



Regular Session

RS

Milwaukie City Council



**MILWAUKIE CITY COUNCIL
REGULAR SESSION**

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

**AGENDA
OCTOBER 18, 2016**

2,232nd Meeting

- 1. CALL TO ORDER** Page #
Pledge of Allegiance

- 2. PROCLAMATIONS, COMMENDATIONS, SPECIAL REPORTS, AND AWARDS**
 - A. Milwaukie High School (MHS) Outstanding Student Achievement Award for October 2016 presented to Dillon Coville**
Presented by: Mark Pinder, MHS Principal
 - B. Clackamas Fire District No. 1 (CFD1) Update on Annexation of Boring Fire District No. 59 (BFD59)** 2
Presented by: Fred Charlton, CFD1 Fire Chief

- 3. CONSENT AGENDA**

These items are considered routine, and therefore, will not be allotted discussion time on the agenda; these items may be passed by the Council in one blanket motion; any Councilor may remove an item from the "Consent" agenda for discussion by requesting such action prior to consideration of that part of the agenda.

 - A. City Council Meeting Minutes:** 10
 - 1. September 20, 2016, Regular Session;**
 - 2. September 22, 2016, Study Session; and**
 - 3. October 4, 2016, Work Session.**
 - B. 2016 Sidewalk and Americans with Disabilities Act (ADA) Ramp Enhancement – Resolution** 19
 - C. Oregon Liquor Control Commission (OLCC) Application for Enchante, 10883 SE Main Street – New Outlet** 22

- 4. AUDIENCE PARTICIPATION**

The presiding officer will call for citizen statements regarding City business. Pursuant to Milwaukie Municipal Code (MMC) Section 2.04.140, 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 submit it to the City Recorder. Pursuant to MMC Section 2.04.360, "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.

- 5. PUBLIC HEARING**

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 presiding officer may limit testimony.

 - A. None Scheduled.**

6. OTHER BUSINESS

These items will be presented individually by staff or other appropriate individuals. A synopsis of each item together with a brief statement of the action being requested shall be made by those appearing on behalf of an agenda item.

A. Street Surface Maintenance Program (SSMP) Ordinance Amendment – 24 Ordinance

Staff: Charles Eaton, Engineering Director

B. Milwaukie-Portland Sunday Parkways 2016 Event Debrief

Staff: Mitch Nieman, Assistant to the City Manager

C. Council Reports

7. INFORMATION

8. ADJOURNMENT

Public Notice

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 may attend 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 and they are closed to the public.

The Council requests that mobile devices be set on silent or turned off during the meeting.

The City of Milwaukie is committed to providing equal access to information and public meetings per the Americans with Disabilities Act. For special accommodations, please call 503-786-7502 or email ocr@milwaukieoregon.gov at least 48 hours prior to the meeting.



**Regular Session
Agenda Item No.**

2

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

What You Need To Know

On November 8, 2016, voters will be asked to consider:

- Voting on **Measure #3-494** to annex all properties located within the Boring Fire District #59 boundaries into Clackamas Fire District #1.



**To Safely Protect
and
Preserve Life and Property.**

More Information

For more information visit us at
www.clackamasfire.com



Clackamas Fire District #1

11300 SE Fuller Rd.
Milwaukie, OR 97222
Phone: 503.742.2600

This information was reviewed by the Oregon Secretary of State's Office for compliance with ORS 260.432.

Clackamas Fire District #1

Measure #3-494



Measure #3-494



Background:

- Since July 1, 2014, Clackamas Fire has provided a contract for service to Boring Fire District #59 for fire protection, fire prevention and emergency medical services.
- Boring Fire residents will be asked to consider two separate measures: the dissolution and annexation of their fire district into Clackamas Fire District.
- Voters in both Boring Fire District and Clackamas Fire District will be asked to vote on the annexation. Only if all annexation measures in both fire districts pass, will Boring Fire District be permanently annexed into Clackamas Fire District.

Questions:

What is an annexation?

- A form of legal integration where an agency extends its boundaries outside of its previous limits. While the law allows one agency to expand its boundaries to annex another agency into its service area, it may only do so if the involved agencies are formed under differing statutory authority, or an agency dissolves, rendering it available for annexation.

If approved, what would the annexation of Boring Fire District #59 mean to Clackamas Fire residents?

- If approved, Boring Fire would become a permanent part of Clackamas Fire to include the addition of three community fire stations, equipment and apparatus that would be used to respond throughout the fire district.

If approved, would the Clackamas Fire permanent tax rate change?

- No, current Clackamas Fire residents would continue to pay \$2.4012 per \$1,000 of assessed value and Boring Fire residents would also be asked to pay \$2.4012 per \$1,000 of assessed value. Boring Fire residents would also be asked to pay on Clackamas Fire's current 2015 general obligation bond, which could be a reduction in the millage rate for the bonds based on changes in assessed value.

Fast Facts:

The district is growing. Clackamas Fire District #1 is one of the largest fire protection districts in Oregon, serving approximately 220,000 citizens, 20 strategically located fire stations with 256 employees and 100 volunteers.

Provides wide range of services. The district provides fire suppression, advanced life support, emergency medical care, fire prevention, swift water rescue, hazardous materials response, Community Emergency Response Teams, emergency management, community education and other programs.

Result of annexation: If approved, Clackamas Fire's permanent tax rate would remain unchanged with the annexation and would apply to the Boring Fire citizens at \$2.4012 per \$1,000 of assessed value.

The annexation would result in Clackamas Fire extending its boundaries to continue to provide quality emergency services and provide the most up to date equipment, apparatus and training, while keeping the financial impact to residents at a minimum.



What You Need To Know

On November 8, 2016, voters will be asked to consider:

- **Measure #3-493:** the dissolution of Boring Fire District.
- **Measure #3-503:** the annexation of all properties located within the Boring Fire District #59 boundaries into Clackamas Fire District #1.
- Voters in both Boring Fire District and Clackamas Fire District will be asked to vote on the annexation. Only if all annexation measures in both fire districts pass, will Boring Fire District be permanently annexed into Clackamas Fire District.



**Pride, Service and
Dedication.**

More Information

For more information visit us at

www.boringfire.com
www.clackamasfire.com



Boring Fire District #59

28655 SE Hwy 212
Boring, OR 97009
Phone: 503.742.2600

This information was reviewed by the Oregon Secretary of State's Office for compliance with ORS 260.432.

Boring Fire District #59

Measures #3-493 #3-503



Measures #3-493 and #3-503



Background:

- Clackamas Fire began providing services through an intergovernmental agreement in 2009 and transitioned to a full contract for service beginning on July 1, 2014. The current contract for service has been providing fire protection, fire prevention and emergency medical services.
- Boring Fire District residents will be asked to consider two separate measures: Measure #3-493 is the dissolution of the fire district and Measure #3-503 is the annexation of all properties into Clackamas Fire District #1.

Questions:

If approved, would the permanent tax rate increase for Boring Fire District #59 residents?

- Yes. The Clackamas Fire tax rate would apply to the Boring Fire property owners, which would mean an increase of \$.0241 (two and a half cents) per \$1,000 of assessed value. If approved, Boring Fire's tax rate would increase from \$2.3771 to \$2.4012 per \$1,000 of assessed value.

If approved, what would the cost be to the Boring Fire residents to the existing Clackamas Fire District #1 general obligation bond?

- Boring Fire District residents would pay an approximate levy rate of \$.10 (ten cents) per \$1,000 of assessed value or \$10 per year for each \$100,000 of assessed property value.

What does annexation mean?

- If approved, Boring Fire District residents would have an increase in staffing efficiencies within the Boring, Damascus, and Eagle Creek stations, depth of response resources, direct access to specialty response services (e.g. technical rescue, water rescue) and the advantage of greater efficiency across communities.

If approved, would additional career and volunteer firefighters staff the Boring, Damascus and Eagle Creek fire Stations?

- Yes, additional career firefighter/paramedics would staff the Damascus Fire Station seven days a week, 24-hours a day. Additional volunteer firefighters would continue to support the Boring Fire and Eagle Creek Stations.

Fast Facts:

Annexation: A form of legal integration where an agency extends its boundaries outside of its previous limits. While the law allows one agency to expand its boundaries to annex another agency into its service area, it may only do so if the involved agencies are formed under differing statutory authority, or an agency dissolves, rendering it available for annexation.

Dissolution: In the case of Boring Fire and Clackamas Fire, complete annexation between the two districts can occur only if one district takes the step of dissolving, immediately followed by being annexed into the other fire district, since enabling statutes prohibit one agency annexing the entire service area of another agency having the same statutory authority. If approved, the annexation would take effect on or before February 28, 2017.





**Boring Fire District #59
Clackamas Fire District #1
Legal Integration - Annexation
Proposed Cost to Boring Fire Property Owners**



Boring Fire District #59 (Boring Fire) permanent tax of \$2.3771 per \$1,000 of assessed property value would increase to the Clackamas Fire District #1 (Clackamas Fire) permanent tax rate of \$2.4012 per \$1,000 of assessed property value.

If passed, Boring Fire property owners would pay an approximate levy rate of \$.10 (ten cents) per \$1,000 of assessed property value or \$10 per year for each \$100,000 of assessed property value toward the Clackamas Fire general obligation bond.

Below are estimated costs, if passed, of how much Boring Fire property owners would pay, based on assessed property value annually and or monthly regarding an annexation.

Current cost for a Boring Fire property owner:

<u>Assessed Value</u>	<u>Annual</u>	<u>Monthly</u>
\$250,000	\$594.28	\$49.52
\$300,000	\$713.13	\$59.43
\$350,000	\$831.99	\$69.33
\$400,000	\$950.84	\$79.24
\$450,000	\$1,069.70	\$89.43

Annexed cost for a Boring Fire property owner:

<u>Assessed Value</u>	<u>Annual</u>	<u>Monthly</u>	<u>Estimated Monthly Increase</u>
\$250,000	\$625.26	\$52.10	\$2.58
\$300,000	\$750.31	\$62.53	\$3.10
\$350,000	\$875.36	\$72.95	\$3.61
\$400,000	\$1,000.41	\$83.37	\$4.13
\$450,000	\$1,125.46	\$93.79	\$4.65

This information was reviewed by the Oregon Secretary of State's Office for compliance with ORS 260.432.



Boring Fire District #59 Clackamas Fire District #1 Legal Integration - Annexation Frequently Asked Questions



1. What is an Annexation?

A form of legal integration where an agency extends its boundaries outside of its previous limits. While the law allows one agency to extend its boundaries to annex another agency into its service area, it may only do so if the involved agencies are formed under differing statutory authority, or an agency dissolves, rendering it available for annexation.

2. Why is Boring Fire District #59 recommending an annexation to Clackamas Fire District #1?

If approved, Boring Fire residents would have an increase in staffing efficiencies within the Boring, Damascus, and Eagle Creek Stations, depth of response resources, direct access to specialty response services (e.g. technical rescue, water rescue) and the advantage of greater efficiencies across communities.

3. How long has Clackamas Fire District #1 been providing services to Boring Fire District #59 and what do those services include?

Clackamas Fire began providing shared services through an intergovernmental agreement in 2009 and transitioned to a full contract for service beginning on July 1, 2014. The current contract for service has been providing fire protection, fire prevention, emergency management, emergency medical services, volunteer services, and support operations to Boring Fire area residents.

4. What is the permanent tax rate of Boring Fire District #59?

Boring Fire's permanent tax rate is \$2.3771 per \$1,000 of assessed property value.

5. What is the permanent tax rate of Clackamas Fire District #1?

Clackamas Fire's permanent tax rate is \$2.4012 per \$1,000 of assessed property value.

6. If the measure passes, what would the cost be for Boring Fire residents to the existing Clackamas Fire District #1 general obligation bond?

The cost of the existing Clackamas Fire general obligation bond is an approximate levy rate estimated to be \$.10 (ten cents) per \$1,000 of assessed value. The estimated cost per each \$100,000 of assessed property value would be \$10 per year until retirement of the bonds.

7. What projects will be completed from the general obligation bond proceeds that passed in the May 2015 election?

The Clackamas Fire general obligation bond proceeds will include the following:

- Purchase emergency apparatus to replace aging fire engines, ladder trucks, water tenders, and other emergency response vehicles.
- Replace Self-Contained Breathing Apparatus for firefighter health and safety.
- Construct new Fleet Maintenance Center to maintain, repair and service emergency apparatus and related projects.
- Redesign and construct Training Center to include community training sites.
- Upgrade and improve Fire District community fire stations, facilities, and infrastructure.
- Replace and upgrade communications equipment and infrastructure.
- Add and or replace community fire station(s), including land acquisition.

8. If approved, would additional firefighters staff Boring, Damascus and Eagle Creek Fire Stations?

Yes, additional career firefighter/paramedics would staff the Damascus Fire Station seven days a week, 24-hours a day. Additional volunteer firefighters would continue to support the Eagle Creek and Boring Fire Stations.

9. When is the election and what measures are voters being asked to vote on?

The election is November 8, 2016 and Boring Fire residents will be asked to vote on two measures: Measure #3-493, the dissolution of Boring Fire District and Measure #3-503, the annexation of all Boring Fire District properties into Clackamas Fire District.

Clackamas Fire District residents will be asked to vote on one measure: Measure #3-494, the approval of all Boring Fire District properties into Clackamas Fire District. All three measures must pass in order for the annexation of Boring Fire District take effect.

10. If approved, when would the annexation take effect?

If all three measures are approved, the annexation would take effect on or before February 28, 2017.

11. What if the three measures do not pass?

Clackamas Fire District #1 will continue to provide services to Boring Fire District #59 through the current contract for service. The contract for service will expire on June 30, 2019, unless amended by the governing bodies.

12. How can I learn more about this annexation measures?

To learn more information about these annexation measures, please visit the Clackamas Fire website at www.clackamasfire.com or Boring Fire website at www.boringfire.com, or by calling the Administration Office at 503.742.2600.

This information was reviewed by the Oregon Secretary of State's Office for compliance with ORS 260.432.



**Regular Session
Agenda Item No.**

3

Consent Agenda



MINUTES
MILWAUKIE CITY COUNCIL
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REGULAR SESSION
SEPTEMBER 20, 2016
City Hall Council Chambers

Mayor Mark Gamba called the 2,230th meeting of the Council to order at 6:01 p.m.

Council Present: Council President Lisa Batey and Councilors Scott Churchill, Wilda Parks, and Karin Power

Staff Present: City Manager Bill Monahan, City Attorney Dan Olsen, Co-City Recorder Pat DuVal, Co-City Recorder Scott Stauffer, Planning Director Denny Egner, and Associate Planner Vera Koliass

CALL TO ORDER

Pledge of Allegiance.

PROCLAMATIONS, COMMENDATION, SPECIAL REPORTS AND AWARDS

A. Milwaukie High School (MHS) Outstanding Student Achievement Award Presented to Kesley Collingwood

Mr. Pinder introduced Ms. Collingwood and the group applauded her achievements. **Councilor Power** and **Ms. Collingwood** discussed holding a Council meeting at MHS.

B. Constitution Week Proclamation

Mayor Gamba proclaimed the week of September 17, 2016, through September 23, 2016, to be *Constitution Week* in Milwaukie.

CONSENT AGENDA

It was moved by Council President Batey and seconded by Councilor Power to approve the consent agenda as presented.

A. City Council Meeting Minutes:

1. August 2, 2016, Regular Session;
2. August 16, 2016, Work Session;
3. August 16, 2016, Regular Session;
4. August 25, 2016, Special Session; and
5. September 2, 2016, Special Session.

Motion passed with the following vote: Councilors Batey, Parks, Power, and Churchill, and Mayor Gamba voting "aye." [5:0]

AUDIENCE PARTICIPATION

Mayor Gamba reviewed the speaker procedures and **Mr. Monahan** reported that there was no follow-up report from the September 6, 2016, Audience Participation.

Eugene Zaharie, Milwaukie resident, urged Council to repurpose the Wichita Park site for use as a tiny house development for homeless human beings. **Mr. Monahan** and **Council President Batey** discussed the status of grant funding received to develop the Wichita Park site, and **Mayor Gamba** and **Mr. Zaharie** noted ongoing discussions in the community regarding homelessness and housing needs.

PUBLIC HEARING

A. Code Amendments to Regulate Marijuana Businesses (File #ZA-2016-001) – Ordinance, Continued from September 6, 2016

Mayor Gamba called the public hearing on the legislative Zoning Ordinance Amendment File ZA-2016-001, continued from September 6, 2016, and initiated by the City to order at 6:24 p.m.

Mayor Gamba explained that the purpose of the hearing was to continue to consider an Ordinance to adopt proposed amendments to the Zoning Ordinance that included the regulation of marijuana businesses in Milwaukie. This was a legislative decision by the Council and would be based on the following standards: the Statewide planning goals, applicable federal or state laws or rules; any applicable plans and rules adopted by Metro; applicable Comprehensive Plan polices; and applicable provisions of implementing Ordinances.

Staff Presentation:

Mr. Egner provided a brief overview of the revisions made to the proposed Ordinance based on Council direction received at the September 6, 2016, Regular Session, which included a 1,500 foot buffer between grow site buildings and a limit of 10,000 square-foot for grow sites in the manufacturing (M) zone. He noted that the City Attorney had provided revised findings language on the morning of September 20, 2016.

Conduct of Hearing:

Mayor Gamba reviewed the testimony procedures.

Correspondence:

Staff reported that no additional correspondence on the topic had been received.

Testimony:

Ronald Buel, Portland resident, expressed support for the proposed Ordinance and discussed his intention to develop a 10,000 square-foot grow site in a building on Mailwell Drive that would feature solar panels and employ about 20 people. **Mr. Buel** and **Mayor Gamba** noted that the proposed 1,500 foot buffer was between buildings and that a single building could contain more than one grow site if permitted by Oregon Liquor Control Commission (OLCC) rules.

The group discussed the number of full-time employees required to operate a full production grow site and the anticipated impacts a grow site would have on the area's traffic volume, power, and water usage. **Mr. Buel** reported that he was prepared to dispose of the grow site's wastewater outside the City's sewer system if the grow site caused the waste water to become too salty.

Jimmy Bruce, Milwaukie business owner, explained that he sub-leases almost 250,000 square-feet in the North Milwaukie Industrial Area (NMIA) as flex space where overhead costs are shared by multiple businesses. He expressed support for allowing limited grow site operations in the City. **Mayor Gamba** asked Mr. Bruce for feedback on the proposed limitations on the number of grows sites to be allowed in each industrial area, and **Mr. Bruce** remarked that he thought the proposed limitations were too restricting.

Council President Batey reported she had received correspondence asking why the City would put a buffer area around grow sites and not prescription drug or liquor stores. **Mayor Gamba** noted that Council was not considering a buffer area around retail spaces and asked Council President Batey to forward the correspondence to Council.

It was moved by Councilor Parks and seconded by Councilor Power to close the public hearing. Motion passed with the following vote: Councilors Batey, Parks, Power, and Churchill, and Mayor Gamba voting "aye." [5:0]

Mayor Gamba closed the public testimony part of the public hearing at 6:44 p.m.

Decision by Council:

Council President Batey expressed support for the proposed Ordinance and buffer area, and remarked on the compromise of allowing and limiting grow sites in the City. **Councilor Churchill** concurred with Council President Batey's remarks.

Councilor Power explained that she supported fewer restrictions, not unregulated grow operations, and noted concerns about building owners have a monopoly on grow sites and the impacts of grow sites on neighborhood security and the environment. She expressed interest in reducing the buffer zone from the proposed 1,500 foot length and commented on the grow sites' anticipated high consumption of water and energy. **Councilor Parks** and **Council President Batey** noted that the proposed restrictions would impact businesses in the M zones, including the Johnson Creek area.

Councilor Parks explained that she was most concerned about minimizing marijuana production in the NMIA and expressed disappointment that the number of expected marijuana production jobs was lower than previously suggested. She stated her support for a 1,500 foot buffer area in the NMIA.

Mayor Gamba, Council President Batey, and Councilor Power discussed concerns and impacts of allowing and/or encouraging business monopolies in certain areas.

Mayor Gamba remarked that even with fewer jobs expected than previously suggested, a grow site would offer a higher job density than elsewhere in the NMIA. He expressed concern that the growth expected after the Tacoma Station Area (TSA) Plan had been adopted had not materialized. **Council President Batey** suggested that the NMIA Study would be more comprehensive than the TSA Plan.

Councilor Power suggested that Council consider eliminating or reducing the proposed buffer zone.

Mr. Egner suggested that a 1,500 foot buffer between buildings could potentially allow up to 3 grow sites in each industrial area, depending on where each grow site was located. **Council President Batey** and **Mr. Egner** discussed how 3 grow sites could geographically fit in the NMIA. **Council President Batey** noted that the potential for 3 grow sites in an industrial area made her less willing to compromise on the buffer zone.

Council President Batey, Councilor Power, and Councilor Parks discussed the potential impact of marijuana production truck traffic on the industrial areas.

Councilor Power commented that allowing more than 3 grow sites across the entire City made her more comfortable supporting the proposed Ordinance.

Councilor Parks noted concerns about the possibility of 3 grow sites in the NMIA.

Councilor Power, Council President Batey, and Mayor Gamba discussed the possibility of including a sunset clause for the buffer area restriction in the Ordinance.

It was moved by **Councilor Churchill** and seconded by **Councilor Parks** to approve the first and second reading by title only and adoption of the Ordinance amending Title 19 Zoning to regulate marijuana businesses (File #ZA-2016-001) with discussed amendments to the findings. Motion passed with the following vote: **Councilors Batey, Parks, Power, and Churchill, and Mayor Gamba** voting "aye." [5:0]

Mr. Monahan read the Ordinance two times by title only.

Mr. Stauffer polled the Council: **Councilors Batey, Parks, Power, and Parks and Mayor Gamba** voting "aye." [5:0]

ORDINANCE No. 2134:

AN ORDINANCE OF THE CITY OF MILWAUKIE, OREGON, TO AMEND TITLE 19 ZONING TO REGULATE MARIJUANA BUSINESSES. (FILE #ZA-2016-001).

Mayor Gamba read State Land Use Board of Appeals (LUBA) appeal information.

OTHER BUSINESS

A. Downtown Wayfinding Systems Plan – Resolution

Ms. Kolias provided an overview of the project and noted that extensive public outreach had been conducted to solicit input on the final design. She presented mock-ups of each type of sign, reviewed a map showing sign locations, and explained how they would integrate with Trolley Trail and 17th Avenue Trail signage. She reported that staff recommended Council adopt the proposed Downtown Wayfinding Systems Plan and explained how the sign installation phases would be funded.

Mayor Gamba and **Ms. Kolias** discussed when sign text would be determined and the possibility of adding a sign on Main Street under the light rail bridge noting the Kronberg Park pathway as a route to the Island Station Neighborhood and the Trolley Trail.

Council President Batey recommended that the new signs be proof read before installation to ensure that the distances and directions are correct.

The group expressed excitement about the new signage and noted the importance of signage for tourism and getting around Downtown Milwaukie.

It was moved by Councilor Power and seconded by Council President Batey to adopt the Resolution adopting the Downtown Milwaukie Wayfinding Systems Plan. Motion passed with the following vote: Councilors Batey, Parks, Power, and Churchill, and Mayor Gamba voting “aye.” [5:0]

RESOLUTION No. 104-2016:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, ADOPTING THE DOWNTOWN MILWAUKIE WAYFINDING SYSTEMS PLAN.

B. Council Reports

Councilor Power discussed a Clackamas County and Oregon Food Bank (OFB) briefing she had attended. The group noted the food banks located in the City, their hours of operation, and the pressing need for volunteers and donations.

Councilor Parks announced that she would be attending a regional wastewater interest group meeting in West Linn on September 26, 2016.

Council President Batey noted that there would be a special Milwaukie Sunday Farmers' Market before Thanksgiving and that the Planned Parenthood clinic on McLoughlin Boulevard would be celebrating their 1st anniversary on October 1, 2016.

Mayor Gamba reviewed recent events and noted upcoming events such as the Milwaukie-Portland Sunday Parkways on October 2, 2016, and the final First Friday event of the year on October 7, 2016.

Councilor Churchill announced that Linwood Elementary School's Walk and Bike to School Day would be on October 5, 2016.

ADJOURNMENT

It was moved by Councilor Churchill and seconded by Councilor Parks to adjourn the Regular Session. Motion passed with the following vote: Councilors Batey, Parks, Power, and Churchill, and Mayor Gamba voting “aye.” [5:0]

Mayor Gamba moved to adjourn the regular session at 7:37 p.m.

Respectfully submitted,

Scott S. Stauffer, City Recorder



MINUTES
MILWAUKIE CITY COUNCIL
www.milwaukieoregon.gov

STUDY SESSION
September 22, 2016
City Hall Conference Room

Mayor Mark Gamba called the Study Session to order at 6:04 p.m.

Council Present: Council President Lisa Batey and Councilors Wilda Parks and Karin Power

Council Absent: Councilor Scott Churchill

Staff Present: City Manager Bill Monahan, Administrative Specialist II Amy Aschenbrenner, Police Chief Steve Bartol, Police Captain Mark Dye, Police Officer Billy Wells, and Public Works Director Gary Parkin.

Solids Handling Project Update for Clackamas County Service District No. 1 (CCSD1) and Tri-City Service District

Greg Geist, Water Environment Services (WES) Director, provided a background on CCSD1 and the Tri-City Service District. He remarked on the impact of past funding on the Kellogg Water Resource Recovery Facility (WRRF) system.

Mr. Geist noted the 3 service interties between the two districts and explained the history of those connections. He explained the relationship between CCSD1 and Tri-City and discussed the differences of the plants and their digesters.

Mr. Geist and **Mayor Gamba** discussed the funding relationship and partnership between CCSD1 and Tri-City.

The group discussed the purpose and accomplishments of the Regional Wastewater Treatment Capacity Advisory Committee.

Mr. Geist noted that an analysis had been done to see if it made sense for the two districts to continue working together or to go it alone. The analysis showed that both districts benefited by working together, with CCSD1 benefiting more.

The group discussed the possibility of future infrastructure improvements. **Mr. Geist** noted anything was possible, but it came down to money.

Mr. Geist discussed Phase 1 of the 2016 Preliminary Design Work, as well as the refurbishments and improvements at the Kellogg WRRF. He noted the new Kellogg WRRF sign and how the wording better explained the benefits of the facility to the community.

Mayor Gamba asked how well the Kellogg facility captured methane. **Mr. Geist** said it could be better, and explained future options. **Mr. Geist** noted recently completed projects at the Kellogg facility and the long list of projects on the horizon.

Mr. Geist reported that CCSD1's refinancing efforts had saved \$9.7 million, and he discussed other cost-savings measures.

Councilor Power pointed out Mr. Geist's recent award.

Mayor Gamba discussed methane gas and asked when the reduction project would be in place. **Mr. Geist** noted the high costs and infrastructure improvements involved in the project. **Councilor Power** and **Mr. Geist** discussed the possibility of wastewater facilities owned by the public achieving a net zero energy status.

Council President Batey asked about the barges currently in the river, and **Mr. Geist** replied that the in-water work permits would end soon.

Council President Batey asked about marijuana grow sites reporting high amounts of salt in the water that comes off the plants, and the concerns about putting into the wastewater stream. The Council asked Mr. Geist to look into concerns about water run-off from marijuana grow sites.

Council President Batey asked if WES had a good handle on companies like Precision Castparts and **Mr. Geist** reported that WES takes samples regularly.

Homelessness Update

Mr. Monahan provided a quick background of what had happened over the summer related to homeless people living along the Springwater Corridor. He noted Police Officer Billy Wells had been assigned to be the City's contact to work on Springwater Corridor issues.

Chief Bartol explained that Light Rail did not bring significantly more homeless into the City. The police had received a lot of calls asking how the City handles the issues and Officer Wells had been appointed as the Homeless Liaison Officer. Chief Bartol noted park rules which permitted camping overnight.

Officer Wells explained his background and noted the local homeless population had been around for many years; most were harmless and had addiction problems. The small size of the City meant it was easier to keep track of camps. He discussed his approach to citations and explained how he works with the different groups of homeless people. He noted most people were cited and not put in jail, unless repeat offenses occurred. He discussed the focus on vacant houses being occupied, and noted the partnership with Clackamas County.

Chief Bartol discussed the resources officers try to direct individuals towards, but noted that many people choose not to take advantage of the resources.

Officer Wells described the makeup of the local homeless population and noted that the number of homeless people in the City had not gone up, and that police were quick to respond to new homeless people coming into the City.

Council President Batey and **Officer Wells** discussed locations where homeless people are often found around the City.

Chief Bartol noted the various reasons people were on the streets, and explained the importance of being compassionate. The enforcement of City laws and regulations focused on littering and camp debris, as well as some associated criminal activity. There was no target specifically for the homeless.

Councilor Parks, Councilor Power, and Officer Wells discussed the uptick of people living in cars. The group discussed the instance with a family staying in a car in a church parking lot and **Chief Bartol** recalled there had been no issues and the program had fizzled out.

Mayor Gamba noted what had been learned about the homeless population in the surrounding areas and discussed the circumstances that had resulted in homelessness.

Mayor Gamba discussed programs designed to provide tiny homes and other forms of housing for homeless populations. He and **Councilor Parks** talked about the County's capacity to help and the need that existed. The group noted the larger conversations that needed to take place discussing how to create and execute a process to provide shelter and housing.

Officer Wells discussed the variety of people who were homeless and how there was not enough money to help those with medical issues. **Chief Bartol** noted the increase in people with mental health crises; the police provided welfare checks and assistance to help steer them to resources, but it is difficult. The group discussed the nation's change in mental health programs over the years.

Councilor Power discussed her uneasiness in downtown Portland, commented on the increase of aggressiveness, and wondered what the police saw as solutions to help prevent it in Milwaukie. **Officer Wells** discussed the situation and Portland's "hands off" approach, which limited their tools to help. He noted aggressive and violent behavior was not tolerated in Milwaukie; they would go to jail or get moved along. He talked about the proactive actions and approaches of the Milwaukie Police Department (MPD) to create a safe environment. **Councilor Power** observed the different approaches between Milwaukie and Portland and **Chief Bartol** explained Milwaukie's approach.

The group thanked the police for their work and **Chief Bartol** praised Officer Wells for his work with the homeless population in the City. The group discussed having small amounts of money for officers to give out to people for food or other items if needed.

Fireworks Discussion

Chief Bartol referenced his staff report and noted the MPD usually added more staff for certain holidays. He discussed issues with illegal fireworks. He reported that the City of Happy Valley had created a section in their municipal code that said anything illegal by Oregon Revised Statutes (ORS) was also violation of the city's code, punishable by civil penalty. He explained the different violation options.

Chief Bartol said Happy Valley reported that over 6 years with the program, they had seen fewer violations that were cited on the days leading up to the 4th of July, but big violations still occurred the day of the holiday and then the Happy Valley police run out of resources. Chief Bartol noted Milwaukie had similar resource issues.

The group discussed the noise level of fireworks in Milwaukie's neighborhoods.

Councilor Power thought if they could conduct a fireworks public outreach effort, it would be worthwhile. **Council President Batey** noted the effect of fireworks on pets and people suffering from Posttraumatic Stress Disorder (PTSD). **Chief Bartol** noted minimal problems with fires. The group discussed conducting outreach efforts regarding illegal fireworks.

Chief Bartol asked if he could bring forward Code language that would mimic Happy Valley's fireworks program to serve as a tool to help with citations. He discussed the pros and cons of enforcement and discussed enhanced enforcement.

The group remarked on the use of fireworks during the week leading up to the 4th of July. **Chief Bartol** suggested spending time to spread the word about the new enforcement and suggested visiting the Neighborhood District Associations (NDAs) to help provide outreach.

The group discussed how the public could dispose of fireworks safely. **Chief Bartol** noted that he would check with staff about the disposal of fireworks and discussed the importance of safety.

Chief Bartol summarized he would bring back a proposal to add a fireworks section to the Milwaukie Municipal Code (MMC) for Council to look at before July 2017. He asked Council to help spread the message about firework safety. **Mayor Gamba** agreed it was important to do outreach. **Chief Bartol** discussed an outreach timeline.

The group noted the importance of enjoying fireworks and being respectful to others.

Mayor Gamba adjourned the Study Session at 7:51 p.m.

Respectfully submitted,

Amy Aschenbrenner, Administrative Specialist II



MINUTES
MILWAUKIE CITY COUNCIL
www.milwaukieoregon.gov

WORK SESSION
OCTOBER 4, 2016
City Hall Conference Room

Mayor Mark Gamba called the Work Session to order at 4:01 p.m.

Council Present: Council President Lisa Batey and Councilors Scott Churchill, Wilda Parks, and Karin Power

Staff Present: City Manager Bill Monahan, City Recorder Scott Stauffer, Assistant to the City Manager Mitch Nieman, Building Official Samantha Vandagriff, Planning Director Denny Egner, Associate Planner Vera Koliass, Engineering Director Charles Eaton, Finance Director Haley Fish, and Community Development Director Alma Flores

City Managers Update

Mr. Monahan reviewed the Council Agenda Forecaster and asked for Council's opinion on moving the November 17, 2016, Study Session to November 10, 2016. The group discussed the idea and it was group consensus to move the November Study Session to November 10, 2016.

Mr. Monahan explained changes to the agenda for the Regular Session to follow this meeting. He noted an item was added to the Consent Agenda regarding the 2nd element to the pro tem judge contract. He explained the Kronberg Park draft intergovernmental agreement (IGA) from the Oregon Department of Transportation (ODOT) had not been received yet. He asked the group if they were comfortable designating the City Attorney to review the IGA or if they wanted to simply carry it to the October 18, 2016, meeting. The group agreed they did not need to see it, discussed the timeline, and noted the item would be kept on the agenda for the Regular Session meeting.

Mr. Monahan discussed conversations with the project manager regarding the requests for proposals (RFPs) regarding the library project, and discussed possible Council participation in interviews on November 17, 2016. It was the group consensus that Councilor Power and Councilor Churchill would be the Council representatives at the library RFP interviews.

Seismic Retrofit of City Facilities

Ms. Vandagriff explained that the City's seismic retrofit needs had come up at the emergency operations center (EOC) shake-out earthquake event. She explained that police buildings were required to be seismic retrofitted by January 1, 2022. She explained the steps needed to get the Public Safety Building (PSB) retrofitted, including the hiring of a seismic engineer to first evaluate the building. She discussed funding and grants and noted it would require supplemental budget funding for assessments.

Housekeeping Code Amendments Briefing #1

Ms. Koliass introduced the topic and reviewed the package of proposed housekeeping code amendments. She referenced the Planning Commission's comments included in the staff report, including their desire to revisit the Willamette Greenway Overlay.

The group noted concerns with the proposed changes and subject areas, including home occupations, fence code, and sign code. They discussed the order of importance

for which changes to address first, and agreed the topics should be discussed further in depth.

Council President Batey and **Ms. Kolia**s discussed the Commercial Limited (CL) zones, the Island Station area, and 22nd Avenue.

Ms. Kolias asked for Council's thoughts regarding the Willamette Greenway zone, and the group discussed the zone. The group decided to schedule another Work Session discussion about the Housekeeping Code Amendments. **Mr. Monahan** said staff would identify which Work Session meeting in October or November 2016 to bring this back for discussion.

Continuation of Coho Point Discussion

Ms. Flores reviewed Council's last discussion on the topic, noted the changes requested by Council, and asked for Council input. The group discussed the topic, building design, and downtown use. The group also discussed the housing crisis and affordable housing.

Ms. Flores asked about specific language to be included in the proposal, including language regarding green standards, affordable housing, parking, and design standards. The group discussed whether or not to proscribe what the building type could be. It was noted that the Council was on the same page about which criteria, goals, and objectives to offer up to the development community.

Ms. Flores reviewed the handout. **Council President Batey** and **Mayor Gamba** mentioned the bridge across McLoughlin Boulevard as an aspirational goal for the site.

The group talked about possible consultants for the south downtown plaza project. They noted the Sunday Parkways debrief would occur at the October 18, 2016, Regular Session meeting.

Mayor Gamba adjourned the Work Session at 5:24 p.m.

Respectfully submitted,

Amy Aschenbrenner, Administrative Specialist II



MILWAUKIE CITY COUNCIL
STAFF REPORT

Agenda Item: **RS 3. B.**
Meeting Date: **10/18/16**

To: Mayor and City Council
Through: Bill Monahan, City Manager
Charles Eaton, Engineering Director
Subject: **2016 Sidewalk and ADA Ramp Enhancement**
From: Rick Buen, Civil Engineer
Date: October 6, 2016

ACTION REQUESTED

Adopt a resolution authorizing the City Manager to Sign a contract for the construction of 2016 Sidewalk and ADA Ramp Enhancement with Brown Contracting Inc. in the amount of \$103,476.25.

BACKGROUND

The scope of the project is to upgrade existing curb ramps and sidewalks along the south side of SE Van Water Street from SE 30th Avenue to SE 32nd Avenue as well as provide continuity of the pedestrian access on SE Lake Road and SE 38th Avenue.

The project went through a competitive bidding process per Chapter 30 of the City's Public Contracting Rules (PCR). Two (2) bids were received by the city before the October 6th, 2016, 2:00 P.M. bid opening. The following table is a summarization of all bid amounts:

	Contractor	Bid Amount
1	GT Excavating, LLC	\$126,269.75
2	Brown Contracting, Inc.	\$103,476.25

Engineer's Cost Estimate is in the amount of \$79,091.50. The difference between the engineer's cost estimate is due to the high construction demand given that concrete prices have almost doubled and there were only two bidders.

FISCAL IMPACTS

The project is funded within the FY 16-18 budget and includes additional ADA improvements on Lake Rd. with sidewalk and ADA improvements on Van Water. The budgeted funds include restricted FILOC funds that must be used on Van Water Street. The Van Water portion of the bid was \$15,891 over the budget of \$49,565 and accounts for the majority of the cost overrun. Additional funds are available within the current budget authorization to cover the increased project authorization. Failure to award the construction of the Van Water portion may result in the return of the FILOC funds.

WORK LOAD IMPACTS

No additional impact anticipated since this project is scheduled for this fiscal year.

CONCURRENCE

Finance concurs with staff recommendation.

ALTERNATIVES

- Award the project as presented.
- Reject all bids in the public interest and direct staff to revise and rebid the project during a more favorable period.
- Reject all bids in the public Interest. (FILOC funds would be returned to the owner)

RECOMENDATION

Staff is recommending award of 2016 Sidewalk and ADA Ramp Enhancement to Brown Contracting, Inc. with a project authorization of \$113,823.90.

ATTACHMENTS

1. Resolution



CITY OF MILWAUKIE

"Dogwood City of the West"

Resolution No.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, APPROVING THE AWARD OF CONTRACT FOR THE CONSTRUCTION OF 2016 SIDEWALK AND ADA RAMP ENHANCEMENT TO BROWN CONTRACTING, INC.

WHEREAS, the City of Milwaukie has identified SE Van Water Street as well as the intersection of SE 38th Avenue and SE Lake Road as part of an overall program of improving pedestrian accessibility throughout the City, and

WHEREAS, these improvements are contained within the 2016-2018 biannual budget and

WHEREAS, Brown Contracting, Inc. was the lowest responsive and responsible bidder; and

Now, Therefore, be it Resolved that the City of Milwaukie authorizes the City Manager to execute a contract with Brown Contracting, Inc. for the construction of the 2016 Sidewalk and ADA Ramp Enhancement, and authorize the Engineering Director to administer the project in accordance with the project specifications with a project authorization of \$113,823.90.

Introduced and adopted by the City Council on _____.

This resolution is effective on _____.

Mark Gamba, Mayor

ATTEST:

APPROVED AS TO FORM:
Jordan Ramis PC

Pat DuVal, City Recorder

City Attorney



To: Mayor Gamba and Milwaukie City Council

Through: Bill Monahan, City Manager

From: Steve Bartol, Chief of Police 

Date: October 4, 2016

Subject: O.L.C.C. Application – Yankee Ingenuity LLC – 10883 SE Main Street

Action Requested:

It is respectfully requested the Council approve the O.L.C.C. Application To Obtain A Liquor License from Yankee Ingenuity LLC – 10883 SE Main Street

Background:

We have conducted a background investigation and find no reason to deny the request for liquor license.



**Regular Session
Agenda Item No.**

6

Other Business



MILWAUKIE CITY COUNCIL
STAFF REPORT

Agenda Item: **RS 6. A.**
Meeting Date: **10/18/16**

To: Mayor and City Council

Through: Bill Monahan, City Manager

Subject: **SSMP Ordinance Amendment**

From: Charles Eaton, Engineering Director

Date: October 7, 2016

ACTION REQUESTED

First reading of an ordinance adopting revisions to the Street Surface Maintenance Program Ordinance specifically to allow receipt of additional funds and corresponding housekeeping changes.

HISTORY OF PRIOR ACTIONS AND DISCUSSIONS

During the City Council work session on August 2, 2016 council indicated its desire to revise Milwaukie Municipal Code 3.25 to allow for additional funds to be received in response to the proposed county gas tax. Staff also presented several housekeeping revisions in addition to a fee structure revision. Council directed staff to do more research on the fee structure revision and report back at a future council meeting, so those revisions have been removed from the proposed code amendment.

BACKGROUND

The City of Milwaukie's Street Surface Maintenance Program (SSMP) was adopted by Ordinance No.1966, effective on July 1, 2007. The ordinance, in concert with related ordinances, established a street maintenance fee, an electric utility privilege tax and local gas tax to fund the SSMP. All funds were dedicated to street maintenance and rehabilitation, with the goal of bringing all arterials and collectors in the City to a "good" or better condition within ten years. Good is defined as a pavement condition index (PCI) of 75 or better.

Clackamas County has announced that it will be placing a 6 cent gas tax on the ballot in November with the potential of additional funds becoming available to the City if the measure passes. The funds are restricted in accordance with Oregon Law to be used "for construction, reconstruction, improvement, repair, maintenance, operation and use of public highways, roads, streets and roadside rest areas". This would require the funds to be distributed into the gas tax fund, which includes the SSMP funds. These funds could then be allocated to any expenditure within those funds.

As part of the discussion on August 2, 2016 staff identified a shortfall in the SSMP program and its ability to keep pace with maintenance demands. Council directed staff to review the effects of the proposed gas tax on the SSMP program if applied to those projects. The proposed gas tax would bring in an amount equivalent to \$1.93 per month per household and is estimated to allow the program to maintain the existing deferred maintenance levels while raising the network PCI from 59 to 64.

After review staff identified the key code changes required to accommodate the proposed county gas tax if passed. Current code language would not allow the city to receive these funds without reducing other revenues. These issues were discussed at the council work session on August 2, 2016. As part of the review, staff has identified some housekeeping changes to the current SSMP ordinance that are required for it to be in conformance with recently adopted ordinances and, those are as follows:

- Clarify the use of the funds for street facilities
- Addition of references to MMC 3.26 by name
- Updating Staff Responsibilities
- Removal of duplicated text
- Update manual reference

CONCURRENCE

N/A

FISCAL IMPACTS

These changes will allow receipt of county gas tax funds if passed.

WORK LOAD IMPACTS

These changes have no additional impacts.

ATTACHMENTS

1. Ordinance
2. Clean copy of Chapter 3.25
3. Underline/strike proposed code amendment



CITY OF MILWAUKIE
"Dogwood City of the West"

Ordinance No.

AN ORDINANCE OF THE CITY OF MILWAUKIE, OREGON, AMENDING CHAPTER 3.25 OF THE MUNICIPAL CODE.

WHEREAS, the City Council, by Ordinance number 1966, adopted a Street Surface Maintenance Program effective July 1, 2007; and

WHEREAS, the City Council desires to make revisions to the existing ordinance; and

WHEREAS, the City Council finds that the proposed amendments are in the public interest of the City of Milwaukie; and

Now, Therefore, the City of Milwaukie does ordain as follows:

Section 1. The Milwaukie Municipal Code 3.25 is amended to read as shown on the attached Exhibit A

Section 2. This ordinance shall take effect 30 days after passage.

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 _____.

Mark Gamba, Mayor

ATTEST:

APPROVED AS TO FORM:
Jordan Ramis PC

Pat DuVal, City Recorder

City Attorney

CHAPTER 3.25**STREET SURFACE MAINTENANCE PROGRAM****3.25.010 DEFINITIONS**

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

“Developed property” means a parcel or portion of real property on which an improvement exists or has been constructed. Improvement on developed property includes, but is not limited to buildings, parking lots, landscaping, and outside storage.

“Dwelling Unit” As defined in Section 19.201.

“Gross square footage” means the area of all structures, located on a developed property, measured along the exterior walls of the structures, and including but not limited to enclosed courtyards and stairwells, but not including fences and parking areas which are not enclosed within a building.

“Multiunit residential property” means residential property consisting of two (2) or more dwelling units. For the purposes of this chapter, condominiums and individual mobile home units are also classified as multiunit residential properties.

“Nonresidential property” means any property that is not residential property.

“Reconstruction Project” means to replace, widen, improve or other construction of Milwaukie streets. Activities include right-of-way acquisition, widening roadways to City standards, and construction of other elements within the right-of-way as necessary to complete the project.

“Residential property” means a property that is primarily for personal, domestic accommodation, including single-family, multiunit residential property, and group homes, but not including hotels and motels.

“Responsible party” means the person or persons who by occupancy or contractual arrangement are responsible to pay for utility and other services provided to an occupied unit. Unless another party has agreed in writing to pay and a copy of the writing is filed with the City, the person(s) paying the City’s water and/or sewer bill for an occupied unit shall be deemed the responsible party as to that occupied unit. For any occupied unit not otherwise required to pay a City utility bill, “responsible party” shall mean the person or persons legally entitled to occupancy of the occupied unit, unless another responsible party has agreed in writing to pay and a copy of the writing is filed with the City. Any person who has agreed in writing to pay is considered the responsible person if a copy of the writing is filed with the City.

“Single-family residential” means residential property that has only detached dwelling units.

“Street” means a public street or right-of-way within the City that is under the jurisdiction or control of the City. For purposes of this chapter, County, State and federal roads are excluded.

“Street surface maintenance program” means the program established by this chapter to maintain, repair, and reconstruct City of Milwaukie streets. Activities include the administration of the street maintenance fee, preventive maintenance, rehabilitation, and reconstruction projects; design and inspection of such projects; street condition monitoring and assessment, including inspection of street repairs; and staff training and consultant services in support of the above activities.

“Trip generation” means the average number of vehicle trips, as determined by reference to the most recent manual entitled, Trip Generation, published by the Institute of Transportation Engineers (ITE) (“ITE Manual”),.

“Use category or category of use” means the code number and resulting trip generation estimate determined with reference to the ITE Manual, and applicable to a particular developed property.

3.25.020 ADMINISTRATIVE OFFICERS

- A. Except as provided in subsections B and C of this section, the Engineering Director shall be responsible for the administration of this chapter. The Engineering Director shall be responsible for developing administrative procedures for the chapter, and consideration and assignment of categories of use subject to appeal to the City Council.
- B. The Engineering Director and the Streets Supervisor shall be jointly responsible for annually developing and updating a five (5)-year street surface maintenance program project schedule. The Engineering Director is responsible for ensuring that the schedule is properly integrated into the CIP and that the schedule is coordinated with other City capital projects.
- C. The Community Development and Public Works Director shall provide an annual report on the street surface maintenance program to City Council.
- D. The Engineering Director shall be responsible for implementation and enforcement of steps to minimize utility cut damage to streets, including a five (5)-year moratorium on capital projects on recently reconstructed, rehabilitated, or newly built City streets. The Public Works Operations Director is responsible for City compliance with street cut repair policy.
- E. The Finance Director shall be responsible for the administration and collection of fees under this chapter.

3.25.030 DEDICATION OF REVENUES

- A. All funds and all proceeds from funds collected pursuant to this chapter shall be used for the street surface maintenance program.

3.25.040 ANNUAL STREET SURFACE MAINTENANCE PROGRAM REPORT

- A. Each spring the Engineering Director shall prepare and present to Council the Annual Street Surface Maintenance Program Report.
- B. The report shall include a narrative description of the overall condition of the street network, the findings of any new condition assessments, a schedule of projects for the upcoming year, an updated five (5) year project schedule, the project selection criteria employed, and a report on the previous year projects, workload impacts, and overall program progress. The report shall include revenues received relative to revenue projections, project cost inflation trends, and any other new developments that impact the adequacy of the program funds to meet program goals.

3.25.050 STREET MAINTENANCE FEE

- A. A street maintenance fee is imposed and levied upon the responsible party for all developed property within the City. The fee shall be based on the direct and indirect use of or benefit derived from the use of public streets generated by the developed property, to be calculated as described in Section 3.25.060.

- B. The street maintenance fee is also imposed and levied on the property owner of the developed property in the event of nonpayment by the responsible party.

3.25.060 DETERMINATION OF STREET MAINTENANCE FEE

A. Residential Fees

1. Single-family residences shall be charged three dollars and thirty-five cents (\$3.35) per month.
2. Multifamily residences, except for elderly housing, mobile home parks, and congregate care, shall be charged two dollars and ten cents (\$2.10) per month for each dwelling unit.
3. Elderly housing and mobile homes parks will be charged one dollar and forty cents (\$1.40) per month for each dwelling unit.
4. Congregate care facilities will be charged seventy cents (\$0.70) per month for each dwelling unit.

B. Nonresidential Fees

1. Category Assignment

Each nonresidential developed property in the City shall be assigned to a category of use according to the land use type listed in subsection C of this section.

2. Upon request of the customer, the Engineering Director shall review the category of use assignment. The Engineering Director shall consider evidence provided by the customer that relates to the actual trip generation patterns of the property in question. The determination of category of use shall not be considered a land use decision as that term is defined in ORS 197.015.

3. Fee Calculation

The street maintenance fee shall be calculated by multiplying the number of units (listed in subsection C) by the trip rate per unit for that assigned category of use and then by the monthly per trip charge of thirty-five cents (\$0.35) to establish the monthly fee to be billed.

4. Fee Maximum

The maximum monthly street maintenance fee for nonresidential accounts shall be two hundred and fifty dollars (\$250.00) per property. The maximum shall be adjusted for inflation annually according to the Consumer Price Index published by the Bureau of Labor Statistics. The adjustment for inflation shall be included in the annual fee schedule update beginning in 2008.

5. Fee Minimum

The minimum monthly street maintenance fee for nonresidential accounts shall be three dollars and thirty-five cents (\$3.35).

C. Category of Use

1. Category 1 shall be estimated at 0.75 trips per unit. Land uses include elementary and middle schools, private schools (K12), and lodge/fraternal organizations (ITE Codes 520, 521, 522 and 591).

Proposed Code Amendment

2. Category 2 shall be estimated at two (2) trips per unit. Land uses include general heavy industrial, mini-warehouses, City parks, high schools, colleges, and furniture stores (ITE Codes 120, 151, 411, 530, 540, 550 and 890).
3. Category 3 shall be estimated at four (4) trips per unit. Land uses include manufacturing, warehouses, utilities, County parks, religious institutions, and nursing homes (ITE Codes 140, 150, 170, 412, 560, and 620).
4. Category 4 shall be estimated at eight (8) trips per unit. Land uses include general light industrial, industrial park, motels, golf courses, general office, single-tenant office buildings, office parks, research and development centers, and drinking places (ITE Codes 110, 130, 320, 430, 710, 715, 750, 760, and 836).
5. Category 5 shall be estimated at sixteen (16) trips per unit. Land uses are hotels, cemeteries, hospitals, business parks, wholesale nurseries, automobile care centers, self-service car washes, tire stores, discount clubs, and apparel stores (ITE Codes 310, 432, 566, 610, 770, 818, 840, 847, 848, 849, 861 and 870).
6. Category 6 shall be estimated at thirty-two (32) trips per unit. Land uses include marinas, tennis courts, racquet clubs, health clubs, bowling alleys, recreational community centers, day care, libraries, clinics, medical/dental office buildings, building materials and lumber, discount stores, specialty retail, hardware/paint stores, nursery/garden centers, shopping centers, high turnover sit-down restaurants, quick lubrication vehicle stops, new car sales, gas stations with convenience market, supermarkets, home improvement superstores, and electronics superstores (ITE Codes 420, 491, 492, 493, 494, 495, 565, 590, 630, 720, 812, 813, 814, 815, 816, 817, 820, 832, 837, 841, 844A, 845, 850, 862 and 863).
7. Category 7 shall be estimated at sixty-four (64) trips per unit. Land uses include government office buildings, quality restaurants, and gas stations (ITE Codes 730, 831, 844, 846, and 854).
8. Category 8 shall be estimated at one hundred twenty-eight (128) trips per unit. Land uses include U.S. Post Offices, fast food restaurants, convenience markets, and banks (ITE Codes 732, 833, 834, 851, 911, and 912).
9. Category 9 shall be estimated at two hundred (200) trips per unit. Land use is a multipurpose recreational facility (ITE Code 435).
10. Category 10 shall be estimated at four hundred forty (440) trips per unit. Land use is a movie theater (ITE Code 444).

D. Units. The unit used in calculating the nonresidential street maintenance fee shall be one thousand (1,000) gross square feet of building area, with the following exceptions:

USE	UNIT
Parks, golf courses, cemeteries, marinas, multipurpose recreational facilities	One (1) acre
Schools and colleges	One (1) student
Lodges	One (1) member
Hotels and motels	One (1) room
Self-service car washes	One (1) wash stall
Tennis courts and racquet clubs	One (1) court
Quick lubrication vehicle stops and gas stations	One (1) fueling or service position
Movie theaters	One (1) screen

E. Unlisted Uses

In the event that a property is occupied by a use that is not expressly listed in any of the above categories, the Engineering Director shall determine which category the property should be placed in, based on similarity in expected trip generation. If no category is appropriate, the Engineering Director shall determine the trips per unit shall be based on a transportation study, the Trip Generation Manual, or any other method of determining trips. Any determination by the Engineering Director under this section may be reviewed under the procedure described in Section 3.25.100.B. The result of the review may be appealed to the City Council by filing a notice of appeal within ten (10) days of the date notice of the result of the review is mailed to the property owner.

3.25.070 ADMINISTRATION OF STREET MAINTENANCE FEE

- A. Under the supervision of the Finance Director, the street maintenance fee shall be billed and collected with and as part of the monthly water and sewer bill for those lots or parcels utilizing City water and sewer, as provided for in Section 13.04.100, and billed and collected separately for those developed properties not utilizing City water and sewer. In the event of nonpayment, the City may bill the property owner or take other action as authorized by law to collect from the responsible party.
- B. In the event funds received from City utility billings are inadequate to satisfy in full all of the water, sanitary sewer, storm sewer, street maintenance, and bicycle and pedestrian fees, credit shall be given to the bicycle and pedestrian fee, street maintenance fee, sanitary sewer service charges, storm sewer service charges, and water service charges proportionately.
- C. Notwithstanding any provision herein to the contrary, the City may institute any necessary legal proceedings to enforce the provisions of this chapter, including, but not limited to injunctive relief and collection of charges owing. The City's enforcement rights shall be cumulative.

3.25.080 WAIVER OF STREET MAINTENANCE FEE IN CASE OF VACANCY

- A. When any property within the City becomes vacant and water service is discontinued, a waiver of the street maintenance fee may be granted by the Finance Director upon written application of the person responsible, including a signed statement, affirming under penalty of perjury that the property is vacant, and upon payment of all outstanding water, sanitary sewer, storm sewer, street maintenance, and bicycle and pedestrian charges.
- B. For purposes of this section, "vacant" means that an entire building or utility billing unit has become vacant or continuously unoccupied for at least thirty (30) days. "Vacant" shall not mean that only a portion of a property without a separate water meter has become vacant or unoccupied.
- C. Fees shall be waived in accordance with this section only while the property remains vacant. The person responsible shall notify the City within five (5) days of the premises being occupied, partially occupied, or used, regardless of whether water service is restored.

3.25.090 RELIEF FOR LOW INCOME RESIDENTIAL CUSTOMERS FROM STREET MAINTENANCE FEE

The street maintenance fee shall not be billed to those households included in the low income utility program.

3.25.100 STREET MAINTENANCE FEE APPEAL PROCEDURE

- A. Any owner who disputes any interpretation given by the City as to the category of use assigned to such owner's property pursuant to this chapter may request a review and appeal such interpretation, but only in accordance with this section. The dispute must first be presented to the Engineering Director for review and thereafter may be appealed to the City Council in accordance with this section. Failure to appeal an interpretation made under this chapter within the time and in the manner provided shall be sufficient cause to deny the relief requested. Except in cases of hardship as determined by the Council, disputes which result in changes in the street maintenance fee charged under this chapter shall become effective with the next billing cycle.
- B. A utility customer may request a review of the category of use assigned. The Engineering Director shall conduct the review, considering all relevant evidence presented by the customer related to their actual trip generation patterns. Such evidence may include business records, parking lot usage, or traffic studies. The Engineering Director shall make a determination based on the evidence provided and provide notice to the customer.
- C. An owner who disputes an interpretation made by the Engineering Director as to the assigned category of use under this chapter shall submit a written appeal to the City Manager within ten (10) days from the date of notice of the Engineering Director's determination under subsection B of this section, together with a filing fee in the amount of three hundred dollars (\$300.00). The application for appeal shall specify the reasons therefore and include an engineering study prepared by a licensed professional engineer in conformance with the methodology outlined in the ITE Manual. Appeals shall be limited to the issue of whether the appropriate category of use has been assigned to the property.
- D. The City Manager shall schedule the matter for City Council review and notify the appellant not less than ten (10) days prior to the date of such Council review. The Council shall conduct a hearing during a public meeting and determine whether there is substantial evidence in the record to support the interpretation given by the Engineering Director. The Council may continue the hearing for purposes of gathering additional information bearing on the issue. The Council shall make a tentative oral decision and shall adopt a final written decision together with appropriate findings in support. The decision of the Council with respect to the category of use shall be limited to whether the appellant has been assigned to the appropriate category of use. If the Council should determine that a different category of use should be assigned, it shall so order, provided no refund of prior street maintenance fees shall be given. Only where the Council decision results in a change in category of use will the filing fee on the appeal be refunded. The Council decision shall be final.

3.25.110 EXCEPTIONS TO STREET MAINTENANCE FEE

The following shall not be subject to the street maintenance fee:

- A. City-owned parking lots;
- B. Publicly owned parkland, open spaces, and greenways, unless public off-street parking designed to accommodate the use of such areas is provided;
- C. Areas encompassed by railroad and public rights-of-way, except for developed railroad property such as maintenance areas, nonrolling storage areas, and areas used for the transfer of rail-transported goods to nonrail transport, which areas shall be subject to street maintenance fees.

3.25.120 STREET MAINTENANCE PROJECT SELECTION

The Engineering Director and Public Works Operations Director shall annually update a five (5) year schedule of street maintenance projects and include that schedule in the City Capital Improvement Plan.

3.25.130 RESERVED

3.25.140 SEVERABILITY

In the event any section, subsection, paragraph, sentence, or phrase of this chapter is determined by a court of competent jurisdiction to be invalid or unenforceable, the validity of the remainder of the chapter shall continue to be effective. If a court of competent jurisdiction determines that this ordinance imposes a tax or charge, which is therefore unlawful as to certain but not all affected properties, then as to those certain properties, an exception or exceptions from the imposition of the street maintenance fee shall be created and the remainder of the ordinance and the fees imposed thereunder shall continue to apply to the remaining properties without interruption. Nothing contained herein shall be construed as limiting the City's authority to levy special assessments in connection with public improvements pursuant to applicable law.

Underline/Strikeout Amendments

CHAPTER 3.25

STREET SURFACE MAINTENANCE PROGRAM

3.25.010 DEFINITIONS

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

“Developed property” means a parcel or portion of real property on which an improvement exists or has been constructed. Improvement on developed property includes, but is not limited to buildings, parking lots, landscaping, and outside storage.

“Dwelling Unit” As defined in Section 19.201.

“Gross square footage” means the area of all structures, located on a developed property, measured along the exterior walls of the structures, and including but not limited to enclosed courtyards and stairwells, but not including fences and parking areas which are not enclosed within a building.

“Multiunit residential property” means residential property consisting of two (2) or more dwelling units. For the purposes of this chapter, condominiums and individual mobile home units are also classified as multiunit residential properties.

“Nonresidential property” means any property that is not residential property.

“Reconstruction Project” means to replace, widen, improve or other construction of Milwaukie streets. Activities include ~~R~~right-of-way acquisition, widening roadways to City ~~S~~standards, and construction of other elements within the ~~R~~right-of-way as necessary to complete the project.

“Residential property” means a property that is primarily for personal, domestic accommodation, including single-family, multiunit residential property, and group homes, but not including hotels and motels.

“Responsible party” means the person or persons who by occupancy or contractual arrangement are responsible to pay for utility and other services provided to an occupied unit. Unless another party has agreed in writing to pay and a copy of the writing is filed with the City, the person(s) paying the City’s water and/or sewer bill for an occupied unit shall be deemed the responsible party as to that occupied unit. For any occupied unit not otherwise required to pay a City utility bill, “responsible party” shall mean the person or persons legally entitled to occupancy of the occupied unit, unless another responsible party has agreed in writing to pay and a copy of the writing is filed with the City. Any person who has agreed in writing to pay is considered the responsible person if a copy of the writing is filed with the City.

“Single-family residential” means residential property that has only detached dwelling units.

“Street” means a public street or right-of-way within the City that is under the jurisdiction or control of the City. For purposes of this chapter, County, State and federal roads are excluded.

“Street surface maintenance program” means the program established by this chapter to maintain, repair, and reconstruct City of Milwaukie streets. Activities include the administration of the street maintenance fee, preventive maintenance, rehabilitation, and reconstruction projects; design and inspection of such projects; street condition monitoring and assessment,

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including inspection of street repairs; and staff training and consultant services in support of the above activities.

“Trip generation” means the average number of vehicle trips, as determined by reference to the most recent manual entitled, Trip Generation, published by the Institute of Transportation Engineers (ITE) (“ITE Manual”), ~~7th edition~~.

“Use category or category of use” means the code number and resulting trip generation estimate determined with reference to the ITE Manual, and applicable to a particular developed property.

3.25.020 ADMINISTRATIVE OFFICERS

- A. Except as provided in subsections B and C of this section, the Engineering Director shall be responsible for the administration of this chapter. The Engineering Director shall be responsible for developing administrative procedures for the chapter, and consideration and assignment of categories of use subject to appeal to the City Council.
- B. The Engineering Director and the Streets Supervisor shall be jointly responsible for annually developing and updating a five (5)-year street surface maintenance program project schedule. The Engineering Director is responsible for ensuring that the schedule is properly integrated into the CIP and that the schedule is coordinated with other City capital projects.
- C. The Community Development and Public Works Director shall provide an annual report on the street surface maintenance program to City Council.
- D. The Engineering Director shall be responsible for implementation and enforcement of steps to minimize utility cut damage to streets, including a five (5)-year moratorium on capital projects on recently reconstructed, rehabilitated, or newly built City streets. The Public Works Operations Director is responsible for City compliance with street cut repair policy.
- E. The Finance Director shall be responsible for the administration and collection of fees under this chapter.

3.25.030 DEDICATION OF REVENUES

A. All funds and all proceeds from funds collected pursuant to this chapter shall be used for the street surface maintenance program.

~~B. Upon the establishment of County, regional, State or other programs providing monies to the City for street maintenance at rates or annual amounts greater than those in effect at the time of adoption of the ordinance codified in this chapter, local fees or taxes shall be reduced in an equal amount to the additional monies made available to the City for street maintenance. The dollar-for-dollar reductions shall be made first in the local fee or tax most similar to the newly established fee or tax. If the City share of the new fee or tax exceeds the annual revenue of the reduced local fee or tax, the City shall reduce another fee by the excess amount. The selection of the second fee to reduce shall be at the discretion of Council. Revenues from the motor vehicle fuel tax and any utility privilege tax, including the electric utility privilege tax under Chapter 3.30, shall not be considered additional monies or new revenue. Annual variations in the City share of state gas tax revenues absent a change in the allocation method or tax rate shall not be considered additional monies or new revenue. Any reduction in the street maintenance fee shall be shared proportionally across all billing categories, residential and nonresidential. The fee per trip charge shall be reduced for all nonresidential bills and the residential bills shall be reduced by the same percentage.~~

Comment [EC1]: Removal of paragraph to allow other fees for work within the right-of-way.

3.25.040 ANNUAL STREET SURFACE MAINTENANCE PROGRAM REPORT

- A. Each spring the ~~Community Development and Public Works~~Engineering Director shall prepare and present to Council the Annual Street Surface Maintenance Program Report.
- B. The report shall include a narrative description of the overall condition of the street network, the findings of any new condition assessments, a ~~detailed project~~ schedule of projects for the upcoming year, an updated five (5) year project schedule, the project selection criteria employed, and a report on the previous year projects, workload impacts, and overall program progress. The report shall include revenues received relative to revenue projections, project cost inflation trends, and any other new developments that impact the adequacy of the program funds to meet program goals.

3.25.050 STREET MAINTENANCE FEE

- A. A street maintenance fee is imposed and levied upon the responsible party for all developed property within the City. The fee shall be based on the direct and indirect use of or benefit derived from the use of public streets generated by the developed property, to be calculated as described in Section 3.25.060.
- B. The street maintenance fee is also imposed and levied on the property owner of the developed property in the event of nonpayment by the responsible party.

3.25.060 DETERMINATION OF STREET MAINTENANCE FEE

- A. Residential Fees
 - 1. Single-family residences shall be charged three dollars and thirty-five cents (\$3.35) per month.
 - 2. Multifamily residences, except for elderly housing, mobile home parks, and congregate care, shall be charged two dollars and ten cents (\$2.10) per month for each dwelling unit.
 - 3. Elderly housing and mobile homes parks will be charged one dollar and forty cents (\$1.40) per month for each dwelling unit.
 - 4. Congregate care facilities will be charged seventy cents (\$0.70) per month for each dwelling unit.
- B. Nonresidential Fees
 - 1. Category Assignment

Each nonresidential developed property in the City shall be assigned to a category of use according to the land use type listed in subsection C of this section.
 - 2. Upon request of the customer, the Engineering Director shall review the category of use assignment. The Engineering Director shall consider evidence provided by the customer that relates to the actual trip generation patterns of the property in question. The determination of category of use shall not be considered a land use decision as that term is defined in ORS 197.015.
 - 3. Fee Calculation

The street maintenance fee shall be calculated by multiplying the number of units (listed in subsection C) by the trip rate per unit for that assigned category of use and then by the

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monthly per trip charge of thirty-five cents (\$0.35) to establish the monthly fee to be billed.

4. Fee Maximum

The maximum monthly street maintenance fee for nonresidential accounts shall be two hundred and fifty dollars (\$250.00) per property. The maximum shall be adjusted for inflation annually according to the Consumer Price Index published by the Bureau of Labor Statistics. The adjustment for inflation shall be included in the annual fee schedule update beginning in 2008.

5. Fee Minimum

The minimum monthly street maintenance fee for nonresidential accounts shall be three dollars and thirty-five cents (\$3.35).

C. Category of Use

1. Category 1 shall be estimated at 0.75 trips per unit. Land uses include elementary and middle schools, private schools (K12), and lodge/fraternal organizations (ITE Codes 520, 521, 522 and 591).
2. Category 2 shall be estimated at two (2) trips per unit. Land uses include general heavy industrial, mini-warehouses, City parks, high schools, colleges, and furniture stores (ITE Codes 120, 151, 411, 530, 540, 550 and 890).
3. Category 3 shall be estimated at four (4) trips per unit. Land uses include manufacturing, warehouses, utilities, County parks, religious institutions, and nursing homes (ITE Codes 140, 150, 170, 412, 560, and 620).
4. Category 4 shall be estimated at eight (8) trips per unit. Land uses include general light industrial, industrial park, motels, golf courses, general office, single-tenant office buildings, office parks, research and development centers, and drinking places (ITE Codes 110, 130, 320, 430, 710, 715, 750, 760, and 836).
5. Category 5 shall be estimated at sixteen (16) trips per unit. Land uses are hotels, cemeteries, hospitals, business parks, wholesale nurseries, automobile care centers, self-service car washes, tire stores, discount clubs, and apparel stores (ITE Codes 310, 432, 566, 610, 770, 818, 840, 847, 848, 849, 861 and 870).
6. Category 6 shall be estimated at thirty-two (32) trips per unit. Land uses include marinas, tennis courts, racquet clubs, health clubs, bowling alleys, recreational community centers, day care, libraries, clinics, medical/dental office buildings, building materials and lumber, discount stores, specialty retail, hardware/paint stores, nursery/garden centers, shopping centers, high turnover sit-down restaurants, quick lubrication vehicle stops, new car sales, gas stations with convenience market, supermarkets, home improvement superstores, and electronics superstores (ITE Codes 420, 491, 492, 493, 494, 495, 565, 590, 630, 720, 812, 813, 814, 815, 816, 817, 820, 832, 837, 841, 844A, 845, 850, 862 and 863).
7. Category 7 shall be estimated at sixty-four (64) trips per unit. Land uses include government office buildings, quality restaurants, and gas stations (ITE Codes 730, 831, 844, 846, and 854).
8. Category 8 shall be estimated at one hundred twenty-eight (128) trips per unit. Land uses include U.S. Post Offices, fast food restaurants, convenience markets, and banks (ITE Codes 732, 833, 834, 851, 911, and 912).

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- 9. Category 9 shall be estimated at two hundred (200) trips per unit. Land use is a multipurpose recreational facility (ITE Code 435).
 - 10. Category 10 shall be estimated at four hundred forty (440) trips per unit. Land use is a movie theater (ITE Code 444).
- D. Units. The unit used in calculating the nonresidential street maintenance fee shall be one thousand (1,000) gross square feet of building area, with the following exceptions:

USE	UNIT
Parks, golf courses, cemeteries, marinas, multipurpose recreational facilities	One (1) acre
Schools and colleges	One (1) student
Lodges	One (1) member
Hotels and motels	One (1) room
Self-service car washes	One (1) wash stall
Tennis courts and racquet clubs	One (1) court
Quick lubrication vehicle stops and gas stations	One (1) fueling or service position
Movie theaters	One (1) screen

E. Unlisted Uses

In the event that a property is occupied by a use that is not expressly listed in any of the above categories, the Engineering Director shall determine which category the property should be placed in, based on similarity in expected trip generation. If no category is appropriate, the Engineering Director shall determine the trips per unit shall be based on a transportation study, the Trip Generation Manual, or any other method of determining trips. Any determination by the Engineering Director under this section may be reviewed under the procedure described in Section 3.25.100.B. The result of the review may be appealed to the City Council by filing a notice of appeal within ten (10) days of the date notice of the result of the review is mailed to the property owner.

3.25.070 ADMINISTRATION OF STREET MAINTENANCE FEE

- A. Under the supervision of the Finance Director, the street maintenance fee shall be billed and collected with and as part of the monthly water and sewer bill for those lots or parcels utilizing City water and sewer, as provided for in Section 13.04.100, and billed and collected separately for those developed properties not utilizing City water and sewer. In the event of nonpayment, the City may bill the property owner or take other action as authorized by law to collect from the responsible party.
- B. In the event funds received from City utility billings are inadequate to satisfy in full all of the water, sanitary sewer, storm sewer, ~~and street maintenance, and bicycle and pedestrian~~ fees, credit shall be given to the ~~bicycle and pedestrian fee~~, street maintenance fee, sanitary sewer service charges, storm sewer service charges, and water service charges proportionately.
- C. Notwithstanding any provision herein to the contrary, the City may institute any necessary legal proceedings to enforce the provisions of this chapter, including, but not limited to injunctive relief and collection of charges owing. The City's enforcement rights shall be cumulative.

Comment [EC2]: Added to reflect the new code 3.26 passed during last city council meeting (Typical)

3.25.080 WAIVER OF STREET MAINTENANCE FEE IN CASE OF VACANCY

- A. When any property within the City becomes vacant and water service is discontinued, a waiver of the street maintenance fee may be granted by the Finance Director upon written application of the person responsible, including a signed statement, affirming under penalty of perjury that the property is vacant, and upon payment of all outstanding water, sanitary sewer, storm sewer, ~~and~~ street maintenance, ~~and~~ bicycle and pedestrian charges.
- B. For purposes of this section, “vacant” means that an entire building or utility billing unit has become vacant or continuously unoccupied for at least thirty (30) days. “Vacant” shall not mean that only a portion of a property without a separate water meter has become vacant or unoccupied.
- C. Fees shall be waived in accordance with this section only while the property remains vacant. The person responsible shall notify the City within five (5) days of the premises being occupied, partially occupied, or used, regardless of whether water service is restored.

3.25.090 RELIEF FOR LOW INCOME RESIDENTIAL CUSTOMERS FROM STREET MAINTENANCE FEE

The street maintenance fee shall not be billed to those households included in the low income utility program.

3.25.100 STREET MAINTENANCE FEE APPEAL PROCEDURE

- A. Any owner who disputes any interpretation given by the City as to the category of use assigned to such owner’s property pursuant to this chapter may request a review and appeal such interpretation, but only in accordance with this section. The dispute must first be presented to the Engineering Director for review and thereafter may be appealed to the City Council in accordance with this section. Failure to appeal an interpretation made under this chapter within the time and in the manner provided shall be sufficient cause to deny the relief requested. Except in cases of hardship as determined by the Council, disputes which result in changes in the street maintenance fee charged under this chapter shall become effective with the next billing cycle.
- B. A utility customer may request a review of the category of use assigned. The Engineering Director shall conduct the review, considering all relevant evidence presented by the customer related to their actual trip generation patterns. Such evidence may include business records, parking lot usage, or traffic studies. The Engineering Director shall make a determination based on the evidence provided and provide notice to the customer.
- C. An owner who disputes an interpretation made by the Engineering Director as to the assigned category of use under this chapter shall submit a written appeal to the City Manager within ten (10) days from the date of notice of the Engineering Director’s determination under subsection B of this section, together with a filing fee in the amount of three hundred dollars (\$300.00). The application for appeal shall specify the reasons therefore and include an engineering study prepared by a licensed professional engineer in conformance with the methodology outlined in the ITE Manual. Appeals shall be limited to the issue of whether the appropriate category of use has been assigned to the property.
- D. The City Manager shall schedule the matter for City Council review and notify the appellant not less than ten (10) days prior to the date of such Council review. The Council shall conduct a hearing during a public meeting and determine whether there is substantial evidence in the record to support the interpretation given by the Engineering Director. The Council may continue the hearing for purposes of gathering additional information bearing

on the issue. The Council shall make a tentative oral decision and shall adopt a final written decision together with appropriate findings in support. The decision of the Council with respect to the category of use shall be limited to whether the appellant has been assigned to the appropriate category of use. If the Council should determine that a different category of use should be assigned, it shall so order, provided no refund of prior street maintenance fees shall be given. Only where the Council decision results in a change in category of use will the filing fee on the appeal be refunded. The Council decision shall be final.

3.25.110 EXCEPTIONS TO STREET MAINTENANCE FEE

The following shall not be subject to the street maintenance fee:

- A. City-owned parking lots;
- B. Publicly owned parkland, open spaces, and greenways, unless public off-street parking designed to accommodate the use of such areas is provided;
- C. Areas encompassed by railroad and public rights-of-way, except for developed railroad property such as maintenance areas, nonrolling storage areas, and areas used for the transfer of rail-transported goods to nonrail transport, which areas shall be subject to street maintenance fees.

3.25.120 STREET MAINTENANCE PROJECT SELECTION

The Engineering Director and Public Works Operations Director shall annually update a five (5) year schedule of street maintenance projects and include that schedule in the City Capital Improvement Plan.

3.25.130 ~~STREET MAINTENANCE PROJECT SCHEDULE AND NARRATIVE~~RESERVED

~~The street maintenance project schedule shall include a narrative description of street conditions, the project selection criteria, and a history of projects completed as part of the Street Surface Maintenance Program. The Street Maintenance Project Schedule and Narrative is a public record. The Street Maintenance Project Schedule and Narrative shall be prepared annually and presented to City Council as part of the Community Development and Public Works Director's annual report on the program.~~

Comment [EC3]: Duplicated information from 3.25.040.B

3.25.140 SEVERABILITY

In the event any section, subsection, paragraph, sentence, or phrase of this chapter is determined by a court of competent jurisdiction to be invalid or unenforceable, the validity of the remainder of the chapter shall continue to be effective. If a court of competent jurisdiction determines that this ordinance imposes a tax or charge, which is therefore unlawful as to certain but not all affected properties, then as to those certain properties, an exception or exceptions from the imposition of the street maintenance fee shall be created and the remainder of the ordinance and the fees imposed thereunder shall continue to apply to the remaining properties without interruption. Nothing contained herein shall be construed as limiting the City's authority to levy special assessments in connection with public improvements pursuant to applicable law.