already have formally approved CEVMS use on HBA controlled routes, as well as those that have not yet issued a decision, should re-evaluate their position in light of the following considerations. The decision of the Division should be based upon a review and approval of a State's affirmation and policy that: (1) is consistent with the existing Federal/State Agreement (FSA) for the particular State, and (2) includes but is not limited to consideration of requirements associated with the duration of message, transition time, brightness, spacing, and location, submitted for FHWA approval, that evidence reasonable and safe standards to regulate such signs are in place for the protection of the motoring public. Proposed laws, regulations, and procedures that would allow permitting CEVMS subject to acceptable criteria (as described below) do not violate a prohibition against "intermittent" or "flashing" or "moving" lights as those terms are used in the various FSAs that have been entered into during the 1960s and 1970s.

This Guidance is applicable to conforming signs, as applying updated technology to nonconforming signs would be considered a substantial change and inconsistent with the requirements of 23 CFR 750.707(d)(5). As noted below, all of the requirements in the HBA and its implementing regulations, and the specific provisions of the FSAs, continue to apply.

### **Background**

The HBA requires States to maintain effective control of outdoor advertising adjacent to certain controlled routes. The reasonable, orderly and effective display of outdoor advertising is permitted in zoned or unzoned commercial or industrial areas. Signs displays and devices whose size, lighting and spacing are consistent with customary use determined by agreement between the several States and the Secretary, may be erected and maintained in these areas (23 U.S.C. § 131(d)). Most of these agreements between the States and the Secretary that determined the size, lighting and spacing of conforming signs were signed in the late 1960's and the early 1970's.

On July 17, 1996, this Office issued a Memorandum to Regional Administrators to provide guidance on off-premise changeable message signs and confirmed that FHWA has "always applied the Federal law 23 U.S.C. 131 as it is interpreted and implemented under the Federal regulations and individual Federal/State agreements." It was expressly noted that "in the twenty-odd years since the agreements have been signed, there have been many technological changes in signs, including changes that were unforeseen at the time the agreements were executed. While most of the agreements have not changed, the changes in technology require the State and FHWA to interpret the agreements with those changes in mind". The 1996 Memorandum primarily addressed tri-vision signs, which were the leading technology at the time, but it specifically noted that changeable message signs "regardless of the type of technology used" are permitted if the interpretation of the FSA allowed them. Further advances in technology and affordability of LED and other complex electronic message signs, unanticipated at the time the FSAs were entered into, require the FHWA to confirm and expand on the principles set forth in the 1996 Memorandum.

The policy espoused in the 1996 Memorandum was premised upon the concept that changeable messages that were fixed for a reasonable time period do not constitute a moving sign. If the State set a reasonable time period, the agreed-upon prohibition against moving signs is not violated. Electronic signs that have stationary messages for a reasonably fixed time merit the same considerations.

### **Discussion**

Changeable message signs, including Digital/LED Display CEVMS, are acceptable for conforming off-premise signs, if found to be consistent with the FSA and with acceptable and approved State regulations, policies and procedures.

This Guidance does not prohibit States from adopting more restrictive requirements for permitting CEVMS to the extent those requirements are not inconsistent with the HBA, Federal regulations, and existing FSAs. Similarly, Divisions are not required to concur with State proposed regulations, policies, and procedures if the Division review determines, based upon all relevant information, that the proposed regulations, policies and procedures are not consistent with the FSA or do not include adequate standards to address the safety of the motoring public. If the Division Office has any question that the FSA is being fully complied with, this should be discussed with the State and a process to change the FSA may be considered and completed before such CEVMS may be allowed on HBA controlled routes. The Office of Real Estate Services is available to discuss this process with the Division, if requested.

If the Division accepts the State's assertions that their FSA permits CEVMS, in reviewing State-proposed regulations, policy and procedures for acceptability, Divisions should consider all relevant information, including but not limited to duration of message, transition time, brightness, spacing, and location, to ensure that they are consistent with their FSA and that there are adequate standards to address safety for the motoring public. Divisions should also confirm that the State provided for appropriate public input, consistent with applicable State law and requirements, in its interpretation of the terms of their FSA as allowing CEVMS in accordance with their proposed regulations, policies, and procedures.

Based upon contacts with all Divisions, we have identified certain ranges of acceptability that have been adopted in those States that do allow CEVMS that will be useful in reviewing State proposals on this topic. Available information indicates that State regulations, policy and procedures that have been approved by Divisions to date, contain some or all of the following standards:

- **Duration of Message**
  - Duration of each display is generally between 4 and 10 seconds – 8 seconds is recommended.
- **Transition Time**
  - Transition between messages is generally between 1 and 4 seconds – 1-2 seconds is recommended.
- **Brightness**
  - Adjust brightness in response to changes in light levels so that the signs are not unreasonably bright for the safety of the motoring public.
- **Spacing**
  - Spacing between such signs not less than minimum spacing requirements for signs under the FSA, or greater if determined appropriate to ensure the safety of the motoring public.
- **Locations**
  - Locations where allowed for signs under the FSA except such locations where determined inappropriate to ensure safety of the motoring public.

Other standards that States have found helpful to ensure driver safety include a default designed to freeze a display in one still position if a malfunction occurs; a process for modifying displays and lighting levels where directed by the State DOT to assure safety of the motoring public; and requirements that a display contain static messages without movement such as animation, flashing, scrolling, intermittent or full-motion video.

### **Conclusion**

This Memorandum is intended to provide information to assist the Divisions in evaluating proposals and to achieve national consistency given the variations in FSAs, State law, and State regulations, policies and procedures. It is not intended to amend applicable legal requirements. Divisions are strongly encouraged to work with their State in its review of their existing FSAs and, if appropriate, assist in pursuing amendments to address proposed changes relating to CEVMS or other matters. In this regard, our Office is currently reviewing the process for amending FSAs, as established in 1980, to determine appropriate revisions to streamline requirements while continuing to ensure there is adequate opportunity for public involvement.

For further information, please contact your Office of Real Estate Point of Contact or Catherine O'Hara ([Catherine.O'Hara@dot.gov](mailto:Catherine.O'Hara@dot.gov)).



## POLICE DEPARTMENT

555 Liberty St. SE / Room 130 • Salem, OR 97301-3513 • (503) 588-6123

January 20, 2011

Lamar Advertising Company  
Attn.: Chris Colvin, General Manager  
29345 Airport Road, Suite B  
Eugene, Oregon 97402

Dear Mr. Colvin:

It is with great pleasure that I send you the following letter of thanks for your support of the Salem Police Department's Top 10 Most Wanted.

The Most Wanted program features Salem's most sought after criminals and provides an opportunity for citizens to assist police in apprehending them to prevent their committing more crimes. The program was revived in January 2010 through the distribution of posters and fliers displayed in prominent locations throughout the community.

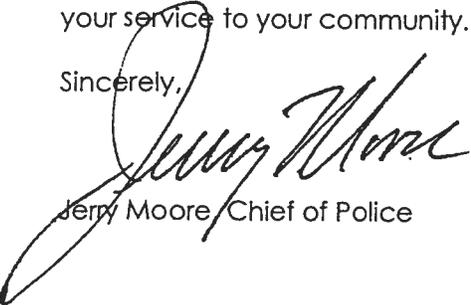
However, in May when your company generously offered to donate digital billboard space, we never imagined just how much of a community awareness boost the program would receive.

Recently, a featured suspect saw the posters and acquaintances made him aware of his digital billboard spot. Because of the exposure he was receiving, the suspect turned himself in. The suspect commented, "The posters are more than effective, but the billboards and posters really shrink Salem." His words give dimension to the success of the partnership between Salem Police and Lamar Advertising.

This month marks the program's one-year anniversary and we are pleased to announce that between January 2010 and January 2011, we have featured 37 suspects and captured 22.

We appreciate the support we have received from Lamar Advertising and commend you for your service to your community.

Sincerely,



Jerry Moore, Chief of Police

c: Rick Smith, Senior Account Executive

---

**From:** Robert Hoever [<mailto:RHOEVER@ncmec.org>]  
**Sent:** Wednesday, June 16, 2010 1:07 PM  
**To:** Parsons, Brad; Laible, Myron; [mary.lindstrand@mcso.us](mailto:mary.lindstrand@mcso.us)  
**Cc:** Alwin, Tony; Sandblast, Terry; DHRUVA, DANIEL; Robert G. Lowery, Jr.  
**Subject:** RE: Kyron CCO Billboard Press Release & photos  
**Importance:** High

I would like to take a moment to thank each and every one of you who are involved with this project! Typically, in any missing child case, someone knows something, and it has been our experience that the public's help is vital to a safe recovery. Your efforts are helping to enlist the eyes and ears of the public to assist help law enforcement in the search for a missing child. It is through your efforts we can be assured that whomever has information knows it is critical they come forward to report it.

Both OAAA and Clear Channel have helped us in the past with AMBER Alerts, and this is just one more example of your good corporate citizenship and willingness to help with public safety issues, specifically missing and abducted children. We thoroughly value our partnership with you!

Our sincere thank you!

Bob

---

**Robert Hoever**

Associate Director, Missing Children Division  
National Center for Missing & Exploited Children

[rhoever@ncmec.org](mailto:rhoever@ncmec.org)

Office (703) 837-6118

Cell (571) 221-5176

U.S. Department of Homeland Security  
Federal Emergency Management Agency  
FEMA-1985-DR-MA  
Joint Field Office  
135 Commerce Way  
Portsmouth, NH 03801



# FEMA

July 23, 2010

Mr. Stephen Ross,  
President-Boston Division  
Clear Channel Outdoor  
89 Maple Street  
Stoneham, MA 02180

Dear Mr. Ross:

On behalf of Administrator Fugate and the Federal Emergency Management Agency (FEMA), please accept our sincere gratitude for assisting us in serving the citizens of the Commonwealth of Massachusetts following the floods and storms that occurred last March and April. Your willingness to place critical disaster assistance information on Clear Channel Outdoor digital billboards in Massachusetts, has enabled us to reach out to a multitude of disaster survivors all within a very brief time period.

The eagerness of Clear Channel Outdoor to join us in our mission to support our citizens and first responders has resulted in an invaluable outreach initiative.

Once again, thank you for your support. FEMA appreciates the assistance you have provided in helping the community get back on its feet. You've been a great partner in this time of need. We all hope the occasion doesn't arise again, but we're thankful for your willingness to support our efforts.

Sincerely,

A handwritten signature in black ink, appearing to read "Nick Russo".

Chief Nick Russo, Ret. CEM  
FCO 1891 DR ME, 1892 DR NH, 1895 DR MA  
Assistant Director, NE Div.  
Federal Coordinating Officer Cadre  
DHS/FEMA Region 1

/sl



## **FBI Wanted Messaging on Digital Displays - Updated 8/2/10**

Clear Channel Outdoor has agreed to work with the Federal Bureau of Investigations (FBI) to provide broadcast of "*Wanted Criminal*" messages on all of its digital outdoor networks across the country, as well as any future digital networks established. This Clear Channel Outdoor initiative has been in place since 12/26/07.

In addition to our internal FBI "Wanted" digital messaging program, there is now a second, expanded, National FBI alert system. These alerts will come by email through the OAAA. The posting of these national FBI alerts will follow the same protocol as our internal program, which is under the discretion of each local market president, based on the importance to that managers local community and availability.

Each Digital Outdoor Network branch office is responsible to do the following:

1. Designate one digital manager in your market and one back-up person to be the contact point person for the FBI information.
2. Each CCO digital point person should contact the following National FBI liaison:

Christopher Allen  
Federal Bureau of Investigation  
Investigative Publicity & Public Affairs  
202-324-5681  
[Christopher.Allen@ic.fbi.gov](mailto:Christopher.Allen@ic.fbi.gov)

3. Chris Allen will then contact a local FBI branch office in your market and have them contact your designated FBI/DON contact.
4. Once each market has established an acceptable and prompt communication route with their local FBI representative they will accept information to be posted on the digital outdoor network.
5. FBI "*Wanted Criminal*" information will be posted on a space available basis. The attached FBI "wanted design template" should be used for branding consistency an easy recognition. (Note: We have an updated FBI template as of 8/2/10 to follow national FBI standards)
6. FBI "*Wanted Criminal*" information or other important security messaging will be displayed on Clear Channel Outdoor digital networks at the discretion of the FBI and subject to the reasonable judgment of the local Clear Channel Outdoor branch office management.
7. As new CCO Digital networks are created in the future please be advised that the same procedure as above should be followed and consideration for FBI messaging should be a high priority for the test period of the digital displays.

### **The National FBI Digital Alert Network**

The OAAA has partnered with the FBI to help create a National Digital Alert Network of digital displays similar to the Amber Alert program. Each division that has digital displays will be contacted by email about the following alerts: The email alert system uses the same routing system as the OAAA Amber Alert system.

- a. **Hot pursuit** - Regional or interstate messages where the FBI, alone or together with state and local law enforcement, is attempting to apprehend suspected felons in the immediate aftermath of a crime.
- b. **Emergency messaging** - regarding security threats relevant to the communities listed in the email.
- c. **Ten Most Wanted Fugitives program** - Criminal alerts for FBI's top ten most wanted criminals.

**TOP 10  
MOST WANTED**

**JOE LUIS SAENZ**

WANTED FOR MURDER, KIDNAP, RAPE

**1-800-CALL-FBI**  
REWARD



**FBI**



**TOP 10 TEMPLATE**

**TOP 10  
MOST WANTED**

**JOE LUIS SAENZ**

WANTED FOR MURDER, KIDNAP, RAPE

**1-800-CALL-FBI** REWARD



**FBI**



**EMERGENCY SITUATION**

**EXPLOSION AT  
JFK AIRPORT**

Tip Line: **1-800-CALL-FBI**



**FBI**

**NATIONAL EMERGENCY TEMPLATE**

**EMERGENCY SITUATION**

**EXPLOSION AT JFK AIRPORT**

Tip Line: **1-800-CALL-FBI**



**FBI**

**From:** Parsons, Brad

**Sent:** Thursday, August 02, 2007 8:46 AM

**To:** Sandblast, Terry

**Subject:** Minneapolis Bridge Collapse

**Attachments:** Breaking news copy.jpg

**From:** Muller, Lee Ann

**Sent:** Wednesday, August 01, 2007 5:27 PM

**To:** Outdoor Corporate Officers; Outdoor Presidents/GMs; Outdoor Sales Managers; Outdoor Operations Managers; Outdoor Real Estate Managers; Fletcher, Nancy; Klein, Ken

**Cc:** MCCARVER, TOM; Klees, Tom; Miller, Patty; Ogilvie, Garfield; 'Fuller, Jeffrey'; St Jacque, Jim

**Subject:** Minneapolis Bridge Collapse

As many of you probably know by now, a bridge on a major freeway heading toward downtown Minneapolis collapsed tonight at 6:19 PM. To my knowledge at this time, none of our employees were on the bridge or harmed by this incident.

This bridge is within 3 miles of our office and is traveled on a daily basis by about half of our employees.

We have dedicated our digital network to MNDOT to communicate traffic and safety information. We were live with an emergency message within 15 minutes of the bridge collapse. Attached is a copy of our initial message.

We will keep you updated on any new information.

*Lee Ann Muller*

President / General Manager

Clear Channel Outdoor  
3225 Spring Street NE  
Minneapolis, MN 55413

612-605-5125 Phone

612-605-5150 Fax

lamuller@clearchannel.com

**35W BRIDGE COLLAPSED  
AT DOWNTOWN MINNEAPOLIS  
PLEASE USE ALTERNATE ROUTES**

**BREAKING NEWS**

**35W BRIDGE COLLAPSES  
AT DOWNTOWN MINNEAPOLIS**

march of dimes

**August 16, 2010**

March of Dimes - Oregon Chapter

Greater Oregon Chapter  
 3000 SW Morrison Street 10  
 Portland, OR 97205

Telephone: (503) 229-9400  
 Fax: (503) 227-8966

http://marchofdimes.org

**To: Oregon State Officials**

**Re: The value of outdoor advertising**

The Greater Oregon Chapter of March of Dimes has a long-standing relationship with Clear Channel Outdoor. For many years Clear Channel Outdoor has been providing billboard space at a deeply discounted rate for March of Dimes, enabling us to raise awareness about our largest fundraising event, March for Babies.

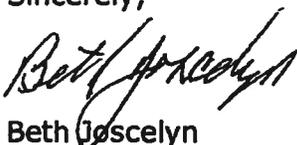
In 2009, for example, we put up 16 billboards to raise awareness for March for Babies. Thanks to Clear Channel Outdoor donating \$24,000 worth of space, our costs as a non-profit were limited to vinyl production and posting fees.

These billboards are not only important for us to generate exposure for the event—the revenues from which fund Nobel Prize-winning research that saves babies lives; but they are also important for us to generate exposure for our sponsors. Our chapter-wide sponsors support March of Dimes mission to improve the health of babies, but they also need their marketing dollars to produce a level of impressions for them that justifies their investment. Nothing can do that for us like billboards can. At roughly 18,000 impressions per billboard per day, we're able to get approximately 16 million impressions for less than the cost of one full page ad in Portland Monthly magazine, which has a readership of 228,000 (circulation of 58,000).

In an age where non-profits expense lines are closely monitored and the need for 75% or more of our revenues to go to programs and mission, advertising budgets are slim to none. Our bottom lines would be improved even more with the use of digital billboards—a faster, greener, more efficient means of getting public service announcements out.

We rely on Clear Channel Outdoor to help further the mission of March of Dimes; which is to improve the health of babies by preventing birth defects, premature birth and infant mortality. Clear Channel Outdoor is a champion for babies.

Sincerely,



Beth Joscelyn  
 State Director



To Whom It May Concern:

The American Cancer Society, on behalf of our leadership and thousands of Oregon and SW Washington volunteers, is pleased to support Clear Channel Outdoor.

Clear Channel Outdoor has provided the American Cancer Society with the opportunity to utilize outdoor advertising at the non-profit rate for several years. As a major supporter of the American Cancer Society, Clear Channel Outdoor has assisted in the advertisement of several local American Cancer Society events, as well as a number of our patient programs and services. With the assistance of Clear Channel Outdoor, we at the Society are better able to reach more of our key constituents in Oregon and SW Washington, enabling us to continue our mission of creating a world with more birthdays.

Though Clear Channel Outdoor has been able to provide this wonderful opportunity to us at a discounted rate, there are still fees incurred that we do not generally budget for. If the state allowed digital advertising, the costs of print and production would be much less, therefore leading our organization the opportunity to put those funds towards educating people about prevention and early detection, raising money to help people stay well and get well, to find cures, and fighting back against the disease.

Thank you for your attention and consideration.

Regards,

A handwritten signature in cursive script that reads "Holly Ball".

Holly Ball  
American Cancer Society  
District Executive Director  
503.795.3946  
[Holly.Ball@cancer.org](mailto:Holly.Ball@cancer.org)



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**Brian Wong, MD**  
OHSU

Cascade AIDS Project



August 16, 2010

**Brad Parsons**  
President / General Manager  
Clear Channel Outdoor – Oregon & SW Washington  
715 NE Everett Street  
Portland, OR 97232

Dear Mr. Parsons:

I want to personally thank you and Clear Channel Outdoor for the tremendous support you have provided Cascade AIDS Project (CAP) over the past two years. As you know, CAP's mission is to prevent HIV infections, support and empower people affected and infected by HIV/AIDS, and to eliminate HIV/AIDS-related stigma. On all these fronts, communications play a critical role, whether it is about raising awareness or providing education.

Over the past 18 months, Cascade AIDS Project has benefitted hugely through the in-kind contribution of billboards for airing messages about AIDS Walk, our Wellness Center, and World AIDS Day. In fact, we've estimated the in-kind value of the donation to be in excess of \$60,000 over the past year and a half.

While the donation of space for our messages has been hugely appreciated, it is always a struggle to come up with the resources for the installation and printing of Boards. We hope that Oregon will soon allow digital billboards, as we know this would reduce production costs and allow us to continue to get our messages out efficiently and effectively.

As a non-profit with limited resources, we rely on the generous support of both donors and key business partners who help to make their resources available to achieve our mission. Towards this end, we once again express our sincere gratitude to you and Clear Channel Outdoor. With the introduction of digital billboards, we are hopeful that we will even have more ability to effectively reach communities throughout Oregon and SW Washington with critical messaging.

Sincerely,

**Michael Kaplan**  
Executive Director  
Dir. 503.278.3810  
mkaplan@cascadeaids.org