



**Regular Session**

**RS**

**Milwaukie City Council**



**MILWAUKIE CITY COUNCIL  
REGULAR SESSION**

City Hall Council Chambers  
10722 SE Main Street  
www.milwaukieoregon.gov

**AGENDA  
SEPTEMBER 2, 2014**

2,181<sup>st</sup> Meeting

- |  | <b>Page #</b> |
|--|---------------|
| <b>1. CALL TO ORDER</b><br>Pledge of Allegiance  |               |
| <b>2. PROCLAMATIONS, COMMENDATIONS, SPECIAL REPORTS, AND AWARDS</b>  |               |
| <b>A. National Preparedness Month Proclamation</b><br>Milwaukie Public Safety Advisory Committee   | <b>2</b>      |
| <b>B. Four Parks Master Planning Project Update</b><br>Staff: Steve Butler, Community Development Director   | <b>3</b>      |
| <b>3. CONSENT AGENDA</b><br><i>These items are considered to be routine, and therefore, will not be allotted discussion time on the agenda; the items may be passed by the Council in one blanket motion; any Councilor may remove an item from the "Consent" agenda for discussion or questions by requesting such action prior to consideration of that part of the agenda.</i>  |               |
| <b>A. Authorize the Purchase of Mini Track Hoe – Resolution</b>  | <b>19</b>     |
| <b>4. AUDIENCE PARTICIPATION</b><br><i>The Presiding Officer will call for statements from citizens regarding issues relating to the City. Pursuant to Section 2.04.140 of the Milwaukie Municipal Code, only issues that are "not on the agenda" may be raised. In addition, issues that await a Council decision and for which the record is closed may not be discussed. Persons wishing to address the Council shall first complete a comment card and return it to the City Recorder. Pursuant to Section 2.04.360 of the Milwaukie Municipal Code, "all remarks shall be directed to the whole Council, and the Presiding Officer may limit comments or refuse recognition if the remarks become irrelevant, repetitious, personal, impertinent, or slanderous." The Presiding Officer may limit the time permitted for presentations and may request that a spokesperson be selected for a group of persons wishing to speak.</i> |               |
| <b>5. PUBLIC HEARING</b><br><i>Public Comment will be allowed on items under this part of the agenda following a brief staff report presenting the item and action requested. The Mayor may limit testimony.</i>   |               |
| <b>A. None scheduled</b>   |               |
| <b>6. OTHER BUSINESS</b><br><i>These items will be presented individually by staff or other appropriate individuals. A synopsis of each item together with a brief statement of the action being requested shall be made by those appearing on behalf of an agenda item.</i>   |               |
| <b>A. Local Marijuana Tax – Ordinance</b><br>Staff: Bill Monahan, City Manager   | <b>23</b>     |
| <b>B. Council Reports</b>  |               |
| <b>7. INFORMATION</b>  |               |

## 8. ADJOURNMENT

### Meeting Information

- Executive Sessions: The Milwaukie City Council may meet in executive session immediately following adjournment pursuant to ORS 192.660(2).
  - All Executive Session discussions are confidential and those present may disclose nothing.
  - Representatives of the news media are allowed to attend Executive Sessions as provided by ORS 192.660(3) but must not disclose any information discussed.
  - Executive Sessions may not be held for the purpose of taking final actions or making final decisions.
  - Executive Sessions are closed to the public.
- For assistance/service per the Americans with Disabilities Act (ADA), please dial TDD 503-786-7555
- During meetings the Council asks that all pagers and cell phones be set on silent mode or turned off.



**Regular Session  
Agenda Item No.**

**2**

**Proclamations,  
Commendations,  
Special Reports,  
& Awards**



**RS 2. A.  
9/2/14**

## PROCLAMATION

**WHEREAS**, “National Preparedness Month” creates an important opportunity for every resident of the City of Milwaukie, Oregon to prepare their homes, businesses, and communities for any type of emergency including natural disasters and potential terrorist attacks; and

**WHEREAS**, investing in the preparedness of ourselves, our families, businesses, and community can reduce fatalities and economic devastation in our city and in our nation; and

**WHEREAS**, the Federal Emergency Management Agency’s *Ready* Campaign, Citizen Corps, the City of Milwaukie’s Community Emergency Response Team and Public Safety Advisory Committee, Red Cross Shelter Teams and other federal, state, local, territorial, private and volunteer agencies are working to increase public activities in preparing for emergencies and to educate individuals on how to take action; and

**WHEREAS**, emergency preparedness is a shared responsibility, all citizens are urged to make preparedness a priority by ensuring that individuals and families have at least 72 hours’ worth of critical supplies on hand at all times, to create an emergency communications plan with relatives and neighbors and to always stay informed about the potential hazards and threats in your area; and

**WHEREAS**, all citizens of the City of Milwaukie are encouraged to participate in preparedness activities and are asked to visit the websites of the *Ready* Campaign at [ready.gov](http://ready.gov) or [listo.gov](http://listo.gov) (in Spanish) and the City of Milwaukie’s Emergency Preparedness webpage found at [milwaukieoregon.gov](http://milwaukieoregon.gov) and become more prepared.

**THEREFORE BE IT RESOLVED**, that the City Council of the City of Milwaukie, in the County of Clackamas, in the State of Oregon, hereby proclaims **September 2014** as **National Preparedness Month**, and encourages all citizens and businesses to develop their own emergency preparedness plan, and work together toward creating a more prepared society.

**DATED** this 2<sup>nd</sup> day of September 2014.

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Jeremy Ferguson, Mayor  
City of Milwaukie

ATTEST:

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Pat DuVal, City Recorder  
City of Milwaukie





MILWAUKIE CITY COUNCIL  
**STAFF REPORT**

**RS 2. B.**  
**9/2/14**

To: Mayor and City Council  
Through: Bill Monahan, City Manager

Subject: **Update on “Four Parks Master Planning” Project**

From: Steve Butler, Community Development Director

Date: August 21, 2014, for September 2, 2014 Work Session

**ACTION REQUESTED**

None, since this is a briefing to inform the City Council about the upcoming schedule and who will be assisting the City on this project, both from North Clackamas Parks and Recreation District (NCPRD) staff and the selected consultant’s team.

**HISTORY OF PRIOR ACTIONS AND DISCUSSIONS**

In response to the City’s strong interest in encouraging the development of park land within Milwaukie, North Clackamas Parks and Recreation District (NCPRD) appropriated \$80,000 for development of master plans for three neighborhood parks (Balfour, Bowman-Brae, and Kronberg parks) and 30% construction drawings for one neighborhood park (Wichita Park). The City Council and the Parks and Recreation Board have been briefed before on this project, which is a partnership between NCPRD and the City.

**BACKGROUND**

A Request for Qualifications was recently issued by NCPRD. The submitted statements of qualification were reviewed by a panel made up of District staff Jeroen Kok and Katie Dunham, PARB member Lynn Sharp, and Community Development Director Steve Butler. The review panel was excited to select a consultant team lead by Lango Hansen Landscape Architects to work on this project. This firm’s principal Kurt Lango will be the Project Manager and will lead all of the public meetings.

The master planning processes for the three community parks will include a vibrant public engagement component. Public meetings are being planned for three of the master planning processes, with the first set scheduled as follows: Balfour Park (September 24); Kronberg Park (September 30) and Bowman-Brae Park ( October 1). The 30% construction drawings for Wichita Park will be presented to the Linwood NDA and Parks & Recreation Board. The attachments provide more detailed information about the project scope and Lango Hansen Landscape Architects.

**CONCURRENCE**

The City Council and Parks & Recreation Board have expressed support for this project.

**FISCAL IMPACTS**

The direct consultant costs are being paid for by NCPRD. City and District staff is providing staff time to assist with the project.

## **ATTACHMENTS**

1. Project Scope of Work
2. Description of Lango Hansen Landscape Architects and List of Relevant Parks Master Plan Projects

# ATTACHMENT 1

## WICHITA PARK

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### Task A: Project Kick-off + Research

In order to address local land use processes and the preparation of 30% construction documents, LHLA will meet with NCPRD and City staff to familiarize themselves with the goals for the project and discuss NCPRD standards, project approach, schedule and deliverables.

LHLA will review information and materials provided by NCPRD and the City to understand the scope of work and any project related issues. In addition, LHLA will conduct a thorough site walk-through to develop a detailed understanding of the proposed improvements outlined in the previously developed Wichita Park Master Plan developed with the Linwood Neighborhood District Association and interested neighbors. LHLA will set up a work plan and schedule that will identify critical path items and key deadlines.

LHLA will work with NCPRD and the City to identify any red flags related to the scope of work. Any conditions of approval that need to be considered as a result of the recently completed park community service use approval process will be addressed before development of construction drawings commences.

### Task B: Prepare 30% Construction Documents

LHLA will subsequently develop 30% Construction Document drawings for review and approval by NCPRD and City staff. 30% Construction Documents will incorporate LHLA recommendations for park configurations and future improvements based on programmatic requirements, site constraints and existing conditions. Construction Documents will include drawings detailing existing conditions, site improvements, grading and erosion control, utilities and irrigation, landscaping and civil/structural plans as necessary. Details and Specifications (in 2004 CSI Master Specifications Format) will be developed based on NCPRD and City Standards. Lango Hansen shall be responsible for the preparation of Division One and Division Two Specifications with use of NCPRD provided boilerplate specifications as a starting point. These specifications will detail recommended materials and products to be used in park construction. All consultant drawings and specifications including any required civil and structural plans will be coordinated by LHLA.

### Task C: Cost Estimating

Based on approved 30% Construction Documents, LHLA will develop a detailed cost estimate to serve as a basis for budgeting and procurement of potential grants and funding sources so that NCPRD and the City can construct the park in the near future. LHLA will work with any subconsultants necessary to develop a complete 30% set. Deliverables will be as follows:

- 30% Construction Documents to include Existing Conditions, Site Improvements, Grading and Erosion Control, Utilities and Irrigation, Landscaping and Civil/Structural Plans, Details and Specifications. Documents will be provided in the following formats: Digital (PDF, Autocad, and Word) and Hardcopy (2 full-size drawing sets, 2 complete specification manuals).
- Detailed Cost Estimate (PDF).
- Detailed list of local and state permits and approvals required to complete construction and likely conditions of approval (PDF).



### Task A: Project Kick-off + Research

For each Balfour and Bowman-Brae Parks projects respectively, LHLA will facilitate a kick-off meeting with NCPRD and City staff. This meeting will provide the basis for clarification on scope of work, coordination and communication methods, and finalize timelines and project deliverables.

LHLA will carefully review information and materials provided by NCPRD and the City, including any previously completed related work such as the Concept Plan developed for Balfour Park, to develop a full understanding of the scope of the project and any related issues.

### Task B: Site Inventory + Analysis

LHLA will conduct a detailed site walk-through to develop an inventory and assess current conditions for each park project.

Based on information gathered during the Site Inventory phase, LHLA will develop a meticulous site assessment. At this time LHLA will contact constituents relevant to park development, such as the Oak Lodge Sanitary District in the case of Bowman-Brae Park. Opportunities and constraints gathered from this site analysis will inform the Master Plan Process.

### Task C: Public Meetings + Concept Development + Cost Estimates

For each park project, LHLA will assist NCPRD in planning two public meetings to solicit community feedback. LHLA will provide meeting graphics, material preparation, and mailings or public notices. LHLA will develop three design options for each park based on site opportunities and constraints, and the previously designed Balfour park. LHLA will review these Master Plan Concepts with NCPRD and City staff and will make refinements based on their comments prior to the first public meeting. The first public meeting will present the findings from Site Inventory and Analysis, and present the three design options for each park. LHLA will then gather feedback from neighbors and community members regarding the vision for future park development including recreational elements, natural resource enhancements, maintenance needs and interpretive elements. LHLA will then summarize the input received and incorporate it into the development of a final Master Plan option with concept-level cost estimate. The final Master Plan option and preliminary cost estimate will be reviewed by NCPRD and the City for approval prior to the second public meeting. Updates will be made as necessary before it is presented to the public. The purpose of the second public meeting will be to review the final Master Plan option with the public and attain consensus.

### Task D: Support for Land Use Processes + Master Plan Documents

Once a final Master Plan document is completed, the design team will provide 5 hard copies for each park project. LHLA will also provide digital files in the following formats: PDF, Word, CAD, Excel, and InDesign in addition to the hard copies. The Master Plan document will contain information gathered during the Master Plan process including Existing Conditions, Program, Opportunities and Constraints Analysis, Stakeholder Input, Conceptual Site Plan, Permitting Requirements, Concept-Level Cost Estimate, and any other supporting relevant technical information.

After completion of the Master Plan Concept, LHLA will continue to provide the city with support in order to successfully complete the City Comprehensive Plan Amendment and Community Service Land Use Processes for each park project. LHLA will develop and provide necessary drawings, calculations, land use applications and supporting documents that will allow City staff to complete land use reviews and hearings.

### Task D, continued

LHLA will conduct a final meeting for each park project to present the Master Plan Concept to the City of Milwaukie Park and Recreation Board, City Council and NCPRD's District Advisory Board for the approval and adoption of the Master Plan.

Site Master Plan Final Report, Digital (PDF, InDesign, Word, Excel, Autocad) and Hardcopy (5 copies):

- Complete Site Inventory and Analysis including existing conditions, opportunities and constraints, and program.
- Initial Concept Plans (3 Options, 11x17 format).
- Final Master Plan Concept graphics (full-size and 11x17 formats).
- Concept-level Cost Estimate.
- Summary of stakeholder and public information, input and feedback, meeting and draft materials.
- A Narrative Report which details the complete site inventory and analysis, the summary of stakeholder and public input, the Final Master Plan Concept, the Concept-Level Cost Estimate, and other relevant information.

Support for Community Service Land Use Processes Documents:

- Comprehensive Plan Amendment Documents
- Permitting Requirements
- Any Additional Related Information

### Task A: Project Kick-off + Research

LHLA will facilitate an initial kick-off meeting with NCPRD and City staff to develop a detailed understanding of the scope of this multi-agency, environmentally sensitive park project. This meeting will clarify scope of work, methods of coordination and communication, and finalize timelines and deliverables.

LHLA will begin by researching the pre-industrial and subsequent industrial history of this park property donated by Mr. Kronberg and his wife to gain a deep understanding of the project related issues and wide range of agency and stakeholder involvement. Research will include intensive study of land use issues, regulatory requirements, and previous and concurrent concept plans both the project site and adjacent sites. LHLA will work with Pacific Habitat Services to develop a plan for park development that best compliments the Kellogg Creek restoration work currently being performed by Wildlands. Anticipating the development of light rail transit and pedestrian access to this park site will provide ample opportunity for programming amenities that will benefit the neighborhood's businesses and residents. Careful review of the comprehensive plans, zoning, land use regulations and the future uses of projects developed with involved agencies will inform the way that LHLA proceeds with Master Planning for this multi-layered park project.

With direction of NCPRD and City Staff, LHLA will add to the research process by conducting a series of 5 - 10 key stakeholder interviews. These will help LHLA develop programming that addresses the needs and desires of the associated community.

### Task B: Site Inventory + Analysis

In conjunction with PHS, LHLA will conduct a thorough site inventory and walk-through to analyze and map current conditions. This study will reveal key features to be highlighted as well as any constraints that will inform the development of the park Master Plan. This opportunities and constraints analysis will also take into account the previous and current plans and other stakeholder interests in the immediate area which could impact the potential uses of the site.

Towards the end of the Site Inventory and Analysis process, LHLA will submit a draft of the presentation to NCPRD and City Staff for review. Following NCPRD/City review, LHLA will assemble the information gathered during the process and prepare it for presentation at the first Public Meeting.

### Task C: Public Meetings + Concept Development + Cost Estimate

LHLA will conduct the first Public Meeting to discuss the scope and intent of the park project with interested community members. LHLA will review the site analysis and inventory, discuss the project objectives and goals, and receive feedback from the community members.

With the feedback received from the first Public Meeting, LHLA will develop three Master Plan Concept options. These Concept graphics will illustrate the range of possibilities for development of this future park site. LHLA will submit the draft Master Plan Concept Options to NCPRD and City Staff for review prior to the next public meeting.

After review by NCPRD and City Staff, LHLA will conduct the Second Public Meeting to present the three Master Plan Concept Options, and to solicit feedback from community members.

Following the Second Public Meeting, and based on public feedback and comments from NCPRD and City Staff, LHLA will refine the final Master Plan Concept as well as a concept-level Cost Estimate for the Park. Prior to the third Public Meeting, LHLA will submit a draft of the Final Master Plan Concept along with a draft concept-level Cost Estimate to NCPRD and City Staff. LHLA will also conduct Team Review Meeting #3 to discuss the documents and prepare for the final Public Meeting.

LHLA will then conduct the third and final Public Meeting, either as a targeted stakeholder meeting or as a public meeting as determined by the project team and project partners, to present the Final Master Plan Concept.

### Task D: Support for Land Use Processes + Master Plan Documents

Following the Final Public Meeting, LHLA will facilitate a team debrief meeting with NCPRD and City Staff. LHLA will then prepare all the materials developed through the Master Planning process so that NCPRD and City Staff can present the Final Master Plan Concept to NCPRD DAB, Milwaukie City Council and Milwaukie PARB meetings. LHLA will also provide the City with the necessary drawings, calculations, land use applications and supporting documents to successfully complete the City Comprehensive Plan Amendment and Community Service Land Use Processes for the park.

The Project Deliverables will be as follows:

Site Master Plan Final Report, Digital (PDF, InDesign, Word, Excel, Autocad) and Hardcopy (5 copies):

- Project background information, including historical research, stakeholders information, and previous and concurrent plans.
- Complete Site Inventory and Analysis, including zoning and land use regulations, existing conditions, opportunities and constraints, and program.
- Initial Concept Plans (3 Options, 11x17 format).
- Final Master Plan Concept graphics (full-size and 11x17 formats).
- Concept-level Cost Estimate.
- Summary of stakeholder and public information, input and feedback, meeting and draft materials.
- A Narrative Report which details the complete site inventory and analysis, the summary of stakeholder and public input, the Final Master Plan Concept, the Concept-Level Cost Estimate, and other relevant information.

Support for Community Service Land Use Processes Documents:

- Comprehensive Plan Amendment Documents
- Permitting Requirements
- Any Additional Related Information



### KURT LANGO, Principal

Kurt Lango is a founding partner of Lango Hansen Landscape Architects, and a LEED accredited professional. He has 25 years of experience in public facilitation, planning, and interpretive and sustainable design. Having worked extensively with public-private partnerships and multi-disciplinary teams, he brings outstanding design and management skills to complex projects.

Kurt has served on numerous art juries, lectured widely and acted as a visiting professor at Portland State University and the University of Oregon. He strongly believes in the power of landscapes to strengthen a place's identity and engage residents' and visitors' sense of community.

### SELECTED PROJECT EXPERIENCE

- Canemah Neighborhood Park, Oregon City, OR
- Barsotti Park, Beaverton, OR
- Roy Dancer Park, Beaverton, OR
- Elizabeth Caruthers Park, Portland, OR
- Aurora City Park, Aurora, OR
- Patton Square Park, Portland, OR
- Barsotti Park, Beaverton, OR
- Jon Storm Park, Oregon City, OR
- Spencer Park, Vernonia, OR
- Kale Road Park, Salem, OR
- Steel Bridge Skatepark, Portland, OR
- Wesley Lynn Park, Oregon City, OR
- East Bull Mountain Park, Tigard, OR
- Hoodview Park, Salem, OR
- Clackamas River Trail, Oregon City, OR
- Black Walnut Park, Gervais, OR
- Smith & Bybee Wetlands, Portland, OR

### EXPERIENCE

Lango Hansen Landscape Architects 2000 – Present  
Walker Macy 1993-1999  
Hargreaves Associates 1988 – 1993

### EDUCATION

Bachelor of Landscape Architecture, University of Oregon 1988

### REGISTRATION

Landscape Architect, State of Oregon #345  
Landscape Architect, State of California #5184  
Landscape Architect, State of Washington #791

### ACADEMIC/LECTURES

University of Oregon Professional Practice Series Lecture 2013  
Moderator, Successful Marketing Strategies, Oregon ASLA 2012  
Visiting Professor, Portland State University Spring, 2008  
Visiting Professor, University of Oregon Winter, 2004  
"Adidas Village", Praxis Lecture Series, Portland State University 2002  
Portland State University Architecture Design Studio 2000  
University of Oregon Landscape Architecture Design Studio 1999

### AFFILIATIONS/COMMITTEES

Portland Urban Design Panel 2014  
Past President, Oregon Chapter ASLA Executive Committee 2013  
Metro Technical Advisory Committee 2013  
Member, American Society of Landscape Architects 2012 - present  
Pearl Arts Foundation Design Committee  
Regional Arts & Culture Council – In-Situ Selection Panel  
Regional Arts & Culture Council – Design Team Roster



HEIDI BAKER, Associate, Project Manager

Heidi has 9 years of experience within the field of landscape architecture. Her background includes projects within sites on the national register of historic places, brownfields, parks, educational facilities, streetscapes, courtyards, environmental planning and design, and natural resource conservation. Heidi just completed design and documentation for Canemah Park in Oregon City. Heidi's current assignments include construction documents for Karuna II, Portland and CCC Environmental Learning Center, Oregon City, and construction administration for Interstate Maintenance Facility, Portland and Lifeworks NW, Portland.

EDUCATION

Master of Landscape Architecture, University of Virginia, 2006  
Bachelor of Science, Biology, College of Charleston, 1997

REGISTRATION

Oregon #781

AFFILIATIONS/COMMITTEES

LEED Accredited Professional

SELECTED PROJECT EXPERIENCE

- Canemah Neighborhood Park, Oregon City, OR
- Jon Storm Park, Oregon City, OR
- Aurora City Park, Aurora, OR
- East Bull Mountain Park, Tigard, OR
- Lone Fir Cemetery Chinese Workers Memorial, Portland, OR



ANDREW SHEIE, Associate, Project Manager

Andrew is a licensed landscape architect in Oregon with more than twelve years of experience in campus, park, and urban projects throughout the Pacific Northwest. He has managed projects at each stage of the design and construction process, from master planning to construction administration, including city and regional parks, stormwater management projects, educational campuses, and commercial and residential roof gardens. He has also contributed technical expertise for specialized project elements such as custom stonework and interactive stormwater features.

EDUCATION

Master of Landscape Architecture, University of Manitoba, 2002  
Fifth Year Art Apprenticeship, St. Olaf College, 1996  
Bachelor of Arts, St. Olaf College, 1995

REGISTRATION

Oregon #628

AFFILIATIONS/COMMITTEES

LEED Accredited Professional

Northeast Coalition of Neighborhoods Land Use and Transportation Committee, Member At Large

SELECTED PROJECT EXPERIENCE

- Harmony/Three Creeks Park Master Plan, Clackamas County, OR
- Hoodview Park, Salem, OR
- Steel Bridge Skate Park Master Plan, Portland, OR
- Sherwood Cannery Square, Sherwood, OR
- Civic Drive MAX Station, Gresham, OR
- Cascade Park Community Library, Vancouver, WA
- Vestas Headquarters, Portland, OR
- Buoy Art Tubes at PCC Willow Creek, Beaverton, OR
- 10th Street Green Street, Lake Oswego, OR
- Portland Community College, Rock Creek Campus, 2008 Bond Capital Improvement Projects, Hillsboro, OR



JOHN VAN STAVEREN, President, Senior Scientist

John van Staveren is president of Pacific Habitat Services and directs their environmental and regulatory compliance activities throughout the Pacific Northwest. With 25 years of experience, he has conducted over 1,000 wetland delineations, 27 Local Wetland Inventories and riparian inventories, and designed and implemented dozens of freshwater and estuarine wetland mitigation plans. Pacific Habitat Services has extensive experience guiding Parks Departments through the often complicated State and Federal regulatory process.

John has worked together with Lango Hansen over the last 15 years on projects throughout the State of Oregon including the Clackamas River Trail, Jon Storm Park, Roy E Dancer Park, and Harmony Park/3 Creeks Master Plan. Currently they are working together on the Environmental Learning Center and just completed work on the Gervais Black Walnut Community Park and the East Bull Mountain Master Plan.

John and his staff will be providing the wetland determination for each park and offering design input as it relates to the natural resource aspect of the park designs.

#### SELECTED PROJECT EXPERIENCE

- Willamette Falls Park Delineation, West Linn
- Harmony Park Master Plan, Clackamas County
- Greenway Park/Fanno Creek Enhancement, Tigard
- Bryant Woods Park/Canal Acres, Lake Oswego
- Cooper Mountain Trail Hydrology Study, Wa County
- CCC Environmental Learning Center, Oregon City



CURTIS C. VANDERZANDEN, Civil Engineering Principal/Project Manager

Curt has more than 27 years of experience in civil engineering and project management, including development of preliminary designs and construction documents for numerous public infrastructure and site development projects for both public and private clients. His work history covers a broad range of project types including recreational waterfront, commercial, residential and institutional site development projects, roadway and utility infrastructure, and parks and pedestrian facilities. Curt is also experienced in public involvement, quality assurance/quality control and the management of multidisciplinary teams. His clients have come to rely on him for his careful attention to schedules and budgets and his ability to work through the difficult issues that often arise in the development of complex projects. Curt's role will be as Civil Engineering Principal/Project Manager and he will be able to devote 20% of his time to on call projects. His current assignments include Laurel Street Pathway project, Ivon Street Waterfront project, N. Tualatin Nature Areas Access Study, and Killin Wetlands Access Study.

#### SELECTED PROJECT EXPERIENCE

- Barsotti Park, Beaverton, OR [with Lango Hansen Landscape Architects]
- Roy Dancer Park, Beaverton, OR [with Lango Hansen Landscape Architects]
- Oregon Parks and Recreation Department Civil Engineering On-call Services, Various, OR
- Cottonwood Canyon State Park, near Wasco, OR
- Graham Oaks Nature Park, Wilsonville, OR
- Portland Parks & Recreation Civil Engineering On-Call, Portland, OR

REFERENCES

Canemah Park  
Scott Archer  
Community Services Director  
City of Oregon City  
PO Box 3040  
625 Center St.  
Oregon City, Oregon 97045  
Phone: 503-496-1546  
Email: sarcher@orcify.org



Canemah Neighborhood Park, Oregon City  
completed 2012



Canemah Neighborhood Park

Lango Hansen was recently awarded an Oregon State Recreation and Park design award for the Canemah Park project with the City of Oregon City. The City partnered with Metro to renovate an existing park that sits on the bluffs overlooking the Willamette River. The park site has a rich natural and cultural history that is expressed through the design and furnishings.

New pathways lead visitors to an expanded play area, a new basketball court, picnic areas, and connect to Metro’s Canemah Bluff Natural Area that totals over 300 acres. Native planting was utilized throughout the park along with interpretive signage that highlights the natural and cultural history of the site.

The design of the park went through an extensive public outreach process including volunteer efforts for the design and construction of the play area. Over half the funding was the result of a successful grant application that was prepared by Lango Hansen. Sustainable features include native planting and reuse of existing materials.

COST OF CONSTRUCTION

\$550,000

COST OF DESIGN  
DEVELOPMENT,  
CONSTRUCTION  
DOCUMENTATION  
AND CONSTRUCTION  
MANAGEMENT SERVICES

\$85,000

CONSTRUCTION  
CONTRACTOR

Brant Construction, Inc  
8000 NE Parkway Dr # 200,  
Vancouver, WA 98662  
Phone: 360-737-1844



REFERENCES

Aurora City Park  
Betsy Imholt  
ODOT Government Relations  
Manager  
Phone: 503-986-3444  
Email: betsy.imholt@odot.  
state.or.us



Aurora City Park, Aurora  
completed 2011

Lango Hansen developed a master plan for improvements to the existing 7-acre Aurora City Park just south of downtown Aurora. Working with the Aurora City Parks Committee, Lango Hansen helped secure a grant through the Oregon Parks & Recreation Grants Program to fund the improvements.

Neighbors wanted new pathways through the park, a small bermed amphitheater for sitting and relaxing, tennis court and basketball court improvements and reestablishment of a large central lawn area. The preparation of the construction documents was on a fast-track schedule and our firm provided permitting assistance, bidding and construction observation.

An important component of the grant application and constructed improvements was the utilization of volunteer labor for the park improvements. Lango Hansen worked with the Parks Committee to identify potential improvements and how the work would be coordinated with the on-site contractor. Local Aurora citizens provided labor for the installation of the site's irrigation system, nuisance plant removal and drainage improvements.

"Lango Hansen was great at helping our small town dream big with our parks master plan. Kurt and his team were patient, understanding and openly embraced all of our unique community characteristics. The end result was a successful state grant application and a beautifully revamped community treasure. We could not have done it without Lango Hansen" -- Betsy Imholt, City Project Manager



Aurora City Park easter egg hunt

COST OF CONSTRUCTION

\$275,000

COST OF DESIGN  
DEVELOPMENT,  
CONSTRUCTION  
DOCUMENTATION  
AND CONSTRUCTION  
MANAGEMENT SERVICES

\$25,000

CONSTRUCTION  
CONTRACTOR

Colton Homes  
PO Box 1168  
Oregon City, OR 97045 -  
Phone: (503) 631-4318

REFERENCES

Roy E. Dancer Park  
Steven Gulgren,  
Superintendent of  
Planning & Development  
Tualatin Hills Park & Rec.  
District  
6220 SW 112th Avenue  
Beaverton, Oregon 97008  
Phone: 503-629-6305  
Email: sgulgren@thprd.org



Roy E. Dancer Park, Beaverton  
completed 2014

Lango Hansen assisted in a public involvement process to develop a Master Plan for renovations to the Roy E Dancer Park in Beaverton. The park is a 3.2 acre steeply sloped and forested neighborhood park located in the West Beaverton neighborhood, surrounded by residences and a small commercial area. Park improvements included a new accessible entrance, new accessible trails, picnic areas, bench seating areas, a play area with a drinking fountain, bike parking, invasive species removal, stormwater drainage improvements, and a new park pedestrian access stairway at the west end of the park.



Roy E. Dancer Park

COST OF CONSTRUCTION

\$ 425,000

COST OF DESIGN  
DEVELOPMENT,  
CONSTRUCTION  
DOCUMENTATION  
AND CONSTRUCTION  
MANAGEMENT SERVICES

\$75,000

CONSTRUCTION  
CONTRACTOR

Milroy Golf Systems  
1102 N Springbrook Rd. #106  
Newberg, OR 97132  
Phone: 503-538-3568

The park was designed with Low Impact Development strategies to preserve existing trees and native planting areas. All new plantings were native and low maintenance. Lango Hansen also worked with the parks district's Natural Resources Department to identify areas of the park for native plant restoration. The elevated pedestrian stairway was designed and routed to have as little impact on existing tree roots as possible, and constructed from recycled plastic lumber for low maintenance requirements. To blend into the environment, the play area was designed, with neighborhood input, with green and brown tones similar to the surrounding natural areas.

REFERENCES

East Bull Mountain Park  
Steve Martin  
Parks and Streets Manager  
City of Tigard  
13125 SW Hall Blvd.  
Tigard, OR 97223  
Phone: 503-718-2583  
Email: steve@tigard-or.gov



Existing Open Meadow

East Bull Mountain Park, Tigard  
Master Plan completed in 2013

Lango Hansen worked with the City of Tigard and the Friends of Bull Mountain Park to design a new neighborhood park within a ten-acre woodland. A strong citizens group of volunteers had already constructed trails, interpretive areas and erosion control, and were an important part of the public process. The goals of the project included creating outdoor classrooms for meaningful learning, a place for community and family gatherings, areas for children of all ages to play and a design that fosters a healthy active lifestyle.

The design sought a balance between public use and consideration of the existing ecosystem including the wildlife habitat, flora and endangered species. The master plan design included a central gathering area with an interpretive theme, walkways, play areas and an overlook. Particular attention was paid to creating a design that did not remove any existing trees and maintained a large sloping meadow for active play.

“Lango Hansen brought the neighborhood vision to reality while considering the ecosystem, wildlife habitat, flora and meeting the citizens needs.” -- Toraj Khavari, East Bull Mountain Neighbor

COST OF CONSTRUCTION

NA

COST OF DESIGN  
DEVELOPMENT,  
CONSTRUCTION  
DOCUMENTATION  
AND CONSTRUCTION  
MANAGEMENT SERVICES

NA

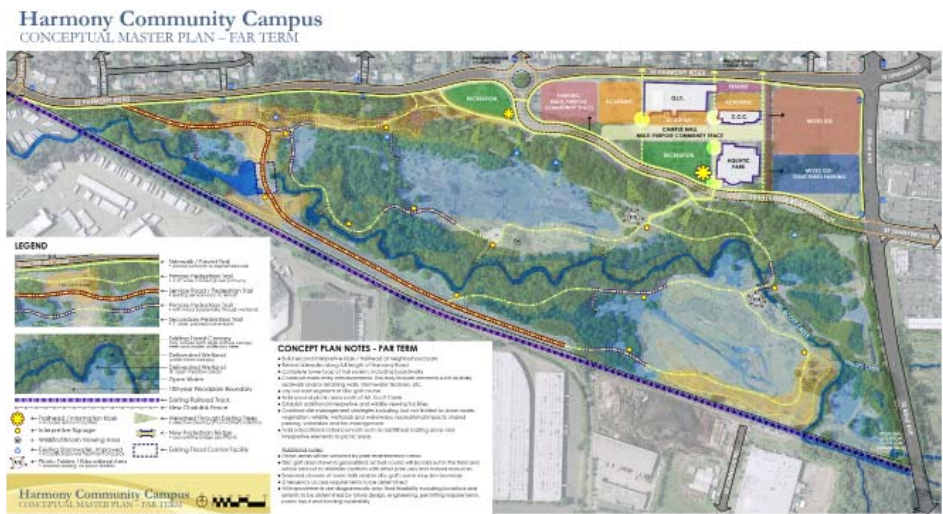
CONSTRUCTION  
CONTRACTOR

NA

REFERENCES

3 Creeks Natural Area

Michelle Healy  
Planning and Design Director  
(formerly Director, NCPRD)  
Bend Park and Rec District  
District Office  
799 SW Columbia Street  
Bend, OR 97702  
Phone: (541) 706-6113  
michelleh@bendparksandrec.org



Existing Stream Corridor

Harmony Community Campus/3 Creeks Natural Area

Master Plan completed in 2009

Lango Hansen worked with Clackamas Community College to design a master plan for the Harmony Campus expansion, and protection of the adjacent 89-acre 3 Creeks Natural Area for passive recreation and educational opportunities. The natural area consists of Mt. Scott Creek, Phillips Creek and Deer Creek which provide habitat for a resident Cutthroat Trout population and a small number of returning Coho Salmon and Steelhead. In addition to housing a diverse number of fauna such as otter, mink, deer, coyote, weasels, beaver, and many species of birds, the steeply sloped, wooded site had become a vagrant camping ground and as such had considerable safety and security issues that needed to be addressed as part of the master plan. The goals of the project included protection and restoration of degraded wetlands and stream corridor restoration, careful curating of existing native habitat to increase visibility, invasive species removal, trail connections throughout the park to adjacent neighborhoods and the college for increased recreational use and educational opportunities, wildlife viewing areas, informal picnic areas, and informational signage and kiosks.

The design sought a balance between public use and consideration of the existing ecosystems. The master plan design included picnic areas for small groups, trail connections with use of boardwalks to avoid sensitive habitat areas, pedestrian bridge improvements, wildlife viewing areas, and improvement of existing stormwater outfalls through the addition of source treatment areas. Particular attention was paid to creating a design that did not remove any existing trees, used permeable paving options, and protected the most sensitive habitat areas while routing trails through areas that provided important educational opportunities and promoted increased use by neighbors for more eyes on the park.

COST OF CONSTRUCTION

NA

COST OF DESIGN  
DEVELOPMENT,  
CONSTRUCTION  
DOCUMENTATION  
AND CONSTRUCTION  
MANAGEMENT SERVICES

NA

CONSTRUCTION  
CONTRACTOR

NA



**Regular Session  
Agenda Item No.**

**3**

# **Consent Agenda**



MILWAUKIE CITY COUNCIL  
**STAFF REPORT**

Agenda Item: **RS 3. A.**  
Meeting Date: Sept 2, 2014

To: Mayor and City Council  
Through: Bill Monahan, City Manager  
Subject: **Purchase Mini-Track Hoe Excavator**  
From: Ronelle Sears/Gary Parkin  
Date: August 25, 2014

**ACTION REQUESTED**

Authorize the City Manager to approve the purchase of a mini-track hoe excavator for the Public Works Department for \$70,210.00 from Feenaughty Machinery Co.

**HISTORY OF PRIOR ACTIONS AND DISCUSSIONS**

None.

**BACKGROUND**

The purchase of a mini-track hoe was included in the current budget to meet a need and replace an old backhoe. Public Works owns two rubber tired backhoe/loaders. One is relatively new (2008) and the other (the Ford) is old (1987) and is no longer used on a regular basis.

Instead of replacing the Ford with another backhoe, Public Works staff has chosen to purchase a mini-track hoe excavator as it is better suited for their work need. It is a lighter and more compact machine with the ability to dig deep trenches and set shoring in less space for less traffic disruption. Mini excavators are widely used in the construction field as their smaller size provides a safer work zone and better sight lines for the operator.

Public Works has rented mini-track hoes on occasion for specific jobs. Regular renting is an option to purchasing, however, purchasing is advantageous for the following reasons:

- in an emergency it may not be possible to rent in a timely manner
- the mini-track hoe is the most appropriate machine for most of the work done by Public Works, not the back hoe now used
- it is not possible for the crew to gain proficiency when renting various brands/types

This purchase process involved obtaining bids from dealers of three comparable brands of mini-track hoes as the State bid contract (ORPIN) does not provide this type of machinery. Staff was able to try out the two top brands and determined that the Takeuchi TB 260 met department needs and was the lowest priced of the three.

The older back hoe (Ford) will be disposed of at the next available auction of City vehicles.

## **CONCURRENCE**

The Finance Department participated in the purchasing process. The Fleet, Street, Water, Wastewater and Stormwater divisions within the Public Works Department were involved in the selection process.

## **FISCAL IMPACTS**

The purchase price, and the cost of a transport trailer that will be purchased separately, are within the amount budgeted (\$80,000) in the BN 2015-16 budget. It is funded from the Water, Stormwater, Wastewater and Transportation funds.

Savings from not needing to rent mini-track hoes in the future are estimated from past use at about \$5,000 per year. The sale of the disposed older back hoe is expected to bring in \$5,000.

The cost to maintain the new mini-track hoe will be partially offset by the disposal of the older back hoe and a reduction in hours used by the newer back hoe that will remain in service.

The annual maintenance cost of the newer back hoe has been \$1,700 (parts and labor) over its 6.5 year life. The older back hoe had an average annual maintenance cost of \$600 during the same timeframe for a current total back hoe maintenance cost of \$2,300 per year.

The cost to maintain the mini-track hoe will be similar to a back hoe when its two year warranty expires. Considering the difference in age compared to the newer back hoe, the mini-track hoe maintenance is estimated at \$1,500 per year. The cost to maintain the newer back hoe will be reduced as it will see reduced hours of usage and is estimated at \$1,100 per year for a total of \$2,600. This extra maintenance cost will be more than compensated by the reduced rental costs noted above.

## **WORK LOAD IMPACTS**

Using a mini-track hoe will enhance the ability of the utility crews to perform their work as it is an easier machine to maneuver and use than the back hoe. Quantifying the improvement is easiest done by looking at the savings from traffic control where a reduction in time of 1 hour per job is expected.

The Fleet division will have another vehicle to take care of but as specified above under fiscal impacts, the net increase in work load will be minimal and within the capacity of the current fleet shop.

## **ALTERNATIVES**

1. Delay purchase: Not recommended as no price reductions are foreseen and work enhancement is delayed.
2. Rent a mini-track hoe as needed. Not recommended for reasons noted above.
3. Contract out work that requires a mini-track hoe. Not recommended as most of the work would still require City workers - leading to coordination issues and inefficiencies.

## **ATTACHMENTS**

1. Resolution

# Attachment 1



## CITY OF MILWAUKIE

*"Dogwood City of the West"*

### Resolution No.

**A resolution of the City Council of the City of Milwaukie, Oregon, authorizing the City Manager to approve the purchase of a mini-track hoe excavator for the Public Works Department for \$70,210.00 from Feenaughty Machinery Co.**

**WHEREAS**, Public Works divisions require excavation equipment for maintenance and operational work; and

**WHEREAS**, the existing Ford back hoe excavator is no longer capable of performing the duties needed; and

**WHEREAS**, Public Works staff have determined that a mini-track hoe is the best option available to replace the Ford back hoe; and

**WHEREAS**, Public Works staff have followed the City's purchasing policy and acquired three quotes and determined that the Takeuchi TB 260 meets department needs and was the lowest priced of the three brands quoted;

**Now, Therefore, be it Resolved** that City Council authorizes the City Manager to approve the purchase of a mini-track hoe excavator for the Public Works Department for \$70,210.00 from Feenaughty Machinery Co.

Introduced and adopted by the City Council on September 2, 2014.

This resolution is effective on September 2, 2014.

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Jeremy Ferguson, Mayor

ATTEST:

APPROVED AS TO FORM:  
Jordan Ramis PC

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Pat DuVal, City Recorder

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City Attorney





**Regular Session  
Agenda Item No.**

**6**

# **Other Business**



**RS 6. B.**  
**9/2/14**

**To: Mayor and City Council**

**From : Bill Monahan, City Manager**

**Subject: Local Tax on the Sale of Marijuana and Marijuana-Infused Products**

**Date: August 26, 2014**

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### **ACTION REQUESTED**

Consider adopting an ordinance establishing a tax on the sale of marijuana and marijuana-infused products in the City of Milwaukie.

### **HISTORY OF PRIOR ACTIONS AND DISCUSSIONS**

Earlier this year the City Council discussed the issues related to the possible siting of medical marijuana dispensaries in the City. On August 19 the City Council was briefed by the City Attorney on the question of whether the City has the right to impose a tax on the sale of marijuana and marijuana-infused products in the City of Milwaukie. Other Oregon communities are taking similar action. The City Council indicated a desire to review the question and a potential ordinance at a September Council meeting.

### **BACKGROUND**

During the August 19, 2014 City Council meeting, the Council directed the City Attorney to draft an ordinance imposing a tax on the retail sale of marijuana in Milwaukie. The Council indicated that it was open to discussing the question in September, 2014. The draft ordinance on this agenda would impose a gross receipts tax on the sale of medical marijuana, recreational marijuana (should it be legalized by Oregon voters in November) and marijuana-infused products. The ordinance (based on a marijuana taxation ordinance from Colorado that is being considered in some Oregon communities, including Ashland) imposes a lower tax on medical marijuana (5%) than that imposed on recreational marijuana (10%). The ordinance would apply to all state-licensed retailers of marijuana and medical marijuana, as well as all those who are required to be licensed by the state. The ordinance allows the seller to retain five percent (5%) of all taxes due to defray the costs of bookkeeping and remittance.

Earlier Background – Oregon voters legalized medical marijuana through an initiative petition in 1999. In 2013 the Oregon Legislature passed HB 3460 creating a regulatory and licensing regimen for medical marijuana dispensaries. There are approximately 200 approved and over 100 additional provisionally approved dispensaries in Oregon. Signature gathering is currently underway to place a ballot measure before the voters in November that would legalize the sale of recreational marijuana in Oregon. There is nothing in current Oregon law that prohibits a local government from taxing marijuana. In order to impose a tax, the City Council must pass an ordinance.

The ordinance before the City Council for consideration is a gross receipts tax on the sale of marijuana, medical marijuana, and marijuana-infused products. A gross receipts tax is applied to the total gross taxable revenues of a business. It is similar to a sales tax except that it is levied on the seller rather than the purchaser. The seller is responsible for maintaining accurate records of its gross revenues from taxable goods and services and then remitting a percentage to the taxing entity. A business subject to a gross receipts tax typically will show the tax on the bill of sale that it presents to the customer, but it is nonetheless the business that is responsible for paying it. A gross receipt tax has the administrative advantage of ease of collection and ease of auditing.

The draft ordinance was prepared by the City Attorney for inclusion in Chapter 5.55 of the Milwaukie Municipal Code.

## **CONCURRENCE**

The City Attorney concurs with the proposed ordinance that it prepared.

## **FISCAL IMPACTS**

If the ordinance is passed, and if marijuana dispensaries are located in the City limits, the city would receive undetermined revenues. Some administrative expense would be incurred to administer the program of collection.

## **WORK LOAD IMPACTS**

Not known at this time.

## **ALTERNATIVES**

Take no action to establish taxing authority.

## **ATTACHMENTS**

1. Draft ordinance establishing a tax on the sale of marijuana and marijuana-infused products in the City of Milwaukie.

# Attachment 1



## CITY OF MILWAUKIE

*"Dogwood City of the West"*

### Ordinance No.

## **An Ordinance of the City Council of the City of Milwaukie, Oregon Establishing a Tax on the Sale of Marijuana and Marijuana-Infused Products in the City of Milwaukie.**

**WHEREAS**, Milwaukie is an Oregon home-rule municipal corporation having all powers which the constitutions, statutes, and the common law of the United States and this state expressly or impliedly grant or allow municipalities as full as though the charter specifically enumerated each of those powers; and

**WHEREAS**, the city's charter shall be liberally construed to the end that the city may have all powers necessary and convenient for the conduct of its municipal affairs, including all powers that cities may assume pursuant to state laws and to the municipal home rule provisions of the state constitution; and

**WHEREAS**, except as otherwise provided, all powers of the City shall be vested in the Council; and

**WHEREAS**, the City Council wishes to exercise that power to tax the sale or transfer of marijuana and marijuana-infused products within the City.

### **NOW, THEREFORE, THE CITY OF MILWAUKIE ORDAINS AS FOLLOWS:**

**SECTION 1.** Milwaukie Municipal Code is amended by adding a new Chapter 5.55 Marijuana Tax, to read as follows:

#### **Chapter 5.55 MARIJUANA TAX**

- 5.55.010 Purpose**
- 5.55.015 Definitions**
- 5.55.020 Tax Imposed**
- 5.55.025 Amount and Payment, Exemption, Deductions**
- 5.55.030 Seller Responsible for Payment of Tax**
- 5.55.035 Penalties and Interest**
- 5.55.040 Failure to Report and Remit Tax – Determination of Tax by Director**
- 5.55.045 Appeal**
- 5.55.050 Refunds**
- 5.55.055 Actions to Collect**
- 5.55.060 Violation**
- 5.55.065 Confidentiality**
- 5.55.070 Audit of Books, Records, or Persons**
- 5.55.075 Forms and Regulations**
- 5.55.010 Purpose**

For the purposes of this chapter, every person who sells marijuana, medical marijuana or marijuana-infused products in the City of Milwaukie is exercising a taxable privilege. The purpose of this chapter is to impose a tax upon the retail sale of marijuana, medical marijuana, and marijuana-infused products.

### **5.55.015 Definitions**

As used in this ordinance, unless the context requires otherwise:

1. "Director" means the Director of Finance for the City of Milwaukie or his/her designee.
2. "Gross Sales" means the total amount received in money, credits, property or other consideration from sales of marijuana, medical marijuana and marijuana-infused products that is subject to the tax imposed by this chapter.
3. "Marijuana" means all parts of the plant of the Cannabis family Moraceae, whether growing or not; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant or its resin, as may be defined by Oregon Revised Statutes as they currently exist or may from time to time be amended. It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted there from), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination.
4. "Oregon Medical Marijuana Program" means the office within the Oregon Health authority that administers the provisions of ORS 475.300 through 475.346, the Oregon Medical Marijuana Act, and all policies and procedures pertaining thereto.
5. "Person" means natural person, joint venture, joint stock company, partnership, association, club, company, corporation, business, trust, organization, or any group or combination acting as a unit, including the United States of America, the State of Oregon and any political subdivision thereof, or the manager, lessee, agent, servant, officer or employee of any of them.
6. "Purchase or Sale" means the acquisition or furnishing for consideration by any person of marijuana or marijuana-infused product within the City.
7. "Registry identification cardholder" means a person who has been diagnosed by an attending physician with a debilitating medical condition and for whom the use of medical marijuana may mitigate the symptoms or effects of the person's debilitating medical condition, and who has been issued a registry identification card by the Oregon Health Authority.
8. "Retail sale" means the transfer of goods or services in exchange for any valuable consideration.
9. "Seller" means any person who is required to be licensed or has been licensed by the State of Oregon to provide marijuana or marijuana-infused products to purchasers for money, credit, property or other consideration.
10. "Tax" means either the tax payable by the seller or the aggregate amount of taxes due from a seller during the period for which the seller is required to report collections under this chapter.
11. "Taxpayer" means any person obligated to account to the Director of Finance for taxes collected or to be collected, or from whom a tax is due, under the terms of this chapter.

### **5.55.020 Tax Imposed**

A tax is hereby levied and shall be paid by every seller exercising the taxable privilege of selling marijuana and marijuana-infused products as defined in this chapter. The Director is authorized to exercise all supervisory and administrative powers with regard to the enforcement, collection, and administration of the marijuana tax.

### **5.55.025 Amount and Payment, Exemption, Deductions**

1. In addition to any fees or taxes otherwise provided for by law, every seller engaged in the sale of marijuana and marijuana-infused products shall pay a tax of ten percent (10%) of the gross sale amount paid to the seller of marijuana and marijuana-infused products by individuals who are not registry identification cardholders purchasing marijuana or marijuana-infused products under the Oregon Medical Marijuana Program.
2. Sale of marijuana or marijuana-infused products to individuals who are registry identification cardholders purchasing marijuana or marijuana-infused products under the Oregon Medical Marijuana Program are exempt from taxation under subparagraph 1 of this section.
3. The following deductions shall be allowed against sales received by the seller providing marijuana or marijuana-infused products:
  - a. Refunds of sales actually returned to any purchaser;
  - b. Any adjustments in sales which amount to a refund to a purchaser, providing such adjustment pertains to the actual sale of marijuana or marijuana-infused products and does not include any adjustments for other services furnished by a seller.

### **5.55.030 Seller Responsible for Payment of Tax**

1. Every seller shall, on or before the last day of the month following the end of each calendar quarter (in the months of April, July, October and January) make a return to the Director, on forms provided by the City, specifying the total sales subject to this chapter and the amount of tax collected under this chapter. The seller may request or the Director may establish shorter reporting periods for any seller if the seller or Director deems it necessary in order to ensure collection of the tax and the Director may require further information in the return relevant to payment of the tax. A return shall not be considered filed until it is actually received by the Director.
2. At the time the return is filed, the full amount of the tax collected shall be remitted to the Director. Payments received by the Director for application against existing liabilities will be credited toward the period designated by the taxpayer under conditions that are not prejudicial to the interest of the City. A condition considered prejudicial is the imminent expiration of the statute of limitations for a period or periods.
3. Non-designated payments shall be applied in the order of the oldest liability first, with the payment credited first toward any accrued penalty, then to interest, then to the underlying tax until the payment is exhausted. Crediting of a payment toward a specific reporting period will be first applied against any accrued penalty, then to interest, then to the underlying tax. If the Director, in his or her sole discretion, determines that an alternative order of payment application would be in the best interest of the City in a particular tax or factual situation, the Director may order such a change. The Director may establish shorter reporting periods for any seller if the Director deems it necessary in order to ensure collection of the tax. The Director also may require additional information in the return relevant to payment of the liability. When a shorter return period is required, penalties and interest shall be computed according to the shorter return period. Returns and payments are due immediately upon cessation of business for any reason. All taxes collected by sellers pursuant to this chapter shall be held in trust for the account of the City until payment is made to the Director. A separate trust bank account is not required in order to comply with this provision.

4. Every seller required to remit the tax imposed in this chapter shall be entitled to retain five percent (5%) of all taxes due to defray the costs of bookkeeping and remittance.
5. Every seller must keep and preserve in an accounting format established by the Director records of all sales made by the dispensary and such other books or accounts as may be required by the Director. Every seller must keep and preserve for a period of three (3) years all such books, invoices and other records. The Director shall have the right to inspect all such records at all reasonable times.

**5.55.035 Penalties and Interest**

1. Any seller who fails to remit any portion of any tax imposed by this chapter within the time required shall pay a penalty of ten percent (10%) of the amount of the tax, in addition to the amount of the tax.
2. Any seller who fails to remit any delinquent remittance on or before a period of 60 days following the date on which the remittance first became delinquent, shall pay a second delinquency penalty of ten percent (10%) of the amount of the tax in addition to the amount of the tax and the penalty first imposed.
3. If the Director determines that the nonpayment of any remittance due under this chapter is due to fraud, a penalty of twenty-five percent (25%) of the amount of the tax shall be added thereto in addition to the penalties stated in subparagraphs 1 and 2 of this section.
4. In addition to the penalties imposed, any seller who fails to remit any tax imposed by this chapter shall pay interest at the rate of one percent (1%) per month or fraction thereof on the amount of the tax, exclusive of penalties, from the date on which the remittance first became delinquent until paid.
5. Every penalty imposed, and such interest as accrues under the provisions of this section, shall become a part of the tax required to be paid.
6. All sums collected pursuant to the penalty provisions in subparagraphs 1 and 3 of this section shall be distributed to the City of Milwaukie General Fund to offset the costs of auditing and enforcement of this tax.

**5.55.040 Failure to Report and Remit Tax – Determination of Tax by Director**

If any seller should fail to make, within the time provided in this chapter, any report of the tax required by this chapter, the Director shall proceed in such manner as deemed best to obtain facts and information on which to base the estimate of tax due. As soon as the Director shall procure such facts and information as is able to be obtained, upon which to base the assessment of any tax imposed by this chapter and payable by any seller, the Director shall proceed to determine and assess against such seller the tax, interest and penalties provided for by this chapter. In case such determination is made, the Director shall give a notice of the amount so assessed by having it served personally or by depositing it in the United States mail, postage prepaid, addressed to the seller so assessed at the last known place of address. Such seller may make an appeal of such determination as provided in section 5.55.045. If no appeal is filed, the Director's determination is final and the amount thereby is immediately due and payable.

**5.55.045 Appeal**

Any seller aggrieved by any decision of the Director with respect to the amount of such tax,  
Ordinance No.

interest and penalties, if any, may appeal pursuant to the City Council within thirty (30) days of the serving or mailing of the determination of tax due. The City Council shall hear and consider any records and evidence presented bearing upon the Director's determination of amount due, and make findings affirming, reversing or modifying the determination. The findings of the City Council shall be final and conclusive. Any amount found to be due shall be immediately due and payable upon the service of notice.

#### **5.55.050 Refunds**

1. Whenever the amount of any tax, interest or penalty has been overpaid or paid more than once, or has been erroneously collected or received by the City under this chapter, it may be refunded as provided in subparagraph 2 of this section, provided a claim in writing, stating under penalty of perjury the specific grounds upon which the claim is founded, is filed with the Director within one year of the date of payment. The claim shall be on forms furnished by the Director.
2. The Director shall have twenty (20) calendar days from the date of receipt of a claim to review the claim and make a determination in writing as to the validity of the claim. The Director shall notify the claimant in writing of the Director's determination. Such notice shall be mailed to the address provided by claimant on the claim form. In the event a claim is determined by the Director to be a valid claim, in a manner prescribed by the Director a seller may claim a refund, or take as credit against taxes collected and remitted, the amount overpaid, paid more than once or erroneously collected or received. The seller shall notify Director of claimant's choice no later than fifteen (15) days following the date Director mailed the determination. In the event claimant has not notified the Director of claimant's choice within the fifteen (15) day period and the seller is still in business, a credit will be granted against the tax liability for the next reporting period. If the seller is no longer in business, a refund check will be mailed to claimant at the address provided in the claim form.
3. Any credit for erroneous overpayment of tax made by a seller taken on a subsequent return or any claim for refund of tax erroneously overpaid filed by a seller must be so taken or filed within three (3) years after the date on which the overpayment was made to the City.
4. No refund shall be paid under the provisions of this section unless the claimant established the right by written records showing entitlement to such refund and the Director acknowledged the validity of the claim.

#### **5.55.055 Actions to Collect**

Any tax required to be paid by any seller under the provisions of this chapter shall be deemed a debt owed by the seller to the City. Any such tax collected by a seller which has not been paid to the City shall be deemed a debt owed by the seller to the City. Any person owing money to the City under the provisions of this chapter shall be liable to an action brought in the name of the City of Milwaukie for the recovery of such amount. In lieu of filing an action for the recovery, the City of Milwaukie, when taxes due are more than 30 days delinquent, can submit any outstanding tax to a collection agency. So long as the City of Milwaukie has complied with the provisions set forth in ORS 697.105, in the event the City turns over a delinquent tax account to a collection agency, it may add to the amount owing an amount equal to the collection agency fees, not to exceed the greater of fifty dollars (\$50.00) or fifty percent (50%) of the outstanding tax, penalties and interest owing.



**5.55.060 Violation**

1. A violation of this chapter shall be punishable by a mandatory fine not to exceed two hundred dollars (\$200.00). Each violation of a separate provision of this chapter shall constitute a separate offense and each day that a violation of this chapter is committed or permitted to continue shall constitute a separate offense. A violation of this chapter shall be processed pursuant to Chapter 1.08 of this code. It is a violation of this chapter for any seller or other person to:
  - a. Fail or refuse to comply as required herein;
  - b. Fail or refuse to furnish any return required to be made;
  - c. Fail or refuse to permit inspection of records;
  - d. Fail or refuse to furnish a supplemental return or other data required by the Director;
  - e. Render a false or fraudulent return or claim; or
  - f. Fail, refuse or neglect to remit the tax to the city by the due date.
2. The remedies provided by this section are not exclusive and shall not prevent the City from exercising any other remedy available under the law, nor shall the provisions of this ordinance prohibit or restrict the City or other appropriate prosecutor from pursuing criminal charges under state law or City ordinance.

**5.55.065 Confidentiality**

Except as otherwise required by law, it shall be unlawful for the City, any officer, employee or agent to divulge, release or make known in any manner any financial information submitted or disclosed to the City under the terms of this chapter. Nothing in this section shall prohibit:

1. The disclosure of the names and addresses of any person who is operating a licensed establishment from which marijuana or marijuana-infused products are sold or provided; or
2. The disclosure of general statistics in a form which would not reveal an individual seller's financial information; or
3. Presentation of evidence to the court, or other tribunal having jurisdiction in the prosecution of any criminal or civil claim by the Director or an appeal from the Director for amount due the City under this chapter; or
4. The disclosure of information when such disclosure of conditionally exempt information is ordered under public records law procedures; or
5. The disclosure of records related to a business' failure to report and remit the tax when the report or tax is in arrears for over six (6) months or the tax exceeds five thousand dollars (\$5,000). The City Council expressly finds and determines that the public interest in disclosure of such records clearly outweighs the interest in confidentiality under ORS 192.501(5).

**5.55.070 Audit of Books, Records, or Persons**

1. The City, for the purpose of determining the correctness of any tax return, or for the

purpose of an estimate of taxes due, may examine or may cause to be examined by an agent or representative designated by the City for that purpose, any books, papers, records, or memoranda, including copies of seller's state and federal income tax return, bearing upon the matter of the seller's tax return. All books, invoices, accounts and other records shall be made available within the City limits and be open at any time during regular business hours for examination by the Director or an authorized agent of the Director.

2. If the examinations or investigations disclose that any reports of sellers filed with the Director pursuant to the requirements herein have shown incorrectly the amount of tax accruing, the Director may make such changes in subsequent reports and payments, or make such refunds, as may be necessary to correct the errors disclosed by its examinations or investigations.
3. The seller shall reimburse the City for reasonable costs of the examination or investigation if the action disclosed that the seller paid 97 percent or less of the tax owing for the period of the examination or investigation. In the event that such examination or investigation results in an assessment by and an additional payment due to the City, such additional payment shall be subject to interest at the rate of 9 percent per year from the date the original tax payment was due.
4. If any taxpayer refuses to voluntarily furnish any of the foregoing information when requested, the Director may immediately seek a subpoena from the Milwaukie Municipal Court to require that the taxpayer or a representative of the taxpayer attend a hearing or produce any such books, accounts and records for examination.
5. Every seller shall keep a record in such form as may be prescribed by the Director of all sales of marijuana and marijuana-infused products. The records shall at all times during the business hours of the day be subject to inspection by the Director or authorized officers or agents of the Director.
6. Every seller shall maintain and keep, for a period of three (3) years, all records of marijuana and marijuana-infused products sold.

#### **5.55.075 Forms and Regulations**

The Director is hereby authorized to prescribe forms and promulgate rules and regulations to aid in the making of returns, the ascertainment, assessment and collection of said marijuana tax and in particular and without limiting the general language of this chapter, to provide for:

1. A form of report on sales and purchases to be supplied to all vendors;
2. The records which sellers providing marijuana and marijuana-infused products are to keep concerning the tax imposed by this chapter.

**SECTION 2.** Severability. The sections, subsections, paragraphs and clauses of this ordinance are severable. The invalidity of one section, subsection, paragraph, or clause shall not affect the validity of the remaining sections, subsections, paragraphs and clauses.

**SECTION 3.** Savings. Notwithstanding any amendment/repeal, the City ordinances in existence at the time any criminal or civil enforcement actions were commenced, shall remain valid and in full force and effect for purposes of all cases filed or commenced during the

times said ordinance(s) or portions thereof were operative. This section simply clarifies the existing situation that nothing in this Ordinance affects the validity of prosecutions commenced and continued under the laws in effect at the time the matters were originally filed.

**SECTION 4.** This ordinance shall be effective 30 days after its passage by the Council, signature by the Mayor, and posting by the City Recorder.

PASSED: By a \_\_\_\_\_ vote of all Council members present after being read by number and title only this \_\_\_\_\_ day of September, 2014.

APPROVED: Approved by Milwaukie City Council this \_\_\_\_\_ day of September, 2014.

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Jeremy Ferguson, Mayor

ATTEST:

APPROVED AS TO FORM:  
Jordan Ramis PC

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Pat DuVal, City Recorder

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City Attorney