

Regular Session

RS

Milwaukie City Council

COUNCIL REGULAR SESSION

City Hall Council Chambers, 10722 SE Main Street
& Zoom Video Conference (www.milwaukieoregon.gov)

AGENDA

MAY 17, 2022

Council will hold this meeting in-person and through video conference. The public may attend the meeting by coming to City Hall or joining the Zoom webinar, or watch the meeting on the [city's YouTube channel](#) or Comcast Cable channel 30 in city limits. **For Zoom login** visit <https://www.milwaukieoregon.gov/citycouncil/city-council-regular-session-322>.

To participate in this meeting by phone dial 1-253-215-8782 and enter Webinar ID 841 6722 7661 and Passcode: 097479. To raise hand by phone dial *9.

Written comments may be delivered to City Hall or emailed to ocr@milwaukieoregon.gov. Council will take verbal comments.

Note: agenda item times are estimates and are subject to change.

Page #

1. **CALL TO ORDER** (6:00 p.m.)
 - A. **Pledge of Allegiance**
 - B. **Native Lands Acknowledgment**

2. **ANNOUNCEMENTS** (6:01 p.m.) **2**

3. **PROCLAMATIONS AND AWARDS**
 - A. **Outstanding Milwaukie High School (MHS) Student – Award** (6:05 p.m.)
Presenter: Carmen Gelman, MHS Principal

 - B. **MHS Update – Report** (6:25 p.m.)
Presenter: Carmen Gelman, MHS Principal

 - C. **Dogwood Day – Proclamation** (6:35 p.m.) **4**
Presenter: Scott Stauffer, City Recorder

 - D. **Historic Preservation Month – Proclamation** (6:40 p.m.) **5**
Presenter: Lisa Batey, City Councilor

 - E. **Public Works Week – Proclamation** (6:45 p.m.) **6**
Presenter: Peter Passarelli, Public Works Director

4. SPECIAL REPORTS

- A. **None Scheduled.**

5. COMMUNITY COMMENTS (6:50 p.m.)

To speak to Council, please submit a comment card to staff. Comments must be limited to city business topics that are not on the agenda. A topic may not be discussed if the topic record has been closed. All remarks should be directed to the whole Council. The presiding officer may refuse to recognize speakers, limit the time permitted for comments, and ask groups to select a spokesperson. **Comments may also be submitted in writing before the meeting, by mail, e-mail (to ocr@milwaukieoregon.gov), or in person to city staff.**

6. **CONSENT AGENDA** (6:55 p.m.)
 Consent items are not discussed during the meeting; they are approved in one motion and any Council member may remove an item for separate consideration.
- A. **Approval of Council Meeting Minutes of:** **8**
 - 1. April 12, 2022, study session,
 - 2. April 12, 2022, special session,
 - 3. April 19, 2022, work session, and
 - 4. April 19, 2022, regular session.
 - B. **Authorization of a Contract for Electric Vehicle Charging Stations – Resolution** **21**
 - C. **Adoption of the 2021 Water Master Plan – Resolution** **33**
 - D. **Adoption of the 2021 Wastewater Master Plan – Resolution** **53**
7. **BUSINESS ITEMS**
- A. **Transit Police Contract – Resolution** (7:00 p.m.) **66**
 Staff: Luke Strait, Police Chief
8. **PUBLIC HEARINGS**
- A. **Wastewater System Development Charge (SDC) Revisions – Resolution** **99**
 (8:00 p.m.)
 Staff: Peter Passarelli, Public Works Director
 - B. **Middle Housing Land Division, Senate Bill (SB) 458, Code Changes – Ordinance (File #ZA-2022-001)** (8:30 p.m.) **117**
 Staff: Vera Kolias, Senior Planner
9. **COUNCIL REPORTS** (9:00 p.m.)
10. **ADJOURNMENT** (9:05 p.m.)

Meeting Accessibility Services and Americans with Disabilities Act (ADA) Notice

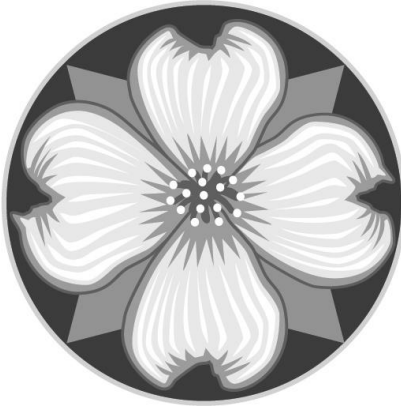
The city is committed to providing equal access to public meetings. To request listening and mobility assistance services contact the Office of the City Recorder at least 48 hours before the meeting by email at ocr@milwaukieoregon.gov or phone at 503-786-7502. To request Spanish language translation services email espanol@milwaukieoregon.gov at least 48 hours before the meeting. Staff will do their best to respond in a timely manner and to accommodate requests. Most Council meetings are broadcast live on the [city's YouTube channel](#) and Comcast Channel 30 in city limits.

Servicios de Accesibilidad para Reuniones y Aviso de la Ley de Estadounidenses con Discapacidades (ADA)

La ciudad se compromete a proporcionar igualdad de acceso para reuniones públicas. Para solicitar servicios de asistencia auditiva y de movilidad, favor de comunicarse a la Oficina del Registro de la Ciudad con un mínimo de 48 horas antes de la reunión por correo electrónico a ocr@milwaukieoregon.gov o llame al 503-786-7502. Para solicitar servicios de traducción al español, envíe un correo electrónico a espanol@milwaukieoregon.gov al menos 48 horas antes de la reunión. El personal hará todo lo posible para responder de manera oportuna y atender las solicitudes. La mayoría de las reuniones del Consejo de la Ciudad se transmiten en vivo en el [canal de YouTube de la ciudad](#) y el Canal 30 de Comcast dentro de los límites de la ciudad.

Executive Sessions

The City Council may meet in executive session pursuant to Oregon Revised Statute (ORS) 192.660(2); all discussions are confidential; news media representatives may attend but may not disclose any information discussed. Final decisions and actions may not be taken in executive sessions.



RS Agenda Item

2

Announcements

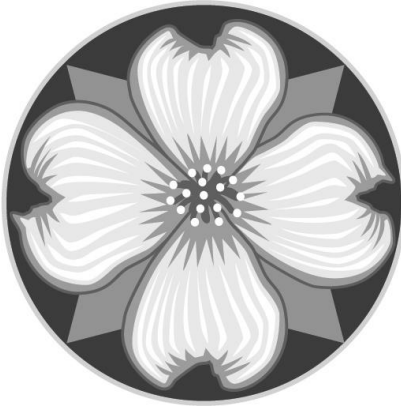


Mayor's Announcements – May 17, 2022

- **Interim Council Member Application – Accepted Until 5 PM on May 23**
 - For more information visit www.milwaukieoregon.gov/citycouncil/councilor-vacant-position-no-1
 - Applications may be submitted by email to ocr@milwaukieoregon.gov or delivered in person to City Hall (10722 SE Main St.)
- **Visit Engage Milwaukie (engage.milwaukieoregon.gov) to Participate in Two New Projects**
 - **Officer Body-Worn Camera Program**
 - Learn more, join the conversation, and ask questions
 - **Scott Park (Next to Ledding Library) – Milwaukie Park Development Project**
 - Take a short survey to let us know what you would like to see in the park
- **Pancake Breakfast Fundraiser – Corporal Diffie Veterans Fund – Saturday, May 21 (9 AM – 12 PM)**
 - Cost: \$10 per person, Children 12 and under eat free
 - American Legion Post 180, 2146 SE Monroe St.
 - Buy event tickets, raffle tickets, or make a general donation at <http://go.rallyup.com/cdvfbreakfast2022>
- **Ardenwald-Johnson Creek Plant Sale – Sunday, May 22 (11 AM – 5 PM)**
 - Support the development of Balfour Park at the neighborhood's annual plant sale
 - 3012 & 3026 SE Balfour St. / For more information visit www.ardenwald.org
- **Free Career Fair – Tuesday, May 24 (11 AM – 2 PM)**
 - In person event for job-seekers to explore and learn about various career paths, and network
 - Clackamas Community College, Gregory Forum (19600 Molalla Ave., Oregon City)
 - For more information or to register, visit www.clackamas.edu/career-fair
- **Ledding Library Lecture Series - Preservation: Three Experiences – Wednesday, June 1 (6:30 PM)**
 - Program focuses on topics to help preserve our historic places
 - In person at Ledding Library, virtually live on Zoom, or watch the recording on the city's YouTube Channel

RS2

- **LEARN MORE AT WWW.MILWAUKIEOREGON.GOV OR CALL 503-786-7555**



RS Agenda Item

3

Proclamations & Awards

PROCLAMATION

WHEREAS the Pacific Dogwood (*cornus nuttallii*) was nurtured and cultivated by the earliest settlers of the Milwaukie area, including the Clackamas people who used the Dogwood to weave baskets and make other utensils, and

WHEREAS the Oregon State Legislature incorporated the Town of Milwaukie on May 21, 1903, after years of organized community action that sought to seek local control of the area's infrastructure and shared spaces, and

WHEREAS on April 27, 1952, a plaque was placed by the Susannah Lee Barlow Chapter of the Daughters of the American Revolution at the home of Milwaukie's first mayor, William Shindler, to mark the location of the then-largest native Pacific Dogwood in the United States, which stood at 65-feet in height and 7-feet in circumference, and

WHEREAS on July 9, 1962, the City Council designated the Pacific Dogwood as the city's official flower and "The Dogwood City of the West" as the city's nickname, and

WHEREAS the people of Milwaukie continue to appreciate the Pacific Dogwood and other Dogwood species by planting them in yards, parks, and shared spaces, and

WHEREAS, by designating May 21st as Dogwood Day, Milwaukie continues to recognize the beauty of the Dogwood blossom as an emblem of our shared commitment to the earth and to each other.

NOW, THEREFORE, I, Mark Gamba, Mayor of the City of Milwaukie, a municipal corporation in the County of Clackamas, in the State of Oregon, do hereby proclaim May 21, 2022, to be **DOGWOOD DAY** in Milwaukie, *The Dogwood City of the West*.

IN WITNESS, WHEREOF, and with the consent of the City Council of the City of Milwaukie, I have hereunto set my hand on this 17th day of May 2022.

Mark Gamba, Mayor

ATTEST:

Scott Stauffer, City Recorder



PRESERVING MILWAUKIE'S
HISTORY FOR
FUTURE GENERATIONS

RS 3. C. 5/17/22
Presentation



3737 SE Adams St
Milwaukie OR 97222
503-659-5780

Located at the intersection of 37th and Railroad Ave
Behind Milwaukie Marketplace

Open Saturdays
1:00-5:00 PM



Thank You
2022 Corporate Sponsors



PRESERVING MILWAUKIE'S HISTORY FOR FUTURE GENERATIONS
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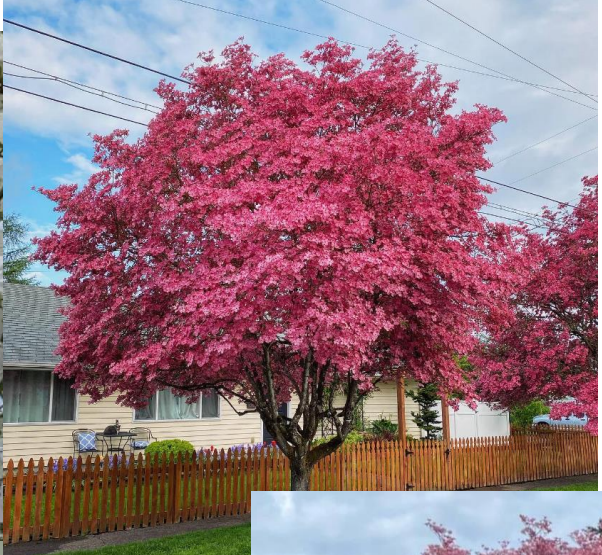




#milwaukiedogwood Photo Contest 2022



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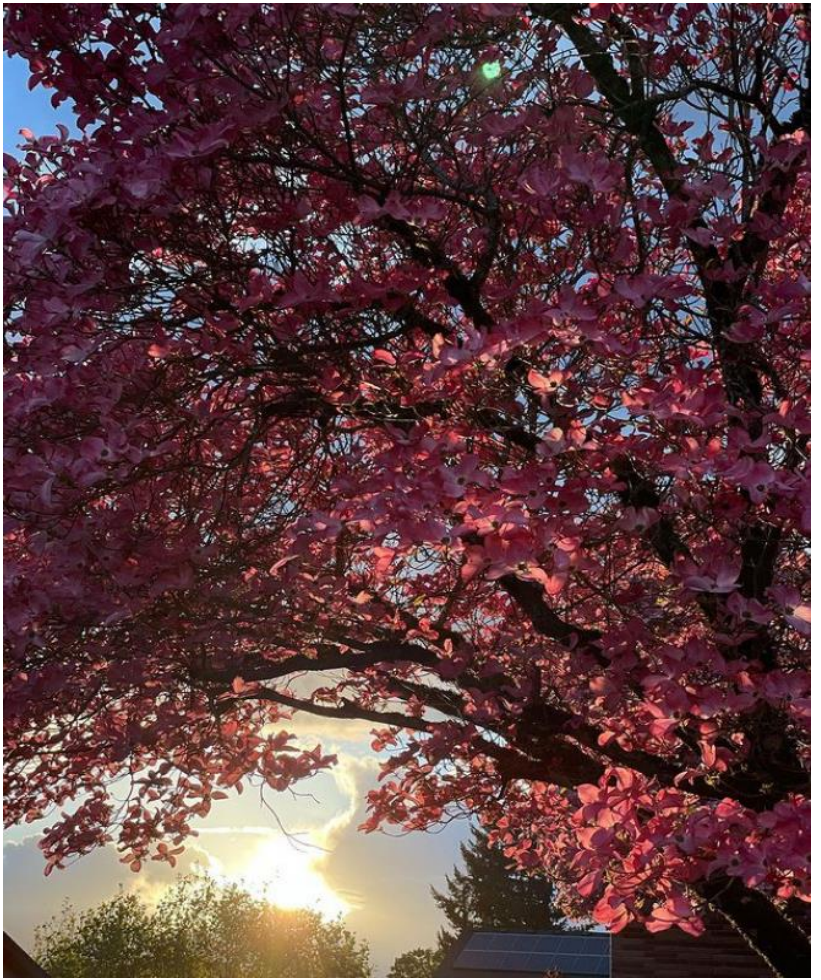
#milwaukiedogwood Photo Contest 2022



Congratulations Winners!

←
@juniper.and.yew

→
@velveetaoleta



Dogwood Day Proclamation 2022



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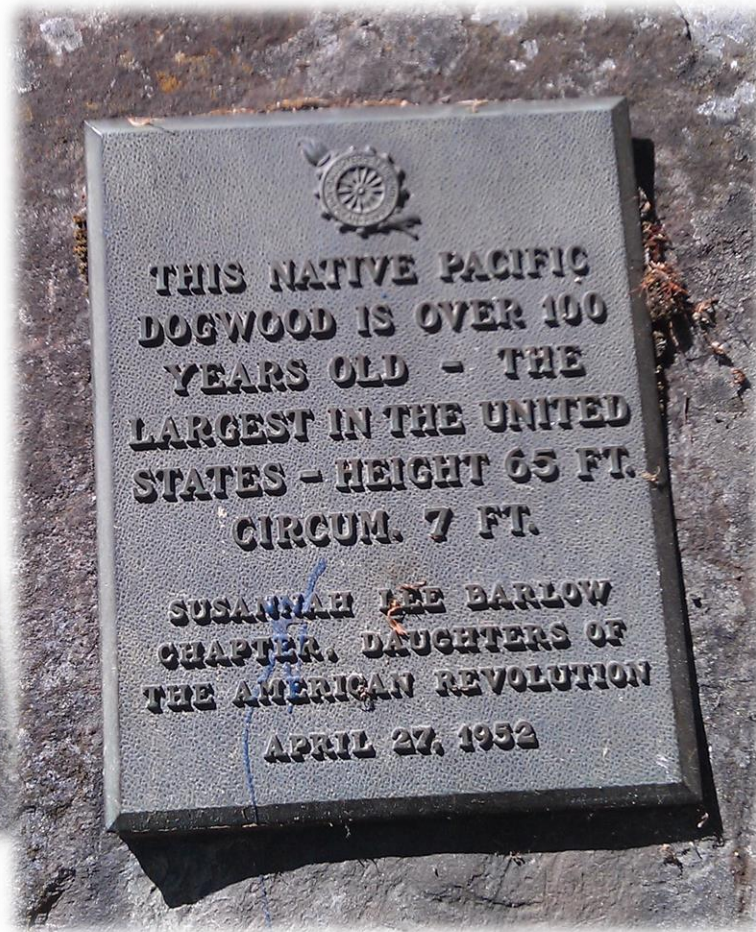
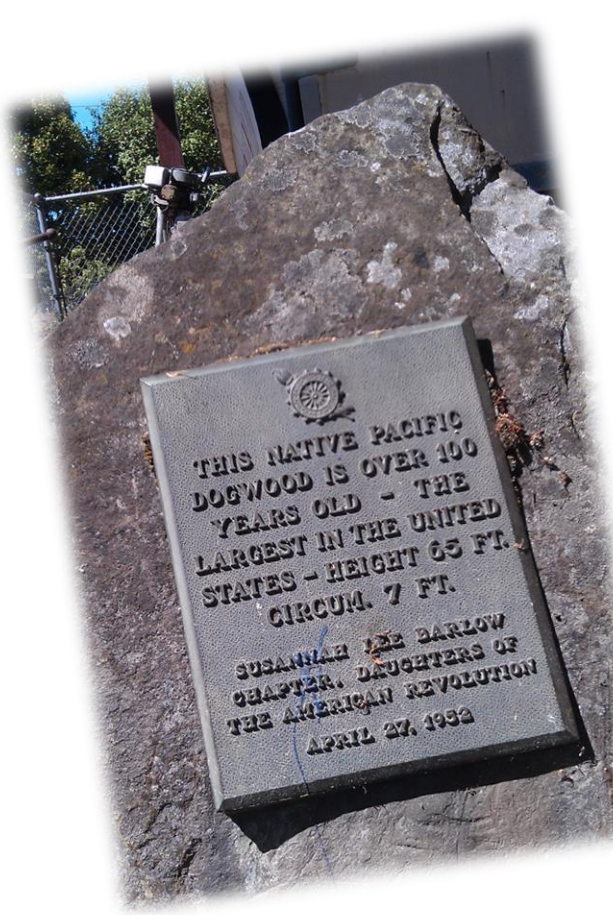
WHEREAS the people of Milwaukie continue to appreciate the Pacific Dogwood and other Dogwood species by planting them in yards, parks, and shared spaces, and

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IN WITNESS, WHEREOF, and with the consent of the City Council of the City of Milwaukie, I have hereunto set my hand on this 17th day of May 2022.

Happy Dogwood Day!



PROCLAMATION

WHEREAS the preservation of historic places is an effective tool for revitalizing neighborhoods, fostering local pride, and maintaining community character while enhancing livability, and

WHEREAS since 1973 the National Trust for Historic Preservation and countless other communities across the United States have marked May as an annual time to reflect on the importance of preserving places that reflect America's history, and

WHEREAS modern-day Milwaukie, situated in the historic homeland of the Clackamas people, was established in 1847 and incorporated in 1903. The city boundaries encompass a range of potentially historic buildings, from late pioneer-era structures, through Victorian, Craftsman and other historic eras and styles, to exceptional mid-century architecture, and

WHEREAS residents of Milwaukie and the many volunteers of the Milwaukie Historical Society have helped raise awareness of historic resources and buildings in our community, including by launching the first Historic Homes Tour in 2019, which will return on August 20, 2022, in the Historic Milwaukie and Lake Road neighborhoods, and

WHEREAS the preservation of historic places has a positive impact on communities by strengthening neighborhoods, encouraging local economic growth, providing a physical link to the past, and by being environmentally responsible.

NOW, THEREFORE, I, Mark Gamba, Mayor of the City of Milwaukie, a municipal corporation in the County of Clackamas, in the State of Oregon, do hereby proclaim **May 2022** as **HISTORIC PRESERVATION MONTH** in Milwaukie to increase public understanding of the importance of preserving our history for future generations.

IN WITNESS, WHEREOF, and with the consent of the City Council of the City of Milwaukie, I have hereunto set my hand on this 17th day of **May 2022**.

Mark Gamba, Mayor

ATTEST:

Scott Stauffer, City Recorder

PRESERVING MILWAUKIE'S
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RS 3. D. 5/17/22
Presentation



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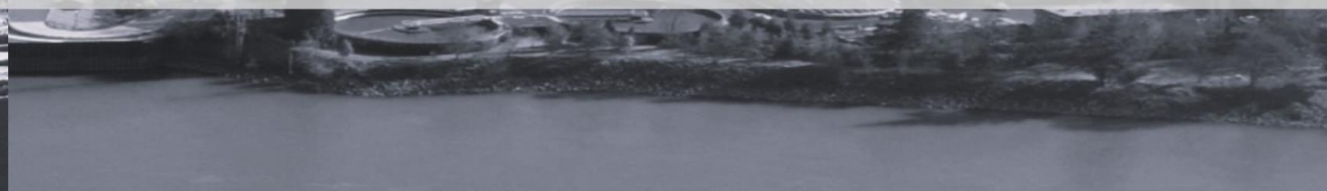
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Milwaukie: Then & Now



 **Milwaukie Museum**
PRESERVING MILWAUKIE'S HISTORY FOR FUTURE GENERATIONS

Open Saturdays 1pm ~ 5pm
3737 SE Adams St., Milwaukie



Home Tours and other Activities

Enjoy Your Tour

Tours begin at 10am; last tour 1:30pm.
Parking lot opens at 9:15am

Parking has been reserved on the corner of 22nd and Sparrow. This is your check in location. **Important:** You will not be admitted into homes without checking in.

One ticket per person including children. Tickets will not be sold during the day of the event. Only purchased ticket holders will be admitted into the homes.

You may tour any house in any order and as many times as you wish. Each home will have a waiting area for entry. Entry to each home will typically begin on the ½ hour and hour. Your ticket will be marked before entry.

Each home tour is guided. Your guide will inform and show you important features, history, and overall home appeal. Please feel free to ask any questions.

We ask you do not take pictures, bring backpacks, food, drinks, strollers, or enter rooms that are roped off. Please be considerate to our hosts and wear the provided booties at each entrance.

Restrooms inside homes will not be available for use. There is a restroom located at Spring Park on the corner of 19th and Sparrow. ADA access is limited and the tour will cover about 3 miles of walking. Please wear comfortable shoes.

An emergency manager will be onsite if needed.

1. Fernwood Manor



The rustic style manor (1921-1941) has stunning views of the Willamette River from its strategically placed windows and balconies. Initial construction was halted by the Depression and was completed by a hotel owner who named it Fernwood Manor. Locally it is remembered as the Amadeus Restaurant but was purchased in 2018 and has been carefully restored to a private residence.

2. Shaw House



This two-story Craftsman bungalow is characterized by a low-pitched gabled roof with dormers; a large covered porch supported by substantial columns; broad eaves with exposed rafters; and large fixed and double hung windows with multiple panes in the upper windows. Distinctive to this house is the rounded arch in the front gable where the windows were originally screened in for a sleeping porch.

3. Heintz House



The Heintz House (ca.1914) was designed for Alfred C. Heintz by Alfred H. Faber, a prolific architect active in Portland between 1904 and 1918. This Craftsman bungalow has a cross gabled roof allowing for maximum views of Willamette River. Distinctive elements include clinker brick porch piers and a wood-planked front door

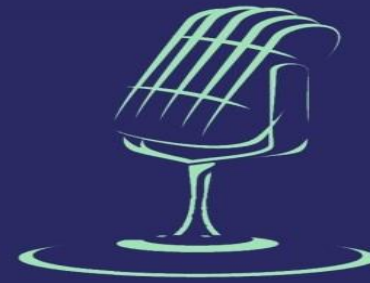
4. Pittock Cottage



The Pittock Cottage (1916) was constructed as a summer home by the Pittock family whose financial empire included ownership of the Oregonian. It has few formal stylistic details but was designed to take advantage of the views of the Willamette River. The front entrance - originally the rear entrance - is protected by an arched portico supported by decorative cast iron remnants from the Oregon Elevator

Historic Home
CANCELLED
July 2022
**Historic Milwaukie
Lake Road
Neighborhoods**

LEDDING LIBRARY LECTURE SERIES Preservation: Three Experiences



Wednesday June 1st 6:30 PM

Watch Live on Zoom or replay on City of Milwaukie YouTube Channel

Join Live Audience at Ledding Library

SPEAKERS



Councilor Batey



Steve Bennett



Michael Schmeer

The program focuses on topics that help preserve our historic places that we endear in our community and our lives. A State Historic Preservation Office representative will discuss the ins and outs on how to list and take advantage of preserving a historic building, Steve Bennett, Milwaukie Museum records specialist, will teach home research and how to find those unique stories you may not know about your property, Michael Schmeer, a longtime resident and owner of an Oatfield property, will share his thoughts and feelings of living and taking care of a historic home, and a special address by Councilor Lisa Batey.

To view the program via Zoom

<https://us02web.zoom.us/j/86555746890?pwd=VzBxelZCeHVrWmdXeGFLMVBWcTJMQT09>

Find it on Zoom during the day of the event by visiting the City Calendar at www.milwaukieoregon.gov

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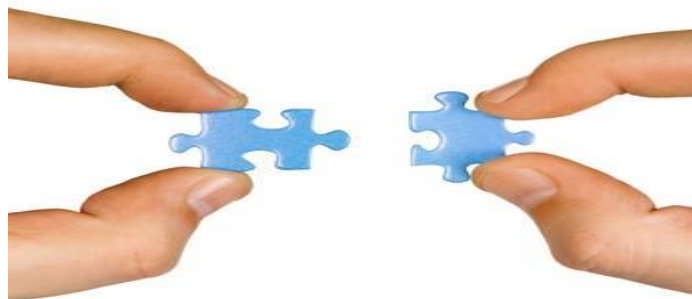
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Milwaukie Museum

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CITY OF MILWAUKIE

PROCLAMATION

WHEREAS public works services are important to the health, safety, and well-being of Milwaukie’s citizens, and

WHEREAS these services are provided through dedicated public works professionals who oversee water distribution, water treatment, wastewater treatment, sewer systems, urban forests, equipment services, public properties, solid waste systems, city streets, and water utilities, and

WHEREAS 2022 marks the 62nd annual National Public Works Week, and this year’s theme is “Ready and Resilient.”

NOW, THEREFORE, I, Mark Gamba, Mayor of the City of Milwaukie, a municipal corporation in the County of Clackamas, in the State of Oregon, do hereby proclaim **May 15-21, 2022**, as **PUBLIC WORKS WEEK** in Milwaukie.

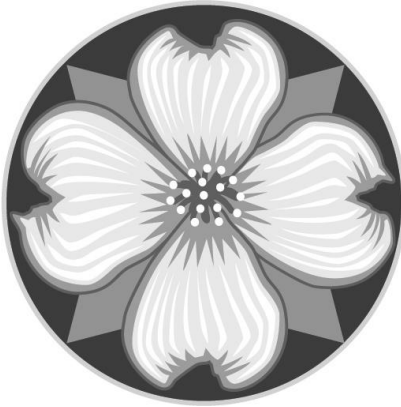
IN WITNESS, WHEREOF, and with the consent of the City Council of the City of Milwaukie, I have hereunto set my hand on this 17th day of **MAY 2022**.

Mark Gamba, Mayor

ATTEST:

Scott Stauffer, City Recorder





RS Agenda Item

6

Consent Agenda

COUNCIL STUDY SESSION

Leading Library, 10660 SE 21st Avenue
& Zoom Video Conference (www.milwaukieoregon.gov)

MINUTES

APRIL 12, 2022

Council Present: Councilors Lisa Batey, Angel Falconer, Desi Nicodemus, Council President Kathy Hyzy, and Mayor Mark Gamba

Staff Present: Nicole Madigan, Deputy City Recorder
Ann Ober, City Manager

Scott Stauffer, City Recorder

Mayor Gamba called the meeting to order at 5:15 p.m.

1. Clackamas Community College (CCC) – Presentation

Greg Chaimov, CCC Board Member informed the group about CCC's annual state of the college address on April 22 and shared that CCC anticipates opening the Harmony Campus' community room for public use depending on the COVID-19 pandemic.

Chaimov highlighted upcoming activities at CCC and briefly discussed each of three the colleges' campuses primary focused curriculum.

Chaimov presented the difference and benefits of a two-year program at CCC versus a four-year program at both public and private universities, the college's student demographics, how high school students can obtain funding for their first two years with the Oregon Promise program, and the variety of career technical training programs that are offered. **Chaimov** also shared information on CCC's supplemental high school programs such as general education degree (GED) courses and advanced college credits.

Chaimov discussed some of the initiatives CCC is working on, such as making student and faculty diversity, equity, and inclusion a priority, the hiring of a new chief diversity, equity, and inclusion officer, an early childhood education (ECE) program that focuses on promoting future educators that speak Spanish, how the new Wacheno Welcome Center at the Oregon City campus serves the community and CCC's students, and highlighted the new environmental learning center – also at the Oregon City campus.

Councilor Nicodemus shared thoughts on how to shorten the time it takes to get future educators into classrooms and how to recruit a diversified higher education faculty. **Chaimov** stated that Councilor Nicodemus' thoughts were in line with CCC's highest priorities and CCC would follow up with the Councilor.

Council President Hyzy asked for Chaimov's insights on the ECE program and how it connected with current childcare providers. **Chaimov** was unsure of how the program was connected to current providers but would follow up. **Chaimov** stated the ECE program is successful, despite low wages for childcare professionals.

Chaimov shared information about a partnership program called Clackamas Volunteers in Medicine which provides free medical care to anyone in need, located at CCC's Oregon City Campus.

Councilor Nicodemus and **Chaimov** discussed the "two plus two" model – two years of community college and two years at a university – in relation to the transfer of college credits between community colleges and universities.

Councilor Nicodemus discussed ideas associated with the ECE Spanish program and how it could be used to recruit Black, Indigenous, and People of Color (BIPOC) students to be ECE instructors.

Mayor Gamba, Chaimov, and Councilor Falconer discussed the importance of getting young students interested and enrolled in technical trades and the hurdles in place from parents, society, and most recently the COVID-19 pandemic.

2. Adjourn

Mayor Gamba announced that after the meeting Council would hold a special session at Milwaukie Bay Park and after that, via video conference, an executive session pursuant to Oregon Revised Statute (ORS) 192.660 (2)(h) to consult with counsel concerning the legal rights and duties of a public body with regard to current litigation or litigation likely to be filed.

Mayor Gamba adjourned the meeting at 5:44 p.m.

Respectfully submitted,

Nicole Madigan, Deputy City Recorder

COUNCIL SPECIAL SESSION

Milwaukie Bay Park, 11211 SE McLoughlin Blvd.
& Zoom Video Conference (www.milwaukieoregon.gov)

MINUTES

APRIL 12, 2022

Council Present: Councilors Lisa Batey, Angel Falconer, Desi Nicodemus, Council President Kathy Hyzy, and Mayor Mark Gamba

Staff Present: None.

Before the special session Council held a study session at the Ledding Library, 10660 SE 21st Avenue. At the end of the study session **Mayor Gamba** announced that after the special session Council would hold an executive session pursuant to Oregon Revised Statute (ORS) 192.660 (2)(h) to consult with counsel concerning the legal rights and duties of a public body with regard to current litigation or litigation likely to be filed. It was noted that the executive session would be held by Zoom video conference.

1. Call to Order

Mayor Gamba called the meeting to order at approximately 6:00 p.m.

2. Sparrow Street Auxiliary TriMet Property Purchase – Resolution

This item was removed from the agenda and added to a future Council meeting agenda.

3. Kellogg Creek Dam Visit with US Senator Jeff Merkley – Walking Tour

Council participated in a walking tour of the Kellogg Creek Dam with Senator Merkley. The group discussed the need for federal resources to remove the dam to improve native fish access to Kellogg Creek.

4. Adjourn

Mayor Gamba adjourned the meeting at approximately 6:45 p.m.

Respectfully submitted,

Scott Stauffer, City Recorder

COUNCIL WORK SESSION

City Hall Council Chambers, 10722 SE Main Street
& Zoom Video Conference (www.milwaukieoregon.gov)

MINUTES

APRIL 19, 2022

Council Present: Councilors Lisa Batey, Angel Falconer, Desi Nicodemus, Council President Kathy Hyzy, and Mayor Mark Gamba

Planning Commission Present: Commissioners Adam Khosroabadi, Jacob Sherman, Robert Massey, and Chair Lauren Loosveldt

Staff Present: Joseph Briglio, Community Development Director
Kelly Brooks, Assistant City Manager
Justin Gericke, City Attorney
Nicole Madigan, Deputy City Recorder
Scott Stauffer, City Recorder
Laura Weigel, Planning Manager
Courtney Wilson, Urban Forester

Mayor Gamba called the meeting to order at 4:01 p.m.

1. Planning Commission – Annual Update & Joint Session

Weigel introduced the Planning Commissioners Massey and Sherman who were present, and **Stauffer** noted that Commissioner Khosroabadi and Chair Loosveldt had joined on Zoom. **Weigel** stated the Commission held 19 public hearings on 14 different land use applications and presented a few of the Commission’s accomplishments for the last year, including the work on the Comprehensive Plan implementation and the Hillside, Coho Point at Kellogg Creek, Henley Place, and Dogwood Station projects.

Weigel shared updates that were made on the city’s development project application webpage that were a result of a joint meeting between the Commission and neighborhood district associations (NDAs). **Councilor Batey** and **Weigel** discussed when in the process an application is posted online. **Weigel** also reported that the joint meeting was used to provide a land use 101 training and shared what future trainings for NDAs would look. **Council President Hyzy, Weigel** and **Commissioner Massey** discussed who had participated in the joint meeting, how those unable to attend could still take advantage of the training, and what future trainings should include. **Weigel** added the city’s planning webpage would be updated to be more user friendly.

Weigel presented the Planning Commission’s 2022 – 2023 workplan, starting with what projects would be in development review. **Councilor Batey** and **Weigel** clarified that the middle housing application review would not be handled by the city’s planning department. **Weigel** shared what topics would be covered during the second phase of the Comprehensive Plan implementation project, including the Housing Capacity Technical Committee (HCTC) meeting and the city’s Transportation System Plan (TSP) update. **Commissioner Sherman** and **Weigel** confirmed there was a deadline for the state Transportation and Growth Management (TGM) grant funds to be used on the TSP project by mid-2024.

Weigel presented timelines on projects in the second phase of the Comprehensive Plan implementation such as neighborhood hubs and downtown design and review.

Weigel noted that Council would receive an update in August 2022 on parking in relation to the state’s Climate-Friendly and Equitable Communities Rulemaking. The group noted that the state rules were slated to be adopted in May 2022. **Weigel** shared

that Council would also receive an update on Oregon House Bill (HB) 2180 code changes related to electric vehicle charging stations.

Councilor Batey and **Weigel** discussed the requirements for urban center/town center/climate friendly areas in correlation to the Climate-Friendly and Equitable Communities Rulemaking and noted that the city had a designated area with Metro to meet those requirements. **Weigel** added how the new rulemaking work with Metro ties into the work on the TSP. **Council President Hyzy** mentioned policy work that had been slowing Metro down and in turn has slowed the progress of the Regional Transportation Plan (RTP).

Weigel looked ahead to phase three of the Comprehensive Plan implementation and other projects the Commission would work on through 2026. **Councilor Batey**, **Mayor Gamba** and **Weigel** discussed what the downtown plans consolidation work would entail. **Commissioners Massey** and **Sherman** and **Mayor Gamba** discussed whether a flood protection project was centered around Federal Emergency Management Administration (FEMA) flood maps, how flood maps can be changed, and noted that maps would need be changed if the Kellogg Dam is removed.

Commissioner Sherman stated the Commission was looking for opportunities to update the zoning map on a parcel-by-parcel basis through projects such as neighborhood hubs. **Mayor Gamba** asked if the city was considering consolidating high density zones, and **Weigel** replied staff was working on first updating definitions and would bring those to Council, and then staff would evaluate where and when the allowances occur and under what conditions. **Weigel** followed up on Commissioner Sherman's comment, adding that city staff are working with both the Commission and Council on updating zoning around the neighborhood hubs project. **Council President Hyzy** suggested planning staff connect with the state ombudsman program to get a better understanding of what elder and long-term care looks like.

Councilor Batey expressed frustration with hybrid in-person and virtual meeting technical issues and was glad some Commissioners had appeared in person. **Council President Hyzy** and **Mayor Gamba** expressed gratitude and congratulations for all the Commission's work. **Commissioner Sherman** thanked staff for their work.

2. Vertical Housing Development Zone (VHDZ) – Discussion

Briglio gave a brief overview on what vertical housing is and provided background information on the city's VHCZ program which included a five-year sunset clause that would end the program in July. **Briglio** shared that one project had taken advantage of the program and two others would be applying before the program sunsets. **Councilor Batey**, **Mayor Gamba** and **Briglio** discussed what requirements the two project applicants would abide by.

Briglio commented on whether the VHDZ program should be extended or allowed to sunset, how extending it could strain staff resources, and whether the program incentivized the type of housing Council had prioritized. **Mayor Gamba** summarized the pros and cons of the project and voiced interest in extending the program but with adjustments to make mandatory requirements for more affordable/workforce housing. The group discussed what the current affordable housing requirements were within the program, the city's construction excise tax (CET) program as a tool to promote affordable housing, how staff constraints would affect moving forward with program, and conversations/negotiations to be had with other taxing jurisdictions about the program.

Councilor Batey asked where rent was around the city compared to the 80% area median income (AMI). **Briglio** presented rents based on AMI limits for 2021 and cited three current rental rates from local apartments. **Councilor Batey** and **Mayor Gamba** discussed what the rent information presented, taking into considering older units versus new construction and if building new units would lower the rent at older buildings, and whether Council could bring the program back in the future.

Councilor Batey suggested that with new units being built, and with current constraints on staff, the city should let the program sunset – and plan on evaluating whether to bring the program back after new housing projects were completed. **Briglio** confirmed there would be no difference in the amount of staff work required to restart the program later. **Council President Hyzy** mentioned the benefits of the CET program and agreed with Councilor Batey. **Councilor Falconer** encouraged the city to prioritize deeply affordable housing and questioned if everyone eligible for the program had been made aware they could qualify. The group discussed how the Coho Point at Kellogg Creek project could have qualified for the program.

Mayor Gamba asked Briglio if the tax abatement from the current VHDZ program would affect funds from CET and **Briglio** confirmed that CET funds originate from construction permits, not property taxes, and agreed that the focus of the program should be on building deeply affordable housing. **Mayor Gamba, Councilor Falconer, and Briglio** discussed the city's vacancy rate. **Mayor Gamba** commented on the development of the Murphy opportunity site, how it could provide much needed workforce housing to the hospital, and suggested developers were running into barriers even with the program in place, and that the cost of living is not meeting the 10% a year rent raise threshold.

Councilor Nicodemus shared concerns for staff burnout and the desperate need for affordable housing and was not comfortable waiting 18 months to renew the program and agreed with focusing on deeply affordable housing. The group discussed what steps would need to occur to move forward with a deeply affordable housing program and combining it with the city's planned Housing Production Strategy (HPS) work.

Brooks summarized that staff would move forward with combining a plan for deeply affordable housing with the CET program instead of the VHDZ program which the city would let sunset. Council and **Briglio** agreed and discussed whether new construction would be subject to rental rate caps.

3. Adjourn

Mayor Gamba adjourned the meeting at 5:13 p.m.

Respectfully submitted,

Nicole Madigan, Deputy City Recorder

COUNCIL REGULAR SESSION

City Hall Council Chambers, 10722 SE Main Street
& Zoom Video Conference (www.milwaukieoregon.gov)

MINUTES

APRIL 19, 2022

Council Present: Councilors Lisa Batey, Angel Falconer, Desi Nicodemus, Council President Kathy Hyzy, and Mayor Mark Gamba

Staff Present: Joseph Briglio, Community Development Director
Kelly Brooks, Assistant City Manager
Justin Gericke, City Attorney
Galen Hoshovsky, Natural Resources Technician
Vera Kalias, Senior Planner
Nicole Madigan, Deputy City Recorder
Peter Passarelli, Public Works Director

Natalie Rogers, Climate & Natural Resources Manager
Scott Stauffer, City Recorder
Jason Wachs, Community Engagement Coordinator
Courtney Wilson, Urban Forester

Mayor Gamba called the meeting to order at 6:03 p.m.

1. CALL TO ORDER

A. Pledge of Allegiance.

B. Native Lands Acknowledgment.

2. ANNOUNCEMENTS

Mayor Gamba announced upcoming activities, including the city's Earth Day event, a city manager's open-door session, a prescription drug drop-off and paper shredding event, a Scott Park master planning event, and the return of the Milwaukie Farmers' Market. **Councilor Batey** noted a Milwaukie Parks Foundation fundraiser for Milwaukie Bay Park and **Council President Hyzy** added that the Hector Campbell Neighborhood District Association (NDA) would be sponsoring an Earth Day adopt-a-road event.

3. PROCLAMATIONS AND AWARDS

A. Milwaukie High School (MHS) Outstanding Student Achievement – Award

Carmen Gelman, MHS Principal, introduced Elijah Otero and Council congratulated them on their academic and extra-curricular activities.

B. MHS Update – Report

Gelman reported on the return of in-person activities, including performances, dances, assemblies, and end of year traditions. **Council President Hyzy, Gelman, and Otero** remarked on how students have dealt with the trauma and change of the last two years.

C. 2021 Volunteer of the Year – Award

Wachs reviewed the award criteria and selection process. **Mayor Gamba** and **Wachs** noted who had been nominated and announced that the 2021 Volunteer of the Year award recipients were Brandi and Tom Johnson who run the non-profit LoveOne community support organization. **Tom Johnson** and **Brandi Johnson** provided an overview of the services LoveOne provides, and the group remarked on the impact of the Johnson's work on the Clackamas County community.

D. Earth Day – Proclamation

Rogers introduced the proclamation and remarked on the city's plans to celebrate Earth Day. **Mayor Gamba** proclaimed April 19, 2022, to be Earth Day in Milwaukie.

4. SPECIAL REPORTS

A. None Scheduled.

5. COMMUNITY COMMENTS

Mayor Gamba reviewed the public comment procedures. **Brooks** reported that in follow-up to April 5 community comments about the removal of trees around City Hall, the city manager would respond at the May 3, 2022, regular session; and in response to April 5 community comments about new bulb-outs on 42nd Avenue, temporary traffic cones had been installed until permanent striping could be painted.

Kiran Das Bala, Milwaukie resident, commented on personal financial issues related to a 2009 car rental incident.

Anthony Allen, Milwaukie resident, reported that parked cars had blocked a mailbox on 26th Avenue off Lake Road which had prevented the United States Postal Service (USPS) from accessing the box. It was noted that staff would follow-up with Allen.

6. CONSENT AGENDA

It was moved by Councilor Batey and seconded by Councilor Nicodemus to approve the Consent Agenda as presented.

A. City Council Meeting Minutes:

- 1. March 15, 2022, Work Session, and**
- 2. March 15, 2022, Regular Session.**

B. Resolution 24-2022: A resolution of the City Council of the City of Milwaukie, Oregon, acting as the Local Contract Review Board, authorizing the city manager to execute a contract amendment for municipal court judge services.

C. An Oregon Liquor Control Commission (OLCC) Application for the Little Blue Store, 2936 SE Washington Street – Off-Premises Sales

Motion passed with the following vote: Councilors Falconer, Batey, Nicodemus, and Hyzy and Mayor Gamba voting “aye.” [5:0]

7. BUSINESS ITEMS

A. Community Survey Briefing – Report

Brooks explained that the city conducts a community survey every two years and noted how the survey questions and target audience had changed over time.

Brooks introduced Miranda Everitt, with FM3 research who had conducted the survey. **Everitt** provided an overview of how the survey had been conducted and reviewed the results, discussing Milwaukie resident's satisfaction with city services and opinions on housing, parking, downtown, streets, utility costs, communication with the city, and barriers to participating in city government. **Everitt** summarized that in general residents were satisfied with the city's work.

The group noted that survey questions were asked in a random order, residents had not been asked about the city's payment assistance program, and Council expressed interest in seeing the raw survey data.

8. PUBLIC HEARING

A. City Hall Surplus Process – Resolution

Call to Order: **Mayor Gamba** called the public hearing on the proposed city property surplus action to order at 7:48 p.m.

Purpose: **Mayor Gamba** announced that the purpose of the hearing was to hear the staff report, take public comment, and declare city hall to be surplus property.

Conflict of Interest: No Council member declared a conflict of interest.

Staff Presentation: **Briglio** reviewed the city's process to develop goals for the next use of the current city hall building, noting the work of the City Hall Blue Ribbon Committee (CHBRC) and the adoption of development goals for the site. **Briglio** reported that the site had been replatted into two lots to ensure a portion of the site remains a city park as required by the deed restriction placed on the property by the North Clackamas School District (NCSD). **Councilor Batey** and **Briglio** noted that any potential city hall lease or sale agreement could include the tenant or new owner's use of the parking lot.

Briglio reviewed the request for Council to declare city hall to be surplus so the city could run a request for proposals (RFP) process to find the next tenant or owner.

Councilors Batey and Nicodemus and **Mayor Gamba** agreed that the city should be as flexible as possible in reviewing RFP responses to allow for more groups that might not otherwise have a chance at using such a building. **Briglio** commented on how the city could best support groups interested in using city hall. **Council President Hyzy** encouraged the city to consider the building's location on Main Street and **Councilor Nicodemus** suggested that any new user may become unable to maintain the building in the future.

Mayor Gamba, Councilor Batey, and **Briglio** noted RFP process steps, including how long proposals would be accepted.

Correspondence: No correspondence had been received about the hearing topic.

Conduct of Hearing: **Mayor Gamba** reviewed the public comment procedures.

Audience Testimony: No audience member wished to address Council.

Continue Hearing: **It was moved by Councilor Falconer and seconded by Council President Hyzy to close the public comment part of the city hall surplus hearing. Motion passed with the following vote: Councilors Falconer, Batey, Nicodemus, and Hyzy and Mayor Gamba voting "aye." [5:0]**

Mayor Gamba closed the public comment part of the hearing at 8:05 p.m.

Council Discussion: Council voiced appreciation for the city's opportunity with a new city hall and to be in a place to go through the current city hall RFP process.

Council Decision: **It was moved by Councilor Falconer and seconded by Council President Hyzy to approve the resolution declaring part of the city owned property located at 10722 SE Main Street to be surplus and authorizing the city manager to sell or lease the property. Motion passed with the following vote: Councilors Falconer, Batey, Nicodemus, and Hyzy and Mayor Gamba voting "aye." [5:0]**

Resolution 25-2022:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, DECLARING PART OF CITY OWNED PROPERTY LOCATED AT 10722 SE MAIN STREET TO BE SURPLUS AND AUTHORIZING THE CITY MANAGER TO SELL OR LEASE THE PROPERTY.

Mayor Gamba recessed the meeting at 8:08 p.m. and reconvened at 8:16 p.m.

B. Comprehensive Plan Implementation, Housing and Parking Code Amendments (continued) – Ordinance

Call to Order: **Mayor Gamba** called the continued public hearing on the proposed housing and parking code amendments, file #ZA-2021-002, to order at 8:17 p.m.

Purpose: **Mayor Gamba** announced that the purpose of the hearing was to hear the final staff report, finish deliberation, and consider adopting the proposed code changes.

Conflict of Interest: No Council member declared a conflict of interest.

Staff Presentation: **Kolias** reported that changes to the proposed code requested by Council at the last hearing had been made. **Mayor Gamba, Kolias, and Councilor Batey** noted a clarification made to a chart in the code showing minimum lot sizes for cottage cluster developments.

Council President Hyzy noted that several scrivener errors had been submitted to staff to clean-up in the final version of the adopted ordinance.

Councilor Falconer, Mayor Gamba, and Kolias commented on the wording in the cottage cluster minimum lot size chart.

Council Discussion: **Council President Hyzy** thanked the community, Planning Commission, and staff who had engaged in the Comprehensive Plan update process.

Councilor Batey intended to vote ‘no’ on the proposed housing and parking code and read a statement that expressed support for middle housing options and most of the proposed code but disagreed about not requiring one parking space per middle housing unit. **Batey** suggested the city had not done enough public outreach work over the last few years to take public input on the proposed code changes.

Mayor Gamba remarked that the proposed code represented the end of a multi-year effort to implement a community vision and Comprehensive Plan changes that dealt with global issues. **Gamba** intended to vote for the proposed code.

Councilor Falconer remarked on the racist housing and car-centric policies the city and many communities across the country had adopted in the twentieth century that had contributed to the climate crisis. **Councilor Nicodemus** agreed with Falconer.

Council Decision: **It was moved by Councilor Nicodemus and seconded by Councilor Falconer for the first and second readings by title only and adoption of the ordinance amending the Milwaukie Comprehensive Plan Land Use Map and Residential Land Use Designations, Municipal Code (MMC) Title 19 Zoning Ordinance, Title 17 Land Division, Title 12 Streets, Sidewalks, and Public Places, Title 13 Public Services, and amending the Zoning Map for the purpose of addressing middle housing and residential parking (File #ZA-2021-002). Motion passed with the following vote: Councilors Falconer, Nicodemus, and Hyzy and Mayor Gamba voting “aye,” and Councilor Batey voting “no.” [4:1]**

Brooks read the ordinance one time by title only.

Mayor Gamba announced that as the vote was not unanimous the second reading and final adoption of the ordinance would be done during the May 3, 2022, regular session.

Brooks expressed appreciation for the staff who had worked on the code changes.

B. Comprehensive Plan Implementation, Tree Code Amendments (continued) – Ordinance and Resolution

Call to Order: **Mayor Gamba** called the continued public hearing on the proposed tree code amendments, file #ZA-2021-002, to order at 8:37 p.m.

Purpose: **Mayor Gamba** announced that the purpose of the hearing was to hear the final staff report, finish deliberation, and consider adopting the proposed code changes.

Conflict of Interest: No Council member declared a conflict of interest.

Staff Presentation: **Rogers** noted a change made to the proposed tree code since the last hearing dealing with regional business registration taxes.

Council Discussion: **Mayor Gamba** remarked on the work that had gone into the tree code and previous attempts to create a tree code.

Council President Hyzy commented on the code as a tool to protect trees and noted that it would need to be revised in the future to make it better. **Hyzy** encouraged the community to provide feedback as the code was implemented.

Councilors Batey and Falconer and **Mayor Gamba** thanked staff for their work on the tree code and for shepherding it through the hearing process. **Rogers** reported that the tree code had already started to garner national attention.

Council Decision: **It was moved by Councilor Nicodemus and seconded by Councilor Batey for the first and second readings by title only and adoption of the ordinance amending Milwaukie Municipal Code (MMC) Title 16 Environment for the purpose of addressing tree preservation (File #ZA-2021-002). Motion passed with the following vote: Councilors Falconer, Batey, Nicodemus, and Hyzy and Mayor Gamba voting “aye.” [5:0]**

Ober read the ordinance two times by title only.

Stauffer polled the Council with **Councilors Falconer, Batey, Nicodemus, and Hyzy** and **Mayor Gamba** voting “aye.” [5:0]

Ordinance 2216:

AN ORDINANCE OF THE CITY OF MILWAUKIE, OREGON, AMENDING MILWAUKIE MUNICIPAL CODE (MMC) TITLE 16 ENVIRONMENT FOR THE PURPOSE OF ADDRESSING TREE PRESERVATION (FILE #ZA-2021-002).

Brooks thanked Passarelli and Rogers for their work on the tree code.

D. Master Fee Schedule Revision, Tree Code Fees – Resolution

Call to Order: **Mayor Gamba** called the continued public hearing on the proposed Master Fee Schedule revisions to order at 8:53 p.m.

Purpose: **Mayor Gamba** announced that the purpose of the hearing was to continue the hearing on the proposed fee changes, hear the staff report, take public comment, continue deliberation, and consider adopting the proposed resolution.

Conflict of Interest: No Council member declared a conflict of interest.

Staff Presentation: **Rogers** reported that the changes requested by Council at the last hearing had been incorporated into the proposed fee schedule revision. **Mayor Gamba** and **Rogers** noted the fees could be revised as needed going forward.

Correspondence: **Stauffer** reported that two emails regarding the tree code fees had been submitted to Council by Geraldine Butcher.

The group noted that Milwaukie resident Teresa Bresaw had submitted a comment card but had spoken to staff and was no longer at the meeting.

Conduct of Hearing: **Mayor Gamba** reviewed the public comment procedures.

Audience Testimony:

Micah Meskel, Portland Audubon Society, supported the tree code and fees and encouraged Council to support the city's urban forest staff and the community in implementing and updating it in the future. **Meskel** hoped the city would adopt a tree code for commercial and industrial properties.

Anthony Allen, Milwaukie resident, believed the city was missing an opportunity to protect trees on commercial and industrial land and asked about the consequences for residents who do not get a permit and do not have the ability to pay for a permit. **Allen** was worried that many residents were not aware of the new tree code. **Rogers** explained the processes in the tree code that gave the city manager and municipal court judge the ability to reduce or waive tree fees and fines and provided a brief overview of staff's plan to inform the public about the new code through community outreach work.

Councilor Falconer and **Rogers** noted that the tree code applied to all residential zones and the city intended to create commercial and industrial tree codes.

Continue Hearing: **It was moved by Councilor Batey and seconded by Council President Hyzy to close the public comment part of the Master Fee Schedule revision hearing. Motion passed with the following vote: Councilors Falconer, Batey, Nicodemus, and Hyzy and Mayor Gamba voting "aye." [5:0]**

Mayor Gamba closed the public hearing at 9:09 p.m.

Mayor Gamba remarked on the importance of adopting fees to support the tree code.

It was moved by Councilor Batey and seconded by Councilor Nicodemus to approve the resolution revising fees and charges and updating Section 5 of the Master Fee Schedule for fiscal years 2021 and 2022. Motion passed with the following vote: Councilors Falconer, Batey, Nicodemus, and Hyzy and Mayor Gamba voting "aye." [5:0]

Resolution 26-2022:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, REVISING FEES AND CHARGES AND UPDATING SECTION 5 OF THE MASTER FEE SCHEDULE FOR FISCAL YEARS 2021 AND 2022.

9. COUNCIL REPORTS

None.

10. ADJOURNMENT

It was moved by Councilor Nicodemus and seconded by Councilor Falconer to adjourn the regular session. Motion passed with the following vote: Councilors Falconer, Batey, Nicodemus, and Hyzy and Mayor Gamba voting “aye.” [5:0]

Mayor Gamba adjourned the meeting at 9:11 p.m.

Respectfully submitted,

Scott Stauffer, City Recorder

COUNCIL STAFF REPORT

To: Mayor and City Council
Ann Ober, City Manager

Date Written: May 5, 2020

Reviewed: Karin Gardner, Administrative Specialist III, and
Kelli Tucker, Accounting & Contracts Specialist

From: Damien Farwell, Facilities Supervisor, and
Peter Passarelli, Public Works Director

Subject: **Electric Vehicle (EV) Charging Stations and Installation Services**

ACTION REQUESTED

Council is asked to authorize the city manager to sign a contract with Blink Charging Company for the purchase and installation of four (4) Level 2 electric vehicle charging stations.

HISTORY OF PRIOR ACTIONS AND DISCUSSIONS

The public works facilities division previously installed two (2) Level 2 chargers for the city's fleet at the Johnson Creek Building (JCB) campus and one (1) Level 2 charger at the Public Safety Building (PSB).

ANALYSIS

Staff has negotiated a contract with Blink Charging Company to supply and install four (4) Blink IQ 200 80-amp Level 2 charging stations. Three chargers will be public facing (at PSB, JCB, and the Ledding Library) and one will serve police vehicles. This work advances Council goals, the community vision and aligns with the city's Climate Action Plan (CAP). This procurement is compliant with the city's public contracting rules (PCRs) for purchasing from a competitively awarded price agreement.

BUDGET IMPACT

The three (3) public facing chargers were identified as a CIP project for FY 2023-2024. The one (1) fleet facing PSB charger will be funded by special projects.

WORKLOAD IMPACT

City staffing will be minimal for this project.

CLIMATE IMPACT

The three (3) public facing charging stations will encourage electric vehicle adoption and reduce vehicle emissions. The police charging station is necessary infrastructure for existing and planned electric vehicles for the department.

COORDINATION, CONCURRENCE, OR DISSENT

The climate and natural resources manager concur with this report and action.

STAFF RECOMMENDATION

Staff recommends Council authorize the city manager to sign a contract with Blink Charging Company to supply and install vehicle charging stations to advance city climate goals and serve the community.

ALTERNATIVES

Council could decide to:

1. Defer installing three public facing charging stations and install a slower charger to serve police vehicles.
2. Council could postpone installation of the chargers to a later date.

ATTACHMENTS

1. Purchase Agreement
2. Resolution



**PURCHASE AGREEMENT
WITH THE CITY OF MILWAUKIE, OREGON
FOR EV CHARGING STATIONS AND INSTALLATION SERVICES**

THIS CONTRACT is made and entered into this ____ day of May, 2022, by and between the City of Milwaukie, Oregon, a municipal corporation of the State of Oregon, hereinafter called "City", and Blink Charging Company, hereinafter called "Contractor."

RECITALS

WHEREAS, City has need for certain goods or services provided by Contractor; and

WHEREAS, Contractor is in the business of selling certain goods or services and is aware of the purposes for which City will use the goods.

THEREFORE, City and Contractor wish to enter into a contract under which City shall purchase the goods or services described in Contractor's bid in accordance with these contract documents, including the attached standard terms and conditions.

TERM AND CONDITIONS

Any purchase made against this Contract shall be in compliance with the terms and conditions set forth in these contract documents, including those listed in Exhibit A, Standard Terms and Conditions.

GOODS OR SERVICES TO BE PROVIDED

City shall purchase goods or services from Contractor in accordance with specifications, scope, and unit prices outlined in Exhibit B. This Contract is non-exclusive. City reserves the right to procure goods or services through any other means as it deems necessary. Contractor shall be responsible for the delivery of goods or services in accordance with Exhibit B and the terms and conditions of this Contract.

EFFECTIVE DATES AND DURATION

This Contract shall become effective upon the date of execution, and shall expire, unless otherwise terminated or extended, on October 31, 2022.

COMPENSATION

City agrees to pay Contractor not to exceed one hundred nineteen thousand seventy-nine dollars (\$119,079.00) for goods or services supplied, including any applicable shipping and handling charges, as described in Exhibit B. City shall not be responsible for payment of any materials, services, expense, or costs other than those which are specifically included in Exhibit B. Payment shall be for those goods or services received in an acceptable condition to City.

Any pricing increase must be submitted to the City 60 days prior to the effective date and must be in compliance with the Escalation Clause stated in Exhibit B. Payment will be made based on Contractor's invoice, subject to the approval of the City, and not more frequently than monthly. Payment shall be made only for work actually completed as of date of invoice. Payment terms shall be net 30 days from date of invoice.

CONTACT INFORMATION

All notices, bills, and payments shall be made in writing and may be given by mail or email. Payments may be delivered by mail or electronic transfer. The following addresses and contacts shall be used to transmit notices, bills, payments, and other information:

Contract Manager for City:	Contract Manager for Contractor:
City of Milwaukie - Public Works/Facilities	Company: Blink Charging Company
Attn: Damien Farwell	Attn: Amber Muse
6101 SE Johnson Creek Blvd.	Address: 605 Lincoln Rd 5 th Floor
Milwaukie, OR 97206	Miami Beach, FL 33139
Phone: 503-786-7621	Phone: 305-521-0200 ext. 463
Email: farwelld@milwaukieoregon.gov	Email: amuse@blinkcharging.com

Accounts Payable for City:	Accounts Receivable for Contractor:
City of Milwaukie – City Hall	Company: Blink Charging Company
Attn: Accounts Payable	Attn: Adrian Barco
10722 SE Main Street	Address: 605 Lincoln Rd 5 th Floor
Milwaukie, OR 97222	Miami Beach, FL 33139
Phone: 503-786-7535	Phone: 305-521-0200 (x: 263)
Invoices to: ap@milwaukieoregon.gov	Email: abarco@blinkcharging.com

CONTRACTOR AS INDEPENDENT CONTRACTOR

Contractor acknowledges that for all purposes related to this Contract, Contractor is and shall be deemed to be an independent contractor as defined by ORS 670.600 and not an employee of City, shall not be entitled to benefits of any kind to which an employee of City is entitled and shall be solely responsible for all payments and taxes required by law. Furthermore, in the event that Contractor is found by a court of law or any administrative agency to be an employee of City for any purpose, City shall be entitled to offset compensation due, or to demand repayment of any amounts paid to Contractor under the terms of this Contract, to the full extent of any benefits or other remuneration Contractor receives (from City or third party) as a result of said finding and to the full extent of any payments that City is required to make (to Contractor or to a third party) as a result of said finding.

Contractor acknowledges that for all purposes related to this Contract, Contractor is not an officer, employee, or agent of the City as those terms are used in ORS 30.265.

Contractor certifies that it will possess either a City of Milwaukie or a Metro business license for the duration of this Contract.

INDEMNIFICATION

Contractor shall defend, indemnify, and hold harmless City, City's officers, employees, agents, and representatives from and against all liability, claims, demands, judgments, penalties, and causes of action of any kind or character, or other costs or expenses incidental to the investigation and defense thereof, of whatever nature, resulting from or arising out of the activities of the Contractor or its subcontractors, agents, or employees under this contract, except, however, that the foregoing shall not apply to liability that arises out of City's negligence.

INSURANCE

Contractor and its subcontractors shall maintain insurance acceptable to City in full force and effect throughout the term of this contract. Such insurance shall cover all risks arising directly or indirectly out of Contractor's activities and work performed hereunder, including the operations of its subcontractors of any tier.

The policy or policies of insurance maintained by the Contractor and its subcontractors shall provide at least the following limits and coverages:

a. Commercial General Liability Insurance

Contractor shall obtain, at Contractor's expense, and keep in effect during the term of this Contract, Commercial General Liability Insurance covering bodily injury and property damage on an "occurrence" form., This coverage shall include Contractual Liability insurance. Coverage will include \$1,000,000 per occurrence and \$2,000,000 general annual aggregate.

b. Commercial Automobile Insurance

Contractor shall also obtain, at Contractor's expense, and keep in effect during the term of this Contract, Commercial Automobile Liability coverage including coverage for all owned, hired, and non-owned vehicles. The Combined Single Limit per occurrence shall not be less than \$1,000,000.

c. Workers' Compensation Insurance

The Contractor, its subcontractors, if any, and all employers providing work, labor, or materials under this Contract who are subject employers under the Oregon Workers' Compensation Law shall comply with ORS 656.017, which requires them to provide workers' compensation coverage that satisfies Oregon law for all their subject workers. Out-of-state employers must provide Oregon workers' compensation coverage for their workers who work at a single location within Oregon for more than 30 days in a calendar year. Contractors who perform work without the assistance or labor of any employee need not obtain workers' compensation coverage. All non-exempt employers shall provide Employers Liability Insurance with coverage limits of not less than \$500,000 each accident.

d. Additional Insured Provision

The Commercial General Liability Insurance and Commercial Automobile Insurance policies shall include the City, its officers, directors, employees and volunteers as additional insureds with respect to this Contract.

e. Certificates of Insurance

As evidence of the insurance coverage required by the contract, the Contractor shall furnish a Certificate of Insurance to the City. No contract shall be effective until the required certificates have been received and approved by the City. The certificate will specify and document all provisions within this Contract.

f. Notice of Cancellation

There shall be no cancellation, material change, exhaustion of aggregate limits or intent not to renew insurance coverage without 30 days written notice to the City. Any failure to comply with this provision will not affect the insurance coverage provided to the City.

g. Primary Coverage Clarification

City's insurance is excess and not contributory insurance with the insurance required by this contract.

GOVERNING LAW

The provisions of this Contract shall be construed in accordance with the provisions of the laws of the State of Oregon. Any action or suits involving any question arising under this Contract must be brought in the appropriate court of the State of Oregon.

EXTRA (CHANGES) WORK

Only the Facilities Supervisor Damien Farwell may, by written order, authorize extra (and/or change) work. Failure of Contractor to secure authorization for extra work shall constitute a waiver of all right to adjustment in the contract price or contract time due to such unauthorized extra work and Contractor thereafter shall be entitled to no compensation whatsoever for the performance of such work.

COMPLETE AGREEMENT

This Contract, including the attached terms and conditions and exhibits, constitutes the entire agreement between the parties. No waiver, consent, modification, or change of terms of this Contract shall bind either party unless in writing and signed by both parties. Such waiver, consent, modification, or change if made, shall be effective only in specific instances and for the specific purpose given. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Contract. Contractor, by the signature of its authorized representative, hereby acknowledges that he/she has read this Contract, understands it and agrees to be bound by its terms and conditions.

IN WITNESS WHEREOF, City has caused this Contract to be executed by its duly authorized undersigned officer and Contractor has executed this Contract on the date hereinabove first written.

CITY OF MILWAUKIE

BLINK CHARGING COMPANY

Signature

Signature

Printed Name & Title

Printed Name & Title

Date

Date

STANDARD TERMS AND CONDITIONS

1. **Packing & Shipment.** Any deliveries shall be made as specified, without charge for boxing, crating, carting or storage. Material shall be suitably packed to ensure against damage from weather or transportation and to secure lowest transportation costs, and in accordance with the requirements of common carriers. City's Contract number and symbols must be plainly marked on all invoices, packages, bills of lading and shipping orders. Packing lists shall accompany each box or package shipment. City's count or weight shall be conclusive on shipment not accompanied by packing lists. Unless otherwise specifically agreed, all costs of packaging and shipment are included in the purchase price and all goods will be shipped, with all costs prepaid. Risk of loss to goods in shipment (including damage, destruction, theft, or loss) shall be borne by the Contractor. Risk of loss shall not pass to City until the goods are delivered to and checked in at the location specified by City in this Contract.

2. **Warranty.** Unless otherwise agreed in writing, Contractor warrants that the products ordered will conform to the specifications herein and to any drawings, samples, or other description furnished or adopted by City. All products are warranted to be merchantable, to be of the highest quality design, material, and workmanship and free from defect and to be fit for purpose intended. All warranties shall survive inspection or test, acceptance and payment. Warranties shall run to City, its successors, assigns and customers. Warranty period shall be (1) year from date of acceptance by City.

3. **Inspection and Acceptance.** At City's request, Contractor shall provide a complete inspection program; satisfactory to City, for City's inspection of all materials, fabricating methods, equipment in process work and finished products. If this Contract provides for inspection of the work by City on site during the period of manufacture, Contractor agrees to provide City's inspectors with reasonable facilities and assistance during such inspection. Inspection by City shall not unduly delay the work. City may charge Contractor any additional cost incurred by City if the work is not ready in accordance with the inspection schedule. Any inspection made or Waiver-of-Inspection-Notice given by City will not relieve Contractor from its responsibilities for delivering products and work hereunder. Acceptance or rejection of the products shall be made up to 10 days after delivery and inspection by City except as otherwise provided herein. Failure to inspect and accept or reject products shall neither relieve Contractor from responsibility for such products, which do not meet the requirements herein nor impose liability on City therefore.

4. **Delivery.** If Contractor fails to meet the delivery schedule provided herein, City may require Contractor to deliver the products, or any portion thereof, in any manner commercially necessary to speed delivery, all at the Contractor's sole expense. Unless otherwise agreed upon in writing by City and Contractor, Contractor shall be required to pay the normal freight weight plus any premium rate required. Invoices covering products shipped in advance of the date specified will not be paid until after the date specified for delivery and are subject to rejection, as provided in this paragraph immediately below, if shipped too early. Neither party shall be liable for delays or defaults due to strike, fire, windstorm, riot, natural disaster, pandemic, public health emergency, war, civil unrest or other similar unforeseeable cause beyond the control and without the fault or negligence of the party incurring such delay. Contractor shall notify City in writing of the existence of such cause within five (5) days after the commencement of the delay or default giving pertinent information concerning such cause. No delivery shall be made more than seven (7) days prior to the applicable delivery date, and City shall have the right to return earlier deliveries at Contractor's risk and expense or charge to Contractor any additional costs sustained because of the same.

5. **City-Furnished Materials.** Contractor shall assume all risk of loss of any material furnished by City to Contractor for use in performance of this Contract.

6. **Taxes.** Contractor shall not invoice City for any taxes nor include in Contractor's price any federal excise, state, or city tax or any other tax, unless Contractor has first asked City for City's tax exemption number and it has been agreed upon between both parties that City is not exempt from the tax.

7. **Changes.** City may, by written order, make changes including changes in drawings or specifications. City will equitably adjust any difference in cost or time for performance resulting from such change and the Order modified in writing accordingly. ANY CLAIM BY CONTRACTOR UNDER THIS CLAUSE MUST BE ASSERTED IN WRITING WITHIN 30 DAYS FROM THE DATE OF CONTRACTOR'S RECEIPT OF THE CHANGE ORDER OR THE CLAIM WILL NOT BE ALLOWED. In the event that City proposes any change prior to making such change by written order and such change will have an effect on the warranty of the products procured by this Contract, Contractor shall notify City in writing of such effect within 10 days of receipt of such proposal.

8. **Advertising.** Contractor shall not, without the written consent of City, in any manner advertise or publish the fact that Contractor has furnished or contracted to furnish to City the products herein.

9. **Cancellation for Cause.** City may cancel all or any part of the undelivered portion of this Contract if Contractor breaches any of the terms hereof or in the event of any of the following: Insolvency of Contractor, a voluntary or involuntary petition

in bankruptcy for, by or against Contractor; the appointment of a receiver or trustee for Contractor, or an assignment for the benefit of creditors by Contractor or if City has reasonable cause to believe Contractor will become insolvent, file for bankruptcy, go out of business or that the products being shipped may be subject to lien, claim or attachment by a creditor of Contractor. Any such cancellation under this section shall be cancellation for cause and in the event of such cancellation, City shall have the right to complete, or cause to have completed, this Contract including the right to cause Contractor to produce, without liability of any kind to the City, proprietary items of the Contractor as necessary to complete the Contract. The remedies and damages in this section shall be cumulative and in addition to any other or further remedies provided at Law or in Equity, including reasonable and necessary attorney's fees and other costs of litigation.

10. **Termination.** City has the right, in its sole discretion, to terminate this Contract without cause at any time by giving written notice to Contractor. If City terminates the contract pursuant to this section, it shall pay Contractor for goods shipped or services rendered by Contractor prior to receipt by Contractor of the notice of termination. City may deduct the amount of damages, if any, sustained by City due to any breach of contract or warranty by Contractor. Damages for breach of contract or warranty shall be those allowed by Oregon law, reasonable and necessary attorney fees, witness fees (expert and non-expert), and other costs of litigation at trial and on appeal.

11. **Assignment and Subcontracting.** Contractor may not assign or subcontract any of its rights or obligations hereunder without the prior written approval of City. Any unapproved assignment shall be void. Contractor shall be fully responsible for the acts or omissions of any subcontractors and all persons employed by them, and neither the approval by City of any subcontract nor anything contained herein shall be deemed to create any contractual relation between the subcontractor and the City. City may assign its rights under this Contract.

12. **Work on City's Premises.** If Contractor's performance of this Contract involves operations by Contractor on City's premises, Contractor shall provide all necessary and sufficient safeguards and take all proper precautions against the occurrence of injury to any person or damage to any property. Any work performed on City's premises must be done pursuant to all OSHA standards, all applicable State and Federal health and safety laws, rules and regulations and all workers must be covered by workers' compensation insurance furnished through and paid for by Contractor.

13. **Stop Work Order.** City may, at any time by written order to Contractor, require Contractor to stop all, or any part of the work called for by this Order for a period of 90 days after the written order is delivered to Contractor, and for any further period to which the parties may agree and for any other period to which the parties may have agreed or as provided in Section 4, 10, and/or 11. Within the period of 90 days or less or within any extension of that period, City shall either: (a) cancel the "Stop Work Order" and direct Contractor to resume work; or (b) terminate the work covered by this Order. If City orders Contractor to resume work, Contractor shall be entitled to any equitable adjustment pursuant to Section 8 provided a claim for such an adjustment shall be submitted by Contractor within 30 days after the end of the period of work stoppage.

14. **Information/Data.** Unless otherwise agreed in writing any designs, drawings, specifications, or other manufacturing information furnished by City to Contractor shall be confidential to City and is furnished solely for the performance of this Contract. All copies of such information shall be returned to City upon completion of the Contract. Any designs, drawings, specifications, or other manufacturing information delivered by Contractor to City may be used for any purpose whatsoever. The foregoing shall apply notwithstanding the presence or absence of any contrary legend or statement on any of such information. All business and governmental information materials containing business and governmental information provided by City to Contractor shall be treated as confidential.

15. **Compliance with Laws and Regulations.** Contractor warrants that all products, goods, or work delivered and performed shall comply with all applicable Federal, State or Local Laws or Regulations including without limitation The Occupational Safety and Health Act (29 USC. Chapter 15); Federal Hazardous Material Transportation Act (49 USC. Chapter 27); Equal Employment Opportunity; E.O. 11246 and 41 CFR Sections 60-1.4 and 60-1.7; Employment of the Handicapped E.O. 11758 and 41 CFR Section 60-741-4; Utilization of Minority Enterprises E.O. 11625 and 41 CFR Subpart 1-1.13; Age Discrimination E.O. 11141, Employment of Veterans E.O. 11701 and 41 CFR Section 50-250.4 and all rules, regulations and amendments issued pursuant to the foregoing. Contractor shall indemnify City, its officers, employees and agents against any damages, penalties, costs or expenses incurred in connection with any alleged violation of any Federal, State or Local Law or regulating the manufacture or sale to the City of any Item covered by this Contract.

16. **Patents, Copyrights, Trademarks.** Contractor warrants that no products will be furnished hereunder which infringe or contribute to the infringement of any letters patent, copyright or trademark. Contractor agrees to immediately replace at its sole cost any products furnished hereunder which infringe or contribute to the

EXHIBIT A

Contract No. _____

infringement of any letters patent, copyright or trademark or to take all steps necessary at Contractor's sole expense to remove such infringement. Contractor will indemnify and hold harmless City, its representatives, officers, employees and agents from and against any and all costs, royalties, damages and/or expenses which may arise out of or result from, or be reasonably incurred in contesting any claims that the methods, processes or acts by the Contractor or its employees or the products furnished hereunder, infringes or contributes to the infringement of any letters, patent, copyright or trademark.

17. Waiver. The failure of City to enforce at any time any of the provisions of this Contract or to exercise any option herein provided, shall not be a present or future waiver of such provisions, nor in any way affect the validity of this Contract or any part hereof, or the right thereafter to enforce each and every such provision. The express waiver (whether one (1) or more times) of any provision, condition or requirement shall not constitute a waiver of any future obligation to comply with such provision, condition or requirement.

18. Acceptance by Performance. If Contractor fails provide to City with a signed copy of this Contract, but delivers product or performs the services specified in this Contract, then Contractor agrees that the Contractor shall be deemed to have accepted the terms and conditions of this Contract, as provided on both the front and this reverse side of the Contract. City must agree any changes or modifications to this Contract by Contractor to, in writing, or they shall not be deemed accepted by City and if the Contractor delivers the products nonetheless, then the original terms and conditions of this Contract shall govern.

19. Mandatory Mediation and Binding Arbitration. If there is a dispute concerning any of the terms, conditions or the performance of this Contract, then it is hereby agreed by both City and Contractor that the dispute shall be submitted first to non-binding mediation, to be performed by a sole mediator to be agreed upon between City and Contractor. If a mediator cannot be agreed upon, then the parties agree that any Circuit Court judge for the State of Oregon, County of Clackamas, shall be authorized to appoint a mediator for the parties. Should the parties fail to reach an agreement through mediation, then the parties shall submit to binding arbitration, which shall be governed by the rules of the Arbitration Service of Portland, and shall be conducted within Clackamas County. The arbitration shall be conducted by a single arbitrator chosen by mutual agreement of the parties. If the parties are unable to agree on an arbitrator, the parties shall ask the Presiding Judge of the Circuit Court for Clackamas County to select the arbitrator. If the arbitrator determines that one party is the prevailing party, then the losing party shall be required to pay all fees and costs of the arbitration. On the other hand, if the arbitrator determines that neither party is to be considered the prevailing party, then the fees and costs of the arbitration shall be divided equally between the parties. The parties knowingly and voluntarily waive their rights to have their dispute tried and adjudicated by a judge or jury. In the event a party fails to proceed with arbitration, unsuccessfully challenges the arbitrator's award, or fails to comply with the arbitrator's award, then the other party shall be entitled to costs, including reasonable attorney fees, for having to compel arbitration or defend or enforce the award. The parties agree to defend the arbitrator and any individual engaged in the administration of an arbitration proceeding from any subpoenas or claims from third parties arising out of this Contract or the arbitration.

20. Jurisdiction and Attorney Fees. This Contract shall be governed and construed according to the laws of the State of Oregon. If a dispute shall arise under this Contract necessitating the services of an attorney, then the prevailing party shall be entitled to collect from the losing party all of its/his/her reasonable costs and attorney fees, either in arbitration (if awarded by the arbitrator as provided above), or by a court before which any matter concerning this Contract may be heard, both at trial and on appeal.

21. Neutral Interpretation. This Contract constitutes the product of negotiations between the parties hereto. Any enforcement hereof will be interpreted in a neutral manner and not more strongly for or against any party based upon the source of draftsmanship.

22. Severability. Nothing contained herein shall be construed to require the commission of any act contrary to law, and wherever there is any conflict between the provisions contained herein and any present or future statute, law, ordinance or regulation contrary to which to the parties have no legal right to contract, the latter shall prevail. The provision of this Contract, which is affected, shall be curtailed and limited only to the extent necessary to bring it within the requirement of the law.

23. Calculation of Time. All periods of time referred to herein shall include Saturdays, Sundays, and legal holidays in the State of Oregon, except that if the last day of any period falls on any Saturday, Sunday or such holiday, then that period shall be extended to include the next day which is not a Saturday, Sunday or holiday.

24. Notice. Any notice required or permitted to be given by either party to the other shall be deemed to have been given when sent via telecopy, overnight air courier, or deposited in the United States mail certified, return receipt requested, with first class postage prepaid, addressed as indicated on the front of this Contract, or addressed to either party at such other address as such party shall hereafter furnish

to the other party in writing. Notice shall also be considered effective upon delivery if personally delivered.

25. Conditions of Supplying a Public Agency. Where applicable, Contractor must make payment promptly as due to persons supplying Contractor labor or materials for the execution of the work provided by this Contract. Contractor must pay all contributions or amounts due from Contractor to the Industrial Accident Fund incurred in the performance of this Contract. Contractor shall not permit any lien or claim to be filed or prosecuted against City or any subdivision of City on account of any labor or material to be furnished. Contractor further agrees to pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.

26. Payment of Claims by Public Officers. In the event that Contractor fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to Contractor or a subcontractor of Contractor by any person in connection with the performance of this Contract when such claim becomes due, then the proper officer or officers representing the City hereunder may pay such claim to the person furnishing the labor or services and charge the amount of the payment against the funds due or to become due to the Contractor by reason of this Contract. The payment of a claim in the manner authorized by this provision shall not relieve the Contractor or any of the Contractor's surety from obligations with respect to any unpaid claims.

27. Health Care Benefits for Contractor's Employees. If this Contract involves public service, then Contractor must provide health care benefits to all employees who are performing services previously performed by public employees performing similar duties under this Contract.

28. Hours of Labor. If labor is performed under this Contract, then no person shall be employed for more than eight (8) hours in any one day, or forty (40) hours in any one week, except in cases of necessity, or emergency or where the public policy absolutely requires it, and in such cases, except cases of contracts for personal services as defined in ORS 279A.055, the labor shall be paid at least time and a half for all overtime in excess of eight (8) hours a day and for all work performed on Saturday and on any legal holidays as specified in ORS 279B.020. In cases of contracts for personal services as defined in ORS 279A.055, any labor shall be paid at least time and a half for all hours worked in excess of forty (40) hours in any one week, except for those individuals excluded under ORS 653.010 to 653.261 or under 29 USC SS 201-219.

29. Medical Care and Workers' Compensation. Contractor shall promptly, as due, make payment to any person, co-partnership, association or corporation, furnishing medical, surgical and hospital care or other needed care and attention incident to sickness or injury, to the employees of such Contractor, of all sums which the Contractor agrees to pay for such services and all moneys and sums which the Contractor collected or deducted from the wages of the employees pursuant to any law, contractor agreement for the purpose of providing or paying for such service.

SCOPE OF WORK

Contractor shall supply and install four (4) EV charging stations at multiple city locations as outlined below:

Public Safety Building located at 3200 SE Harrison Street, Milwaukie, OR 97222 (Secure Lot):

Product	Qty	Price	Sub Total
Blink IQ 200 Dual + Cable Management	1	\$6,559.00	\$6,559.00
Annual Blink Network - Fee IQ 200 - Dual	1	\$360.00	\$360.00
Labor-Scope of Work <ul style="list-style-type: none"> • Relocate (1) manual transfer switch in the main electric room, to the south wall. • Provide and install (1) 100-amp 480-volt breaker in the existing SDP-HVAC electrical panel. • Provide and install (1) 100-amp 480-volt 3ϕ feeder from the SDP-HVAC electrical panel to a 75KVA transformer. • Provide and install (1) 75KVA transformer in the electric room. • Provide and install (1) 200-amp 120/208-volt 3ϕ electrical panel above the new transformer. • Provide and install (1) 200-amp 120/208-volt 3ϕ feeder from the 75KVA transformer to the new EV Panel. • Provide and install (1) 100-amp 208-volt 1 ϕ circuit from the new electrical panel to the new wall mounted EV charging station outside the electrical room. • Install (1) customer provided pedestal style electric vehicle charger. • Provide coring as required. • Provide concrete removal and pour back as required for the sidewalk crossing. • Provide (1) underground raceway from the wall to the new pedestal EV station location. • Provide and install (1) 2'x2' concrete pad for the pedestal. • Provide and install (1) wheel stop in each of (2) parking stalls. • Provide and install (1) wall pack type fixture on the side of building to illuminate the charging station location. • Provide and install (1) 20-amp 120-volt circuit from the new Electrical Panel to the exterior fixture location. • Provide an electrical permit as required. 	1	\$21,401.00	\$21,401.00
Shipping Estimate		Freight	\$249.00
		Discount	
		Subtotal	\$28,569.00

EXHIBIT B

Contract No. _____

Johnson Creek Public Works/Community Development Facility located at
6101 SE Johnson Creek Blvd., Milwaukie, OR 97206 (Public Facing):

Product	Qty	Price	Sub Total
Blink IQ 200 Dual + Cable Management	1	\$6,559.00	\$6,559.00
Annual Blink Network - Fee IQ 200 - Dual	1	\$360.00	\$360.00
Labor- Scope of Work <ul style="list-style-type: none"> • Provide and install (1) 100-amp 208-volt 1 Cf) circuit from an existing 100-amp breaker in the sub-main section of the main service to the new EV charging pedestal location in the employee parking area. • Provide Saturday working hours to make the connection to the breaker during a PGE shutdown. • Provide and install (1) underground conduit from the front of the building adjacent to the main entrance to the new EV charger location. • Provide and install (1) concrete pad for the EV charging pedestal. • Install (1) customer provided pedestal style EV charger. • Provide and install (1) 20-amp 120-volt circuit from the electrical room to the new light pole location. • Provide and install (1) light pole with top of pole fixture. The pole has a 10 to 12 week lead time. • Provide and install (1) 7-day digital timer to control the fixture. • Provide an electrical permit as required. 	1	\$27,995.00	\$27,995.00
Shipping Estimate		Freight	\$249.00
		Discount	
		Subtotal	\$35,163.00

Ledding Library located at 10660 SE 21st Avenue, Milwaukie, OR 97222 (Public Facing):

Product	Qty	Price	Sub Total
Blink IQ 200 Dual + Cable Management	1	\$6,559.00	\$6,559.00
Annual Blink Network - Fee IQ 200 - Dual	1	\$360.00	\$360.00
Labor- Scope of work <ul style="list-style-type: none"> • Locate the existing underground conduit from the electrical room to the planter area. • Provide and install (1) 100-amp 208-volt 1 Cl) circuit from panel 2P-1-A in electric room to the EV charging pedestal location in the parking area - maximum length of 100'. • Provide underground conduit from the unknown exterior conduit stub location to the sidewalk - maximum length of 20'. • Remove and replace (1) sidewalk panel at the new EV location as required. • Install (1) customer provided pedestal style electric vehicle charger. • Provide and install (1) 20-amp 120-volt circuit from the electrical room to the new light pole location. • Provide and install (1) light pole with top of pole fixture. The pole has a 10 to 12 week lead time. • Provide and install (1) 7-day digital timer to control the fixture. • Provide an electrical permit as required. 	1	\$16,835.00	\$16,835.00
Shipping Estimate		Freight	\$249.00
		Discount	
		Subtotal	\$24,003.00

Public Safety Building located at 3200 SE Harrison Street, Milwaukie, OR 97222 (Public Facing):

Product	Qty	Price	Sub Total
Blink IQ 200 Dual + Cable Management	2	\$6,559.00	\$13,118.00
Annual Blink Network - Fee IQ 200 - Dual	2	\$360.00	\$720.00
Labor -Scope of Work <ul style="list-style-type: none"> • Provide and install (1) 100-amp 208-volt 1 <D circuit from the EV electrical panel to the new pedestal mounted EV charging station outside the EOC Community space on the sidewalk. • Provide underground conduit from the building to the sidewalk as required. • Remove and replace (1) sidewalk panel at the new EV location as required. • Install (1) customer provided pedestal style electric vehicle charger. • Provide and install (2) wheel stops in the parking stall. • Provide and install (1) light fixture on the top of the existing adjacent light pole. • Provide an electrical permit as required. 	1	\$17,257.00	\$17,257.00
Shipping Estimate		Freight	\$249.00
		Discount	
		Subtotal	\$31,344.00

ESCALATION CLAUSE

Unit pricing may, through express written approval of City, increase annually at a rate not exceeding the percentage change in the Consumer Price Index for Urban Wage Earners and Clerical Workers, US city average, during the previous year.



COUNCIL RESOLUTION No.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, ACTING AS THE LOCAL CONTRACT REVIEW BOARD, AUTHORIZING A CONTRACT WITH BLINK CHARGING COMPANY TO INSTALL ELECTRIC VEHICLE CHARGING STATIONS.

WHEREAS the city has identified the need for public-facing and city fleet electric vehicle (EV) chargers, and

WHEREAS a price agreement was competitively awarded to Blink Charging Company through the Sourcewell cooperative organization, and

WHEREAS the city’s public contracting rules (PCRs) allow for the purchase of goods and services from price agreements without a subsequent procurement process, and

WHEREAS the purchase and installation of four EV charging stations advances city and climate goals.

Now, Therefore, be it Resolved by the City Council of the City of Milwaukie, Oregon, that the city manager or their designee is authorized to execute a contract with Blink Charging Company to supply and install four electric vehicle charging stations.

Introduced and adopted by the City Council on **May 17, 2022**.

This resolution is effective immediately.

Mark F. Gamba, Mayor

APPROVED AS TO FORM:

ATTEST:

Scott S. Stauffer, City Recorder

Justin D. Gericke, City Attorney



COUNCIL STAFF REPORT

To: Mayor and City Council
Ann Ober, City Manager

Date Written: May 3, 2022

Reviewed: Jennifer Lee (as to form), Administrative Specialist

From: Peter Passarelli, Public Works Director

Subject: **Water System Master Plan (WSMP) Adoption**

ACTION REQUESTED

Council is asked to adopt the 2021 Water System Master Plan (WSMP).

HISTORY OF PRIOR ACTIONS AND DISCUSSIONS

[June 5, 2018](#): Council adopted the 2019-2024 Capital Improvement Plan (CIP) and the 2019-2020 budget, which identified the 2019 WSMP update as a CIP project.

[March 5, 2019](#): Council authorized the city manager to sign a personal services agreement with Tetra Tech in the amount of \$240,184 for providing a WSMP.

[September 21, 2021](#): Staff and the consultant team provided Council an update on the WSMP.

ANALYSIS

The city contracted with Tetra Tech to update the WSMP. Tetra Tech evaluated the adequacy of the water system to provide safe and reliable service to customers and outlined the recommended capital improvements required to maintain that level of service over a 20-year planning horizon. During the process of preparing the updated WSMP, the city identified the following objectives:

- Plan for growth expected within the city’s existing service area based on proposed modifications to planning policy that allow for increased residential density.
- Plan for expansion of the city’s service area to accommodate development within the Urban Growth Management Area (UGMA).
- Develop an accurate hydraulic model of the water distribution system.
- Identify existing and future system deficiencies.
- Assess the city’s vulnerability to seismic events and climate change and identify potential mitigation measures to improve system resiliency.
- Coordinate the water system plan with parallel city initiatives to act against climate change and to improve housing affordability.
- Develop a prioritized list of improvement projects, including anticipated costs, to address the deficiencies and assure capacity of the collection system.

This master planning effort compared existing system conditions and hydraulic performance to projected future conditions to identify necessary improvements to achieve required hydraulic capacity, improve maintenance, replace aging infrastructure, and address vulnerabilities to seismic risks and anticipated effects of climate change (increased flooding impacts). The largest efforts focused on the system hydraulic model for analyzing the various scenarios and associated capital improvements to address system deficiencies. The plan includes CIP

recommendations that address replacement of obsolete and aged systems on the water production and treatment systems, pumping capacity, future storage needs, and fire flow deficiencies. The updated plan provides a guide for future capital expenditures for the system and furnishes guidance on operational issues and system development charges (SDC).

OHA Plan Review

The plan was reviewed by Oregon Health Authority (OHA). OHA reviewed the plan for completeness to ensure the plan included the necessary elements such as system goals and description, future demand estimates, engineering evaluations, evaluations of options to meet future demand, financing, and a list of recommended projects and cost estimates. Also required were a seismic risk assessment and mitigation plan. OHA concurred that the WSMP represents a 20-year planning horizon out to the year 2041, and that the elements listed in Oregon Administrative Rules (OAR) 333-061-0060(5) were addressed.

Summary of Findings:

For a summary of the WSMP's finding the executive summary is attached.

BUDGET IMPACTS

Funding for this project was from the city's water fund and water SDC fund.

CLIMATE IMPACTS

In 2018, the city adopted its first Climate Action Plan (CAP) to minimize the impacts of climate change and increase the climate resilience of the city. The WSMP incorporates aspects of the CAP that further the city's climate goals as they pertain to the water system. Two areas of focus for the water system are the water conservation and potential modifications to engineering and construction standards to improve climate resilience and reduce greenhouse gas emissions.

WORKLOAD IMPACTS

Public works staff has provided management of the project, assisted with data gathering, and flow testing for calibration of the hydraulic model. Engineering staff has reviewed master planning assumptions and future CIP project development. Planning staff has assisted with demand scenario assumptions and future development forecasts.

COORDINATION, CONCURRENCE, OR DISSENT

Not applicable.

STAFF RECOMMENDATION

Adopt the Water System Master Plan

ALTERNATIVES

1. Postpone the adoption of the master plan by suggesting amendments to the document.
2. Postpone the adoption of the document indefinitely.

ATTACHMENTS

1. OHA Concurrence Letter
2. WSMP Executive Summary
3. Resolution



PUBLIC HEALTH DIVISION
Drinking Water Services

Kate Brown, Governor

Oregon
Health
Authority

800 NE Oregon Street, #640
Portland, OR 97232-2162
Phone: 971-201-9794
Fax: 971-673-0694
www.healthoregon.org/dwp

January 13, 2022

Brian Murphy, PE
Tetra Tech
Via email

Re: **2021 Master Plan (PR#186-2021)**
City of Milwaukie (PWS ID#00528)
Concurrence with Master Plan

Dear Mr. Murphy:

Thank you for your submittal to the Oregon Health Authority's Drinking Water Services (DWS) of plan review information for the 2021 Water System Master Plan for the City of Milwaukie. On November 9, 2021, our office received a copy of the plan. A plan review fee of \$4,125 was received on December 14, 2021.

The Master Plan represents a 20-year planning horizon out to the year 2041. The plan includes a system goals and description, future demand estimates, engineering evaluation, evaluations of options to meet future demand, financing, and a list of recommended projects and cost estimates. A seismic risk assessment and mitigation plan is required and was included. Upon review of the Master Plan, it appears the elements listed in Oregon Administrative Rules (OAR) 333-061-0060(5) have been addressed.

Please note that OAR 333-061-0060 contains plan submission and review requirements for all major water system additions or modifications. Construction plans and specifications must be submitted to and approved by DWS before construction begins. If you have any questions, please feel free to call me at (971) 201-9794.

Sincerely,

Carrie Gentry, PE
Regional Engineer
Drinking Water Services

ec: Keith Male, EIT, OHA/DWS
Ronelle Sears, Public Works Supervisor, City of Milwaukie

RS35

EXECUTIVE SUMMARY

This 2021 Water Master Plan (2021 WMP) updates the City of Milwaukie's 2010 Water Master Plan. The 2021 WMP describes current conditions of the City's water system and addresses projected future needs. Information in the 2021 WMP will enable City staff to respond effectively to new water system demand for future development. It includes a capital improvement program (CIP) designed to meet current and future demand and to replace aging and seismically non-resilient assets.

PLANNING AREA

The City of Milwaukie is mostly within Clackamas County; a small portion extends into Multnomah County. The city limits generally follow the Willamette River on the west, Johnson Creek Boulevard on the north, Linwood Avenue and 71st Avenue on the east, and Kellogg Road and Lake Road on the south, encompassing 3,169 acres. The current water system serves a population of 20,291 through 7,870 metered connections. The water system service area corresponds approximately to the city limits, as shown in Figure ES-1.

The City's 1990 Urban Growth Management Agreement (UGMA) with Clackamas County designates 7,400 acres adjacent to the City as the City's future urban service area. The UGMA and the City's Comprehensive Plan policies address ultimate City expansion to include the area between its current boundary and I-205, but no mechanism has been outlined to enable city annexation of this area. Under the UGMA, the *North Clackamas Urban Area Public Facilities Plan* guides public facility improvements for the area, and Clackamas County has planning authority for the area.

The land within the UGMA includes two "dual interest areas" adjacent to the City, however, it has been assumed they will not be included in the City's Water Service area anytime during the planning period. The areas are currently served by Clackamas River Water.

WATER SYSTEM DESCRIPTION

The City's water normally consists entirely of groundwater from the Troutdale Gravel Aquifer. The City has access to secondary water sources via interties with Clackamas River Water and the Portland Water Bureau, both of which use surface water for their water supply. These secondary sources are used by the City only during emergency or high-level maintenance situations. A previous intertie with the Oak Lodge Water Services District is no longer in service, although the City is exploring alternatives for a new intertie with that district.

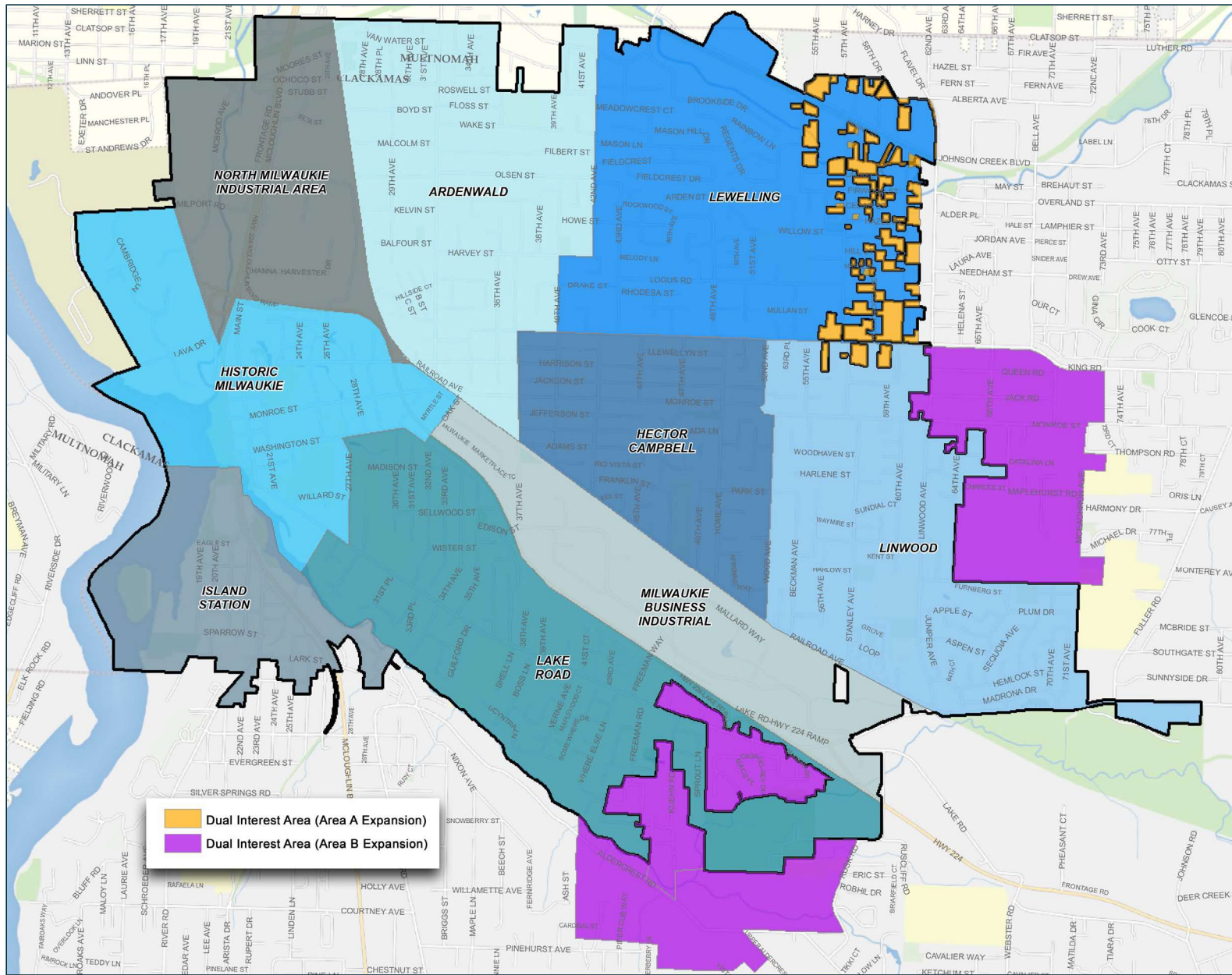


Figure ES-1. Water Service Area

The water system is made up of four pressure zones and provides water through the following water system assets (see Figure ES-2):

- 6,900 service meters
- 100 miles of pipeline
- seven groundwater wells
- two treatment facilities
- two transfer pump stations
- two booster pump stations
- three reservoirs
- 794 hydrants
- 36 pumps
- 19 PRVs
- 6 reduced pressure assemblies
- 4 reduced pressure detectors
- 4 pressure regulators
- 3,001 operational valves
- 2 interties

A December 2019 condition assessment of essential assets found them to be in generally good condition; some deferred maintenance issues were identified.

WATER SYSTEM DEMAND AND PRODUCTION, AND POPULATION

Water demand in the City’s system is metered and recorded monthly for each customer. The City does not meter or record daily demand. Demand data in the 2021 WMP is presented by the City’s fiscal year—July 1 through June 30. The City also meters and bills Clackamas River Water customers located within the city limits; those accounts are not included in the data presented in the 2021 WMP.

Figure ES-3 shows water demand by account classification for the past five years as residential (RES), duplexes, tri-plexes, four-plexes and multi units (MDW), commercial (COM), and total. Figure ES-4 shows annual production for the same period. The difference between recorded water production and demand is defined as water loss, which consists of two components:

- Non-revenue losses represent water that can be tracked and quantified but is not billed, such as operational, flushing, and construction use.
- Unaccounted-for water represents unbilled water that cannot be tracked, such as firefighting, leaks, main breaks, metering inaccuracies, illegal connections, and other types of unmetered water use.

Figure ES-5 compares production, demand, and water loss for the past five years.

SERVICE AREA POPULATION

Water system planning requires reliable growth estimates. The City contracted with Angelo Planning Group to develop five growth scenarios and evaluate their potential impacts on infrastructure. For this WMP update, the City selected Scenario 4 (“Hubs and Corridors”) as the most likely to occur. Scenario 4 represents more growth than the other scenarios, with significant changes to land abutting high-frequency transit corridors and specific hubs where those corridors intersect. Scenario 4 includes growth outside the city limits, but that growth is not included in the planning assumptions and criteria used in this report.

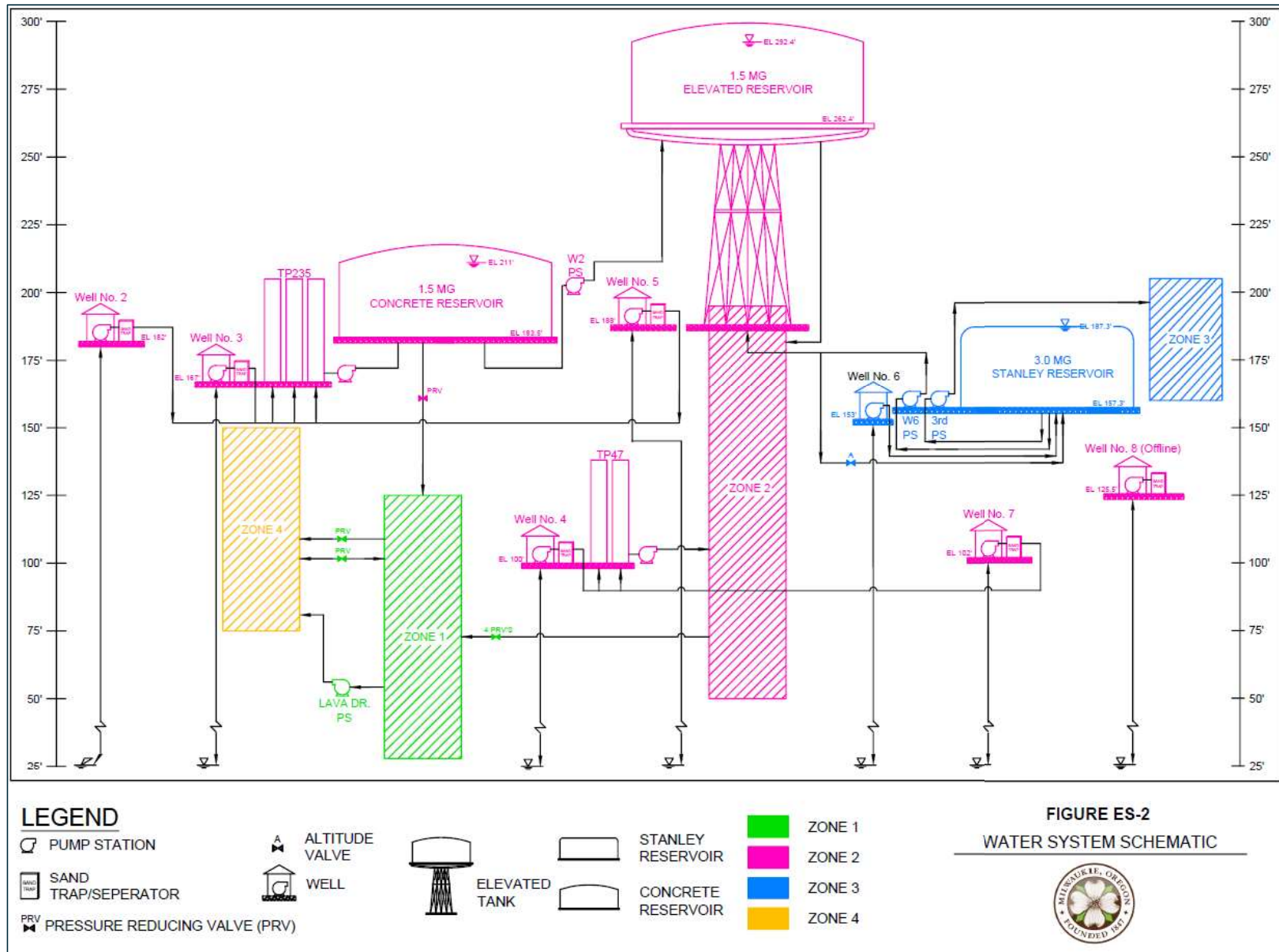


Figure ES-2. Water System Schematic

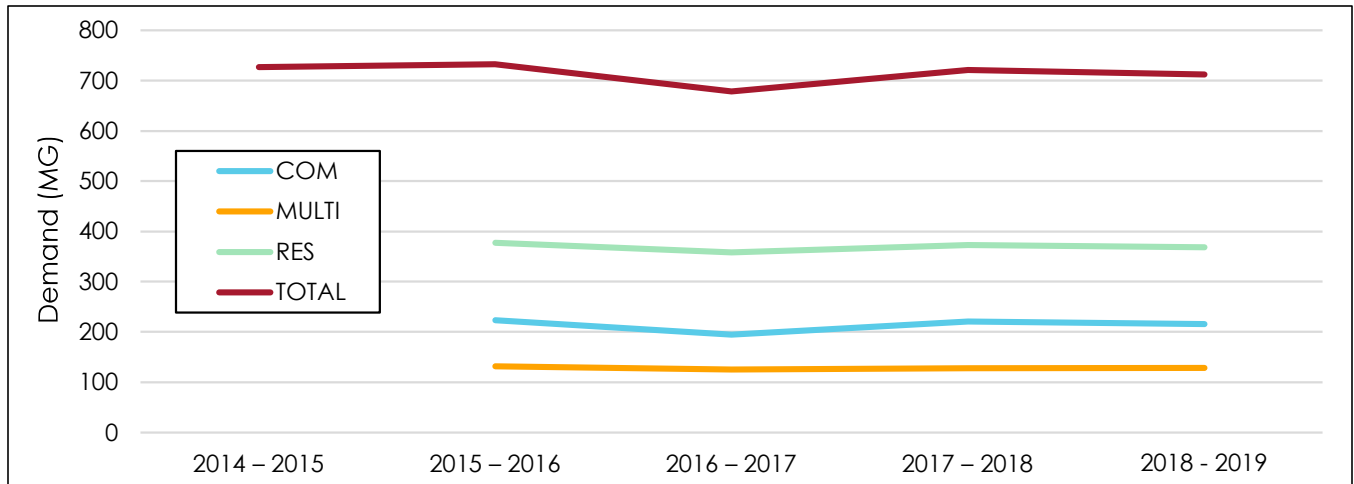


Figure ES-3. Annual Water Demand, 2014-15 Through 2018-19

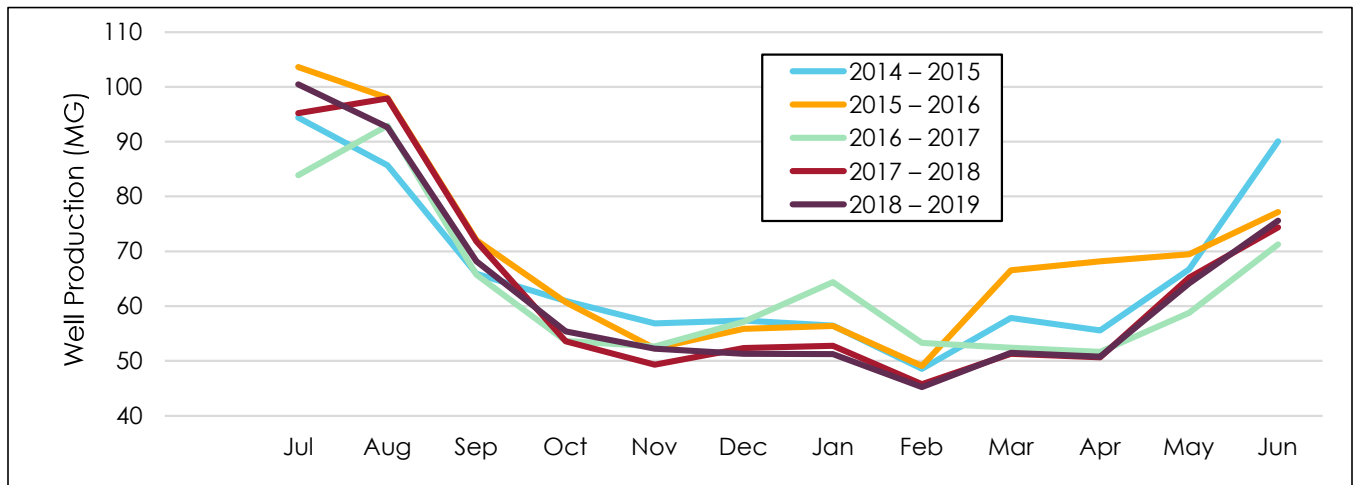


Figure ES-4. Monthly Well Production, 2014-15 Through 2018-19

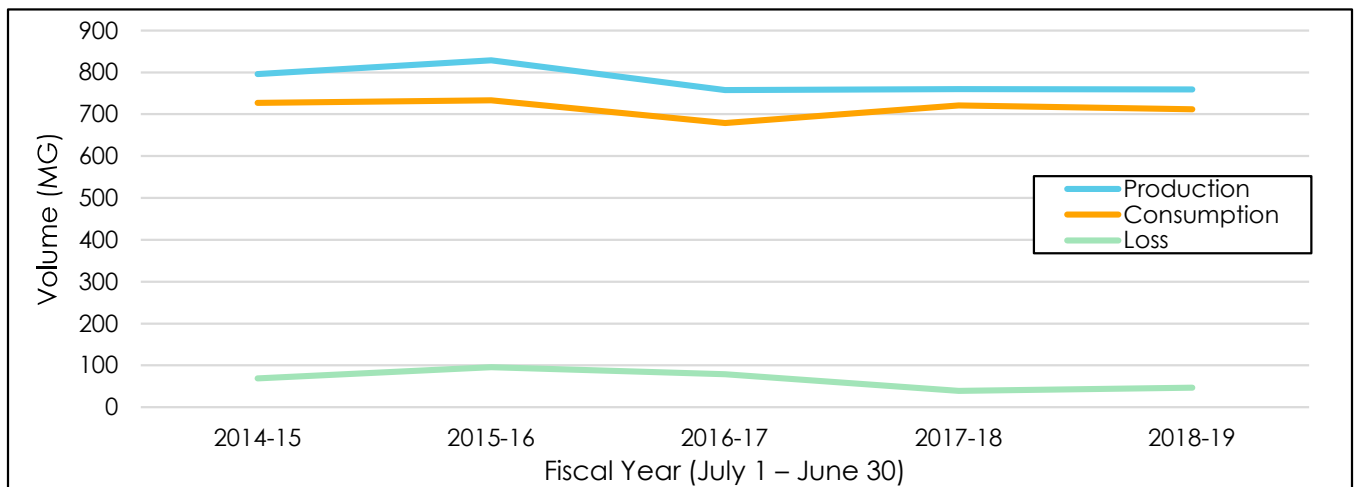


Figure ES-5. Annual Water Demand, Production and Water Loss

Scenario 4 predicted an additional 10,704 residential units in the City at full buildout—6,062 within the city limits and 4,642 in the City’s planning area outside the city limits. It is assumed that development outside the city limits will be served by other water providers. This WMP assumes that 80 percent of the Scenario 4 full buildout within the city limits—4,850 units—will be developed within the planning period (by 2039-40). It also assumes that all this development will be residential, with each unit equivalent to 2.3 people.

Based on these assumptions, the planning area population growth will be 11,154 by 2039-40, for a total of 31,445 at the end of the planning period. This equates to an annual average growth rate of 1.02 percent. Figure ES-6 illustrates the resulting planning period projections for population and ERUs.

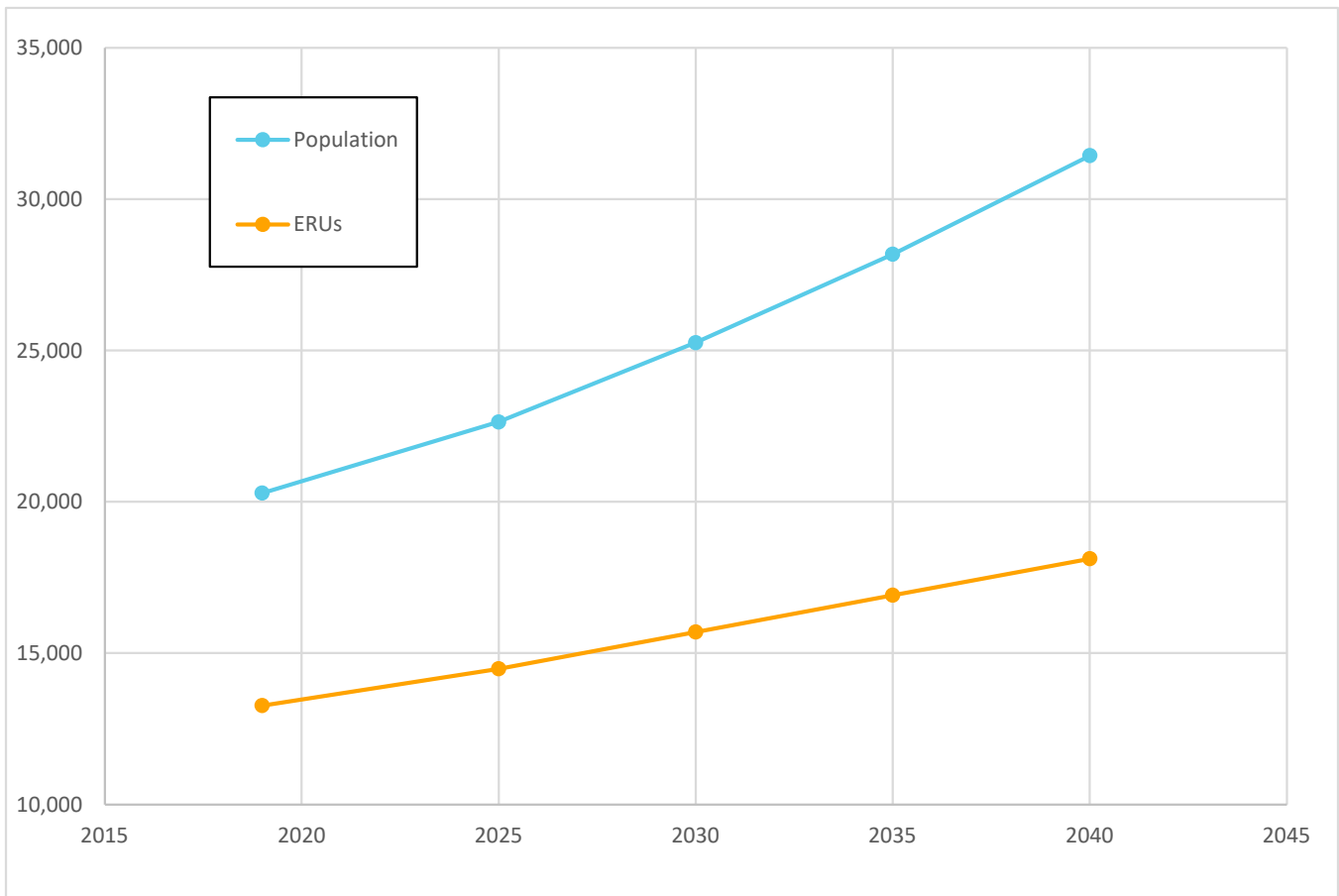


Figure ES-6. Projected Planning Period Population and ERUs

Future system-wide water demand was estimated by applying the ratio of future to present ERUs to the following existing demand values:

- The 2019 average-day demand of 2.0 million gallons (MG)
- The 2019 maximum-day demand of 4.1 MG

The resulting projections are shown on Figure ES-7.

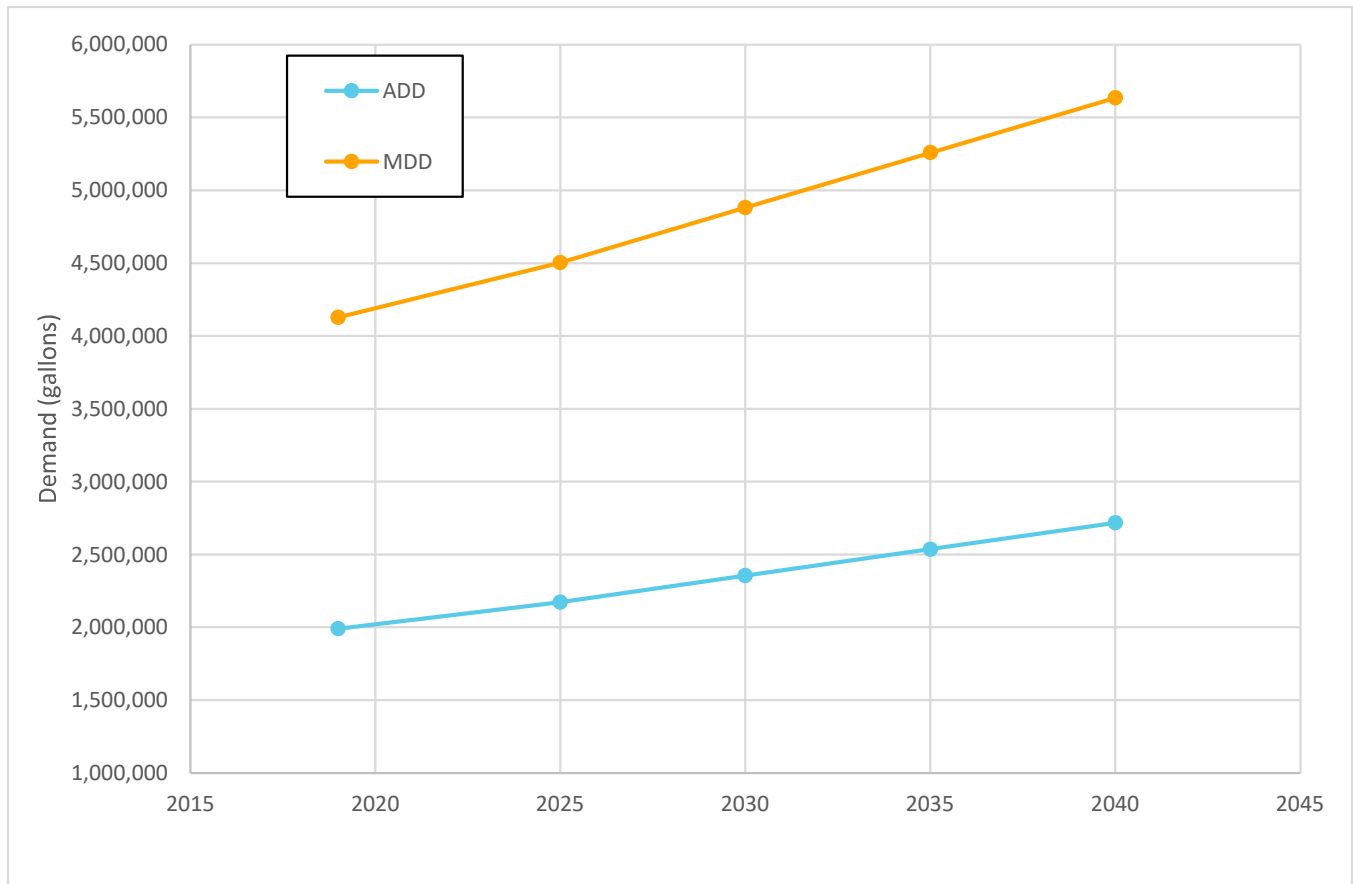


Figure ES-7. Projected Average-Day and Maximum-Day Demand

SYSTEM ANALYSIS

Innovyze’s InfoWater software (version 12.4) was used for the hydraulic analysis of the water distribution system. The City maintains a hydraulic model of its water distribution network. The City’s model, last calibrated in 2010, was the starting point for the analysis. For this update, the pipe network and calibration were reviewed and updated.

The 2021 WMP used modeling to evaluate the ability of the water distribution system to meet service-pressure standards and to provide required water flows for firefighting. The modeling evaluated the hydraulic capacity of the existing system and identified system improvements to increase capacity as needed.

Findings

Model scenarios were run for the existing system to evaluate the following:

- **Minimum pressure at peak-hour demand (PHD)**—Pressure deficiencies were assessed by modeling PHD with tanks two-thirds full and looking for system operating pressures below 40 psi, the City’s minimum service pressure target. Areas that exhibited low pressures typically

were in the immediate vicinity of reservoirs and pumps. All deficiencies fall within 6 psi of the pressure requirements, except for those in Zone 4.

- **Maximum pressure at average-day demand (ADD)**—Excessive pressure were assessed by modeling ADD and looking for system operating pressures above 105 psi, the City’s maximum service pressure target. The area of Zone 2 southwest of Kellogg Lake has areas of low elevation, resulting in some junctions exceeding 105 psi.
- **Fire flow at maximum-day demand (MDD)**—Under MDD conditions with reservoirs two-thirds full, analysis revealed that the distribution system has some areas that do not achieve required fire flow of 1,500 gallons per minute (gpm) for residential or 3,000 gpm for industrial/commercial. All hydrants in institutional zones meet required flows. Most fire flow deficiencies identified are on mains smaller than 8 inches or dead-end mains. In industrial/commercial areas, deficiencies are the result of insufficient looping and transmission.
- **Pipe flow velocity at PHD**—No pipes were identified with velocities exceeding the 7-foot-per-second maximum at PHD.

Recommendations

A list of recommended distribution improvements that are required to meet residential, commercial, and institutional fire flow requirements was developed and prioritized. The recommended improvements are prioritized by the severity of fire flow deficit, the number of hydrants that are brought up to the required flow, and the replacement of existing 4-inch diameter pipes and older pipes. The recommended distribution improvements would increase transmission, eliminate dead ends in areas with low fire flow, and address identified deficiencies.

Evaluation of Potential Emergency Intertie Connections

Seven potential intertie locations were identified from a previous Oak Lodge Water Service District evaluation and from GIS information on neighboring utility pipes. Potential locations were evaluated based on pipe size, pumping requirements, and location. Interties on larger mains are more desirable for conveyance. Based on the data collected, the existing City of Portland, Clackamas River Water and Oak Lodge Aldercrest interties should be considered for future development, due to their adequate pipe size, lack of additional pumping, and connection to Zone 2.

SOURCE OF SUPPLY

The City’s primary water source, the Troutdale Gravel Aquifer, covers 300 square miles under the greater Portland metropolitan area. The aquifer is a deep system of gravels and sandstone with large unconsolidated areas that is well-confined by low-permeability layers. These qualities make a good municipal source of water. The City operates six groundwater wells. Wells 2, 3, and 5 are part of a wellfield in near Water Tower Park. Wells 4, 6, and 7 are in the southern part of the City. Well 8 was taken offline in 2013 due to high iron content in the water and steadily decreasing capacity. Rehabilitation of Well 8 is currently being reviewed as part of a project to develop a new Well 2.

Ability to Meet Current and Projected Demand

The adequacy of the source of supply was assessed based on projected population, ERUs and a 10 percent loss factor. The 2019 maximum-day demand with 10 percent water loss—3,184 gpm—is well within the total supply of 5,094 gpm authorized by the City’s water rights. By 2040, maximum-day demand with a 10 percent allowance for system loss is expected to reach 4,304 gpm, which is also within the City’s authorized rate. Given that the City’s water rights capacity exceeds demand over the planning period, it is not necessary to apply for a new water right at this time. The City should continue to evaluate demand and revisit projections over the next few years to determine whether a new water right or additional source of supply is needed.

Operational Constraints on Source of Supply

The City’s water rights currently exceed operational and treatment capacities and the City could more fully use its water rights by addressing those limitations. Operational limitations are primarily associated with treatment tower capacities. The City’s future groundwater pumping capacity could be increased to utilize full water rights through construction of additional wells or reinstatement of existing wells that are currently offline. The City’s future treatment capacity also could be increased.

Source of Supply Management

It is in the City’s interest to maximize the resource through conservation practices. It is recommended that consideration be given to increasing proactive conservation activities to include the following:

- Indoor appliance rebate program
- Landscape irrigation management tool rebates
- Landscape modification rebates
- Landscape water audits
- Demonstration garden
- Indoor leak kit distribution
- Water use data billing inserts

The Oregon Water Resources Department currently requires a Water Management and Conservation Plan (WMCP) as a condition for new municipal water rights or for permit extensions. However, the City received its most recent permit in 1986 and has never had to extend a permit, so the WMCP requirement has not been triggered. When the City next applies for a new water right, a WMCP will be required. In the interim, there is a great deal of overlap between the WMP and WMCP and the City may choose to include WMCP analysis in subsequent WMP updates to track its conservation activities and to identify those that are most cost effective.

OPERATIONS AND MAINTENANCE

Operation and Maintenance and Staffing

The 2021 WMP describes the current operational control capabilities of the water system and basic operational procedures. The City meets the following Oregon Administrative Rule (OAR) 333-061-0065 requirements for operation and maintenance of key water system components:

- Service continuity must be maintained to ensure continuous production and delivery of potable water.

- Personnel responsible for operations must be competent, knowledgeable, and appropriately trained and certified.
- Operating manuals must be maintained and reviewed at least every five years and updated when new equipment or systems are installed.
- Documents and records must be retained by the water supplier and available upon request.

Figure ES-8 shows the relevant organizational structure.

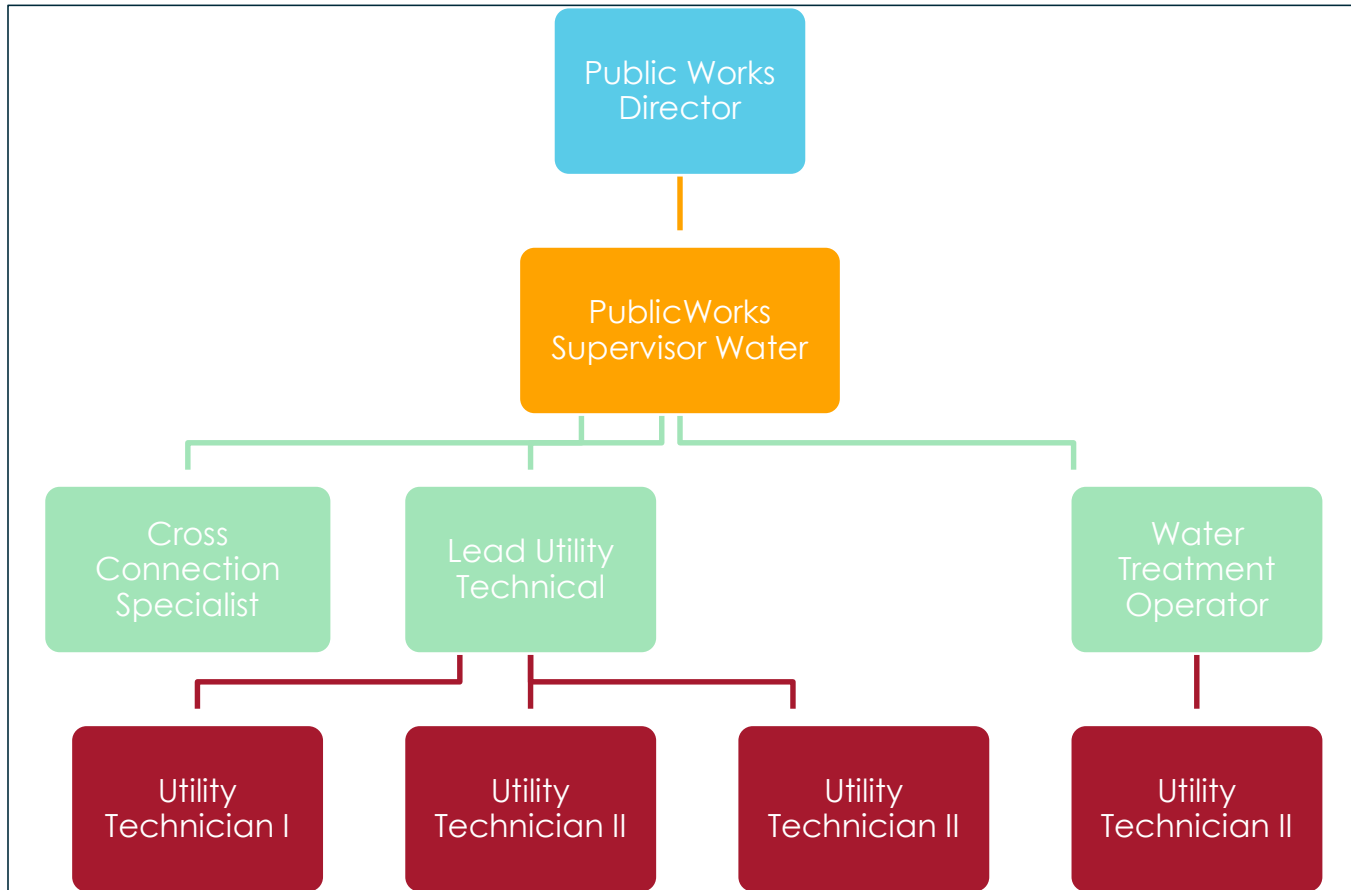


Figure ES-8. Organizational Structure

Supervisory Control and Data Acquisition

City staff control and monitor the water pumping, treatment and storage facilities through a proprietary supervisory control and data acquisition (SCADA) system. The SCADA computers enable operators to monitor system conditions, gather data on system processes and send control commands to the remote pumping facilities. The system alerts operators by text about such issues as well malfunction, low water levels and chlorine issues.

The City is developing designs to expand the SCADA system. The recently completed SCADA Master Plan identifies requirements for operations, maintenance, engineering, IT, and enterprise users. The improvements will enhance the City's SCADA organization, methodology, technology, and

cybersecurity, modernize the system to current industry standards, develop processes to maintain these standards, and ensure system reliability.

Preventive Maintenance

The City does not have a formal preventive maintenance program. It is generally recommended that public works departments conduct an annual operation and maintenance review to critique plan operation, review operating costs and make recommendations for more efficient plan operation. The City is in the process of identifying and addressing deferred maintenance issues. The City uses CityWorks Asset Management software to manage maintenance needs.

Emergency Response Plan

The City completed an updated Water Emergency Response Plan in 2021 addressing water system vulnerabilities and response to water emergencies, as required by the federal Public Health and Security Bioterrorism Preparedness and Response Act of 2002 and OAR 333-061-0064. That plan contains procedures and contacts for the following:

- Communication and authority
- Water system security
- Water system hazard review
- Emergency equipment and water supplies
- Emergency contacts
- Emergency resources
- Public notices
- Drinking water hauling
- Isolating water facility
- Emergency disinfection
- Water rationing plan

Water Rationing Plan

The City has developed a water rationing plan to address local, system-wide, and regional service interruptions. The plan, presented in Municipal Code Chapter 13.06 (Drought and Emergency Water Regulation), describes actions implemented under Level 1 (Critical) and Level 2 (Emergency) rationing. Upon implementation of a water rationing declaration, the water operations supervisor will coordinate with the City's public information officer to notify water system users through the media regarding the rationing requirements.

Recordkeeping

The City maintains water system records in compliance with OAR 333-061-0040 as well as additional records.

STANDARDS

The City has established standards for water system asset design, construction, and performance covering the following:

- **Performance standards:**
 - Service pressure and pressure zones
 - Valves and hydrants
 - Fire flow
 - Water storage
 - Pumping capacity
 - Emergency power generation
 - Pressure reduction
- **Design Standards:**
 - Standard drawings and specifications supplemental to Oregon Administrative Rules (OARs) and American Water Works Association Standards
- **Construction Standards:**
 - Pipe material and size
 - Looped system and dead-end mains
 - Restrained joints
 - Right of way location
 - Minimum cover
 - Separation with sewer lines
 - Easements
 - Watercourse crossings
 - Underwater crossings
 - Valves
 - Fire hydrants
 - Pressure reducing and air release valves
 - Railway and freeway crossings
 - Appurtenances
 - Backflow prevention
 - Water service lines
 - Fire service
 - Fire vaults
 - System testing
 - Water quality sampling stations

The City's criteria are within industry standards as recommended by the American Water Works Association.

SYSTEM RESILIENCY

Seismic Resiliency

The 2021 WMP includes an assessment of seismic resiliency of public water system assets in compliance with Oregon Health Authority requirements. Table ES-1 summarizes key findings.

Natural Hazard and Malevolent Acts

The 2021 WMP identifies water system risks associated with natural hazards and malevolent act based on the U.S. Environmental Protection Agency's comprehensive list of water system threats. The following were identified as hazards that pose a threat to City water system assets:

- Earthquake
- Flood
- Utilities dependency
- Key supplier dependency
- Key employee dependency
- Transportation dependency
- Contamination by chemicals, radionuclides, biotoxins, or pathogens
- Contaminant weaponization
- Physical or cyber sabotage or theft by an insider or outsider
- Car-borne explosive
- Assault by a single assailant
- Ice storm
- Wind

This list serves as the set of risks evaluated for the separate completion of the City's risk and resilience assessment.

Table ES-1. Summary of Points of Seismic Risk and Recommended Actions

Asset	Priority	Potential Point of Failure	Recommendation
Storage Assets			
Elevated Tank	Low	<ul style="list-style-type: none"> Area of concern at the column base plates. The anchor bolts appear to be too small. 	<ul style="list-style-type: none"> Verify the capacity of the base plate anchorage. Regularly monitor the interior and exterior of the structure for rust and touch up painting where necessary. Regularly monitor foundation for settlement or cracks.
Stanley Reservoir	High	<ul style="list-style-type: none"> Insufficient freeboard Anchorage may not meet standards. Piping connections may not allow for required displacements. Uncontrolled loss of tank contents could cause significant damage 	<ul style="list-style-type: none"> Perform a seismic evaluation. Based on results, do one of the following: <ul style="list-style-type: none"> Decrease water storage height to a maximum allowed, or Retrofit tank
Concrete Reservoir	Medium	<ul style="list-style-type: none"> Hoop tension is insufficient Circumferential prestressing is likely undersized. Inadequate shear transfer between the wall and foundation. Seismic load will create excess stress. 	<ul style="list-style-type: none"> Add galvanized steel seismic cables at the wall base and foundation. Add circumferential steel strand prestressing and shotcrete to the outside face of the concrete wall, or Add FRP jacketing to one or both faces of the concrete and a reinforced concrete curb around the perimeter of the base.
Source Water Assets			
Well No. 2 Pumphouse	Low	<ul style="list-style-type: none"> Discontinuity in the lateral force load resisting path could occur. 	<ul style="list-style-type: none"> Conduct a field investigation for discontinuities. As needed, add bracing; repair rusted or broken frame members; repair or replace damaged connectors and/or anchor bolts.
Well No. 3, 4, 5, 6 and 7 Pumphouses	Low	<ul style="list-style-type: none"> Certain seismic force mitigation features were not commonly incorporated in the construction of buildings of this era. 	<ul style="list-style-type: none"> Conduct a seismic evaluation As needed, anchor the tops of the walls to the roof; add steel cross ties as part of the seismic wall anchorage; add roof diaphragm boundary nailing; add seismic shear transfer clips; verify anchorage capacities for onsite equipment
Water Treatment Assets			
TP47, TP235	Medium	<ul style="list-style-type: none"> Certain seismic force mitigation features were not commonly incorporated in the construction of buildings of this era. 	<ul style="list-style-type: none"> Conduct a seismic evaluation <ul style="list-style-type: none"> As needed, anchor the tops of the walls to the roof; add steel cross ties as part of the seismic wall anchorage; add roof diaphragm boundary nailing; add seismic shear transfer clips; verify anchorage capacities for onsite equipment
Air Stripping Towers	Low	<ul style="list-style-type: none"> Anchors may no longer meet code requirements. 	<ul style="list-style-type: none"> Monitor the FRP shell and components for deterioration. Perform a detailed evaluation of the anchor bolts and lugs. Conduct post-earthquake evaluations of anchoring and foundation.

Asset	Priority	Potential Point of Failure	Recommendation
Distribution Operational Assets			
Lava Drive Pump Station	Low	<ul style="list-style-type: none"> The weight of the structure could cause cracking during ground shaking. Improperly anchored equipment may be displaced in earthquake. 	<ul style="list-style-type: none"> Evaluate anchorage and replaced inadequate systems. Conduct and document post-earthquake examinations for diagonal cracking in the roof deck and walls.
3rd Pressure Zone Building	Low	<ul style="list-style-type: none"> Certain seismic force mitigation features were not commonly incorporated in the construction of buildings of this era. 	<ul style="list-style-type: none"> Conduct a seismic evaluation As needed, anchor the tops of the walls to the roof; add steel cross ties as part of the seismic wall anchorage; add roof diaphragm boundary nailing; add seismic shear transfer clips; verify anchorage capacities for onsite equipment

Climate Change Vulnerabilities

In the Pacific Northwest, climate change models project an increase in air temperatures, an increase in fall and winter precipitation, a decrease in summer precipitation, an increase in the severity and frequency of storm events, and a decrease in winter snowpack. The City’s 100 percent groundwater source of supply should not be influenced by climate change year to year as surface water sources could be. However, long-term changes in precipitation patterns may lead to a diminishing supply due to diminished replenishment and increased demand on the aquifer. The following recommendations will help the City evaluate the impacts of climate change on its groundwater supply and plan for changes that will be needed in order to respond:

- Employ a groundwater monitoring program focused on identifying long-term trends
- Maintain redundant/emergency water supply agreements; periodically assess capability and reliability of redundant sources
- Implement a proactive water conservation program
- Integrate climate related design standards into facility design

CAPITAL IMPROVEMENT PLAN

Table ES-2 lists capital improvements that are recommended based on the analyses performed for the 2021 WMP and water system projects previously identified in the City’s 2022-2026 Capital Improvement Plan (CIP), with a schedule of expenditures for each. Projects not included in the first 10 years are long-range projects that may be included in subsequent 10-year plans depending on need.

Table ES-2. Capital Improvement Program

Number of Projects		Annual Expenditures											
Water Master Plan	2022-2026 CIP	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032	2033-2038	2039-2042
Source Improvements													
12	11	\$250,000	\$537,000	\$230,000	\$265,000	\$130,000	\$265,000	\$30,000	\$105,000	\$30,000	\$205,000	\$0	\$0
Treatment Improvements													
2	0	\$0	\$0	\$0	\$1,600,000	\$1,600,000	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Storage Improvements													
3	0	\$1,935,000	\$1,335,000	\$0	\$0	\$0	\$0	\$1,000,000	\$5,500,000	\$0	\$0	\$0	\$0
Pumping Improvements													
5	0	\$30,000	\$30,000	\$1,627,000	\$30,000	\$1,230,000	\$30,000	\$30,000	\$30,000	\$30,000	\$1,230,000	\$0	\$0
Distribution Improvements													
67	12	\$667,000	\$1,631,750	\$1,380,000	\$1,141,850	\$3,453,950	\$5,087,000	\$1,947,750	\$0	\$2,175,800	\$283,150	\$1,470,860	\$5,089,325
SCADA Upgrades and Maintenance													
3	2	\$50,000	\$90,000	\$90,000	\$90,000	\$90,000	\$90,000	\$50,000	\$50,000	\$50,000	\$50,000	\$250,000	\$500,000
Planning and Evaluation Studies													
5	3	\$125,000	\$0	\$25,000	\$225,000	\$25,000	\$25,000	\$550,000	\$0	\$0	\$0	\$0	\$0
Total		\$3,057,000	\$3,623,750	\$3,352,000	\$3,315,850	\$6,528,950	\$5,497,000	\$3,607,750	\$5,685,000	\$2,285,800	\$1,768,150	\$1,720,860	\$5,589,325

CAPITAL FUNDING OPPORTUNITIES

Capital improvements addressing new and replaced facilities are often addressed through a combination of rates, system development charges, loans, grants, and municipal bonds. The City employs a base rate/usage rate structure that charges customers a fixed rate based on meter size plus a consumption rate. It is recommended that the City review its unit rates, rate structure and system development charges to meet projected capital improvements.

- Fixed rate based on meter size:
 - 5/8" - 3/4" meter—\$8.69
 - 1" meter—\$13.08
 - 1 1/2" meter—\$22.34
 - 2" meter—\$33.90
 - 3" meter—\$93.72
 - 4" meter—\$164.62
 - 6" meter—\$281.84
- Consumption charge:
 - Single-family Residential
 - \$3.94/ccf for < 3 ccf/month
 - \$4.07/ccf for >3 ccf/month
 - Single family low use discount
 - (\$5.00) < 3 ccf/month
 - Multi-family/Commercial
 - \$4.07/ccf

In addition to cash financing through water rates, the City may use the following sources to fund water capital improvements; each has specific requirements and limitations:

- Special Public Works Fund
- Drinking Water Revolving Fund Loan Program
- Drinking Water Source Protection Fund Program
- Rural Economic Development Loan & Grant Program
- Community Development Block Grant Program
- The Water Infrastructure Finance and Innovation Program
- Bond Financing
- System Development Charges



COUNCIL RESOLUTION No.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, ADOPTING THE 2021 WATER SYSTEM MASTER PLAN (WSMP).

WHEREAS the city contracted with Tetra Tech to update the 2010 Water System Master Plan (WSMP), and

WHEREAS the city’s public works department prepared the 2021 WSMP input from the engineering department, planning department, and Citizen’s Utility Advisory Board (CUAB), and

WHEREAS the 2021 WSMP establishes projects for the water system that are necessary for the ongoing provision of water utility services in the city, and

WHEREAS it is necessary to document future projects for the wastewater system for the ongoing provision of wastewater services to determine the costs of maintaining the water system.

Now, Therefore, be it Resolved by the City Council of the City of Milwaukie, Oregon, that the 2021 Water System Master Plan (WSMP) is adopted.

Introduced and adopted by the City Council on **May 17, 2022.**

This resolution is effective immediately.

Mark Gamba, Mayor

APPROVED AS TO FORM:

ATTEST:

Scott Stauffer, City Recorder

Justin D. Gericke, City Attorney

COUNCIL STAFF REPORT

To: Mayor and City Council
Ann Ober, City Manager

Reviewed: Jennifer Lee (as to form), Administrative Specialist

From: Peter Passarelli, Public Works Director

Subject: **Wastewater System Master Plan (WWSMP) Adoption**

Date Written: May 3, 2022

ACTION REQUESTED

Council is asked to adopt the 2021 Wastewater Master Plan (WWSMP).

HISTORY OF PRIOR ACTIONS AND DISCUSSIONS

[June 5, 2018](#): Council adopted the 2019-2024 Capital Improvement Plan (CIP) and the 2019-2020 budget, which identified the 2019 WWSMP update as a CIP project.

[April 16, 2019](#): Council authorized the city manager to sign a personal services agreement with Water Systems Consulting, Inc. (WSC) in the amount of \$365,068 for providing a WWSMP.

[August 3, 2021](#): Staff and the consultant team provided Council an update on the WWSMP.

[January 4, 2022](#): Council received a presentation on the proposed wastewater system development charges (SDC) methodology and SDC rate structures.

ANALYSIS

The city contracted with WSC to update the WWSMP. WSC evaluated the adequacy of the wastewater collection system to provide safe and reliable service to customers and outlined the recommended capital improvements required to maintain that level of service into the future. During the process of preparing the updated WWSMP, the city identified the following objectives:

- Plan for growth expected within the city's existing service area based on proposed modifications to planning policy that allow for increased residential density.
- Plan for expansion of the city's service area to accommodate development within the Urban Growth Management Area (UGMA).
- Develop an accurate hydraulic model of the collection system.
- Identify the level of infiltration and inflow (I/I) within the collection system.
- Understand capacity limitations at the Kellogg Water Resource Recovery Facility (WRRF).
- Identify existing and future system deficiencies.
- Assess the city's vulnerability to seismic events and climate change and identify potential mitigation measures to improve system resiliency.
- Coordinate the wastewater system plan with parallel city initiatives to act against climate change and to improve housing affordability.
- Develop a prioritized list of improvement projects, including anticipated costs, to address the deficiencies and assure capacity of the collection system.

No federal or state review was required for the WWSMP.

Summary of Findings:

For a summary of the WWSMP’s finding the executive summary is attached.

BUDGET IMPACTS

Funding for this project will come from the city’s wastewater fund and wastewater SDC fund.

CLIMATE IMPACTS

In 2018, the city adopted their first CAP to minimize the impacts of climate change and increase the climate resilience of the city. The WWSMP incorporates aspects of the CAP that further the city’s climate goals as they pertain to the wastewater system. Two areas of focus for the wastewater system are the risk of sea level rise impacting the wastewater collection system and potential modifications to engineering and construction standards to improve climate resilience and reduce greenhouse gas emissions.

WORKLOAD IMPACTS

Public works staff has provided management of the project, assisted with data gathering, and flow testing for calibration of the hydraulic model.

COORDINATION, CONCURRENCE, OR DISSENT

Engineering staff has reviewed master planning assumptions, future CIP project development and provided feedback to the consultant team. Planning staff has assisted with demand scenario assumptions and future development forecasts. Public works staff has coordinated the document review with Clackamas County Water Environment Services (WES). The Citizen’s Utility Advisory Board (CUAB) has participated throughout development of the master plan and helped with its review.

STAFF RECOMMENDATION

Adopt the WWSMP.

ALTERNATIVES

Council could decide to:

1. Postpone the adoption of the master plan by suggesting amendments to the document.
2. Postpone the adoption of the document indefinitely.

ATTACHMENTS

1. Resolution
2. WWSMP Executive Summary



COUNCIL RESOLUTION No.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, ADOPTING THE 2021 WASTEWATER SYSTEM MASTER PLAN (WWSMP).

WHEREAS the city contracted with Water Systems Consulting, Inc., to update the 2010 Wastewater System Master Plan (WWSMP), and

WHEREAS the city’s public works department prepared the 2021 WWSMP with input from the engineering department, planning department, and Citizen’s Utility Advisory Board (CUAB), and

WHEREAS the 2021 WWSMP establishes projects for the wastewater system that are necessary for the ongoing provision of wastewater utility services in the city, and

WHEREAS it is necessary to document future projects for the wastewater system for the ongoing provision of wastewater services to determine the costs of maintaining the wastewater system.

Now, Therefore, be it Resolved by the City Council of the City of Milwaukie, Oregon, that the 2021 Wastewater System Master Plan (WWSMP) is adopted.

Introduced and adopted by the City Council on **May 17, 2022.**

This resolution is effective immediately.

Mark Gamba, Mayor

ATTEST:

APPROVED AS TO FORM:

Scott Stauffer, City Recorder

Justin D. Gericke, City Attorney

CHAPTER 1

Executive Summary

The City of Milwaukie (City) owns and operates a wastewater collection system that serves approximately 21,000 residents and commercial customers within the City limits as well as a small number of customers located in the Oak Lodge Water Service District service area. This Wastewater System Master Plan (WWSMP) updates the previous plan developed in 2010 to assess the ability of the system to meet the needs of current and future customers and recommends a capital improvement program (CIP) to guide investments over a 20-year planning horizon.

1.1 Objectives

The City contracted with Water Systems Consulting, Inc. (WSC) to develop a WWSMP update through a planning horizon of 2040. During the process of preparing the updated WWSMP, the City identified the following objectives:

- Plan for growth from increased residential density
- Plan for expansion of the City's service area within the Urban Growth Management Area
- Develop an accurate hydraulic model of the collection system
- Identify the level of rainfall dependent infiltration and inflow (RDII) within the collection system
- Understand capacity limitations at the Kellogg Water Resource Recovery Facility (WRRF)
- Identify existing and future system capacity and condition deficiencies
- Assess the City's vulnerability to seismic events and climate change
- Align the WWSMP with parallel City initiatives to address climate change and affordability
- Develop a prioritized list of improvements to address deficiencies and vulnerabilities

IN THIS SECTION

Objectives

System Description

Agreements, Rules, and Regulations

System Loading

Hydraulic Analysis

Infiltration and Inflow

Asset Rehabilitation and Replacement

System Resilience

Capital Improvement Program

With these goals in mind, WSC assisted the City in updating the WWSMP using the best available data for system performance and condition, both currently and as predicted within the planning horizon.

1.2 System Description

The City owns and operates a wastewater collection system that serves the City's residents and small portions of the surrounding communities, including the Oak Lodge Water Services District. Wastewater treatment is provided by Clackamas Water Environment Services (WES) as governed by an intergovernmental agreement with the County. Some wastewater can also be discharged into the City of Portland Lents interceptor through a metered overflow from the Brookside Pump Station

The City's collection system is composed of seven sewer basins: North Milwaukie, Mid-Milwaukie, Brookside, Johnson Creek, South Milwaukie, Harmony, and Lower Kellogg. Wastewater flow is collected at the lowest point(s) of each basin and either sent to a treatment facility or to a pump station that conveys the flow to another sewer basin. The collection system is comprised of approximately 79 miles of active gravity sewer mains and 1,710 active manholes, excluding private facilities. The gravity pipe throughout the system ranges in size from 4-inch to 27-inch diameter, with 81% of the gravity pipe being 8-inch diameter or smaller. The collection system currently includes five (5) sewage pump stations with 3,477 linear feet (LF) of force main pipelines. There is also a two-barrel inverted siphon that crosses Johnson Creek near Milwaukie Bay Park. The siphons, referred to as the Johnson Creek Siphon, includes two 12-inch diameter ductile iron pipes that are part of the City's trunk main network that allow continuous gravity conveyance from the North and Mid-Milwaukie Basins into the Kellogg WRRF.

The City does not own or maintain the lateral service lines that connect privately owned residences, commercial and industrial properties, and public facilities to the City owned sewer mains. City code requires property owners to maintain the lateral services in good working order, and ownership is delineated at the connection to the City's sewer main.

1.3 Agreements, Rules, and Regulations

The City maintains three intergovernmental agreements (IGAs) for the collection and treatment of wastewater with the neighboring sewer providers including WES, the City of Portland, and Oak Lodge Water Services District (Oak Lodge). Each IGA is briefly summarized below:

- Clackamas WES. The City entered into an agreement with Clackamas WES for wastewater treatment services. As part of this agreement, the City and WES acknowledged the importance of identifying and remedying RDII problems within their respective collection systems. The Kellogg Creek WRRF has limited hydraulic capacity for treatment and site constraints preclude further expansion of the facility. WES has identified that portion of the City system that flows directly into Kellogg Creek WRRF as a high priority for RDII reduction and has determined that a 65 percent reduction would optimize capital investment to meet regulatory requirements.
- City of Portland. The agreement with the City of Portland provides for direct compensation for direct connection of the City's sewer system into the Lents interceptor to serve a portion of the Johnson Creek sewer basin.
- Oak Lodge. The City and Oak Lodge provide some wastewater services for select properties within each other's jurisdictions. This agreement establishes which properties and establishes the rate of service.

The terms of the IGAs influence the analysis and recommendations for the City system, which must also meet the rules and regulations of the State of Oregon governing the operation, maintenance, and financial sustainability of municipal wastewater collection systems.

1.4 System Loading

Flow monitoring was conducted in the spring of 2019 and winter of 2019/2020 to understand flows under dry and wet weather conditions and to provide data for loading and calibrating the hydraulic model. The flow monitoring data was used to determine an average dry weather flow for each monitored sewer catchment. The average dry weather flow was spatially allocated within the monitored sewer catchment by using water meter locations and billing records. Wastewater generation factors were calculated based on user type (i.e. residential or non-residential) and used to estimate flow from unmonitored areas and future growth. The flow monitoring data was also used to determine diurnal curve multipliers to model how the sewer loading changes throughout the day.

Wet weather flow was estimated based on system response to flow monitoring data collected during a rainstorm on January 27, 2020, which produced the largest volume of precipitation over a 24-hour period during the flow monitoring period. The hydraulic modeling parameters were iterated for each flow monitoring basin until the estimated model response to precipitation closely resembled the flow response seen at each flow meter. These parameters were then assigned to the model for each basin to estimate the wet weather flow response under design storm conditions for a 10-year recurrence interval storm with a duration of 24 hours.

Buildout flow was estimated using a buildable lands inventory (BLI) prepared by Angelo Planning Group. The BLI identified parcels that could be developed for infill growth based on current land use zoning and policies described in the City's Comprehensive Plan. Working with the City Planning department, several assumptions were used to estimate the amount of equivalent dwelling units (EDUs) and non-residential flows that could be added through infill development of BLI parcels across the City. Based on the rate of known development applications, the City estimates that 80% of buildout will occur by the year 2040. A summary of average dry weather flow under existing, 2040, and buildout conditions is shown in Table 1-1.

Table 1-1. Current and Future Projected Loading

Loading Condition	2020	2040	Buildout
Average Dry Weather Flow (ADWF) (gpd)	1,621,328	2,006,855	2,135,870
Population	20,600	24,356	25,261
Residential EDU	8,729	10,320	10,704
Residential Flow (gpd)	1,003,835	1,186,800	1,230,960
Non-Residential Flow (gpd)	617,493	820,055	904,910
gpd = gallons per day Residential Flow Factor is 115 gpd per EDU Non-Residential Flow Factor is 1,529 gpd per Acre			

1.5 Hydraulic Analysis

The City's updated Geographic Information System (GIS) database of the wastewater collection system was used to construct a hydraulic model using SewerGEMS, Bentley's® GIS-based hydraulic modeling software. As described in the previous section, modeling parameters were adjusted to achieve predicted flows within an acceptable range of the observed flow monitoring of the system. A workshop was conducted with City staff to provide a review of the hydraulic model for existing conditions and operations staff provided some corrections based on historical observations.

Wastewater system criteria were developed for evaluating the hydraulic performance of the City's collection system based on Oregon Department of Environmental Quality (DEQ) regulations, City standards and preferences, and engineering judgement. An evaluation criteria workshop was conducted with City staff to discuss and confirm the desired level of service during dry weather and wet weather conditions. A summary of the evaluation Criteria is provided in Table 1-2.

Table 1-2. Hydraulic Performance Criteria for Evaluation of System Capacity

Category	Evaluation Criteria
Model Peak Wet Weather Flow (PWWF)	PWWF for purposes of evaluating system capacity will be based on the 10-year, 24-hour design storm timed to match peak RDII with daily diurnal peak dry weather flow.
Available Freeboard (>10 feet deep manholes)	Minimum 8-ft freeboard during PWWF. Freeboard measured as distance between manhole rim elevation and the maximum water surface elevation.
Allowable Surcharge (\leq 10 feet deep manholes)	2-ft allowable surcharge during peak wet weather flow. Surcharge measured as the maximum water surface elevation above the outflowing pipe soffit elevation.
Pump station firm capacity	Pump station capacity is equal to, or greater than, PWWF with largest pump out of service.

A hydraulic capacity analysis was conducted using the model and consisted of dry weather and wet weather analysis. Oregon DEQ guidelines allow withholding of enforcement action for a sanitary sewer overflow occurring during a 10-year recurrence interval and 24-hour duration storm during the summer months. A rainfall hyetograph was developed based on the 10-year recurrence interval, 24-hour duration storm defined in the City's Stormwater Master Plan and was applied to the hydraulic model as the design storm to evaluate capacity during wet weather conditions.

Under existing City loading, a total of 16 manholes were identified as lacking sufficient freeboard or having excessive surcharging during the design storm. The number of deficient manholes increased to a total of 30 manholes when additional loading from projected growth was applied to the system through buildout. A total of 3 capacity related pipeline projects were identified to alleviate the hydraulic performance deficiencies, including the upgrade of approximately 1,284 linear feet of gravity sewer main within the Brookside Basin. The model also indicated the Brookside Pump Station's (S5) firm capacity was insufficient to meet peak wet weather flow, and pumping upgrades are recommended as part of condition-based replacement of equipment at the station. Due to some uncertainty regarding the accuracy of existing data, WSC recommends field surveys of existing manholes to confirm actual invert and rim elevations prior to mitigation action. Under current loading the capacity deficiencies do not appear to cause a sanitary sewer overflow and future flow monitoring to track RDII may also be used to confirm the presence of hydraulic deficiencies.

1.6 Rainfall Dependent Infiltration and Inflow

Clackamas WES has identified the reduction of RDII as a priority within the collection systems that convey wastewater to the Kellogg and Tri-City WRRFs, as part of an overall strategy to optimize investments in the wastewater collection and treatment system. Based on the 2019 Sanitary Sewer System Master Plan (SSSMP), Clackamas WES is requiring a 65% reduction in RDII from projected 2040 rates within the Milwaukie Basin, which consists of those sewer basins within the City that flow into the Kellogg Creek WRRF. The projected 2040 RDII rates as well as target reductions for the City basins are provided in Table 1-3.

Table 1-3: RDII Reduction Targets Under Clackamas WES Program

WES Basin	Projected RDII by 2040 (gpad)	RDII Target Value by 2040 (gpad)
Milwaukie	17,100	5,985
Harmony	14,100	Not applicable

The Clackamas WES SSSMP did not use flow monitoring within the collection system to adjust model outputs to approximate field observations. The SSSMP also assigned theoretical deterioration to estimate the future RDII in 2040. The City's hydraulic model was used to evaluate the existing collection system for RDII after adjusting parameters to correlate model results with observed wet weather flow monitoring data. To provide a meaningful evaluation of the City's collection system with the adjusted hydraulic model for comparison with the WES target values, the RDII was evaluated using the same November 22, 2011 storm rainfall used for identifying deficiencies in the WES SSSMP. The calibrated model results were analyzed at the locations of the permanent WES Milwaukie and Harmony meters to allow comparison with the WES target values. The resulting RDII is shown in Table 1-4.

Table 1-4: Existing RDII

Flow Meter	ADWF (gpd)	PWWF (gpd)	Ratio PWWF to ADWF	RDII (gpd)	Contributing Acreage ¹	RDII Rate (gpad)
Milwaukie	1,216,096	6,424,396	5.3	5,554,351	1,213	4,580
Harmony	863,304	2,827,751	3.3	1,969,800	556	3,542
1. The contributing acreage represents a buffer area within 100 feet of each sewer main.						

The total RDII rates for the Milwaukie and Harmony meters are below the WES RDII Reduction Program targets for 2040. Although there does not appear to be the need for implanting RDII reduction efforts at this time, continued structural condition repairs described in the next section will be required to maintain the current RDII rate. The Brookside, North and South Milwaukie basins appear to be a higher priority for continued structural condition repairs to maintain RDII rates at the Milwaukie Meter below the 2040 target.

. WSC recommends flow monitoring at 5-year intervals to track changes in the RDII rate over time so that the observed values are maintained below the WES 2040 target.

1.7 Asset Rehabilitation and Replacement

The City understands the importance of proactively rehabilitating and replacing aging assets to maintain a safe and reliable wastewater collection system for its customers. Assets are divided into two categories: gravity pipelines that are capable of closed-circuit television (CCTV) inspection and pump stations, including the force main pipelines.

The City maintains a dedicated crew that performs cleaning and a CCTV inspection of each sewer main in the collection system on a four-year cycle. During each CCTV inspection, sewer mains are coded according to the National Association of Sewer Service Companies' Pipeline Assessment Certification Program (PACP) to provide defect scoring for each main on a 1 to 5 scale, with a score of 5 representing the worst defects, or those that present an imminent risk of structural failure. At the time of this WWSMP, the City has PACP scores available for 55 percent of mains and is expected to have data on all mains within the next two years. Condition projects were identified for pipelines having Grade 5 or Grade 4 defects which are anticipated to result in structural failure within the next 10 years. An annual rehabilitation budget was established to address these mains with Grade 5 and Grade 4 defects, assuming a similar ratio of high-priority defects within the portion of the City system that remains to be inspected and scored. A system for ranking and prioritizing sewer pipe rehabilitation projects based on risk of failure, defined by evaluating the consequences of a failure and the probability based on the existing condition, is recommended. Each year, the City should use the PACP scores and consequence of failure data to prioritize the highest risk mains in need of rehabilitation or replacement so that the rehabilitation budget is consistently used for mitigating the highest risk sewer pipelines based on the best information available.

The condition of pump stations and their various components are not currently assessed or tracked by the City. Operators indicated that there are not currently any known condition deficiencies at the pump stations that require immediate attention, but given the age of the stations and equipment, some of the critical components will likely reach the end of their useful life within the 20-year planning period of this WWSMP. Based on original record drawings and pump data sheets provided by the City, the components of each pump station expected to reach the end of their remaining useful life were identified and the costs for replacing those components was estimated using a parametric cost database. An estimated total cost of \$4.25M would be required for a program to replace aging components within the City's pump stations, which if executed over a 10-year period would require an average of \$425,000 in CIP projects each year. To better understand the timing of repairs, and to confirm the scope of replacements, WSC recommends a pump station condition assessment be completed for each of the City's stations within the next biennial budget cycle. Additional condition-based projects identified by the City outside of this WWSMP and previously included within the current 2021 to 2026 budget are also included.

1.8 System Resilience

In accordance with the Oregon Resilience Plan, the City is looking to reduce risk and improve recovery of the collection system associated with a Cascadia Subduction Zone (CSZ) magnitude 9.0 earthquake. SEFT led a workshop with City staff to identify and document level of service goals for restoring wastewater service following a CSZ earthquake. A sewer backbone was identified consisting of large trunk mains, the siphons, lift stations and pipes serving facilities that connect to critical facilities, such as hospitals, the City's well sites, and schools, with the goal of returning service to this backbone as quickly as possible following the earthquake. Seismic assessments of several critical pump stations were also conducted to identify and recommend retrofits to the backbone system.

Seismic hazard mapping was conducted by McMillen Jacobs Associates to estimate the peak ground velocity and peak ground deformation (PGD) within the City's service resulting from a CSZ seismic event. A pipe fragility analysis was conducted to estimate the repair rates for each pipeline based on assumed pipe materials and estimated PGD. Pipes were then categorized in terms of the priority for seismic retrofits.

Recommendations were provided for both updates to the City Design Standards and for capital improvements. City Design Standards should be updated to require more robust piping for high and medium seismic risk pipes, such as fused high-density polyethylene, ductile iron pipe with seismic joints, or PVC pipe. The appropriate pipe material will depend on engineering analysis of the anticipated PGD within the area of each pipe. As high-priority backbone pipes reach the end of their useful life, they will be replaced or repaired with the appropriate materials for seismic resiliency. Recommended improvements include upgrading existing backbone pipes with Grade 5 or Grade 4 defects to meet these standards, retrofitting the Home and Monroe (S3) and Brookside (S5) pump stations to meet current seismic code, and fully rebuilding the Island Station (S1) pump station to meet current seismic code. The costs for these improvements would be included within the annual budget for pipe and pump station rehabilitation and replacement.

In accordance with the City's Climate Action Plan, the collection system was also evaluated for potential risk of climate impacts. A sea level rise analysis was conducted if sewer collection system facilities might be impacted by the tidally influenced Willamette River and the City's design standards were reviewed to determine if revisions to sewer standards were needed to reduce climate impacts. Climate Central's Coastal Risk Screening Tool was used to approximate the possible extents of flooding caused by sea level rise and found that manhole rims for trunk sewers within Milwaukie Bay Park and the inverted siphon crossing beneath Johnson Creek may be below future floodwater elevations, posing the risk of massive amounts of inflow that could overwhelm the system. To mitigate this issue, it is recommended the frame and cover of these manholes be replaced with bolt-down watertight assemblies.

1.9 Capital Improvement Program

Projects identified to address capacity deficiencies, condition-based rehabilitation and replacement projects, and seismic risk mitigations are scheduled as part of a recommended CIP. Cost estimates were developed for individual projects in conformance with the Class 5 Conceptual Report Classification of Opinion of Probable Construction Costs as developed by the Association for the Advancement of Cost Engineering. Projects were scheduled and prioritized based on District input, anticipated end of useful life, coordination with the City's Safe Access For Everyone program projects, and other prioritization criteria. A summary of the recommend capital improvement projects, including the opinion of probable construction costs, is provided in Table 1-5.

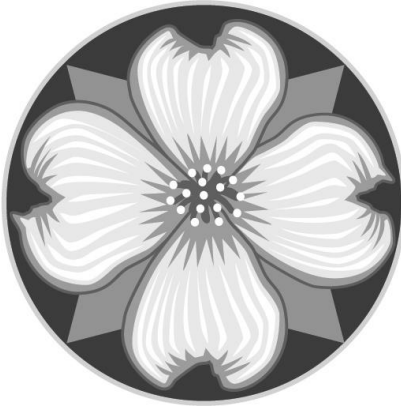
To implement the CIP, the City will need to spend approximately \$1.3M on average each year to fund capital improvement projects, with an average annual spend of \$1.6M per year during the first 10 years. The proposed level of spending does not represent a dramatic increase from the current levels of spending within the City's wastewater fund, so a dramatic increase in wastewater rates is not anticipated to be necessary to fund the recommended improvements. The City prepares budgets on a biennial basis with the next budget cycle occurring in 2023.

Opinions of probable construction costs for all eligible capacity increasing costs were used to calculate a recommendation for an updated system development charge (SDC) of \$1,065 per EDU. The calculated SDC is slightly lower than the current City wastewater SDC of \$1,269 per EDU. FCS Group has also provided potential scaling the SDC based on the square footage of structure, similar to that used by Clackamas WES.

Table 1-5. Capital Improvement Program Summary

Project ID	Description	Pipe Length (feet)	Diameter (Inches)	Project Total (2021 Dollars)
Capacity (CAP) Projects				\$1,423,000
CAP-1	Manhole Surveying	-	-	\$475,000
CAP-2	Pipe Upgrades	1,284	10	\$819,000
CAP-3	Flow Monitoring (Every 5 Years)	-	-	\$124,000
CAP-4	Harvey Street Improvements	-	-	\$5,000
Condition (C) Projects				\$23,404,000
C-1	Pipeline Rehabilitation and Replacement	Varies	Varies	\$11,928,000
C-2	Pump Station Condition Assessments	-	-	\$30,000
C-3 thru C-7	Pump Station Improvements	-	-	\$3,408,000
C-8	Johnson Creek Siphon Inspection	1,368	12	\$100,000
C-9	Waverly Heights Sewer System Reconfiguration	3,206	8	\$3,404,000
C-10	Waverly South	220	10	\$91,000
C-11	SCADA Design and Construction	-	-	\$105,000
C-12	Ardenwald North Improvements	1,542	8	\$476,000
C-13	Milwaukie/El Puente SRTS Improvements	776	10	\$522,000
C-14	Logus Road & 40 th Ave Improvements	403	6 & 8	\$149,000
C-15	Wastewater System Improvements FY2023	1,535	8	\$491,000
C-16	International Way Improvements	354	12	\$144,000
C-17	North Milwaukie Improvements	1,955	6 & 8	\$465,000
C-18	SAFE & SSMP FY2025 Improvements – Park/Lloyd/Stanley	401	8	\$139,000
C-19	Vehicle Purchases	-	-	\$752,000
C-20	Lift Station Pump & SCADA Controls Replacement	-	-	\$200,000
C-21	Wastewater Capital Maintenance Program	-	-	\$1,000,000
Resilience (R) Projects				\$13,000
R-1	S1 Island Pump Station Rebuild	-	-	Included in C-3 thru C-7
R-2	S3 Home & Monroe Pump Station Retrofit	-	-	Included in C-3 thru C-7
R-3	S5 Brookside Pump Station Retrofit and Pump Upgrade	-	-	Included in C-3 thru C-7
R-4	Bolted Manholes	-	-	\$13,000
Planning (P) Projects				\$800,000
P-1	Wastewater System Master Plan Update (Every 5 Years)	-	-	\$800,000
CIP Total				\$25,640,000

Notes: Project costs rounded up to nearest \$1,000 and based on ENR 20-City Average CCI of 11989.91 for May 2021.



RS Agenda Item

7

Business Items



COUNCIL STAFF REPORT

To: Mayor and City Council
Ann Ober, City Manager
Reviewed: Kelli Tucker, Accounting and Contracts Specialist
From: Luke Strait, Chief of Police
Subject: **Authorization of TriMet Transit Police IGA**

Date Written: May 4, 2022

ACTION REQUESTED

Council is asked to authorize the city manager to sign an intergovernmental agreement (IGA) for transit police services beginning July 1, 2022.

HISTORY OF PRIOR ACTIONS AND DISCUSSIONS

2016-2020: Milwaukie Police Department (MPD) participated in an IGA between Tri-county Metropolitan Transportation District of Oregon (TriMet), the City of Portland, and the City of Milwaukie for regional transit police services. Through that IGA, the city provided police officers for transit police services and TriMet reimbursed the city for 105% of the officers’ salaries.

[June 16, 2020](#): Council proposed that the city withdraw MPD officers from the TriMet Transit Police Division. The related video can be found [here](#) and discussion begins at 2:06. Based on Council recommendation, the city chose not to sign the pending IGA, allowing it to expire on June 30, 2020.

[February 2, 2021](#): TriMet provided an equity update to Council. The related video can be found [here](#) and discussion begins at 47:00. TriMet’s Equity and Inclusion Director John Gardner provided updates and discussed increased safety concerns and the need for additional staff on the public transit systems.

April 1, 2021: The Multnomah County Sheriff’s Office (MCSO) replaced the Portland Police Bureau as the lead law enforcement agency managing TriMet’s Transit Police Division. The sheriff’s office prioritized renewed public safety measures which emphasized community partnerships and racial equality.

Over the past 12 months, TriMet has continued to engage the city in discussions related to safety, equity, and a supportive partnership.

April 2022: TriMet submitted a draft IGA proposing the city reinstitute its partnership to provide MPD officer(s) to support transit police with terms to reimburse the city.

ANALYSIS

TriMet has been an excellent partner and a leader in analyzing the intent and impact of services from a perspective of equity and inclusion. Under the leadership of MCSO, TriMet published a new security page, which can be found online at <https://trimet.org/about/security.htm>. The transit police partnership has also been beneficial to MPD in years past, providing an additional avenue for officers to gain new experience.

BUDGET IMPACT

The city will initially need to add the FTE to authorize the hiring and pay the salary up front. TriMet would then reimburse 105% of all salary, benefits, and overtime, on a monthly basis. There would be no negative impact to the city budget once the system is in place. As MPD is currently understaffed, staff anticipates it will be eight to ten months before there is adequate staffing to support TriMet. City staff and TriMet are discussing ways TriMet could assist MPD with any related startup costs, recruitment and hiring.

WORKLOAD IMPACT

MPD will provide an officer for transit services at the time MPD has successfully over-hired by one FTE. There will be no workload impact until such time, and once operational, the additional position will handle all the resulting workload. If the council decides not to rejoin the service, staff expects the over hire will be in place through our next retirement and the department would simply not refill the vacancy created in the retirement.

CLIMATE IMPACT

Mass transit is a shared regional resource which supports the city's climate goals. Supporting the TriMet Transit Police Division recognizes the city's shared responsibility to ensure the safety of these systems with goals of increasing public transit ridership and decreasing community transportation related emissions.

COORDINATION, CONCURRENCE, OR DISSENT

MPD staff worked with TriMet, MCSO, the city manager and finance department staff on this report.

STAFF RECOMMENDATION

Staff recommends authorizing the city manager to sign the IGA to provide support to the TriMet Transit Police Division, contingent upon starting when MPD staffing allows.

ALTERNATIVES

Council could decline or request additional analysis or information.

ATTACHMENTS

1. Draft TriMet Transit Police IGA
2. Resolution

**INTERGOVERNMENTAL AGREEMENT
BETWEEN THE TRI-COUNTY METROPOLITAN TRANSPORTATION
DISTRICT OF OREGON AND THE CITY OF MILWAUKIE
FOR TRANSIT POLICE SERVICES**

Contract No. _____

This Agreement is entered into among the Tri-County Metropolitan Transportation District of Oregon (TriMet) and the City of Milwaukie, pursuant to authority granted in ORS Chapter 190 for the purpose of providing Transit Police Services to TriMet.

RECITAL

TriMet and The City of Milwaukie (“the Parties”) desire to enter into an Agreement with respect to Transit Police Division services including but not limited to deployment strategy, priority of services and administrative procedures.

AGREEMENT

The parties agree as follows:

1. TERM

The initial term of this Agreement shall be from July 1, 2021 through June 30, 2025. Thereafter, this Agreement will automatically renew for successive one-year terms through June 30, 2028, unless terminated sooner under the terms of this Agreement.

2. SERVICE LEVEL

- a. For the term of this Agreement, City of Milwaukie will provide one or more full-time officer(s) or deputies (“law enforcement personnel”) for assignment to the Transit Police Division (hereinafter Division), in such numbers and classifications as the parties mutually agree in writing, by letter among City of Milwaukie, the TriMet Chief of Police, and TriMet's Executive Director, Safety and Security (Executive Director) with such letter in substantially similar a form as set forth in Exhibit 2. If a vacancy of any of the agreed-upon number of law enforcement personnel is not filled within 90 days, the parties agree that TriMet may reassign the opening to another jurisdiction, to provide law enforcement personnel to the Division. City of Milwaukie law enforcement personnel assigned to the Division will remain employees of City of Milwaukie and will not be considered employees or agents of TriMet or Multnomah County. For purposes of this Agreement, the law enforcement personnel assigned to the Division will be referred to as assigned to the TriMet Transit Police Division.
- b. TriMet has entered into a separate intergovernmental agreement among TriMet and Multnomah County (Prime Agreement) to provide for the management, oversight, and deployment of the Division, including the assignment of Command Personnel to the Division. The Prime Agreement will provide that all Subsidiary Agencies are a third party beneficiary under the Prime Agreement for purposes of Multnomah County’s obligation to defend and indemnify Subsidiary Agencies for Multnomah County’s actions.

- c. City of Milwaukie is, and shall at all times be deemed to be an independent contractor. City of Milwaukie shall retain all authority for rendition of services, standards of performance, control of personnel, and other matters incident to the performance of services by City of Milwaukie pursuant to this Agreement. Nothing herein shall be construed as creating the relationship of employer and employee, or principal and agent, between TriMet and Multnomah County or City of Milwaukie or any of City of Milwaukie's agents or employees.

3. ASSIGNMENTS

- a. Deployment Strategy and Priority for Services: Both parties recognize that they have legitimate interests in the deployment strategy and priority of services of Transit Police personnel. The Parties shall work together to insure that the deployment and priorities of law enforcement personnel assigned to TriMet is effective and efficient, and in accordance with TriMet's Public Transit Agency Safety Plan (PTASP), TriMet's Security Management Plan (SMP), TriMet's Emergency Operations Plan (EOP), Federal Transit Administration (FTA) regulations concerning safety and security of transit systems, and as summarized in the attached Exhibit 1, which is incorporated into and made part of this Agreement.
- b. Daily Operation. Supervision of law enforcement personnel for the daily operations of the Transit Police will be provided by the Division's command personnel. Command personnel consists of a Multnomah County Deputy Sheriff with the rank of Captain to serve as the TriMet Transit Police Chief, the lieutenants, and sergeants assigned to the Division. The Police Chiefs or Sheriffs of the Subsidiary Agencies and the TriMet Transit Police Chief shall determine deployments of the respective jurisdiction's personnel on the transit system in accordance with the provisions of Exhibit 3.
- c. Policies, General Orders, Directives, and Training, Division Standard Operating Procedures. All law enforcement personnel assigned to the Division will remain subject to the Policies, General Orders, Directives, and training requirements of the City of Milwaukie. Additionally, all law enforcement personnel assigned to the Transit Police will abide by the Division's Standard Operating Procedures. In the event of a conflict among the City of Milwaukie's Policies, General Orders, Directives, and the Division's Standard Operating Procedures, the City of Milwaukie's will prevail.
 - i. TriMet will not develop, maintain, or create any policies, training materials, general orders, or directives for use by any law enforcement personnel assigned to the Transit Police in carrying out law enforcement activities. TriMet may provide orientation to law enforcement personnel on TriMet's system, the TriMet Code, and other non-enforcement specific information or training.
- d. Selection and assignment of law enforcement personnel to the Transit Police will be determined jointly by the command personnel of the City of Milwaukie and the Transit Police command personnel. Every effort will be made to select the most qualified available officer or deputy making application for assignment to the Transit Police.

- e. Supplemental Police Services: TriMet agrees to pay for supplemental Division police services on an intermittent basis to assist the Division in responding to occasional community impacts or surges that require additional policing. The Executive Director must approve the use of supplemental Division police services prior to deployment by the TriMet Transit Police Chief. Once approval is received from the Executive Director, the TriMet Transit Police Chief will submit in writing to the Executive Director the name of the Subsidiary Agency providing the supplemental police services, and the number and names of personnel being assigned.
- f. Term of Assignment: Law enforcement personnel assigned to the Transit Police Division shall serve a minimum of three (3) years. The term of assignment may be extended upon mutual agreement by TriMet and City of Milwaukie. In the event of a hardship, City of Milwaukie shall notify TriMet in writing explaining the hardship. The term of the assignment shall be revised as mutually agreed upon.

4. REIMBURSEMENT OF COSTS

- a. Personnel Costs: City of Milwaukie shall be responsible for paying the salaries, overtime, insurance, retirement, cell phone monthly bases, and other benefits (“Personnel Costs”) of its respective law enforcement personnel serving in the TriMet Transit Police Division. City of Milwaukie shall invoice TriMet monthly for all actual incurred Personnel Costs for Division personnel services provided by City of Milwaukie. Administrative fees charged by the City of Milwaukie to TriMet in connection with billings shall be 5% of direct costs of salaries, overtime, insurance, retirement and other benefits paid to its personnel (Personnel Costs) assigned to the Division. TriMet agrees to compensate City of Milwaukie within thirty (30) days after receiving the invoice in accordance with this Section.
- b. Invoices. All invoices must be submitted in conformance with Exhibit 4. TriMet agrees to compensate City of Milwaukie within thirty (30) days after receiving: (1) the respective invoice in the required format; and (2) any additional supporting documentation requested by TriMet. Invoices should be submitted to TriMet, Attn: Accounts Payable – FN4, 4012 S.E. 17th Avenue, Portland, OR 97202. For invoicing and auditing purposes, TriMet reserves the right to request any supporting documentation, including but not limited to timesheets, purchase orders, accounting charge spreadsheets, or invoices. TriMet reserves the right to reject any invoice or other payment request that is not in conformance with the requirements of this Agreement, including exhibits.
 - i. Payment. If TriMet fails to make a monthly payment within 45 days of an undisputed billing, City of Milwaukie may charge an interest rate no more than two percentage points above the interest rate on the monthly City of Milwaukie investment earnings.
- c. Training/Meeting Costs. Training and meeting costs must be pre-approved by the Transit Police Chief and the Executive Director as set forth in this paragraph. Training shall be in furtherance of the mission of the Transit Police to improve the understanding of the unique operational needs of transit or in furtherance of TriMet’s mission. Routine or required trainings for law enforcement personnel will generally not be approved.

Transit Police personnel must follow training protocols established by their respective agencies and complete the necessary paperwork to attend training. Trainings must be scheduled at least 30-days in advance of the training date. If approved by the Transit Police Chief, the Transit Police Chief shall forward the training/meeting cost requests to TriMet's Executive Director for final approval.

- d. Equipment and Uniforms: City of Milwaukie shall assign law enforcement personnel to the Transit Police with a standard uniform and a complement of personal equipment at its own expense. Non-personal equipment purchased at TriMet expense specifically for Transit Police shall be for the exclusive use of Transit Police, regardless of title. Personal equipment (such as but not limited to TASERs) purchased by TriMet for the use of law enforcement personnel from other agencies that do not provide such equipment shall remain for exclusive use within Transit Police, regardless of title.
 - i. Computers and Email. City of Milwaukie will provide access to a computer, an e-mail ID, appropriate software, training and support to all City of Milwaukie law enforcement personnel assigned to the Transit Police. All City of Milwaukie employees will maintain their City of Milwaukie e-mail ID. City of Milwaukie Information Services will provide support for the equipment.
 - ii. Cell Phones. City of Milwaukie will provide its law enforcement personnel assigned to the Transit Police with cell phones.
 - iii. Radios. City of Milwaukie shall provide 800 MHz radios to all of its law enforcement personnel assigned to the Transit Police. Law enforcement personnel assigned to the Transit Police will be dispatched and use City of Milwaukie radio channels.
- e. Body Cameras. If City of Milwaukie authorizes the use of body worn cameras, City of Milwaukie will provide body cameras to law enforcement personnel assigned to the Transit Police. City of Milwaukie will be responsible for all costs related to data storage for body cameras. New and replacement body cameras may be billed to TriMet as provided in this Section. Reimbursement for data storage costs associated with body camera footage retention system will be negotiated in a separate agreement or by amendment to this Agreement.
- f. Equipment Replacement. Expenses associated with routine replacement of uniform and equipment unintentionally damaged by Transit Division personnel or worn-out in normal use shall be billed to TriMet subsequent to pre-approval. Operating costs for equipment (such as but not limited to telecommunications, radios and mobile telephones) shall be billed to TriMet. Monthly equipment replacement reserve costs for those items City of Milwaukie manages in that manner shall be billed to TriMet.
- g. Overtime. The following provisions apply to overtime for any personnel assigned to the Division by City of Milwaukie:
 - i. Discretionary. If approved in writing by the Executive Director of Safety and Security or the Executive Director's designee, City of Milwaukie may provide

additional law enforcement personnel to perform operational overtime for special events or unusual occurrences. Overtime, when requested in these categories, will be billable at the actual overtime rate of the law enforcement personnel.

- ii. Disaster or Unusual Occurrence Overtime. If TriMet experiences a disaster or unusual occurrence that is within the TriMet District and officer overtime is requested by TriMet to stabilize the situation, the actual overtime expenditures will be billed to a grant, if available, or to TriMet if no grant funding is available.
- iii. Declared Emergency Overtime. In the case of a county, state, or national declared disaster for which overtime is required to manage the event, the overtime expense will be billed to the appropriate agency (e.g., FEMA). If reimbursement for overtime is not granted, TriMet may be responsible for the direct overtime expense of additional deputies performing duties, as negotiated under then-existing mutual aid agreements.
- iv. Tracking Overtime. City of Milwaukie will track the costs of any overtime incurred by the assigned law enforcement personnel that is related to his/her assignment to the Transit Police. TriMet agrees to reimburse City of Milwaukie for the actual cost of any TriMet-related overtime incurred by the assigned law enforcement personnel and approved by the TriMet Executive Director. TriMet will work with the TriMet Chief of Police to manage and oversee the performance of the agreement by creating written guidelines as to what routine overtime is acceptable. The Executive Director will be responsible for approving all non-routine overtime.
- h. Other Expenses. Any reimbursement by TriMet of costs or expenses incurred by City of Milwaukie in the performance of this Agreement not included in this Agreement, shall be subject to the Executive Director's prior authorization and approval, including but not limited to expenditures for supplies, vehicles, equipment and uniforms. City of Milwaukie shall be responsible for its incurred expenses in performing this Agreement unless authorized and approved by the Executive Director in accordance with this Agreement.
- i. Annual Budget: Prior to January 1st of each year of this Agreement beginning in 2022 and every year thereafter, City of Milwaukie shall submit to TriMet a proposed annual budget for services under this contract for next fiscal year (July 1 through the following June 30). The parties will then agree on the compensation to be paid by TriMet for services to City of Milwaukie under this Agreement. If the parties cannot agree on such compensation by January 1st, any party may elect to terminate this Agreement without penalty.
 - i. Notwithstanding the forgoing, prior to March 1, 2021 the parties shall agree on a budget for the remainder of the fiscal year and the following fiscal year (March 1, 2021 through June 30, 2022).
- j. Increases. If there are changes in City of Milwaukie General Orders or Policies that increase or modify the agreed upon Annual Budget, such costs increases shall be the responsibility of City of Milwaukie.

5. AGENCY COOPERATION AND COORDINATION

- a. The parties will work closely and continuously communicate with each other to ensure that the resources, strategies, work force deployment, and initiatives of TriMet, Multnomah County, and City of Milwaukie are coordinated and effective.
- b. The TriMet Chief of Police or his/her designee, will coordinate contact with the parties to insure that the resources, strategies, work force deployment, and initiatives of the Division and those of the respective law enforcement agencies are coordinated and effective.
- c. City of Milwaukie agrees to work cooperatively in an effort to increase reporting of TriMet related incidents. City of Milwaukie agrees to provide to the Division TriMet coded reports, data, and records based on the National Incident-Based Reporting System (NIBRS) or other similar reporting system. TriMet agrees to make available to City of Milwaukie, through the Division, particular data, reports, records, etc. that will assist in fulfilling the mission as outlined in this document.
- d. The Prime Agreement establishes that Multnomah County and TriMet will develop a strategic plan that will include performance metrics to measure the effectiveness of transit police services with the goal of continuous improvement of services. These performance metrics will be used to prioritize the deployment of services and overall law enforcement strategy for the Division.

6. COLLECTIVE BARGAINING AGREEMENTS

The parties agree that law enforcement personnel assigned to the Division from City of Milwaukie are subject to and protected by their respective collective bargaining agreements, and by Exhibit 3 to this Agreement, to the extent the terms of Exhibit 3 are not in conflict with the respective collective bargaining agreements. Determination of officer seniority of the Transit Police Division for purposes of making shift, vacation, holiday, and overtime assignments shall be according to the attached Exhibit 3.

7. VEHICLES

- a. Vehicles assigned to the Transit Police Division shall be purchased by TriMet for the exclusive use of law enforcement personnel. Those vehicles shall be marked with appropriate distinctive insignia to indicate they are Transit Police vehicles. TriMet shall hold title to all vehicles assigned to the Transit Division and be responsible for obtaining and maintaining all vehicle registration and applicable insurance, including self insurance.
- b. TriMet grants the following permit to City of Milwaukie for use of the vehicles described in this Section. City of Milwaukie shall use Vehicles only for the purposes expressly provided for herein, and shall, at its own expense, comply with and obey all laws, rules and regulations in using the Vehicles, including applicable requirements of

the Federal Transit Administration. City of Milwaukie represents and warrants that its personnel are adequately trained and licensed to carry out the activities of City of Milwaukie under this Permit, and specifically, to operate the Vehicles. City of Milwaukie shall allow only such trained and licensed personnel to perform the activities authorized by this permit, including operation of the Vehicles.

- c. Notwithstanding any other provision of this Agreement, including Section 10 TERMINATION, either party may immediately terminate this permit of use granted under 6 by providing written notice to the other party as provided in this Agreement for notices.
- d. City of Milwaukie shall not permit any other party other than officers from other Transit Police Division participating jurisdictions to take possession of or use the Vehicles described in this Section 7 while in the custody of City of Milwaukie under this Agreement.

8. **K-9 UNIT TRAINING FACILITY**

- a. TriMet has entered into a ground lease (hereinafter “Lease”) with the Port of Portland effective August 1, 2012 for the use of certain premises (hereinafter “Premises”) to house explosives storage magazines in support of TriMet’s training requirements to maintain U.S. Department of Homeland Security, Transportation Security Administration (“TSA”) certification for K-9 units. Transit Police Division personnel as designated by TriMet and TSA will be authorized to access and utilize the Premises for purposes of TriMet’s K-9 unit training in accordance with the Lease terms. City of Milwaukie agrees that the work and operations of the Division including assigned transit police personnel, with respect to activities relating to the Premises, are subject to and shall comply with all provisions and requirements of the Lease, the terms of which are incorporated into and made part of this Agreement, and specifically any obligations of TriMet as Lessee.
- b. Based on funding and other needs, the K-9 Program will be approved annually by the General Manager. K-9 Patrol Unit functions may include:
 - i. Conduct Patrol duties with officer;
 - ii. Respond to calls for suspected explosives;
 - iii. Proactively screen deliveries;
 - iv. Perform perimeter checks;
 - v. Evaluate abandoned packages;
 - vi. Support executive protection (with TriMet’s approval only);
 - vii. Support the management of special events; and
 - viii. Public relation events and community outreach;

9. PROJECT MANAGERS

a. Project Managers. All communications or notices under this Agreement shall be provided to the Project Managers designated by this Paragraph. The parties shall promptly notify each other in writing of any change in the designated Project Managers.

i. TriMet’s Project Manager is:

Executive Director of Safety and Security,
phone (503) 962-5823
address: 1020 NE 1st Avenue, Portland, 97232, mailstop: PSO,
Portland, OR 97232.

ii. City of Milwaukie Project Manager is:

10. TERMINATION

- a. Any party may terminate this Agreement for its convenience and without penalty by giving the other parties thirty (30) days written notice of its intention to terminate.
- b. If TriMet is unable to appropriate sufficient funds to pay City of Milwaukie for their services under this Agreement, TriMet must notify City of Milwaukie and Multnomah County and this Agreement shall automatically terminate as of the end of the last fiscal year for which such appropriations are available.
- c. In addition to the rights afforded under subparagraphs (a) and (b) above, this Agreement may be terminated by a party as a result of a material breach of an obligation by another party to this Agreement as provided by law or in equity. Prior to such a termination, the terminating party must provide the other parties with thirty (30) calendar days written notice of the material breach, including a detailed explanation of the breach during which period the breaching party may cure the material breach (“Cure Period”). If at the end of the Cure Period the breaching party has not cured the default, the terminating party may terminate this Agreement for default.
- d. Any obligations arising prior to the date of termination survive the termination, including any obligation to defend, indemnify and hold harmless any other jurisdiction.
- e. Upon expiration or termination of this Agreement for any reason, TriMet will receive all equipment, vehicles, and supplies billed to TriMet during the course of this Agreement. Equipment and materials in excess of \$1,000 acquired by City of Milwaukie pursuant to this Agreement will be cataloged and tracked by City of Milwaukie, and transferred to TriMet upon termination. In addition, City of Milwaukie will transfer to TriMet the balance of all equipment reserve accounts to TriMet upon termination for any reason.

11. INDEMNIFICATION

- a. Intent. Multnomah County and City of Milwaukie will be responsible for the work of the law enforcement personnel assigned to the TriMet Transit Police Division. It is the intent of the parties that each party be responsible for their own actions or the actions they direct or control. Personnel assigned to the division from City of Milwaukie are not agents of TriMet or Multnomah County. If a suit or action results from the policy, direction, act or omission of a party, that party shall defend and indemnify the other party as provided below.
- b. Indemnity to TriMet and Multnomah County. Subject to the limits of the Oregon Tort Claims Act and the Oregon Constitution, if applicable, City of Milwaukie shall indemnify and hold harmless TriMet and Multnomah County and their respective officers, agents, and employees, or any of them from any and all claims, actions, suits, liability, loss, costs, expenses, and damages of any nature whatsoever, by any reason of or arising out of any act or omission of City of Milwaukie, its officers, agents, and employees, or any of them relating to or arising out of performing services pursuant to this agreement. In the event that any such suit based upon such a claim, action, loss, or damages is brought against TriMet or Multnomah County, City of Milwaukie shall defend the same at its sole cost and expense; provided that TriMet and Multnomah County each reserve the right to participate in said suit if any principle of governmental or public law is involved; and if final judgment in said suit be rendered against TriMet or Multnomah County, and its respective officers, agents, and employees, or any of them, or jointly against TriMet, the County, and City of Milwaukie and their respective officers, agents, and employees, or any of them, City of Milwaukie shall satisfy the same. City of Milwaukie is self-insured and maintains excess coverage for amounts over one million dollars. City of Milwaukie shall maintain excess coverage in an amount of at least one million dollars (\$1,000,000) and name TriMet and Multnomah County as an additional insured.
- c. Indemnity to City of Milwaukie. Subject to the limits of the Oregon Tort Claims Act and the Oregon Constitution, if applicable, TriMet shall indemnify and hold harmless City of Milwaukie and its officers, agents, and employees, or any of them from any and all claims, actions, suits, liability, loss, costs, expenses, and damages of any nature whatsoever, by any reason of or arising out of any act or omission of TriMet, its officers, agents, and employees, or any of them relating to or arising out of performing services pursuant to this agreement. In the event that any such suit based upon such a claim, action, loss, or damages is brought against City of Milwaukie, TriMet shall defend the same at its sole cost and expense; provided that City of Milwaukie reserves the right to participate in said suit if any principle of governmental or public law is involved; and if final judgment in said suit be rendered against City of Milwaukie, and its officers, agents, and employees, or any of them, or jointly against City of Milwaukie and TriMet and their respective officers, agents, and employees, or any of them, the TriMet shall satisfy the same. TriMet is self-insured and maintains excess coverage for amounts over one million dollars.
- d. Liability Related to TriMet Ordinances, Policies, Rules and Regulations. In executing this Agreement, the City of Milwaukie does not assume liability or responsibility for, or in any way release TriMet from any liability or responsibility which arises in whole, or in part, from the validity or enforcement of TriMet's ordinances, policies, customs, rules

or regulations. If any cause, claim, suit, action or administrative proceeding is commenced in which the enforceability and/or validity of any such TriMet adopted ordinance, policy, custom, rule or regulation is at issue, TriMet shall defend the enforceability and/or validity of any such ordinance, policy, custom, rule or regulation at its sole expense and, if judgment is entered or damages are awarded against TriMet, City of Milwaukie, or an individual officer due to the enforceability and/or validity of any such TriMet ordinance, policy, custom, rule or regulation, TriMet shall satisfy the same, including all chargeable costs and reasonable attorney fees. If a claim, suit, administrative proceeding or action determines that a TriMet policy or ordinance is unconstitutional and/or violates a person's rights, TriMet shall indemnify City of Milwaukie and any involved individual officer for damages attributable to the policy or ordinance being unconstitutional and/or a violation of a person's rights. TriMet's defense and indemnification of an individual officer pursuant to this section shall be in accordance with ORS 30.285. As set forth in this section, TriMet shall be liable for the defense and indemnity of claims that allege municipal liability as a result of a TriMet ordinance, policy, custom, rule or regulation, and nothing in this section is intended to override the provisions of this Section that make each party liable for its own actions.

12. **THIRD PARTY BENEFICIARY**

The parties acknowledge and agree that Multnomah County is a third party beneficiary of the indemnity provisions of Section 11 of this Agreement and shall be entitled to enforce its rights under Section 11 of the Agreement as if it were a party hereto.

13. **SEVERABILITY**

The parties agree that if any term or provision of this Agreement is declared by a court to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected.

14. **MEDIATION**

Should any dispute arise between the Parties concerning this Agreement, which is not resolved by mutual agreement, it is agreed that it will be submitted to mediated negotiation prior to any Party commencing litigation. In such an event, the Parties to this Agreement agree to participate in good faith in a non-binding mediation process. The mediator shall be selected by mutual agreement of the Parties, but in the absence of such agreement each Party shall select a temporary mediator and those mediators shall jointly select the permanent mediator. All costs of mediation shall be borne equally by all Parties.

15. **COMPLIANCE WITH LAWS**

Each party must comply with all federal, state, and local laws, rules and regulations applicable to this Agreement.

16. **DATA RETENTION**

Each party must have access to the books, documents, and other records of the other parties related to this Agreement for the purpose of examination, copying, and audit, unless otherwise

limited by law. Records and documents with respect to matters covered in this Agreement shall be retained for three years after the termination of this Agreement.

17. **SURVIVAL**

The terms, conditions, representations and all warranties contained in this Agreement shall survive the termination or expiration of this Agreement.

18. **AMENDMENT**

This Agreement may be modified at any time by written agreement of authorized representatives of TriMet and City of Milwaukie.

19. **INSURANCE**

Each party shall be responsible for providing workers' compensation insurance for their respective employees, as required by law, and may elect to commercially insure or self insure for any other liabilities assumed under this Agreement.

20. **FEDERAL FUNDING**

This Agreement is funded in part by a U.S. Department of Homeland Security Grant Agreement between TriMet and the U.S. Department of Homeland Security. This Agreement is subject to all provisions prescribed for third party contracts by that financial assistance agreement as set forth in the attached and incorporated Exhibit 5.

21. **INTEGRATION**

This Agreement as set forth herein incorporates by reference all of the terms and conditions of Exhibits 1 through 5 attached hereto which are made a part of this Agreement and constitutes the entire agreement among the parties.

22. **COUNTERPARTS**

This Agreement may be executed in several counterparts, each of which shall be an original, each of which shall constitute one and the same instrument.

SIGNATURE PAGE FOLLOWS

The parties have caused this Agreement to be executed by their duly appointed officers, authorized to bind the party for which they sign.

TRIMET

CITY OF MILWAUKIE

General Manager
TriMet

Date

Its

Andrew Wilson
TriMet Exec. Dir. Safety and Security

Date

Date

First Name, Last Name
Title

Date

Approved as to form:

TriMet Legal Department

City of Milwaukie Attorney

Date

Date

Exhibits:

Exhibit 1 – Transit Police Division Deployment Strategy and Priorities

Exhibit 2 – Transit Police Division Staffing Letter

Exhibit 3 – Transit Police Division Personnel Operations

Exhibit 4 – Billing Requirements

Exhibit 5 – U. S. Department of Homeland Security Grant Requirements

EXHIBIT 1

Transit Services Deployment Strategy and Priorities

GOAL: To build and maintain public confidence in the security and safety of TriMet's transit system through the development and implementation of proactive strategies, practices, and resource allocation and deployment methodologies to help ensure the safety and security of TriMet customers, employees, and the general public as they interact with the transit system.

OBJECTIVES: TriMet's objectives for the TriMet Transit Police Division are:

1. To focus efforts on prevention and pro-active enforcement to maximize visible presence on the system, including the use of outreach strategies and forming partnerships with community elements and service providers.
2. To build and maintain an appropriate level of cooperation and coordination between the TriMet Transit Police Division, contracted security services provider, and TriMet field personnel, i.e., Operators, Customer Safety Supervisors, and Road and Rail Supervisors, including responding to calls for assistance and providing or coordinating follow-up investigation or tactical response.
3. To build a high level of cooperation and coordination between the TriMet Transit Police Division and other federal, state, and local law enforcement agencies.
4. To maintain public confidence in use of transit services.
5. To report related incidents to TriMet.

STRATEGY: The deployment of the TriMet Transit Police Division is to be developed in coordination with TriMet and will take into consideration the identified security needs of TriMet. Coordination will emphasize information sharing and deployment strategies aimed at protecting customers, TriMet employees, and the general public as they interact with the transit system.

PRIORITIES: Deployment priorities for the TriMet Transit Police Division will emphasize:

1. Enforcement: Focusing on TriMet ordinances and State and City laws to help ensure the security of passengers, employees, and TriMet's property by responding timely to transit incidents.
 - a. TriMet has decriminalized fare evasion penalties. The TriMet Code prohibits law enforcement from asking TriMet riders for proof of payment (e.g. fare inspection) absent authorization from the General Manager. As a result, fare

inspection should almost exclusively be conducted by personnel that are not law enforcement officers.

2. Problem Orienting Policing: Identifying problem areas, routes and/or transit centers/transfer points based on data relative to the greatest needs for preventive action; using-when-ever possible-community policing strategies. When appropriate, coordinate and assist in providing other services, including services for individuals on transit without stable housing and individuals with behavioral, health, or quality of life concerns, as well as services offered by TriMet such as fare relief programs.
3. Community Involvement: It is a priority of TriMet to have our transit policing integrated with the City of Milwaukie's initiatives on community policing to encourage more direct police involvement with our riders and employees and to have a visible pro-active presence on and around TriMet's public facilities.
4. Visible Presence: On board buses and light rail (MAX) and at transit center/transfer points.
5. Special Event Support: Develop and execute special operations plans, which includes transit security for planned and unplanned events. Participate in incident command posts established by State and local law enforcement agencies to ensure mass transit needs are represented when law enforcement activity may impact transit operations and coordinate efforts between law enforcement and TriMet's Operations Command Center
6. Reporting: Provides periodic and timely reports concerning the TriMet Transit Police Division's work, analyzes crime, part 1 crime data and trends, and related system security and safety data, and makes recommendations to TriMet with respect to strategy, deployment, and resource allocation.
7. Citizen Complaints: All citizen complaints concerning Transit Police personnel from the City of Milwaukie will be referred to the City of Milwaukie Chief of Police with the finding copied to the TriMet Chief of Police. Both parties agree to:
 - a. Maintain a police accountability system as described at subsections (b) through (g) below.
 - b. Provide an accountability system intake point to which the other participating Transit Police jurisdictions ("jurisdictions") can refer or deliver complaints about City of Milwaukie personnel working in the Transit Police Division.
 - c. Receive, review and evaluate all complaints referred or delivered by the other jurisdictions concerning its officers or deputies who work in the Transit Police Division.
 - d. Deliver all complaints about an officer or deputy who works in the Transit Police Division received from citizens or generated by peace

officers to the accountability system intake point of the subject officer's employing jurisdiction.

- e. Absent a conflict with ORS 181A.830(3), permit investigators from other jurisdictions to share information with their counterparts investigating or reviewing an incident involving a Transit Police Division officer.
- f. To the extent it does not conflict with any applicable labor agreement and agency procedures or directives, the following procedure will be used to handle criminal and non-criminal investigations related to law enforcement personnel assigned to the Transit Police:
 - i. Non-Criminal Investigations. Non-criminal complaints received by the Transit Police Division (TPD), Internal Police Review (IPR) or any partner agency will be referred to the respective member's agency for disposition. The member's agency will be the lead agency and will be responsible for processing/investigating the complaint using their policies.
 - ii. Criminal Investigations. Complaints or events that warrant a criminal investigation will be referred to the jurisdiction of occurrence. The jurisdiction of occurrence will become the lead agency. The lead agency will be responsible for processing/investigating the incident using their policies.
 - iii. Cooperation. All TPD agencies acknowledge that investigations should be thorough and completed without unreasonable delay. Agencies will cooperate with the lead agency in an investigation, to the extent allowed by their (partner agency) policies and collective bargaining agreements, to ensure the investigation is thorough and completed in a timely manner.
 - iv. Notifications. When the lead agency receives a complaint or opens an investigation where there is alleged misconduct by a TPD member, the lead agency will notify the Transit Police Chief and the employing agency as soon as possible. At the completion of each investigation the lead agency will apprise the Transit Police Chief and the employing agency of the findings.
- g. Conduct joint investigations when necessary and appropriate.

**EXHIBIT 2
TRANSIT POLICE DIVISION STAFFING LETTER**

(on TriMet letterhead)

(date of letter)

First Name Last Name

City of Milwaukie

RE: City of Milwaukie Police Staffing to TriMet Transit Police Division

Dear _____:

This letter is issued pursuant to the June 2021 Agreement between the Tri-County Metropolitan Transportation District of Oregon (TriMet) and City of Milwaukie, for TriMet Transit Police Services, as amended, to establish or change the number of police officers assigned from the City of Milwaukie to the TriMet Transit Police Division.

Prior Staffing from (effective date of agreement), , To-Date

- from (effective date of agreement), 2021 to (date) (specify number of officer(s))
- from (date) to (date) etc. (specify revised number of officer(s) etc.)
- from (date) to (effective date of this staffing change) (specify revised number of officer(s))

Staffing from (effective date of this staffing change)

- from (effective date of this staffing change) (specify revised number of officer(s))

Any future change in the number of personnel assigned from the City of Milwaukie to the TriMet Transit Police Division is subject to mutual agreement by the parties by subsequent letter in similar form.

Sincerely,

Andrew Wilson
Executive Director, Safety and Security
TriMet

Agreed to by the City of Milwaukie:

Agreed to by Multnomah County:

Title

date

Transit Police Commander

date

EXHIBIT 3

TRANSIT POLICE DIVISION PERSONNEL OPERATIONS

Personnel operations shall be governed by the following three documents that collectively make up Exhibit 3, each of which may be updated from time to time:

Exhibit 3(a) SOP A-11 (Overtime), Exhibit 3(b) SOP A-17 Shift Bid, and Exhibit 3(c) SOP A-34 Vacation Bid.

EXHIBIT 5 – TRANSIT SECURITY GRANT PROGRAM (TSGP)
FEDERAL REQUIREMENTS CONTRACT LANGUAGE

1. No Government Obligation To Third Parties

TriMet and Multnomah County (Contractor) acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to TriMet, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

2. Program Fraud and False or Fraudulent Statement and Related Acts

The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986 as amended, 31 U.S.C 3801 et seq. And U.S. DOT regulations, “Program Fraud civil Remedies, “ 49 CFR Part 31, apply to its actions pertaining to this Project. Upon execution of the contract, the Contractor certifies or affirms the truthfulness of any statement it has made, it makes, or causes to be made, pertaining to this contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.

The Contractor agrees to include the above paragraph in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

3. Audit and Inspection of Records

- A. Contractor shall maintain a complete set of records relating to this contract, in accordance with generally accepted accounting procedures. Contractor shall permit the authorized representatives of TriMet, the U.S. Department of Homeland Security (DHS), and the Comptroller General of the United States to inspect and audit all work, materials, payrolls, books, accounts, and other data and records of Contractor relating to its performance under this contract until the expiration of three (3) years after final payment under this contract.
- B. Contractor further agrees to include in all of its subcontracts under this contract a provision to the effect that the subcontractor agrees that TriMet, the U.S. Department of Homeland Security (DHS), and the Comptroller General of the United States, or any of their duly authorized representatives shall, until the expiration of three (3) years after final payment under the subcontract, have access to and the right to examine any directly pertinent books, documents, papers, and other records of the subcontractor. The term "subcontract" as used in this Paragraph excludes (1) purchase orders not exceeding \$10,000.00 and (2) subcontracts or purchase orders for public utility services at rates established for uniform applicability to the general public.
- C. The periods of access and examination described in subparagraphs A and B of this Paragraph for records that relate to (1) disputes between TriMet and Contractor, (2) litigation or settlement of claims arising out of the performance of this contract, or (3) costs and expenses of this contract as to which exception has been taken by the Comptroller General or any of his or her duly authorized representatives, shall continue until all disputes, claims, litigation, appeals, and exceptions have been resolved.

4. Right to Inventions (04/16)

If the contract meets the definition of “funding agreement” under 37 CFR § 401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,”

the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

5. Equal Employment and Civil Rights (01/18)

Contractor agrees to comply with the following provisions and include in all subcontracts.

- A. Nondiscrimination - In accordance with Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000d and Federal transit law, TriMet is a recipient of Federal funds, and as such, prohibits discrimination of any kind. The Contractor shall not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability .
- B. Equal Employment Opportunity – Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of "federally assisted construction contracts" must include the specifications set forth in §60-4.3, in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."
- C. Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. Sections 1681 et seq. and implementing Federal regulations, "Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance," 49 CFR Part 25, and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect activities undertaken in the course of this Contract. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements DHS may issue.
- D. Age - In accordance with the Age Discrimination in Employment Act of 1974, as amended, 42 U.S.C Sections 6101 et seq., and Department of Health and Human Services implementing regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance, 45 CFR Part 90, the Age Discrimination in Employment Act, 29 U.S.C. Sections 621 et seq., and Equal Employment Opportunity Commission implementing regulations, "Age Discrimination in Employment Act," 29 CFR Part 1625, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
- E. Disabilities - In accordance with section 102 of the Americans with Disabilities Act (ADA), as amended, 42 U.S.C. Sections 12101 et seq., and Titles I, II, III, IV, and V of the ADA, the Contractor shall comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
- F. The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

6. Incorporation of Department of Homeland Security Requirements

The preceding provisions include, in part, certain standard terms and conditions required by DHS, whether or not

expressly set forth in the preceding contract provisions. All contractual provisions required by DHS, are hereby incorporated by reference. The Contractor shall comply with the applicable DHS Special Conditions set forth in Appendix A.

7. Debarment and Suspension (04/16)

The certification in this clause is a material representation of fact relied upon by TriMet. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to TriMet, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 49 CFR 29, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions. A contract (or subcontract) award must not be made to parties listed on the government wide exclusions in the System for Award Management (SAM) in accordance with OMB guidelines at 2 CFR 180.

8. Solid Waste Disposal Act (10/16)

The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 C.F.R. part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

9. Procurement of Recovered Materials (04/16)

TriMet and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired by the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

10. Recycled Products

The contractor agrees to comply with all the requirements of section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247

11. Byrd Anti-Lobbying Amendment (10/16)

Contractor shall not use federal assistance to influence any officer or employee of a federal agency, member of Congress or an employee of a member of Congress, or officer or employee of Congress on matters that involve the Underlying Agreement, including any extension or modification, the contractor agrees to comply with the following: (1) Laws, Regulations, Requirements, and Guidance. This includes:

(a) The Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352, as amended,

(b) U.S. DOT regulations, "New Restrictions on Lobbying," 49 C.F.R. part 20, to the extent consistent with 31 U.S.C. § 1352, as amended, and

(c) Any applicable federal laws, regulations, requirements, and guidance prohibiting the use of federal assistance for any activity concerning legislation or appropriations designed to influence the U.S. Congress or a state legislature, and

(2) Exception. If permitted by applicable federal law, regulations, requirements, or guidance, such lobbying activities described above may be undertaken through the Recipient's or Subrecipient's proper official channels.

A. Definitions. As used in this clause,

"Agency", as defined in 5 U.S.C. 552(f), includes Federal executive departments and agencies as well as independent regulatory commissions and Government corporations, as defined in 31 U.S.C. 9101(1).

"Covered Federal action" means any of the following Federal actions:

- (1) The awarding of any Federal contract;
- (2) The making of any Federal grant;
- (3) The making of any Federal loan;
- (4) The entering into of any cooperative agreement; and,
- (5) The extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

Covered Federal action does not include receiving from an agency a commitment providing for the United States to insure or guarantee a loan. "Indian tribe" and "tribal organization" have the meaning provided in section 4 of the Indian self-determination and Education Assistance Act (25 U.S.C. 450B). Alaskan Natives are included under the definitions of Indian tribes in that Act.

"Influencing or attempting to influence" means making, with the intent to influence, any communication to or appearance before an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any covered Federal action.

"Local government" means a unit of government in a State and, if chartered, established, or otherwise recognized by a State for the performance of a governmental duty, including a local public authority, a special district, an intrastate district, a council of governments, a sponsor group representative organization, and any other instrumentality of a local government.

"Officer or employee of an agency" includes the following individuals who are employed by an agency:

- (1) An individual who is appointed to a position in the Government under title 5, U.S. Code, including a position under a temporary appointment;
- (2) A member of the uniformed services as defined in section 101(3), title 37, U.S. Code;
- (3) A special Government employee as defined in section 202, title 18, U.S. Code; and,
- (4) An individual who is a member of a Federal advisory committee, as defined by the Federal Advisory Committee Act, title 5, U.S. Code appendix 2.

"Person" means an individual, corporation, company association, authority, firm, partnership, society, State, and local government, regardless of whether such entity is operated for profit or not for profit. This term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

"Reasonable compensation" means, with respect to a regularly employed officer or employee of any person, compensation that is consistent with the normal compensation for such officer or employee for work that is not furnished to, not funded by, or not furnished in cooperation with the Federal Government. "Reasonable payment" means, with respect to professional and other technical services, a payment in an amount that is consistent with the amount normally paid for such services in the private sector. "Recipient" includes all contractors and subcontractors at any tier in connection with a Federal contract. The term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

"Regularly employed" means, with respect to an officer or employee of a person requesting or receiving a Federal contract, an officer or employee who is employed by such person for at least 130 working days within one year immediately preceding the date of the submission that initiates agency consideration of such person for receipt of such contract. An officer or employee who is employed by such person for less than 130 working days within one year immediately preceding the date of the submission that initiates agency consideration of such person shall be considered to be regularly employed as soon as he or she is employed by such person for 130 working days.

"State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a territory or possession of the United States, an agency or instrumentality of a State, and a multi-State, regional, or interstate entity having governmental duties and powers.

B. Prohibition

(1) Section 1352 of title 31, U.S. Code provides in part that no appropriated funds may be expended by the recipient of a Federal contract, grant, loan, or cooperative agreement to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) The prohibition does not apply as follows:

(i) Agency and legislative liaison by Own Employees.

(a) The prohibition on the use of appropriated funds, in paragraph B (1) of this section, does not apply in the case of a payment of reasonable compensation made to an officer or employee of a person requesting or receiving a Federal contract if the payment is for agency and legislative liaison activities not directly related to a covered Federal action.

(b) For purposes of paragraph B (2) (i) (a) of this section, providing any information specifically requested by an agency or Congress is allowable at any time.

(c) For purposes of paragraph B (2) (i) (a) of this section the following agency and legislative liaison activities are allowable at any time only where they are not related to a specific solicitation for any covered Federal action:

(1) Discussing with an agency (including individual demonstrations) the qualities and characteristics of the person's products or services, conditions or terms of sale, and service capabilities; and,

(2) Technical discussions and other activities regarding the application or adaptation of the person's products or services for an agency's use.

(d) For purposes of paragraph B (2) (i) (a) of this section, the following agency and legislative liaison activities are allowable only where they are prior to formal solicitation of any covered Federal action:

(1) Providing any information not specifically requested but necessary for an agency to make an informed decision about initiation of a covered Federal action;

(2) Technical discussions regarding the preparation of an unsolicited proposal prior to its official submission; and,

(3) Capability presentations by persons seeking awards from an agency pursuant to the provisions of the Small Business Act, as amended by Public Law 95-507 and other subsequent amendments.

- (e) Only those activities expressly authorized by paragraph B (2) (i) of this section are allowable under paragraph B (2) (i).
- (ii) Professional and technical services by Own Employees.
 - (a) The prohibition on the use of appropriated funds, in paragraph B (1) of this section, does not apply in the case of a payment of reasonable compensation made to an officer or employee of a person requesting or receiving a Federal contract or an extension, continuation, renewal, amendment, or modification of a Federal contract if payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal contract or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal contract.
 - (b) For purposes of paragraph B (2) (ii) (a) of this section, "professional and technical services" shall be limited advice and analysis directly applying any professional or technical discipline. For example, drafting of a legal document accompanying a bid or proposal by a lawyer is allowable. Similarly, technical advice provided by an engineer on the performance or operational capability of a piece of equipment rendered directly in the negotiation of a contract is allowable. However, communications with the intent to influence made by a professional (such as a licensed lawyer) or a technical person (such as a licensed accountant) are not allowable under this section unless they provide advice and analysis directly applying their professional or technical expertise and unless the advice or analysis is rendered directly and solely in the preparation, submission or negotiation of a covered Federal action. Thus, for example, communications with the intent to influence made by a lawyer that do not provide legal advice or analysis directly and solely related to the legal aspects of his or her client's proposal, but generally advocate one proposal over another are not allowable under this section because the lawyer is not providing professional legal services. Similarly, communications with the intent to influence made by an engineer providing an engineering analysis prior to the preparation or submission of a bid or proposal are not allowable under this section since the engineer is providing technical services but not directly in the preparation, submission or negotiation of a covered Federal action.
 - (c) Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation, or reasonably expected to be required by law or regulation, and any other requirements in the actual award documents.
 - (d) Only those services expressly authorized by paragraph B (2) (ii) of this section are allowable under paragraph B (2) (ii).

(iii) Reporting for Own Employees.

No reporting is required with respect to payments of reasonable compensation made to regularly employed officers or employees of a person.

(iv) Professional and technical services by Other than Own Employees.

- (a) The prohibition on the use of appropriated funds, in paragraph B (1) of this section, does not apply in the case of any reasonable payment to a person, other than an officer or employee of a person requesting or receiving a covered Federal action, if the payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal contract or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal contract.
- (b) For purposes of paragraph B (2) (iv) (a) of this section, "professional and technical services" shall be limited advice and analysis directly applying to any professional or technical discipline. For example, drafting of a legal document accompanying a bid or proposal by a lawyer is allowable. Similarly, technical advice provided by an engineer on the performance or operational capability of a piece of equipment rendered directly in the negotiation of a contract is allowable. However,

communications with the intent to influence made by a professional (such as a licensed lawyer) or a technical person (such as a licensed accountant) are not allowable under this section unless they provide advice and analysis directly applying their professional or technical expertise and unless the advice or analysis is rendered directly and solely in the preparation, submission or negotiation of a covered Federal action. Thus, for example, communications with the intent to influence made by a lawyer that do not provide legal advice or analysis directly and solely related to the legal aspects of his or her client's proposal, but generally advocate one proposal over another are not allowable under this section because the lawyer is not providing professional legal services. Similarly, communications with the intent to influence made by an engineer providing an engineering analysis prior to the preparation or submission of a bid or proposal are not allowable under this section since the engineer is providing technical services but not directly in the preparation, submission or negotiation of a covered Federal action.

- (c) Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation, or reasonably expected to be required by law or regulation, and any other requirements in the actual award documents.
- (d) Persons other than officers or employees of a person requesting or receiving a covered Federal action include consultants and trade associations.
- (e) Only those services expressly authorized by paragraph B (2) (iv) of this section are allowable under paragraph B (2) (iv).

C. Disclosure

- (1) Each person who requests or receives from an agency a Federal contract shall file with that agency a certification, set forth in this document, that the person has not made, and will not make, any payment prohibited by paragraph (b) of this clause.
- (2) Each person who requests or receives from an agency a Federal contract shall file with that agency a disclosure form, Standard Form-LLL, "Disclosure of Lobbying Activities," if such person has made or has agreed to make any payment using non-appropriated funds (to include profits from any covered Federal action), which would be prohibited under paragraph (b) of this clause if paid for with appropriated funds.
- (3) Each person shall file a disclosure form at the end of each calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously filed by such person under paragraph C (2) of this section. An event that materially affects the accuracy of the information reported includes:
 - (a) A cumulative increase of \$25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered Federal action; or
 - (b) A change in the person(s) or individual(s) influencing or attempting to influence a covered Federal action; or,
 - (c) A change in the officer(s), employee(s), or member(s) contacted to influence or attempt to influence a covered Federal action.
- (4) Any person who requests or receives from a person referred to in paragraph (C) (1) of this section a subcontract exceeding \$100,000 at any tier under a Federal contract shall file a certification, and a disclosure form, if required, to the next tier above.
- (5) All disclosure forms, but not certifications, shall be forwarded from tier to tier until received by the person referred to in paragraph C (1) of this section. That person shall forward all disclosure forms to the agency.

D. Agreement

In accepting any contract resulting from this solicitation, the person submitting the offer agrees not to make any payment prohibited by this clause.

E. Penalties

- (1) Any person who makes an expenditure prohibited under paragraph B of this clause shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure.
- (2) Any person who fails to file or amend the disclosure form to be filed or amended if required by this clause, shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.
- (3) Contractors may rely without liability on the representations made by their subcontractors in the certification and disclosure form.

F. Cost Allowability

Nothing in this clause is to be interpreted to make allowable or reasonable any costs which would be unallowable or unreasonable in accordance with Part 31 of the Federal Acquisition Regulation. Conversely, costs made specifically unallowable by the requirements in this clause will not be made allowable under any of the provisions of Part 31 of the Federal Acquisition Regulation.

12. Dispute Resolution and Remedies (08/16)

12.1 Disputes

SHOULD ANY DISPUTE ARISE BETWEEN THE PARTIES CONCERNING THIS AGREEMENT THAT IS NOT RESOLVED BY MUTUAL AGREEMENT, IT IS AGREED THAT IT WILL BE SUBMITTED TO MEDIATED NEGOTIATION PRIOR TO ANY PARTY COMMENCING LITIGATION. IN SUCH AN EVENT, THE PARTIES TO THIS AGREEMENT AGREE TO PARTICIPATE IN GOOD FAITH IN A NON-BINDING MEDIATION PROCESS. THE MEDIATION SHALL TAKE PLACE IN PORTLAND, OREGON. THE MEDIATOR SHALL BE SELECTED BY MUTUAL AGREEMENT OF THE PARTIES, BUT IN THE ABSENCE OF SUCH AGREEMENT EACH PARTY SHALL SELECT A TEMPORARY MEDIATOR AND THOSE MEDIATORS SHALL JOINTLY SELECT THE PERMANENT MEDIATOR. THE MEDIATOR'S FEES AND COSTS SHALL BE BORNE EQUALLY BY THE PARTIES.

12.2 Performance During Dispute

Unless otherwise directed by TriMet, Contractor shall continue performance under this Contract while matters in dispute are being resolved.

12.3 Remedies

All claims, counterclaims, disputes and other matters in question between TriMet and the Contractor arising out of or relating to this agreement or its breach will be decided by mediation if the parties mutually agree, or in a court of competent jurisdiction within the State of Oregon in which TriMet is located.

12.4 Rights and Remedies

The duties and obligations imposed by the Contract documents and the rights and remedies available there under shall be in addition to and not a limitation of any duties, obligations, rights, and remedies otherwise imposed or available by law. In the event that TriMet or Contractor fail to act, such failure shall not constitute a waiver of any right or obligation afforded to either party under the Contractor or by law, nor shall any such action or failure to act constitute an approval of or acceptance of any breach there under, except as may be specifically agreed in writing by both parties.

13. Environmental Violations

For all contracts and subcontracts in excess of \$100,000.00, Contractor agrees to comply with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 USC 1857(h)), section 508 of the Clean Water Act (33 USC 1368), Executive Order 11378, and Environmental Protection Agency regulations (40 CFR, Part 15), which prohibit the use under nonexempt Federal contracts, grants, or loans, of facilities included on the EPA List for Violating Facilities. Contractor shall report violations to DHS and to the USEPA Assistant Administrator for Enforcement (ENO329).

14. Energy Conservation

The Contractor shall comply with mandatory standards and policies relating to energy efficiency which are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 USC section 6321, et seq.).

15. Privacy Act

The following requirements apply to the Contractor and its employees that administer any system of records on behalf of the Federal Government under any contract:

(1) The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a. Among other things, the Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.

(2) The Contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance.

(1) Subcontracts - The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.

16. Cargo Preference

Contractor agrees:

A. To use privately owned United States-flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, materials, or commodities pursuant to this section, to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels.

B. To furnish within 20 working days following the date of loading for shipments originating within the United States, or within 30 working days following the date of loading for shipment originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590, and to TriMet (through the contractor in the case of a subcontractor's bill-of-lading) marked with appropriate identification of the Project.

C. To include these requirements in all subcontracts issued pursuant to this contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

17. Fly America

If this contract involves the international transportation of goods, equipment, or personnel by air, Contractor agrees 1) to use U.S. flag carriers, to the extent service by these carriers is available and 2) to include this requirement in

subcontracts at every tier. The Contractor shall submit, if a foreign carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event provide a certificate of compliance with Fly America Requirements. 41 CFR Part 301-10.

END OF EXHIBIT 5 – FEDERAL REQUIREMENTS

APPENDIX A - DEPARTMENT OF HOMELAND SECURITY SPECIAL CONDITIONS

The U.S. Department of Homeland Security (DHS) requires that a DHS grant recipient require that any contractor employed in completion of a DHS grant project comply with the following standard financial requirements. In addition, any such contractor shall require each of its subcontractors employed in the completion of the project to comply with these requirements.

Administrative Requirements:

- 44 CFR Part 13, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments
- 2 CFR Part 215, Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations (formerly OMB Circular A-110)

Cost Principles:

- 2 CFR Part 225, Cost Principles for State, Local, and Indian tribal Governments (formerly OMB Circular A-87)
- 2 CFR Part 220, Cost Principles for Educational Institutions (formerly OMB Circular A-21)
- 2 CFR Part 230, Cost Principles for Non-Profit Organizations (formerly OMB Circular A-122)
- Federal Acquisition Regulations (FAR), Part 31.2 Contract Cost Principles and Procedures, Contracts with Commercial Organizations

Audit Requirements:

- OMB Circular A-133, Audits of States, Local Governments, and Non-Profit Organizations

CERTIFICATION

REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- (3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loan, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The County certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any.

Executed this ____ day of _____, 20 ____

By: _____
Authorized Official
TITLE



COUNCIL RESOLUTION No.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, ACTING AS THE LOCAL CONTRACT REVIEW BOARD, AUTHORIZING THE CITY MANAGER SIGNING AN INTERGOVERNMENTAL AGREEMENT WITH THE TRI-COUNTY METROPOLITAN TRANSPORTATION DISTRICT OF OREGON (TRIMET), THE MULTNOMAH COUNTY SHERIFF'S OFFICE, AND THE MILWAUKIE POLICE DEPARTMENT FOR TRANSIT POLICE SERVICES.

WHEREAS the city previously had an intergovernmental agreement (IGA) with TriMet and the City of Portland for transit police services which expired on June 30, 2020, and

WHEREAS the Milwaukie Police Department (MPD) wishes to re-establish an IGA with TriMet for transit police services, wherein the city would provide a police officer and TriMet would reimburse 105% of the officers salary, and

WHEREAS a resolution to implement the IGA will allow the MPD to continue to operate under the previous terms and conditions for transit police services.

Now, Therefore, be it Resolved by the City Council of the City of Milwaukie, Oregon, that the city manager, or their designee, is hereby authorized to sign an intergovernmental agreement between TriMet, the Multnomah County Sheriff's Office, and the Milwaukie Police Department for transit police services through July 31, 2025.

Introduced and adopted by the City Council on **May 17, 2022.**

This resolution is effective immediately.

Mark F. Gamba, Mayor

ATTEST:

APPROVED AS TO FORM:

Scott S. Stauffer, City Recorder

Justin D. Gericke, City Attorney

TRANSIT POLICE DIVISION
STANDARD OPERATING PROCEDURES



SOP: A-11
EFFECTIVE: March 2, 2022
REVIEW: March 1, 2024

SUBJECT: Overtime

PURPOSE: The purpose of this policy is to provide guidelines for authorization and submission for Overtime.

POLICY: It is the policy of the Transit Police Division to recognize that the TriMet Transit Police Division is staffed by police officers from multiple jurisdictions, each covered by their respective collective bargaining agreements, and that overtime needs to be assigned in a fair and equitable manner.

DEFINITIONS:

- Planned Overtime** - Overtime anticipated for and posted no less than twenty-four (24) hours or more prior to the time the vacancy occurs.
- Unplanned Overtime** - Overtime not anticipated for or that becomes available with less than twenty-four (24) hours notice prior to the time it is due for staffing.
- Supervisor** - Any Law Enforcement Command Staff member or Sergeant of the Transit Police Division.
- Member** – A sworn law enforcement employee of the Transit Police Division.
- Overtime** - Compensation in “Comp” time or pay at a rate of 1.50 times each hour actually worked.
- Minimum Staffing** - A mandatory minimum level of staffing for certain positions in the Transit Police Division. Any staffing below those numbers would require the use of overtime or other means to ensure the minimums are achieved
- Shift** - A specific group of individuals assigned to a precinct (i.e. Days Central, Afternoon Central, Afternoon East, Afternoon South and Afternoon West).

PROCEDURE:

Planned Overtime Shifts:


1. As part of regular scheduling, supervisors of units requiring minimum staffing and supervisors administering special details filled by the use of overtime will ensure that they maintain their schedules up-to date and forecast whenever possible at least 45 days in advance any vacancies so that vacancies can be addressed well ahead of time.
 - a. Any supervisor canceling a planned overtime shift or event shall update the roster and notify the affected member as soon as possible to the cancellation.
2. Planned Overtime shall be divided into separate sign up rosters, consisting of one roster for each precinct.
3. For the first 96 hours after an overtime vacancy is posted the members of that precinct may sign up for one shift per person. Shift preference will apply and members may only sign up for vacancies within their precinct.
 - a. Sergeants in charge of an overtime roster, with command level approval, may authorize two shifts per person. Such authorization will be posted with the roster, and the time frame for when such authorization is in effect.
4. After the vacancy has been posted for more than 96 hours, members of other precincts may sign up for one shift per person per roster.
5. If an unfilled vacancy is within 24 hours of the starting time, all members within the Transit Police Division may sign up for the vacancy, regardless of the number of upcoming vacancies they already are signed up for. Overtime distribution will remain fair and equitable.
6. If an unfilled vacancy is within 18 hours of the starting time, all sergeants within the Transit Police Division may sign up for the vacancy, regardless of the number of upcoming vacancies they already signed up for. Overtime distribution will remain fair and equitable.

7. Special Detail overtime will not be subject to the 96 hour and 24 hour rules regarding signups. Members shall only sign up for one Special Detail per roster.
 - a. Sergeants in charge of a Special Detail overtime roster, with command level approval, may authorize two shifts per person. Such authorization will be posted with the roster, and the time frame for when such authorization is in effect.
 - b. If within 18 hours of the starting time, all sergeants within the Transit Police Division may sign up for the Special Detail vacancy.
8. Once the member has arrived for an overtime vacancy, the vacancy is considered fulfilled, and the member may sign up for an upcoming vacancy as allowed per policy.
9. Any supervisor finding a member in violation of these signup rules will contact the member and cancel the extra signups as needed to bring the member and affected signup list into compliance.
 - a. Members will not be removed from any signup position for reasons of policy violations, or unit preference, except by a sergeant or command member.
 - b. Any member bumped will be notified immediately by the same member requesting the action.
10. Members signed up for voluntary overtime who wish to rescind their signup with more than ninety six (96) hours prior to the overtime vacancy is required to be filled may cancel by crossing their name out and notifying the on-duty sergeant.
11. Members signed up for voluntary overtime may not rescind their sign up with less than ninety six (96) hours prior to the time the overtime vacancy is required to be filled unless:
 - a. The member personally notifies the on-duty Patrol Supervisor, and
 - b. The member provides for their own volunteer replacement in a manner that complies with current overtime sign up policies and procedures.
12. Members without bona fide and compelling reasons that make them unable to comply with the requirements of the short notice

cancellation directive are otherwise required to fulfill their obligation of their original voluntary overtime sign up. Failure to do so may result in the member being considered Absent Without Permission and subject to disciplinary action.

Unplanned Overtime Shifts:

1. Generally, unplanned overtime encompasses any leave, special detail, or other instance where a minimum staffing shortfall occurs with less than twenty-four (24) hours notice. The sergeant receiving the information that there is a staffing short fall will immediately follow these steps in the order listed until the position is filled:
 - a. Advertise the vacancy to all qualified and eligible members currently on duty.
 - b. Contact all off-duty Transit Police members via email and/or text. The first member to respond will be assigned the overtime.
 - c. Send a follow up email and/or text to all off-duty Transit Police members the overtime has been filled.
2. Sergeants are authorized to hold staff over while attempted to locate a member to fill the vacancy.



Captain Brent Laizure
Chief of Police
Transit Police Division

Distribution: Chief of Police
Lieutenants
Sergeants
Display Board
Division SOP Manuals

SOP A-11



**TRANSIT POLICE DIVISION
STANDARD OPERATING PROCEDURES**

SOP: A-17
EFFECTIVE: March 2, 2022
REVIEW: March 1, 2024

SUBJECT: Shift Bid

PURPOSE: The purpose of this policy is to provide guidelines for a semi-annual shift bid within the Transit Police Division.

POLICY: The Transit Police Division shall establish a shift schedule with prescribed days off for each precinct as determined by the unit commander. Preference in days off shall be by seniority on each shift. Whenever two (2) members within the same classification assignment are assigned to the same work schedule, the employee with the most seniority shall have preference in selecting days off.

There shall be two (2) shift changes per year, each beginning the first Sunday of the months of January and July. The Chief of Police shall determine the work schedules, the number of persons to work a given shift and the days off allowed per shift.

Current and future members assigned to the Transit Police Division will use their home agency seniority as the means to select shifts and days off.

DEFINITIONS: **Seniority** - Seniority shall be defined as the length of uninterrupted service by the officer in his/her agency within the officer's Civil Service classification following the officer's most recent appointment. Time spent in the Armed Forces, on military leaves of absence, other authorized leaves and time lost because of duty-connected disability shall be included in length of service. If an officer who has been promoted reverts to a position the officer formerly held, the officer's seniority shall be the sum of the seniority earned in the promotional class and in the class to which the officer reverts.

Special Emergency Situation - Is defined as those situations reasonably determined by the Chief of Police or by his/her designee(s) to represent an

actual or potential risk of extreme property damage or personal injury to the community.

Member – A sworn law enforcement employee of the Transit Police Division.

Westside Parties – City of Hillsboro, City of Beaverton, City of Tualatin and the Washington County Sheriff's Office.

PROCEDURE:

1. Shift Bidding Process

- a. Prior to bidding, the unit commander will provide the schedule including shift minimums for bidding by October 15th and April 15th of each year.
- b. The bidding process for shifts will begin no later than November 1st and May 1st of each year at which time the list of available shifts/days off (shift slots) for each shift will be circulated.
- c. The shift/days off (shift slots) will be bid in order of seniority beginning with the most senior employee through the least senior employee until all shift slots are filled. The bidding process will be completed no later than December 1st and June 1st of each year. The upcoming six (6)-month schedule will be posted no later than December 15th and June 15th of each year.
- d. Members of the Westside parties and the Clackamas County Sheriff's Office must bid all vacant positions within their respective precincts.
 - i. Officers assigned by the Westside parties to the Westside Precinct are prohibited from transfer and cannot be bumped from the Westside Precinct without prior authorization by the Westside parties.
 - ii. Sergeants from the Hillsboro Police Department and the Beaverton Police Department are assigned to the Westside Precinct and prohibited from transfer and cannot be bumped from the Westside Precinct without prior authorization by the Westside parties.
 - iii. Officers assigned by the Clackamas County Sheriffs' Office to the South Precinct are prohibited from transfer and cannot be bumped from the South Precinct without prior authorization by the Clackamas County Sheriff's Office.

2. Work Schedule Changes


- a. Between regular shift rotations, the Chief of Police or their designee may, for good cause and based upon a good faith analysis of operational and/or personnel needs of the Transit

Police Division, reassign employees to a different shift. Employees involved shall receive the appropriate notice in accordance with their home agencies collective bargaining agreement, unless precluded by a Special Emergency Situation.

- b. Voluntary Changes of work days and days off will be considered voluntary if they occur at the employee's request or as a result of shift bidding.

3. Special Emergency Situation

- a. When a special emergency situation is declared by the Chief of Police or by his/her designee(s), unit members may be called to duty by the appropriate section commander or his/her designee on adjusted shifts without the normal collective bargaining agreement notification.
- b. An employee called to duty in such manner will be notified at the earliest possible time:
 - i. That he/she is being called in on a special emergency.
 - ii. That his/her shift is being adjusted.
 - iii. What the starting (and, if possible, ending) hours for his/her shift will be.
 - iv. That he will be compensated at the regular overtime rate for hours worked in excess of his regular number of work day or work week hours.



Captain Brent Laizure
Chief of Police
Transit Police Division

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SOP A-17

TRANSIT POLICE DIVISION STANDARD OPERATING PROCEDURES




SOP: A-34
EFFECTIVE: March 2, 2022
REVIEW: March 1, 2024

- SUBJECT:** Bi-Annual Vacation Signup
- PURPOSE:** Establish a procedure for a vacation signup that provides an appropriate level of police services to TriMet, community members and visitors of the Tri-County area.
- POLICY:** Vacation signup shall be bi-annual, and based on the seniority of the officer/deputy assigned to a shift. Vacation signups are precinct-specific.
- DEFINITIONS:**
- Seniority** - Seniority shall be defined as the length of uninterrupted service by the officer in his/her agency within the officer's Civil Service classification following the officer's most recent appointment. Time spent in the Armed Forces, on military leaves of absence, other authorized leaves and time lost because of duty-connected disability shall be included in length of service. If an officer who has been promoted reverts to a position the officer formerly held, the officer's seniority shall be the sum of the seniority earned in the promotional class and in the class to which the officer reverts.
- Member** – A sworn law enforcement employee of the Transit Police Division.
- PROCEDURE:**
1. **MINIMUM STAFFING LEVELS:**
 - a. Minimum staffing levels, SOP A-31, shall be published prior to each bi-annual vacation signup.
 - b. During vacation signup, members shall not sign up for dates that would put the shift or precinct below designated minimum staffing.

2. VACATION SIGNUP:

- a. Within each precinct and shift there shall be a bi-annual vacation signup and every employee shall have the right to express their preference for vacation time, but vacation time shall be determined on the basis of seniority, within job classification.
- b. Vacation signup shall follow the shift signup process for each shift.
- c. Vacation signup will be allocated in work week (40 hour) blocks during the first seniority preference signup, with a maximum usage equal to the members bi-annual vacation accrual. (e.g., if a member accrues four (4) weeks of vacation per year, their bi-annual will be two (2) weeks and therefore they are able to select up to two (2) weeks in the seniority signup phase).
- d. This process will continue until each shift member has had an opportunity to sign up for their bi-annual allocated vacation accrual.
- e. The process will continue for a second round where each employee, based on seniority, will be permitted to exercise their right of seniority to include vacation time unallocated in the first round and other personal time off as established by your home agency, i.e., comp time, personal holidays and paid time off.



Captain Brent Laizure
Chief of Police
Transit Police Division

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SOP – A-34



Reimagining Public Safety & Security on Transit

2022 Project & Partnership Update

TRI  MET

On July 1, 2020, TriMet shifted \$1.8 million from Transit Police to fund community-informed public safety initiatives to help riders feel more safe and welcome on the region's transit system.



Reimagine project areas

Conduct community-wide listening sessions & focus groups.

Establish a panel of local and national experts to advise TriMet on best practices for transit security, equity and community engagement in safety and security.

Pilot new community informed strategies.

TRI  MET

Committee Membership



Urban League
of Portland

DRO

Disability
Rights
Oregon



OPAL

ORGANIZING PEOPLE / ACTIVATING LEADERS



Northwest
Housing
Alternatives



LIFEWORKS NW



LatinoNetwork



PLAY EAST!
East County Recreation



Clackamas
Community College



HILLSBORO
CHAMBER

HOME
PLATE

Youth Services



CENTRO CULTURAL

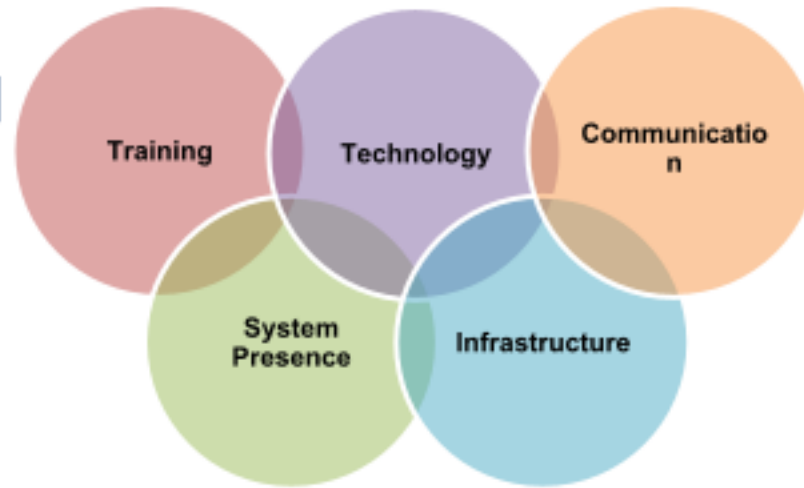


CLACKAMAS
SERVICE CENTER

TRI MET

Five Areas of Focus

24
Recommended strategies to move the Reimagine Public Safety Project Forward



Training: Highlights

- Security personnel have completed de-escalation training
- Public Safety Office hosts monthly Mental Health First Aid class
- 91 % of non-union staff have participated in Micro-aggressions 101
- Training leadership program with Multnomah County Sheriff's Office and TriMet Security

System Presence: Highlights

- **Working on new ways to deploy security on trains and busses in strategic areas during evenings.**
- **Identified new partnerships to increase mental and behavior health connections throughout the tri-county area.**
- **Established a new TriMet's Safety Response Team to provide rider support and social service referrals**
- **Secured a robust partnership with Multnomah County Sheriff to lead the Transit Police**



**Better Training
Greater Transparency
More Collaboration
More Community Connections**



Participating agencies



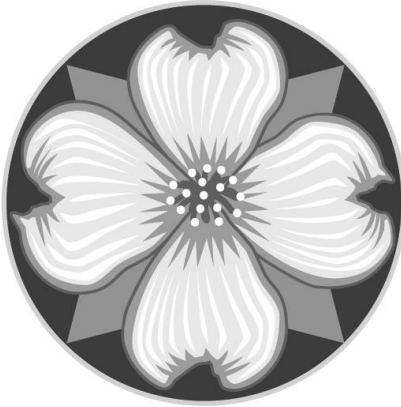
- Multnomah County Sheriff's Office
- Beaverton
- Hillsboro
- Port of Portland
- Gresham (K-9)
- Clackamas County Sheriff's Office

Transit Police Partnerships



6 Reimagine committee members have already participated on a ride along!

Questions?



RS Agenda Item

8

Public Hearings

COUNCIL STAFF REPORT

To: Mayor and City Council
Ann Ober, City Manager

Date Written: May 2, 2022

Reviewed: Jennifer Lee (as to form), Administrative Specialist II

From: Peter Passarelli, Public Works Director

Subject: Wastewater System Development Charges (SDCs)

ACTION REQUESTED

Council is asked to adopt the proposed SDC methodology and SDC rate structure recommendations for the city's wastewater utility.

HISTORY OF PRIOR ACTIONS AND DISCUSSIONS

April 14, 2000: Council received a staff proposal to utilize construction excise tax (CET) funds to facilitate construction of accessory dwelling units (ADU) for affordable housing.

[June 16, 2020](#): Council adopted a resolution waiving city controlled SDCs and frontage improvement requirements for ADUs for a limited duration.

[March 2, 2021](#): Council received a presentation on SDCs and provided guidance to staff and the city's consultant team concerning the desire to develop a tiered wastewater SDC for residential properties based on dwelling unit size.

[January 4, 2022](#): Council received a presentation on the proposed SDC methodology and SDC rate structure recommendations for the city's wastewater utility.

ANALYSIS

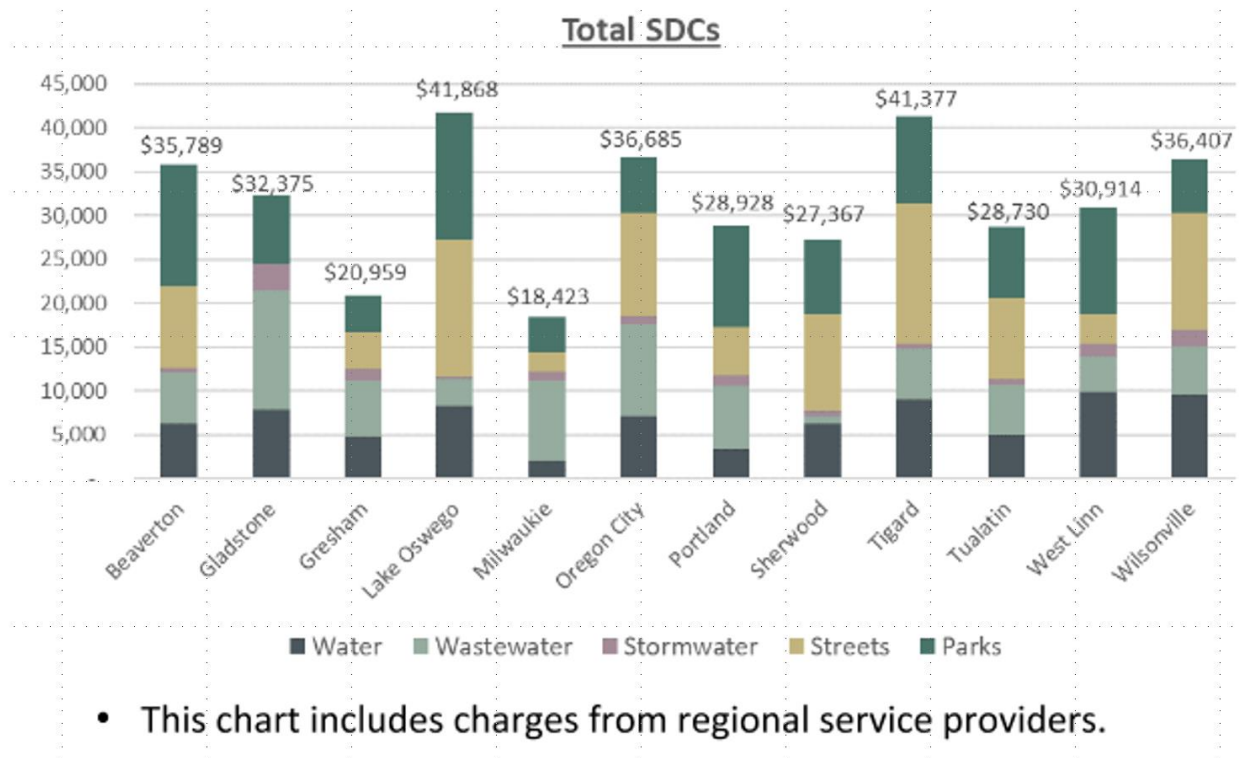
SDCs are one-time charges assessed on new development, additions, and changes of use to pay for the costs of expanding public facilities. As growth creates new infrastructure demand, SDCs provide a mechanism for new growth to pay for new demand on the water, sewer, storm, transportation, and parks systems. Milwaukie currently charges SDCs for development and redevelopment for water, sewer, parks, and street systems. SDCs are the city's principal source of revenue for planning and infrastructure costs related to growth.

Generally, the charges are broken down into two components: 1) a reimbursement charge to recover existing capacity available for growth and 2) an improvement charge to cover planned capacity for growth. In some circumstances, the fee may include an administrative fee/compliance fee to cover the costs of complying with Oregon's SDC laws.

Not all SDCs collected by Milwaukie are set by the city. The city collects charges set and managed by the North Clackamas Parks and Recreation District (NCPRD) as well as sewer connection fees set by Clackamas County Water Environment Services (WES) and the City of Portland.

SDC Philosophy

Council has generally reflected the view that growth should pay for growth, but the current SDC structure is regressive as a percentage of house value, it overestimates the impact of smaller dwelling units, and is a potential barrier to affordable housing. Although Milwaukie SDCs are lower compared to other communities regionally, this is likely a combination of the current build of the community and infrastructure needs based on master plans from ten years ago that no longer capture future growth requirements as opposed to reflecting the Council’s current philosophy. The chart below provides a comparison of total SDC charges between Milwaukie and other regional communities.



SDC Status

The following table provides a summary of information by utility of last analysis, planned analysis, rate structure components, and any rate discounts. The current SDC rates are included as Attachment 1.

Category	Water	Wastewater	Storm	Transportation
Last SDC Analysis	2010 Master Plan	2010 Master Plan	2012 Master Plan	2004 ?
Next Planned update	2022	2021 part of WW Master Plan	2024 with SW Master Plan	After completion of TSP
Administration Fee	Yes	No	No	No
Improvement Fee	Yes	Yes	Yes	Yes
Reimbursement Fee	Yes	Yes	No	Yes
Unit Charge Basis	Meter Size	Fixture Units 16 = 1 EDU	Impervious Surface Area (ESU)	Trips
Indexed for Inflation	Yes- Seattle CCI	Yes – Seattle CCI	Yes – Seattle CCI	Yes- Seattle CCI
ADU Reduction	None	35% reduction	None	35% reduction

The unit charge basis for SDCs can be confusing in some cases. As an example, the wastewater SDC charge is based on a 16-fixture units per single family residential property equivalent dwelling unit (EDU). The utility rate that the city charges wastewater customers also include an EDU charge basis but that is based on the consumption of 10 centum cubic feet (CCF) of water.

Staff and the consultant team have developed rate structures from the wastewater SDC study. The tables below show the current methodology and a proposed tiered schedule.

SDC Schedule (Current Method)	EDUs	Calculated SDC
Single-Family Dwelling	1	\$1,065
Duplex, ADU (per dwelling)	0.65	\$692
Other (per EDU)	1	\$1,065

Tiered SDC Schedule	EDUs	Calculated SDC
< 500 sqft (use ADU rate)	0.6	\$639
500-800 sqft	0.7	\$745
800-1,799 sqft	0.9	\$958
1,800-2,999 sqft	1	\$1,065
3,000-3,799 sqft	1.1	\$1,171
≥ 3,800 sqft	1.2	\$1,278
Multi-family	0.8	\$852
Accessory dwelling unit (ADU)	0.6	\$639
Other (per EDU)	1	\$1,065

Public Notice

The city issued a public notice, pursuant to Oregon Revised Statute (ORS) 223.304, of its intent to consider changes in its system development charges on February 16, 2022, and of the public hearing to take comments from interested stakeholders regarding the proposed system development charges scheduled for Tuesday, May 17, 2022, at City Hall. The public notice was advertised in The Oregonian and the Portland Business Tribune. The technical report addressing the methodology and calculation of the proposed charges was made available for review on the city’s website and at city hall on March 17, 2022.

BUDGET, CLIMATE, & WORKLOAD IMPACTS

Not applicable.

COORDINATION, CONCURRENCE, OR DISSENT

Staff has not received any feedback from interested stakeholders concerning the proposed methodology or the proposed rates.

STAFF RECOMMENDATION

Adopt the proposed SDC methodology and SDC rate structure recommendations for the city’s wastewater utility.

ALTERNATIVES

Council could decide to:

1. Revise the proposed SDC methodology and SDC rate structure recommendations for the city's wastewater utility and then adopt.
2. Not adopt the methodology and rate structure recommendations.

ATTACHMENTS

1. Wastewater SDC Update Report
2. Resolution

City of Milwaukie

WASTEWATER SYSTEM DEVELOPMENT CHARGE UPDATE

Final Report
May 5, 2022

Washington

7525 166th Avenue NE, Ste. D215
Redmond, WA 98052
425.867.1802

Oregon

5335 Meadows Road, Ste 330
Lake Oswego, OR 97035
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Colorado

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www.fcsgroup.com

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FCS GROUP
Solutions-Oriented Consulting

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Section I. INTRODUCTION

This section describes the project scope and policy context upon which the body of this report is based.

I.A. PROJECT

The City of Milwaukie (City) imposes system development charges (SDCs) to recover eligible infrastructure costs and provide partial funding for the capital needs of its wastewater collection system. Wastewater collection SDCs are charged to all new development within the City's boundaries, both residential and commercial. For a typical single-family dwelling unit, the current wastewater collection SDC is \$1,269. The City also collects wastewater treatment SDCs for the Clackamas Water Environment Services (WES), who treats the City's wastewater. The wastewater treatment SDC is currently \$8,120.

In 2019, the City engaged Water Systems Consulting, Inc. (WSC) to begin updating its wastewater system master plan. At the same time, the City and WSC engaged FCS GROUP to update the City's wastewater collection SDC based on that new master plan.

I.B. POLICY

SDCs are enabled by state statute, authorized by local ordinance, and constrained by the United States Constitution.

I.B.1. State Statute

Oregon Revised Statutes (ORS) 223.297 to 223.314 enable local governments to establish SDCs, which are one-time fees on development that are paid at the time of development or redevelopment that creates additional demand for park facilities. SDCs are intended to recover a fair share of the cost of existing and planned facilities that provide capacity to serve future users (i.e., growth).

ORS 223.299 defines two types of SDC:

- A reimbursement fee that is designed to recover “costs associated with capital improvements already constructed, or under construction when the fee is established, for which the local government determines that capacity exists”
- An improvement fee that is designed to recover “costs associated with capital improvements to be constructed”

ORS 223.304(1) states, in part, that a reimbursement fee must be based on “the value of unused capacity available to future system users or the cost of existing facilities” and must account for prior contributions by existing users and any gifted or grant-funded facilities. The calculation must “promote the objective of future system users contributing no more than an equitable share to the cost of existing facilities.” A reimbursement fee may be spent on any capital improvement related to the system for which it is being charged (whether cash-financed or debt-financed).

ORS 223.304(2) states, in part, that an improvement fee must be calculated to include only the cost of projected capital improvements needed to increase system capacity for future users. In other words, the cost of planned projects that correct existing deficiencies or that do not otherwise increase capacity for future users may not be included in the improvement fee calculation. An improvement fee may be spent only on capital improvements (or portions thereof) that increase the capacity of the system for which it is being charged (whether cash-financed or debt-financed).

In addition to the reimbursement and improvement fees, ORS 223.307(5) states, in part, that “system development charge revenues may be expended on the costs of complying” with state statutes concerning SDCs, including “the costs of developing system development charge methodologies and providing an annual accounting of system development charge expenditures.”

I.B.2. Local Ordinance

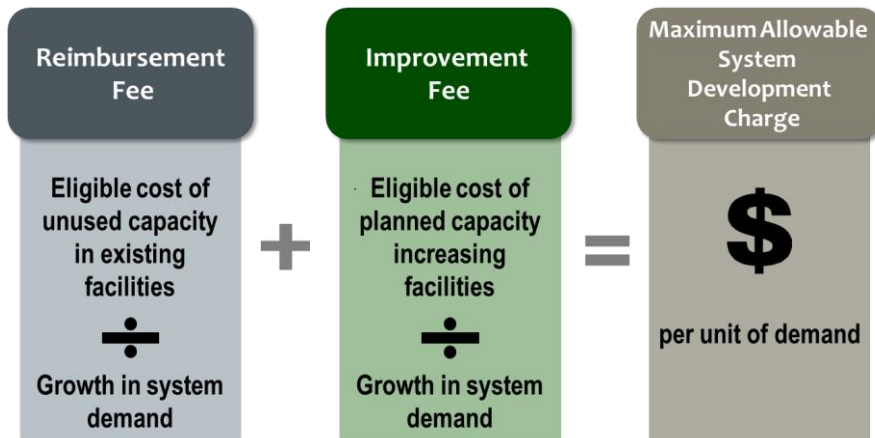
The City’s code authorizes and governs the imposition and expenditure of SDCs in the City.

I.B.3. United States Constitution

The United States Supreme Court has determined that SDCs, impact fees, or other exactions that comply with state and/or local law may still violate the United States Constitution if they are not proportionate to the impact of the development. The SDCs calculated in this report are designed to meet all constitutional and statutory requirements.

I.C. SDC BACKGROUND

In general, SDCs are calculated by adding a reimbursement fee component (if applicable) and an improvement fee component—both with potential adjustments. Each component is calculated by dividing the eligible cost by growth in units of demand. The unit of demand becomes the basis of the charge. Below is an illustration of this calculation:



Section II. SDC CALCULATION

This section provides the detailed calculations of the maximum allowable wastewater SDC.

II.A. GROWTH

The calculation of projected growth begins with defining the units by which current and future demand will be measured. Then, using the best available data, we quantify the current level of demand and estimate a future level of demand. The difference between the current level and the future level is the growth in demand that will serve as the denominator in the SDC calculations.

II.A.1. Unit of Measurement

A good unit of measurement allows an agency to quantify the incremental demand of development or redevelopment that creates additional demand for system facilities. A great unit of measurement allows an agency to distinguish different levels of demand added by different kinds of development or redevelopment.

For wastewater SDCs, demand is often measured in terms of equivalent dwelling units (EDUs), where one EDU is equal to the wastewater flow of a typical single-family dwelling unit. To calculate the demand incurred by other development types, EDUs can be assigned based on the differential flow rates of different meter sizes, or by counting the number of plumbing fixture units.

Currently, the City charges its wastewater SDC using the EDU method, and calculates the demand of multi-family dwelling units and commercial developments using the number of plumbing fixture units. An EDU is assumed to have 16 plumbing fixture units. This method is also used for this wastewater SDC calculation.

II.A.2. Growth in Demand

In 2020, the City had a total dry-weather flow of 1,621,328 gallons per day. The Wastewater System Master Plan Update estimates that the flow will grow to 2,006,855 gallons per day by 2040.

According to the wastewater system master plan, one EDU generates 115 gallons per day of flow. This implies that there are 14,099 EDUs in the system as of 2020. If EDUs grow at the same rate as dry-weather flow, there will be 17,451 EDUs in 2040. So, the growth in EDUs over the planning period is 3,352, and the growth share, or the percentage of EDUs in 2040 that will arrive between 2020 and 2040, is 19.21 percent.

These calculations are summarized in **Table 1** below. The growth of 3,352 EDUs will be the denominator for the SDC calculation.

Table 1: Growth in EDUs

	2020	2040	Growth	Growth Share
Dry-weather flow, gallons per day	1,621,328	2,006,855	385,527	19.21%
Flow per EDU, gallons per day	115	115		
Implied EDUs	14,099	17,451	3,352	19.21%

Source: Wastewater System Master Plan Update, Table 5-6 (2020 flow); Table 5-12 (2040 flow); Table 5-13 (flow per EDU)

II.B. IMPROVEMENT FEE

An improvement fee is the eligible cost of planned projects per unit of growth that such projects will serve. Since we have already calculated growth (denominator) above, we will focus here on the improvement fee cost basis (numerator).

II.B.1. Eligibility

A project’s eligible cost is the product of its total cost and its eligibility percentage. The eligibility percentage represents the portion of the project that creates capacity for future users. Where possible, specific details about a project can provide an eligibility percentage. However, when this is not possible, projects can still be sorted into three broad categories.

The first category is for projects that do not provide capacity for future users. Such projects may be purely replacement projects, or they may be solving a deficiency in the wastewater system. Projects in this category are zero percent eligible. The second category is for projects that are purely for future users, such as when new pipe is laid to provide for a new development. These projects are 100 percent eligible. Finally, projects that provide capacity that will be proportionately shared between current and future users are eligible at the growth share percentage discussed in the previous section, 19.21 percent.

II.B.2. Improvement Fee Cost Basis

Projects in the improvement fee cost basis were taken from the City’s Wastewater System Master Plan Update. Each project except one was sorted into one of the three categories discussed above based on the descriptions provided in the plan and discussions with staff. The remaining project, “Pipe Upgrades,” had specific details provided by WSC to justify a unique eligibility percentage.

Table 2 below shows all the projects in the wastewater system improvement fee cost basis. The eligibility for each project is shown in the SDC Eligibility column, and the SDC Eligible Costs column shows that full amount of the improvement fee cost basis is \$1.16 million.

Table 2: Improvement Fee Cost Basis

Project ID	Project Name	Timing	Cost	SDC Eligibility	SDC-Eligible
					Costs
CAP-1	Manhole Surveying	2023-2041	\$ 475,000	0.00%	\$ -
CAP-2	Pipe Upgrades	2029	819,000	20.01%	163,899
CAP-3	Flow Monitoring	2026-2041	124,000	19.21%	23,821
CAP-4	Harvey Street Improvements	2022	5,000	0.00%	-
C-1	Pipeline Rehabilitation and Replacement	2023-2041	7,239,000	0.00%	-
C-2	Pump Station Condition Assessments	2023	30,000	0.00%	-
C-3 thru 7	Pump Station Improvements	2026-2041	4,250,000	19.21%	816,447
C-8	Johnson Creek Siphon Inspection	2026	100,000	0.00%	-
C-9	Waverly South	2023	91,000	0.00%	-
C-10	Waverly Heights Sewer System Reconfiguration	2023-2025	3,404,000	0.00%	-
C-11	SCADA Design & Construction	2022	105,000	0.00%	-
C-12	Ardenwald North Improvements	2022	476,000	0.00%	-
C-13	Milwaukee/El Puente SRTS Improvements	2022-2023	522,000	0.00%	-
C-14	Logus Road & 40th Ave Improvements	2022-2023	149,000	0.00%	-
C-15	Wastewater System Improvements FY2023	2023	491,000	0.00%	-
C-16	International Way Improvements	2024	144,000	0.00%	-
C-17	North Milwaukee Improvements	2025	465,000	0.00%	-
C-18	SAFE & SSMP FY 2025 Improvements - Park/Lloyd/Stanley	2025	139,000	0.00%	-
C-19	Vehicle Purchases	2022-2024	752,000	0.00%	-
C-20	Lift Station Pump & SCADA Controls Replacement	2022-2025	200,000	0.00%	-
C-21	Wastewater Capital Maintenance Program	2022-2041	1,000,000	0.00%	-
R-1	S1 Island Pump Station Rebuild	2026-2041	-	0.00%	-
R-2	S3 Home & Monroe Pump Station Retrofit	2026-2041	-	0.00%	-
R-3	S5 Brookside Pump Station Retrofit and Pump Upgrade	2026-2041	-	0.00%	-
R-4	Bolted Manholes	2027	13,000	0.00%	-
P-1	Wastewater System Master Plan Update	2026-2041	800,000	19.21%	153,684
Total			\$ 21,793,000		\$ 1,157,851

Source: Wastewater System Master Plan Update, Table 10-1 (project list, timing, and cost); Water Systems Consulting (SDC

II.C. REIMBURSEMENT FEE COST BASIS

A reimbursement fee is the eligible cost of the wastewater facilities available for future users per unit of growth that such facilities will serve. Since growth was calculated above, we will focus on the eligible cost of the wastewater facilities available for future users. That is, we will focus on the cost of reimbursable wastewater facilities.

II.C.1. Capacity in Sewer Pipes for Infill Development

According to WSC, the current collection system has sufficient capacity to allow for infill development in the City's limits. Such infill development is expected to account for 19.21 percent of the City's 2040 population, and so 19.21 percent of the original cost of the City's pipes can be allocated to growth. The original cost of the pipes is \$16.93 million, and so \$3.25 million can be allocated to growth.

However, the City has \$964,578 in outstanding principal for debt related to the wastewater system. Because infill development will pay for this debt in either rates or property taxes, their share of the

principal must be removed from the reimbursement fee cost basis. So, a total of \$3.07 million can be included in the reimbursement fee cost basis.

These calculations are summarized in **Table 3** below.

Table 3: Reimbursement Fee Cost Basis

Original Cost of Sewer Pipes	\$ 16,930,032
Outstanding Principal	964,578
Capacity Available through 2040	19.21%
Reimbursable Cost	\$ 3,067,044

Source: City staff (original cost of pipes, outstanding principal); Water Systems Consulting (available capacity)

II.D. CALCULATED SDC

This section combines the eligible costs from the improvement fee cost basis and the reimbursement fee cost basis and applies some adjustments. The result is a total SDC per EDU.

II.D.1. Adjustments

The City must reduce its cost bases to account for any remaining fund balance in its current SDC fund. The improvement fee cost basis must be lowered by \$708,495, and the reimbursement fee cost basis must be lowered by \$20,061. These adjustments are shown in Table 4 below.

Table 4: Adjustments to the SDC Cost Bases

Unadjusted Improvement Fee Cost Basis	\$ 1,157,851
Improvement Fee Fund Balance	(708,495)
Improvement Fee Cost Basis	\$ 449,356
Unadjusted Reimbursement Fee Cost Basis	\$ 3,067,044
Reimbursement Fee Fund Balance	(20,061)
Reimbursement Fee Cost Basis	\$ 3,046,983

To account for the cost of complying with SDC law, the City should add \$73,800 to the full SDC cost basis.

II.D.2. Calculated SDC

Table 5 below summarizes the full calculation of the SDC. As shown, the full SDC is \$1,065 per EDU.

Table 5: Calculated SDC

Cost Basis:	
Improvement Fee	\$ 449,356
Reimbursement Fee	3,046,983
Compliance Costs	73,800
Total Cost Basis	\$ 3,570,139
Growth in EDUs	3,352
Improvement Fee per EDU	\$ 134
Reimbursement Fee per EDU	909
Compliance Fee per EDU	22
Total SDC per EDU	\$ 1,065

Table 6 below shows the full wastewater SDC schedule.

Table 6: SDC Schedule

	EDUs	Calculated SDC
Single-Family Dwelling Unit	1.00 \$	1,065
Duplex, ADU (per Dwelling Unit)	0.65 \$	692
Other	1.00 \$	1,065
Per EDU	1.00 \$	1,065
Per Fixture Unit	0.06 \$	67

Section III. IMPLEMENTATION

This section addresses practical aspects of implementing SDCs and provides a comparison with relevant jurisdictions.

III.A. INDEXING

ORS 223.304 allows for the periodic indexing of SDCs for inflation, as long as the index used is:

- (A) A relevant measurement of the average change in prices or costs over an identified time period for materials, labor, real property or a combination of the three;
- (B) Published by a recognized organization or agency that produces the index or data source for reasons that are independent of the system development charge methodology; and
- (C) Incorporated as part of the established methodology or identified and adopted in a separate ordinance, resolution or order.

In accordance with Oregon statutes, we recommend that the City use the *Engineering News-Record* (ENR) Construction Cost Index (CCI) 20-City Average as the basis for adjusting SDCs annually.

III.B. SCALING BY DWELLING UNIT SIZE

The City's wastewater collection system flows into a larger wastewater system managed by WES, who also treats the City's wastewater. WES sets the wastewater treatment SDC charged in the City and is considering moving to a different method for calculating the number of EDUs added by residential developments. Under this system, single-family housing units would have a different number of EDUs based on the square footage of the total living area in the residence. This EDU computation is based on research conducted on dwelling units in WES's jurisdiction.

The City can decide to charge its wastewater SDC to residential developments in the same way as WES without changing this methodology. The schedule for residential developments under this system is listed in **Table 7** below.

Note that the City has decided to call a dwelling unit with less than 500 square feet an accessory dwelling unit and evaluate it at a lower rate, which is different from how WES proposes to charge such units.

Table 7: Schedule for Single-Family Dwelling Units based on Total Living Area

	Calculated	
	EDUs	SDC
< 500 sqft (use ADU rate)	0.60	\$ 639
500-800 sqft	0.70	\$ 745
800-1,799 sqft	0.90	\$ 958
1,800-2,999 sqft	1.00	\$ 1,065
3,000-3,799 sqft	1.10	\$ 1,171
≥ 3,800 sqft	1.20	\$ 1,278
Multi-family	0.80	\$ 852
Accessory dwelling unit (ADU)	0.60	\$ 639

WES is also considering calculating the EDUs added by non-residential developments based on a variety of factors rather than using plumbing fixture units. The City can elect to charge non-residential dwelling units using the same EDU methodology as WES without changing this SDC methodology.

III.C. COMPARISONS

This section provides comparisons for the city’s current and proposed SDCs against those of comparable jurisdictions. As shown in **Table 8**, if the wastewater collection SDC is implemented as proposed, the City will maintain its high position relative to other cities but drop slightly.

An important note is that not all SDCs shown are set by the relevant city; some are set by overlapping jurisdictions. This includes the City of Milwaukie, where \$8,120 of the total fee is set by WES.

Table 8: Wastewater SDC Comparisons with Comparable Cities

Gladstone	13,758	
West Linn	12,363	
Oregon City	10,636	
Milwaukie (current)	9,389	
Milwaukie (proposed)	9,185	
Portland	7,235	
Gresham	6,568	
Beaverton	6,085	
Tigard	6,085	
Tualatin	6,085	
Wilsonville	5,905	
Lake Oswego	3,052	
Sherwood	859	

Source: Survey by FCS Group, as of 12/7/2021



COUNCIL RESOLUTION No.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, ESTABLISHING NEW SYSTEM DEVELOPMENT CHARGES FOR WASTEWATER IMPROVEMENTS, AS AUTHORIZED BY MMC CHAPTER 13.28.

WHEREAS Milwaukie Municipal Code (MMC) Chapter 13.28 authorizes the city to establish system development charges (SDCs) for capital improvements, and Section 13.28.030.A defines "capital improvements" to mean facilities or assets used for transportation, and

WHEREAS MMC Section 13.28.040.B requires that SDCs be established by a resolution that sets the amount of the charge, the type of the permit to which the charge applies, and the methodology used to set the amount of the charge, and

WHEREAS MMC 13.28.080 requires the city to adopt a project plan for the SDCs listing capital improvements that may be funded by the SDCs and the estimated costs and time of construction for each improvement, and

WHEREAS the city has previously adopted and has in place a wastewater SDC, and

WHEREAS an update the wastewater system master plan makes it advisable to update the wastewater SDC methodology, and

WHEREAS no person has requested notice of changes in the city's SDCs or SDC methodology, and

WHEREAS the methodology was available to the public on March 16, 2022, at least 60 days prior to the public hearing, and

WHEREAS the City Council held a public hearing on the proposed SDCs and methodology on May 17, 2022, after publishing a notice of the hearing in the Portland Business Tribune on February 16th, 2022, and

WHEREAS FCS Group has prepared a Wastewater SDC Update Report intended to satisfy the code requirements for establishing system development charges and attached as Exhibit 1 to this resolution, and

WHEREAS the final report includes the required capital improvement project plan as required by MMC 13.28.080, the amount of the charge as required by MMC 13.28.040.B, and the methodology used to set the amount of the charge as required by MMC 13.28.040.B and 13.28.050.

Now, Therefore, be it Resolved by the City Council of the City of Milwaukie, Oregon, that:

Section 1: The city adopts the Wastewater System Development Charge by FCS Group, dated May 5, 2022 (Exhibit 1), for the purpose of establishing SDCs for wastewater improvement projects. In particular, the city is adopting, the amount of the charges, and

the methodology used to set the amount of the charges, included in Table 7 of Exhibit 1, as required by the provisions of MMC 13.28.

Section 2: Wastewater SDCs will be payable upon the issuance of a building permit or the issuance of a development permit for development not requiring the issuance of a building permit.

Section 3: The resolution takes effect upon adoption.

Introduced and adopted by the City Council on **May 17, 2022.**

This resolution is effective immediately

Mark F. Gamba, Mayor

ATTEST:

APPROVED AS TO FORM:

Scott S. Stauffer, City Recorder

Justin D. Gericke, City Attorney

Milwaukie Sewer SDC Update

RS 8. A.
5/17/22
Presentation

Tuesday, May 17, 2022

Prepared by FCS GROUP



Agenda

- **Background**
- **SDC Calculations**
- **Comparison**



Agenda

- **Background**
- SDC Calculations
- Comparison



Key Characteristics of SDCs

- SDCs are one-time charges, not ongoing rates. Paid at the time of development.
- SDCs are available for water, wastewater, stormwater, transportation, and parks.
- SDCs are for capital only, in both their calculation and in their use.
- SDCs include both existing and future (planned) infrastructure cost components.
- SDCs are for “system” facilities, not “local” facilities.



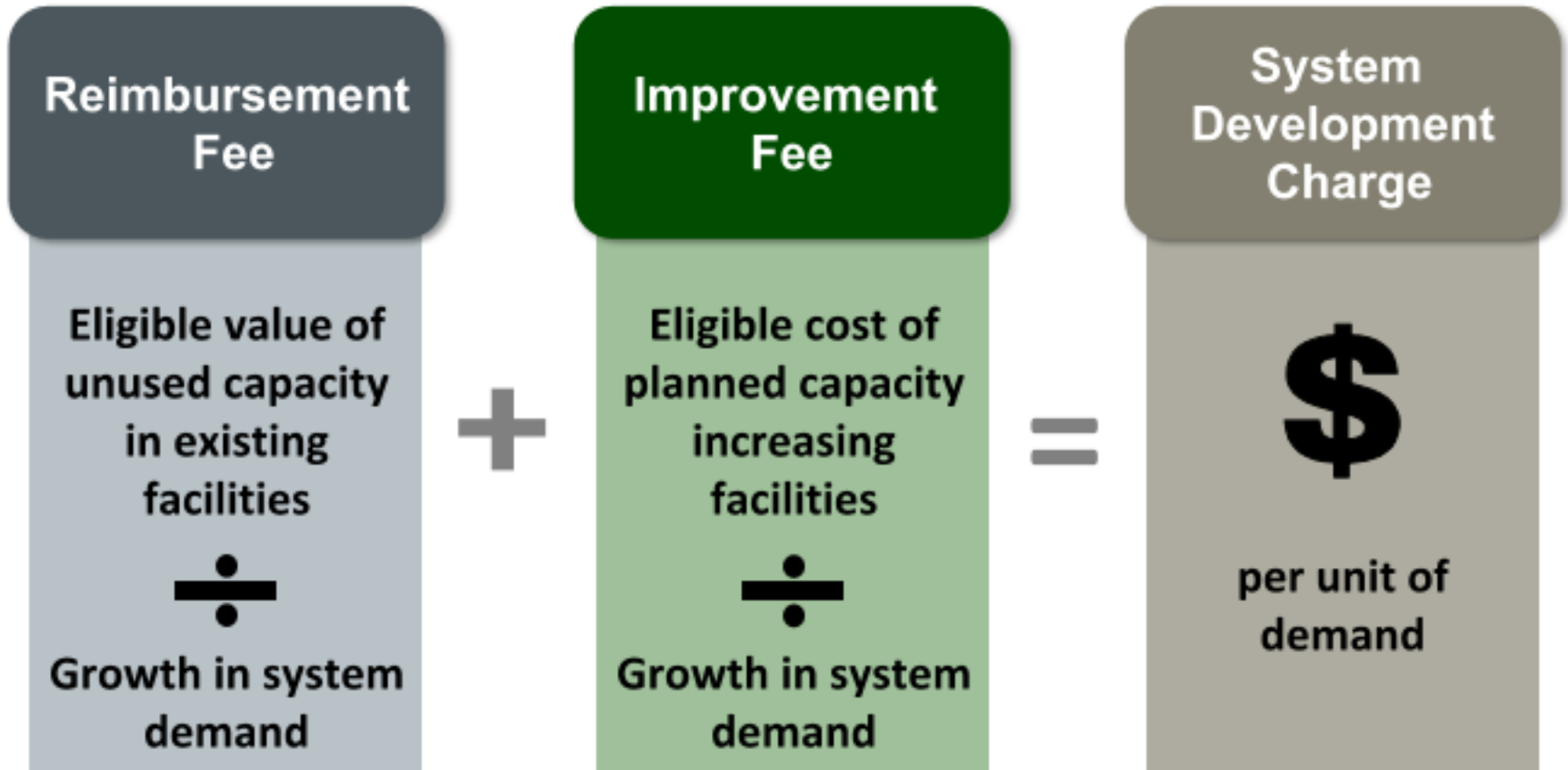
Legal Framework for SDCs

ORS 223.297 - 314, known as *the SDC Act*, provides “a uniform framework for the imposition of system development charges by governmental units” and establishes “that the charges may be used only for capital improvements.”





The SDC Calculation





Current Practices

Milwaukie Sewer Collection SDC	\$	1,269
WES Sewer Treatment SDC		8,120
Total	\$	9,389



Agenda

- Background
- **SDC Calculations**
- Comparison



Growth

	2020	2040	Growth	Growth Share
Dry-weather flow, gallons per day	1,621,328	2,006,855	385,527	19.21%
Flow per EDU, gallons per day	115	115		
Implied EDUs	14,099	17,451	3,352	19.21%

Source: 2019 Wastewater System Master Plan, Table 5-6 (2020 flow); Table 5-12 (2040 flow); Table 5-13 (flow per EDU)



Improvement Fee Cost Basis

Project ID	Project Name	Timing	Cost	SDC Eligibility	SDC-Eligible Costs
CAP-1	Manhole Surveying	2023-2041	\$ 475,000	0.00%	\$ -
CAP-2	Pipe Upgrades	2029	819,000	20.01%	163,899
CAP-3	Flow Monitoring	2026-2041	124,000	19.21%	23,821
CAP-4	Harvey Street Improvements	2022	5,000	0.00%	-
C-1	Pipeline Rehabilitation and Replacement	2023-2041	7,239,000	0.00%	-
C-2	Pump Station Condition Assessments	2023	30,000	0.00%	-
C-3 thru 7	Pump Station Improvements	2026-2041	4,250,000	19.21%	816,447
C-8	Johnson Creek Siphon Inspection	2026	100,000	0.00%	-
C-9	Waverly South	2023	91,000	0.00%	-
C-10	Waverly Heights Sewer System Reconfiguration	2023-2025	3,404,000	0.00%	-
C-11	SCADA Design & Construction	2022	105,000	0.00%	-
C-12	Ardenwald North Improvements	2022	476,000	0.00%	-
C-13	Milwaukie/El Puente SRTS Improvements	2022-2023	522,000	0.00%	-
C-14	Logus Road & 40th Ave Improvements	2022-2023	149,000	0.00%	-
C-15	Wastewater System Improvements FY2023	2023	491,000	0.00%	-
C-16	International Way Improvements	2024	144,000	0.00%	-
C-17	North Milwaukie Improvements	2025	465,000	0.00%	-
C-18	SAFE & SSMP FY 2025 Improvements - Park/Lloyd/Stanley	2025	139,000	0.00%	-
C-19	Vehicle Purchases	2022-2024	752,000	0.00%	-
C-20	Lift Station Pump & SCADA Controls Replacement	2022-2025	200,000	0.00%	-
C-21	Wastewater Capital Maintenance Program	2022-2041	1,000,000	0.00%	-
R-1	S1 Island Pump Station Rebuild	2026-2041	-	0.00%	-
R-2	S3 Home & Monroe Pump Station Retrofit	2026-2041	-	0.00%	-
R-3	S5 Brookside Pump Station Retrofit and Pump Upgrade	2026-2041	-	0.00%	-
R-4	Bolted Manholes	2027	13,000	0.00%	-
P-1	Wastewater System Master Plan Update	2026-2041	800,000	19.21%	153,684
Total			\$ 21,793,000		\$ 1,157,851

Source: 2019 Wastewater System Master Plan, Table 10-1 (project list, timing, and cost); Water Systems Consulting (SDC eligibility)



Reimbursement Fee Cost Basis

Original Cost of Sewer Pipes	\$ 16,930,032
Outstanding Principal	964,578
Capacity Available through 2040	19.21%
Reimbursable Cost	\$ 3,067,044

Source: City staff (original cost of pipes, outstanding principal); Water Systems Consulting (available capacity)



Adjustments

Unadjusted Improvement Fee Cost Basis	\$ 1,157,851
Improvement Fee Fund Balance	(708,495)
Improvement Fee Cost Basis	<u>\$ 449,356</u>
Unadjusted Reimbursement Fee Cost Basis	\$ 3,067,044
Reimbursement Fee Fund Balance	(20,061)
Reimbursement Fee Cost Basis	<u>\$ 3,046,983</u>



SDC Calculation

Cost Basis:	
Improvement Fee	\$ 449,356
Reimbursement Fee	3,046,983
Compliance Costs	73,800
Total Cost Basis	\$ 3,570,139
Growth in EDUs	3,352
Improvement Fee per EDU	\$ 134
Reimbursement Fee per EDU	909
Compliance Fee per EDU	22
Total SDC per EDU	\$ 1,065



SDC Schedule

	EDUs		Calculated SDC
Single-Family Dwelling Unit	1.00	\$	1,065
Duplex, ADU (per Dwelling Unit)	0.65	\$	692
Other	1.00	\$	1,065
Per EDU	1.00	\$	1,065
Per Fixture Unit	0.06	\$	67

- An equivalent dwelling unit (EDU) represents the wastewater flow of an average single-family residence, or 115 gallons per day (sourced from the 2019 Wastewater Master Plan, Table 5-13).
 - » A single-family residence has, on average, 16 fixture units.



SDC Schedule (based on house size)

	EDUs	Calculated SDC
< 500 sqft (use ADU rate)	0.60	\$ 639
500-800 sqft	0.70	\$ 745
800-1,799 sqft	0.90	\$ 958
1,800-2,999 sqft	1.00	\$ 1,065
3,000-3,799 sqft	1.10	\$ 1,171
≥ 3,800 sqft	1.20	\$ 1,278
Multi-family	0.80	\$ 852
Accessory dwelling unit (ADU)	0.60	\$ 639

- Thresholds are based on WES's expected schedule
 - » *Water Environment Services Rules and Regulations, March 2021 (Public Review Draft)*
 - » <https://www.clackamas.us/wes/sanitary-and-stormwater-rules-and-standards-update>

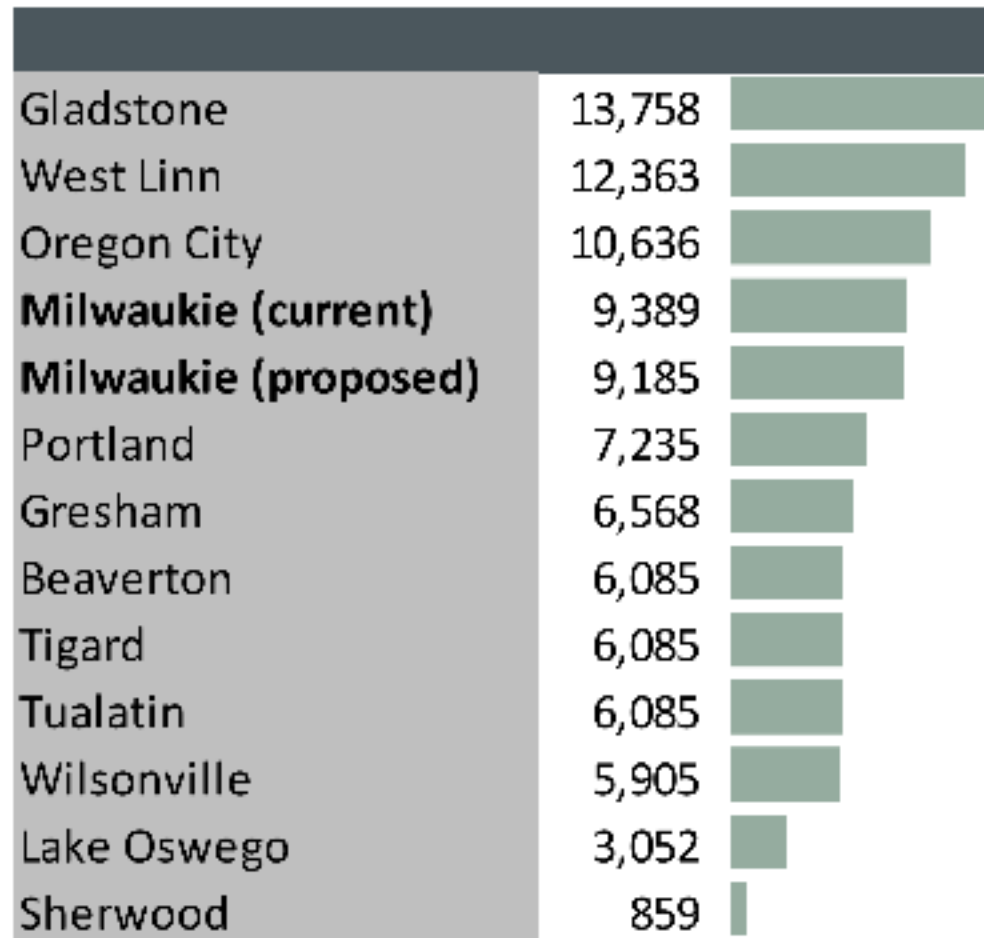


Agenda

- Background
- SDC Calculations
- **Comparison**



Comparison

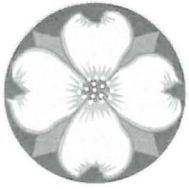


- Note that this includes WES's wastewater treatment SDC: \$8,120 per EDU

Thank you! Questions?

**Doug Gabbard – Project
Manager
(503) 252-3001
DougG@fcsgroup.com**

www.fcsgroup.com



PUBLIC HEARING ATTENDANCE SIGN-UP SHEET

If you wish to have standing and/or to be on the mailing list for Council information from tonight's hearing, please sign-in below.

5/17/2022 | 8. A. Wastewater System Development Charge (SDC) Revisions – Resolution

Land Use File No. (none)

NAME	ADDRESS	PHONE	EMAIL
TAWN MCLEAN	9590 SE 40 th AVE	503 936 4863	river.gardener@gmail.com

COUNCIL STAFF REPORT

To: Mayor and City Council
Ann Ober, City Manager

Reviewed: Laura Weigel, Planning Manager

From: Vera Koliass, Senior Planner

Subject: **Proposed Code Amendments – Middle Housing Land Divisions (SB 458)**

Date Written: May 8, 2022

ACTION REQUESTED

Council is asked to open the public hearing for land use file #ZA-2022-001, discuss the proposed amendments to the Milwaukie Municipal Code (MMC) Title 19 (Zoning) and Title 17 (Land Division), take public testimony, provide direction to staff regarding any desired revisions to the proposed amendments, and vote to approve file #ZA-2022-001 and adopt the proposed ordinance and recommended Findings in Support of Approval found in Attachment 1.

HISTORY OF PRIOR ACTIONS AND DISCUSSIONS

[April 12, 2022](#): Planning Commission held a public hearing and voted unanimously the recommend approval of the proposed code language.

BACKGROUND AND ANALYSIS

[Senate Bill 458](#) was adopted by the Oregon State Legislature in 2021. The bill is a follow-up to House Bill 2001 (HB 2001) and allows lot divisions for middle housing that enable them to be sold or owned individually.

For any city or county subject to the requirements of HB 2001, SB 458 requires those jurisdictions to allow middle housing lot divisions for any HB 2001 middle housing type (duplexes, triplexes, quadplexes, townhouses, and cottage clusters) built in accordance with Oregon Revised Statute [\(ORS\) 197.758](#).

The legislation requires cities to allow land divisions for any HB 2001 middle housing type (duplexes, triplexes, fourplexes, townhomes, and cottage clusters) built in accordance with the cities' middle housing code provisions adopted under ORS 197.758. Accessory dwelling units (ADUs) will not be eligible for land division. The result of such "middle housing land division" will be exactly one dwelling on each resulting lot. However, the bill specifies that "The type of middle housing developed on the original parcel is not altered by a middle housing land division." For example, a subdivided cottage cluster will not become single detached dwellings—it will remain defined as a cottage cluster for the purpose of applying the development code.

SB 458 only applies to middle housing land divisions permitted on or after June 30, 2022.

The bill sets forth a series of parameters on how a city must process middle housing lot division applications. The city must apply an "expedited land division" process defined in ORS 197.360 through 197.380, and the applicant must submit a tentative plan for the division including the following:

- A proposal for development of middle housing in compliance with the Oregon residential specialty code and applicable middle housing land use regulations,
- Separate utilities for each dwelling unit,
- Easements necessary for utilities, pedestrian access, common use areas or shared building elements, dedicated driveways/parking, and dedicated common area,
- One dwelling unit per each resulting lot or parcel (except common areas), and
- Demonstration that the buildings will meet the Oregon residential specialty code.

Additionally, cities retain the ability to require or condition certain things, including further division limitations, street frontage improvements, and right-of-way dedication if the original parcel did not make such dedications. However, cities may not subject applications to approval criteria outside of what is provided in the bill, including that a lot or parcel require driveways, vehicle access, parking, or min/max street frontage, or requirements inconsistent with HB 2001.

What this means is that SB 458 expressly allows back lots for middle housing land divisions, but cities can require that easements are provided for things like maintenance and repair, access, shared common or parking areas, etc.

The bill allows jurisdictions to require or condition the following:

- Prohibition of further division of the resulting lots or parcels.
- Require notation in the final plat indicating approval was provided under SB 458 (later, this will be the resultant ORS reference).
- Require street frontage improvements where a lot or parcel abuts a street (consistent with HB 2001).
- Require right-of-way (ROW) dedication if the original parcel did not previously provide a dedication.

What cities cannot require as part of a middle housing land division:

- **Street Frontage.** Typically, newly created lots are required to have frontage on a public or private street. SB 458 specifies that cities cannot require street frontage for lots created through a middle housing land division (e.g., lots at the rear of the site could only have access to the street via access easement).
- **Parking or Driveway Access to Each Lot.** Cities cannot require that each resulting lot have its own parking space or driveway access. For example, a triplex could have a shared parking area with three spaces; the city cannot preclude the triplex lot from being divided such that two of the resulting lots only have access to the parking area via access easement.
- **Minimum Lot Size or Dimensions.** Cities cannot specify minimum area or dimensions for lots resulting from a middle housing land division.
- **Other Review Criteria.** The city cannot apply any review criteria other than those items specified in SB 458—these include the city’s standards for middle housing development, separate utilities, easements, one dwelling on each lot, and building code compliance.
- **Conditions of Approval.** The city also cannot apply conditions of approval to a middle housing land division other than to ensure consistency with the review criteria, to prohibit further division of resulting lots, and to require that a notation appear on the final plat indicating that the approval was given under the ORS for middle housing land division.

Expedited Land Divisions

Expedited land divisions are defined by [ORS 197.360\(1\)](#). The key aspect of the language is that the homes developed “will be sold or rented to households with incomes below 120 percent of the median family income for the county in which the project is built.”

The proposed amendments in Attachment 1 are proposed to satisfy both SB 458 and the expedited land division statute.

Proposed Amendments

Staff has reviewed the bill’s language as well as code prepared in other communities to develop the proposed amendments. The key aspect of the proposed amendments is that middle housing land divisions (partitions and subdivisions) will go through a Type II process with an expedited time frame:

Process	Existing Type II	Proposed Expedited Type II (SB 458)
Completeness Review	30 days	21 days
Comment Period	14 days	14 days
Deadline for Decision	120 days	63 days

The proposed code language revises sections of Title 17 to incorporate both the Middle Housing land division process and Expedited Land Divisions, including:

- Specific application submittal requirements, including information to be included on the preliminary and final plats.
- Approval criteria.
- Conditions of approval.

The proposed amendments have been reviewed by staff at the Oregon Department Land Conservation and Development (DLCD) for compliance with the regulations.

BUDGET IMPACT

Review of middle housing land divisions will be absorbed into current staff responsibilities. No budget impact is anticipated.

WORKLOAD IMPACT

The code amendments are a continuation of the middle housing code amendments. While the new code may result in an increase in development proposals, review of middle housing land divisions will be absorbed into staff duties.

CLIMATE IMPACT

The proposed code amendments are a continuation of the middle housing code amendments which support a more compact and efficient use of residential land which promotes land development that has fewer climate impacts than traditional larger lot development of single detached dwellings.

COORDINATION, CONCURRENCE, OR DISSENT

Planning and community development staff have worked on the proposed code language.

STAFF RECOMMENDATION

Staff recommends that Council adopt the ordinance, findings, and proposed code amendments found in Attachment 1.

ALTERNATIVES

None.

ATTACHMENTS

1. Ordinance
 - a. Findings in Support of Approval
 - b. Code Amendments (underline/strikeout)
 - c. Code Amendments (clean)



COUNCIL ORDINANCE No.

AN ORDINANCE OF THE CITY OF MILWAUKIE, OREGON, AMENDING THE MILWAUKIE MUNICIPAL CODE (MMC) TITLE 19 ZONING ORDINANCE AND TITLE 17 LAND DIVISION FOR THE PURPOSE OF ADDRESSING MIDDLE HOUSING LAND DIVISION PER OREGON SENATE BILL 458 (FILE #ZA-2022-001).

WHEREAS it is the intent of the City of Milwaukie to support and promote housing opportunities and housing choice throughout the city and increase the supply of middle and attainable housing and providing equitable access to housing for all, and

WHEREAS the proposed code amendments implement several of the goals and policies of the city’s comprehensive plan related to housing and comply with Oregon Senate Bill (SB) 458, and

WHEREAS legal and public notices have been provided as required by law, and

WHEREAS on April 12, 2022, the Milwaukie Planning Commission conducted a public hearing as required by MMC 19.1008.5 and adopted a motion in support of the amendments, and

WHEREAS the City Council finds that the proposed amendments are in the public interest of the City of Milwaukie.

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

Section 1. Findings. Findings of fact in support of the amendments are adopted by the City Council and are attached as Exhibit A.

Section 2. Amendments. The MMC is amended as described in Exhibit B (underline/strikeout version), and Exhibit C (clean version).

Section 3. Effective Date. The amendments shall become effective 30 days from the date of adoption.

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 F. Gamba, Mayor

ATTEST:

APPROVED AS TO FORM:

Scott S. Stauffer, City Recorder

Justin D. Gericke, City Attorney

Exhibit A
Recommended Findings in Support of Approval
File #ZA-2022-001
Middle Housing and Land Division Code Amendments

Sections of the Milwaukie Municipal Code not addressed in these findings are found to be inapplicable to the decision on this application.

1. The applicant, the City of Milwaukie, proposes to make code amendments to Titles 17 and 19 related to middle housing land divisions pursuant to the requirements of Oregon Senate Bill 458 (SB 458). The land use application file number is ZA-2022-001.
2. The proposed amendments relate to Senate Bill 458 which was adopted by the Oregon Legislature in 2021. The bill is a follow-up to House Bill 2001 (HB 2001) and allows lot divisions for middle housing that enable them to be sold or owned individually. For any city or county subject to the requirements of HB 2001, SB 458 requires those jurisdictions to allow middle housing lot divisions for any HB 2001 middle housing type (duplexes, triplexes, quadplexes, townhouses, and cottage clusters) built in accordance with ORS 197.758.
3. Amendments are proposed in several titles of the municipal code, as follows:
 - Municipal Code - Title 19 Zoning Ordinance
 - Chapter 19.1000 REVIEW PROCEDURES
 - Section 19.1003 Application Submittal and Completeness Review
 - Section 19.1005 Type II Review
 - Municipal Code - Title 17 Land Division
 - Chapter 17.12 APPLICATION PROCEDURE AND APPROVAL CRITERIA
 - Section 17.12.020 Application Procedure
 - Section 17.12.040 Approval Criteria for Preliminary Plat
 - Chapter 17.20 PRELIMINARY PLAT
 - Section 17.20.010 Submission of Plans
 - Section 17.20.060 Proposed Conditions
 - Chapter 17.24 FINAL PLAT
 - Section 17.24.010 Required Plat Information
 - Section 17.24.030 Approval of Final Plat
 - Section 17.24.040 Filing
4. The proposal is subject to the following provisions of the Milwaukie Municipal Code (MMC):
 - MMC Section 19.902 Amendments to Maps and Ordinances
 - MMC Chapter 19.1000 Review Procedures
5. Sections of the MMC not addressed in these findings are found to be not applicable to the decision on this land use application.

6. The application has been processed and public notice provided in accordance with MMC Section 19.1008 Type V Review. Public hearings were held on **April 5, 2022, and May 17, 2022** as required by law.

7. MMC Chapter 19.1000 establishes the initiation and review requirements for land use applications. The City Council finds that these requirements have been met as follows.

a. MMC Subsection 19.1001.6 requires that Type V applications be initiated by the Milwaukie City Council, Planning Commission, Planning Manager, or any individual.

The amendments were initiated by the Planning Manager on January 13, 2022.

b. MMC Section 19.1008 establishes requirements for Type V review. The procedures for Type V Review have been met as follows:

(1) Subsection 19.1008.3.A.1 requires opportunity for public comment.

Opportunity for public comment and review has been provided. The draft amendments have been posted on the City's web site since March 10, 2022. Planning staff notified all NDA chairs Land Use Committee members about the proposed code amendments via email on March 22, 2022. The Planning Commission held a worksession on February 22, 2022 to discuss the proposed amendments and a public hearing on April 12, 2022.

(2) Subsection 19.1008.3.A.2 requires notice of public hearing on a Type V Review to be posted on the City website and at City facilities that are open to the public at least 30 days prior to the hearing.

A notice of the Planning Commission's April 12, 2022, hearing was posted as required on March 10, 2022. A notice of the City Council's May 17, 2022, hearing was posted as required on April 14, 2022.

(3) Subsection 19.1008.3.A.3 requires notice be sent to individual property owners if the proposal affects a discrete geographic area or specific properties in the City.

The proposed amendments will apply to all residential properties in the city that have middle housing developments and request an expedited land division as described in Senate Bill 458. The Planning Manager has determined that the proposal affects a large geographic area.

(4) Subsection 19.1008.3.B requires notice of a Type V application be sent to the Department of Land Conservation and Development (DLCD) 35 days prior to the first evidentiary hearing.

Notice of the proposed amendments was sent to DLCD on March 7, 2022.

(5) Subsection 19.1008.3.C requires notice of a Type V application be sent to Metro 45 days prior to the first evidentiary hearing.

Notice of the proposed amendments was sent to Metro on March 7, 2022.

- (6) Subsection 19.1008.3.D requires notice to property owners if, in the Planning Director's opinion, the proposed amendments would affect the permissible uses of land for those property owners.

The proposed amendments will apply to all residential properties in the city that have middle housing developments and request an expedited land division as described in Senate Bill 458. The Planning Manager has determined that the proposal affects a large geographic area.

- (7) Subsection 19.1008.4 and 5 establish the review authority and process for review of a Type V application.

The Planning Commission held a duly advertised public hearing on April 12, 2022 and passed a motion recommending that the City Council approve the proposed amendments. The City Council held a duly advertised public hearing on May 17, 2022 and approved the amendments.

8. MMC 19.902 Amendments to Maps and Ordinances

MMC 19.902.5 establishes requirements for amendments to the text of the zoning ordinance. The City Council finds that these requirements have been met as follows.

- a. MMC Subsection 19.902.5.A requires that changes to the text of the land use regulations of the Milwaukie Municipal Code shall be evaluated through a Type V review per Section 19.1008.

The Planning Commission held a duly advertised public hearing on April 12, 2022 and passed a motion recommending that the City Council approve the proposed amendments. The City Council held a duly advertised public hearing on May 17, 2022 and approved the amendments. Public notice was provided in accordance with MMC Subsection 19.1008.3.

- (1) MMC Subsection 19.902.5.B establishes the approval criteria for changes to land use regulations of the Milwaukie Municipal Code.

- (a) MMC Subsection 19.905.B.1 requires that the proposed amendment be consistent with other provisions of the Milwaukie Municipal Code.

The proposed amendments involve specific language allowing expedited land divisions for middle housing developments. The amendments coordinate and are consistent with other provisions of the Milwaukie Municipal Code.

- (b) MMC Subsection 19.902.5.B.2 requires that the proposed amendment be consistent with the goals and policies of the Comprehensive Plan.

The goals and policies of the Comprehensive Plan support the amendments to allow middle housing ownership opportunities in all residential zones in the city:

- (c) Section 3 – Natural Resources and Environmental Quality:

Protect, conserve, and enhance the quality, diversity, quantity and resiliency of Milwaukie’s natural resources and ecosystems, and maintain the quality of its air, land, and water. Utilize a combination of development regulations, incentives, education and outreach programs, and partnerships with other public agencies and community stakeholders.

(a) Policy 3.4.3:

Provide flexibility in the division of land, the siting and design of buildings, and design standards in an effort to preserve the ecological function of designated natural resources and environmentally sensitive areas and retain native vegetation and trees.

(d) Section 6 – Climate Change and Energy Goals and Policies:

Promote energy efficiency and mitigate the anticipated impacts of climate change in Milwaukie through the use of efficient land use patterns, multimodal transportation options, wise infrastructure investments, and increased community outreach and education as outlined in the City’s Climate Action Plan.

(a) Policy 6.16:

Encourage the creation of compact, walkable neighborhoods and neighborhood hubs throughout the City that provide a mix of uses and help reduce transportation emissions and energy usage.

(e) Section 7 – Housing:

Provide safe, affordable, stable housing for Milwaukie residents of every socioeconomic status and physical ability within dwellings and neighborhoods that are entirely equitable, delightfully livable, and completely sustainable.

(a) Goal 7.1 – Equity:

Enable and encourage housing options that meet the needs of all residents, with a specific focus on uplifting historically disenfranchised communities and eliminating disparities for populations with special needs or lower incomes.

(i) Policy 7.1.1:

Provide the opportunity for a wider range of rental and ownership housing choices in Milwaukie, including additional middle housing types in low and medium density zones.

(ii) Policy 7.1.2:

Establish development standards that regulate size, shape, and form and are not exclusively focused on regulating density.

(iii) Policy 7.1.3:

Promote zoning and code requirements that remove or prevent potential barriers to home ownership and rental opportunities for people of all ages and abilities, including historically marginalized or vulnerable populations such as people of color, aging populations, and people with low incomes.

(b) Goal 7.2 – Affordability:

Provide opportunities to develop housing that is affordable at a range of income levels.

(i) Policy 7.2.2:

Allow and encourage the development of housing types that are affordable to low or moderate-income households, including middle housing types in low and medium density zones as well as larger apartment and condominium developments in high-density and mixed-use zones.

(ii) Policy 7.2.4:

Provide a simplified permitting process for the development of accessory dwelling units (ADUs) or conversion of single-unit homes into duplexes or other middle housing types.

(c) Goal 7.3 – Sustainability:

Promote environmentally and socially sustainable practices associated with housing development and construction.

(i) Policy 7.3.1:

Provide flexibility of footprint and placement of new housing to be consistent with city goals to preserve open spaces, achieve a 40% citywide tree canopy, and protect wetland, floodplains, and other natural resource or hazard areas.

(f) Section 8 – Urban Design and Land Use Goals and Policies:

Promote the design of private development and public spaces and facilities to enhance community livability, environmental sustainability, social interaction, and multimodal connectivity and support the unique function of Milwaukie neighborhoods as the centers of daily life.

(a) Goal 8.3 – Process:

Provide a clear and straight forward design review process for development in Milwaukie along with incentives to achieve desired outcomes.

(i) Policy 8.3.2:

Ensure that a clear and objective process is available for all housing types that meet design standards, provide adequate open space, and fit into the community, while offering an alternative discretionary path for projects that cannot meet these standards.

The proposed amendments implement SB 458 related to expedited land division for middle housing developments. The requirements of the legislation are intended to reduce barriers to homeownership for middle housing and eliminate specific requirements and reduce the land use review timeframe to streamline the process.

- (g) MMC Subsection 19.902.5.B.3 requires that the proposed amendment be consistent with the Metro Urban Growth Management Functional Plan and relevant regional policies.

The proposed amendments were sent to Metro for comment. Metro did not identify any inconsistencies with the Metro Urban Growth Management Functional Plan or relevant regional policies. The proposed code amendments are in compliance with Metro's Functional Growth Management Plan.

- (h) MMC Subsection 19.902.5.B.4 requires that the proposed amendment be consistent with relevant State statutes and administrative rules, including the Statewide Planning Goals and Transportation Planning Rule.

The proposed amendments were sent to the Department of Land Conservation and Development (DLCD) for comment. DLCD did not identify any inconsistencies with relevant State statutes or administrative rules.

Oregon Statewide Planning Goal 10: Housing

Goal 10 refers to the provision of housing to meet the needs of Oregon citizens. The proposed amendments relate to expedited land divisions for middle housing developments per HB 2001.

- (i) MMC Subsection 19.902.5.B.5 requires that the proposed amendment be consistent with relevant federal regulations.

The City Council finds that the Federal Fair Housing Amendments Act of 1988 is relevant to the proposed amendments. The proposed amendments provide a clear and objective review process for middle housing land divisions in the residential zones.

Underline/Strikeout Amendments

Title 19 Zoning Ordinance

CHAPTER 19.500 SUPPLEMENTAL DEVELOPMENT REGULATIONS

19.502 ACCESSORY STRUCTURES

19.502.2 Specific Provisions for Accessory Structures

B. Fences, walls, and plantings may be constructed or maintained in yards with the following limitations:

1. Fences, walls, and plantings shall be constructed or maintained in yards only so as to permit unobstructed vision of passenger vehicle operations when approaching intersecting streets or driveways. Fences, walls, and plantings shall meet clear vision standards provided in Chapter 12.24. Fences and walls on lot perimeters in areas other than those obstructing the vision of passenger vehicle operators shall be constructed or maintained to the following standards:

a. Residential Zones and Residential Uses in All Zones

Maximum height is 6 ft for rear, street side, and side yards; 42 in for front yards, except that for flag lots fences in the front yard may be 6 ft. No electrified, barbed, or razor wire fencing is permitted. Specific standards for fences on cottage cluster developments are contained in Subsection 19.505.4.E.3. ~~19.505.4.D.2.h.~~ All fences on the interior of a middle housing plex development shall be no more than 3 ft high. Fences along the perimeter of the development may be up to 6 ft high, except as restricted by Chapter 12.24 Clear Vision at Intersection. Chain-link fences are prohibited.

CHAPTER 19.1000 REVIEW PROCEDURES

19.1003 APPLICATION SUBMITTAL AND COMPLETENESS REVIEW

19.1003.3 Application Completeness Review

All applications are subject to the provisions of Subsections 19.1003.3.A-D below. Type I, II, III, and IV applications are also subject to the provisions of Subsections 19.1003.3.E-G below.

A. The City shall review the application submittal within 30 days of receipt of the application and advise the applicant in writing as to whether the application is complete or incomplete. The City shall review the application submittal for an Expedited Land Division or Middle Housing Land Division within 21 days of receipt of the application and advise the applicant in writing as to whether the application is complete or incomplete.

19.1005 TYPE II REVIEW

Type II applications involve uses or development governed by subjective approval criteria and/or development standards that may require the exercise of limited discretion. Type II review provides for administrative review of an application by the Planning ~~Manager~~ Director and includes notice to nearby property owners to allow for public comment prior to the decision. The process does not include a public hearing.

19.1005.5 Type II Decision

A. The decision shall be issued with sufficient time to allow the appeal authority for a Type II application to issue a final decision within 120 days from the date that the application was deemed complete. The final decision for an affordable housing application, as defined in, and subject to all of the provisions of ORS 197.311, shall be issued within 100 days from when the application was deemed complete. Pursuant to MMC 17.12.020.G, the final decision for a middle housing or expedited land division as defined in, and subject to the applicable provisions of ORS 92.010 to 92.192 and further referenced in ORS 197.360 and ORS 197.380, must be issued within 63 days from when the application was deemed complete, or extended by the city not to exceed 120 days.

19.1005.6 Appeal of a Type II Decision

A Type II decision may be appealed by filing a written appeal within 15 days from the date that the notice of decision was mailed. The appeal authority for a Type II decision is the Planning Commission. Appeal requirements and procedures are outlined in Section 19.1010.

Appeals of a Type II decision for a middle housing or expedited land division are processed subject to the applicable provisions found in ORS 197.360 – ORS 197.375.

Title 17 Land Division

CHAPTER 17.12 APPLICATION PROCEDURE AND APPROVAL CRITERIA

17.12.010 PURPOSE

The purpose of this chapter is to specify the process and procedures for lot consolidation, property line adjustment, partition, subdivision, and replat. (Ord. 1907 (Attach. 1), 2002)

17.12.020 APPLICATION PROCEDURE

- A. Applications for land division and property boundary changes shall be processed in accordance with Chapter 19.1000 Type I, Type II, and Type III procedures as indicated in this section.
- B. Applications for property boundary changes shall be processed in accordance with Table 17.12.020 based on the type of change requested. The Planning ~~Manager~~ Director may modify the procedures identified in Table 17.12.020 as follows:

1. Type III review may be changed to Type II review, or a Type II review may be changed to a Type I review, upon finding the following:
 - a. The proposal is consistent with applicable standards and criteria;
 - b. The proposal is consistent with the basis and findings of the original approval; and
 - c. The proposal does not increase the number of lots.
2. Type III review may be required in the following situations:
 - a. When the Planning Commission approved the original land use action; and
 - b. The proposed change is inconsistent with the original approval.

Table 17.12.020 Boundary Change Review Procedures			
Boundary Change Action	Type I	Type II	Type III
1. Lot Consolidation Other Than Replat			
a. Legal lots created by deed.	X		
2. Property Line Adjustment			
a. Any adjustment that is consistent with the ORS and this title.	X		
b. Any adjustment that modifies a plat restriction.		X	
3. Partition Replat			
a. Any modification to a plat that was decided by the Planning Commission.			X
b. Parcel consolidation.	X		
c. Actions not described in 3(a) or (b).		X	
4. Subdivision Replat			
a. Any modification to a plat affecting 4 or more lots.			X
5. Expedited and Middle Housing Land Division			
	-	-	-
a. <u>Any land division as defined by ORS 197.360 Expedited Land Division and/or land division of a middle housing project per ORS 197.758.</u>	-	<u>X</u>	

C. An increase in the number of lots within the original boundaries of a partition plat shall be reviewed as a subdivision when the number of existing lots that are to be modified combined with the number of proposed new lots exceeds 3.

D. Partitions

1. Applications for preliminary partition plat shall be processed in accordance with Section 19.1005 Type II Review. Should any associated application subject to Type III review be submitted in conjunction with a partition, the partition application shall be processed according to Section 19.1006 Type III Review.

2. Full compliance with all requirements for subdivision may be required if the Planning Commission should determine that the entire parcel being partitioned is in the process of being divided for the purpose of subdivision. This provision applies if the land to be partitioned exceeds 2 acres and within a year is being partitioned into more than 2 parcels, any one of which is less than 1 acre.

E. Subdivisions

Applications for subdivision preliminary plat applications shall be processed in accordance with Section 19.1006 Type III Review, except that subdivision applications that meet the approval criteria for middle housing or expedited land divisions may be processed pursuant to MMC 17.12.020.G and MMC 17.12.020.H respectively.

F. Final Plats

Applications for final plats of partitions and subdivisions shall be processed in accordance with Section 19.1004 Type I Review. (Ord. 2168 § 2, 2019; Ord. 2025 § 3, 2011; Ord. 2001 § 2, 2009; amended during Supp. No. 2; Ord. 1907 (Attach. 1), 2002)

G. Middle Housing Land Divisions

A middle housing land division is a partition or subdivision of a lot or parcel on which a middle housing project has been developed or approved for development under the provisions of this Code and ORS 197.758. Middle housing land divisions are regulated by this Code and ORS Chapter 92. Following the land division, the units of land created in a middle housing land division will be collectively considered a single lot along with the parent lot for all but platting and property transfer purposes under city code and state rules and statutes, including:

- a. Lot standards such as size, setback, lot coverage, and lot width and depth;
- b. Definition of unit types (e.g. a detached quadplex development where each unit is on its own lot through a middle housing land division would still be considered a detached quadplex development rather than single detached units);
- c. Allowed number of dwelling units and accessory dwelling units; and
- d. Compliance with Middle Housing rules and statutes in ORS 197 and OAR 660-046.

Applications for any land division affecting middle housing as provided in ORS 197.758 (2) must be processed as an expedited land division process as outlined in ORS 197.360 to 197.380. Pursuant to the expedited land division process, a middle housing land division

will be processed according to Section 19.1005 Type II Review. Further division of the resulting lots or parcels in an approved middle housing land division is prohibited.

H. Expedited Land Division

Expedited land divisions are defined by ORS 197.360(1) and are processed according to Section 19.1005 Type II Review. The Expedited Land Division/Middle Housing Land Division review process provides for review by the planning manager of an application based on provisions specified in this land use code. The application process includes notice to nearby occupants and property owners to allow for public comments prior to the planning manager's decision. Eligibility and approval criteria are detailed in Subsection 17.12.040.A.7.

17.12.040 APPROVAL CRITERIA FOR PRELIMINARY PLAT

A. Approval Criteria

The approval authority may approve, approve with conditions, or deny a preliminary plat based on the following approval criteria:

1. The proposed preliminary plat complies with Title 19 of this code and other applicable ordinances, regulations, and design standards, including Title 16.32 Tree Code.
2. The proposed division will allow reasonable development and will not create the need for a variance of any land division or zoning standard.
3. The proposed subdivision plat name is not duplicative and the plat otherwise satisfies the provisions of ORS 92.090(1).
4. The streets and roads are laid out so as to conform to the plats of subdivisions already approved for adjoining property as to width, general direction, and in all other respects unless the City determines it is in the public interest to modify the street or road pattern.
5. A detailed narrative description demonstrating how the proposal conforms to all applicable code sections and design standards.
6. Approval of a preliminary plat for a middle housing land division will be granted if the Planning Manager finds that the applicant has met all of the following criteria:
 - a. The middle housing development complies with the Oregon residential specialty code and the applicable MMC middle housing regulations. To demonstrate compliance with this criterion, the applicant must submit approved building permits or concurrent building permits demonstrating that existing or proposed structures comply with the Oregon Residential Specialty Code and MMC middle housing regulations in Titles 12 and 19.
 - b. The middle housing development is in compliance with the land use regulations applicable to the parent lot allowed under ORS 197.758 (5).
 - c. Separate utility service connections for public water, sewer, and stormwater will be provided for each dwelling unit.

- d. Easements will be provided as necessary for each dwelling unit on the site for:
 - i. Locating, accessing, replacing, and servicing all utilities;
 - ii. Pedestrian access from each dwelling unit to a private or public road;
 - iii. Any common use areas or shared building elements;
 - iv. Any dedicated driveways or parking; and
 - v. Any dedicated common area.
 - e. Exactly one dwelling unit will be located on each resulting lot except for lots or tracts used as common areas, on which no dwelling units will be permitted.
 - f. Buildings or structures on a resulting lot will comply with applicable building codes provisions relating to new property lines.
 - g. Structures or buildings located on the newly created lots will comply with the Oregon Residential Specialty Code.
 - h. Where a resulting lot abuts a street that does not meet City standards, street frontage improvements will be constructed and, if necessary, additional right-of-way will be dedicated, pursuant to MMC 19.700.
 - i. The proposed middle housing land division will not cause any existing improvements on the middle housing lots to be inconsistent with applicable standards in this land use code.
7. If an applicant elects to use the expedited land division procedure, the application must meet the following additional approval criteria:
- a. The proposed partition only includes land zoned for residential uses;
 - b. The parcels created will only be developed for residential use, including recreational or open space accessory to residential use;
 - c. The land division satisfies minimum street or other right-of-way connectivity standards established by the City's Transportation System Plan, Public Works Standards, and MMC 19.700;
 - d. The land division will not provide for dwellings or accessory buildings to be located on land that is specifically mapped and designated in the comprehensive plan and land use regulations for full or partial protection of natural features under the statewide planning goals that protect:
 - i. Open spaces, mapped historic properties as identified on Map 3 on the comprehensive plan, and mapped natural resources as regulated by MMC 19.402; or
 - ii. The Willamette River Greenway as regulated by MMC 19.401.
 - e. The land division will result in development that either:
 - i. Creates enough lots or parcels to allow building residential units at 80 percent or more of the maximum net density permitted by the zoning designation of the site; or
 - ii. Will be sold or rented to households with incomes below 120 percent of the median family income for Clackamas County.

B. Conditions of Approval

The approval authority may attach such conditions as are necessary to carry out the applicable ordinances and regulations and may require access control strips be granted to the City for the purpose of controlling access to adjoining undeveloped properties. (Ord. 1965 §§ 6, 7, 2006; Ord. 1907 (Attach. 1), 2002)

1. The City will attach conditions of approval of a preliminary plat for a middle housing land division to:
 - a. Require that a notation appear on the final plat indicating:
 - i. The middle housing lots shown on the tentative plan were created pursuant to a middle housing land division and may not be further divided.
 - ii. The middle housing developed on the middle housing lots shown on the preliminary plat shall remain middle housing and shall not be considered to be any other housing type as a result of the middle housing land division.
 - iii. Accessory dwelling units are not permitted on new lots resulting from a middle housing land division.
 - iv. Ensure that improvements associated with review criteria in MMC 17.12.040 are provided.
 - b. The preliminary plat approval of a middle housing land division is void if and only if a final middle housing land division plat is not approved within three years of the tentative approval.

CHAPTER 17.20 PRELIMINARY PLAT

17.20.010 SUBMISSION OF PLANS

Applicants for partition, subdivision, expedited land division, middle housing land division, and replat shall prepare a preliminary plat and such improvement plans and other supplemental material including as may be required to describe and represent the objectives of the proposal. (Ord. 1907 (Attach. 1), 2002)

17.20.060 PROPOSED CONDITIONS

- A. ~~42 copies of a preliminary plat shall be submitted to the Planning Director.~~ The plat shall include the following information:
1. Date, north point, scale, address, assessor reference number, and legal description;
 2. Name and address of the record owner or owners and of the person who prepared the site plan;
 3. Approximate acreage and square feet under a single ownership, or if more than 1 ownership is involved, the total contiguous acreage of all landowners directly involved in the partition;

4. For land adjacent to and within the area to be divided, the locations, names, and existing widths of all streets, driveways, public safety accesses, easements, and rights-of-way; location, width, and purpose of all other existing easements; and location and size of sewer and waterlines, drainage ways, power poles, and other utilities;
5. Location of existing structures, identifying those to remain in place and those to be removed;
6. Lot design and layout, showing proposed setbacks, landscaping, buffers, driveways, lot sizes, and relationship to existing or proposed streets and utility easements;
7. Existing development and natural features for the site and adjacent properties, including those properties within 100 feet of the proposal, showing buildings, mature trees as required in MMC 16.32, topography, and other structures;
8. Elevation and location of flood hazard boundaries;
9. The location, width, name, and approximate centerline grade and curve radii of all streets; the relationship of all streets to any projected streets planned by the City; whether roads will continue beyond the plat; and existing and proposed grade profiles. No street name may be used which will duplicate or be confused with the name of an existing street, except for extensions of existing streets. Street names and numbers shall conform to the established pattern in the surrounding area.
10. For middle housing land divisions, in addition to the items in MMC 17.20.060.A, the following must be provided and shown on the preliminary plat:
 - a. separate utility connections for each dwelling unit;
 - b. proposed easements necessary for each dwelling unit on the plan for:
 1. Locating, accessing, replacing and servicing all utilities;
 2. Pedestrian access from each dwelling unit to a private or public road;
 3. Any common use areas or shared building elements;
 4. Any dedicated driveways or parking; and
 5. Any dedicated common area.
 - c. Copies of all required easements in a form approved by the City Attorney.
 - d. A description of the manner in which the proposed division complies with each of the provisions of 17.12.040.A.6 including copies of approved building permits, or concurrent building permits, and other evidence necessary to demonstrate:
 1. How buildings or structures on a resulting lot will comply with applicable building codes provisions related to new property lines; and
 2. Notwithstanding the creation of new lots, how structures or buildings located on the newly created lots will comply with the Oregon Residential Specialty Code.

- B. A conceptual plan shall be provided for complete subdivision or partitioning of the property, as well as any adjacent vacant or underutilized properties, so that access issues may be addressed in a comprehensive manner. The concept plan shall include documentation that all options for access have been investigated including shared driveways, pedestrian accessways, and new street development.
- C. A detailed narrative description demonstrating how the proposal meets all applicable provisions of this title, Title 19, Subsection 16.32, and City design standards, including the Public Works Standards.
- D. Plans and drawings as necessary to demonstrate compliance with all applicable provisions of chapters of this title, Title 19, Subsection 16.32, and City design standards, including the Public Works Standards.
- E. A drainage summary report and plan prepared in accordance with the applicable Public Works Standards.
- F. Proposed deed restrictions, if any, in outline form.
- G. Improvements to be made by the developer and the approximate time such improvements are to be completed. Sufficient detail regarding proposed improvements shall be submitted so that they may be checked for compliance with the objectives of this title, State law, and other applicable City ordinances. If the nature of the improvements is such that it is impractical to prepare all necessary details prior to approval of the preliminary plat, the additional details shall be submitted with the request for final plat approval.

CHAPTER 17.24 FINAL PLAT

17.24.010 REQUIRED PLAT INFORMATION

In addition to that otherwise specified by law, the following information shall be shown on the final plat:

- A. The date, scale, north point, legend, plat boundary, and controlling topography such as creeks and highways;
- B. Legal description of the tract boundaries;
- C. Name of the owner(s), applicant(s), and surveyor.
- D. Reference points of existing surveys identified, related to the plat by distances and bearings, and referenced to a field book or map as follows:
 - 1. Stakes, monuments, or other evidence found on the ground and used to determine the boundaries of the subdivision;
 - 2. Adjoining corners of adjoining subdivisions;
 - 3. Other monuments found or established in making the survey of the subdivision or required to be installed by provision of this title.
- E. The exact location and width of streets and easements intersecting the boundary of the tract.

- F. Lines with dimensions, bearings or deflection angles, radii, arcs, points of curvature, and tangent bearings for tract, lot, and block boundaries, and street right-of-way and centerlines. Tract boundaries and street bearings shall be shown to the nearest second with basis of bearings approved in advance by the County Surveyor. All distances shall be shown to the nearest hundredth of a foot. No ditto marks may be used.
- G. The width of the portion of streets being dedicated, the width of any existing right-of-way, and the width of each side of the centerline. For streets on curvature, curve data shall be based on the street centerline and, in addition to the centerline dimensions, the radius and central angle shall be indicated.
- H. Easements denoted by fine dotted lines, clearly identified and, if already of record, their recorded reference. If an easement is not definitely located of record, a statement of the easement. The width of the easement, its length and bearing, and sufficient ties to locate the easement with respect to the subdivision must be shown. If the easement is being dedicated by the map, it shall be properly referenced in the owner's certificates of dedication.
- I. Lot numbers beginning with the number "1" and numbered consecutively.
- J. Land tracts to be dedicated or reserved for any purpose, public or private, as distinguished from residential lots intended for sale.
- K. References to any agreements including conditions of approval or special building restrictions that will be recorded with the plat.
- L. The following certificates, which may be combined where appropriate:
 - 1. A certificate signed and acknowledged by all parties having any record title interest in the land, consenting to the preparation and recording of the plat;
 - 2. A certificate signed and acknowledged as above, dedicating all parcels of land shown on the final map as intended for any public use without any reservation or restriction whatsoever, except those parcels which are intended for the exclusive use of the lot;
 - 3. A certificate signed by the engineer or the surveyor responsible for the survey and final map. The seal and signature of the engineer or surveyor.
- M. For middle housing land divisions, the following notations:
 - 1. The middle housing lots shown on the tentative plan were created pursuant to a middle housing land division and may not be further divided.
 - 2. The middle housing developed on the middle housing lots shown on the final plat shall remain middle housing and shall not be considered to be any other housing type as a result of the middle housing land division.

(Ord. 1907 (Attach. 1), 2002)

17.24.030 APPROVAL OF FINAL PLAT

Approval of the final plat shall be indicated by signature of the Planning Manager ~~Director~~ and Engineering Director. (Ord. 1907 (Attach. 1), 2002)

17.24.040 FILING

Within 6 months of City approval of the preliminary plat, the applicant shall submit the final plat for City signatures. Approval of the final plat shall be null and void if the plat is not submitted within the time specified or if the plat is not recorded within 30 days after the date the last required signature has been obtained. One copy of the recorded plat shall be supplied to the City.

A notice of middle housing land division shall be recorded for each middle housing lot with Clackamas County that states:

- (1) The middle housing lot may not be further divided.
- (2) No more than one unit of middle housing may be developed on each middle housing lot.
- (3) The dwelling developed on the middle housing lot is a unit of middle housing and is not a single attached or detached dwelling, or any other housing type.

For middle housing and expedited land divisions, the approval of a preliminary plat is void if and only if a final plat is not approved within three years of the preliminary plat approval. Within that time, any conditions of approval must be fulfilled and the final plat, as approved by the city, must be recorded by the applicant with Clackamas County.

Clean Amendments
Title 19 Zoning Ordinance

CHAPTER 19.500 SUPPLEMENTAL DEVELOPMENT REGULATIONS

19.502 ACCESSORY STRUCTURES

19.502.2 Specific Provisions for Accessory Structures

B. Fences, walls, and plantings may be constructed or maintained in yards with the following limitations:

1. Fences, walls, and plantings shall be constructed or maintained in yards only so as to permit unobstructed vision of passenger vehicle operations when approaching intersecting streets or driveways. Fences, walls, and plantings shall meet clear vision standards provided in Chapter 12.24. Fences and walls on lot perimeters in areas other than those obstructing the vision of passenger vehicle operators shall be constructed or maintained to the following standards:

a. Residential Zones and Residential Uses in All Zones

Maximum height is 6 ft for rear, street side, and side yards; 42 in for front yards, except that for flag lots fences in the front yard may be 6 ft. No electrified, barbed, or razor wire fencing is permitted. Specific standards for fences on cottage cluster developments are contained in Subsection 19.505.4.E.3. All fences on the interior of a middle housing plex development shall be no more than 3 ft high. Fences along the perimeter of the development may be up to 6 ft high, except as restricted by Chapter 12.24 Clear Vision at Intersection. Chain-link fences are prohibited.

CHAPTER 19.1000 REVIEW PROCEDURES

19.1003 APPLICATION SUBMITTAL AND COMPLETENESS REVIEW

19.1003.3 Application Completeness Review

All applications are subject to the provisions of Subsections 19.1003.3.A-D below. Type I, II, III, and IV applications are also subject to the provisions of Subsections 19.1003.3.E-G below.

A. The City shall review the application submittal within 30 days of receipt of the application and advise the applicant in writing as to whether the application is complete or incomplete. The City shall review the application submittal for an Expedited Land Division

or Middle Housing Land Division within 21 days of receipt of the application and advise the applicant in writing as to whether the application is complete or incomplete.

19.1005 TYPE II REVIEW

Type II applications involve uses or development governed by subjective approval criteria and/or development standards that may require the exercise of limited discretion. Type II review provides for administrative review of an application by the Planning Manager and includes notice to nearby property owners to allow for public comment prior to the decision. The process does not include a public hearing.

19.1005.5 Type II Decision

A. The decision shall be issued with sufficient time to allow the appeal authority for a Type II application to issue a final decision within 120 days from the date that the application was deemed complete. The final decision for an affordable housing application, as defined in, and subject to all of the provisions of ORS 197.311, shall be issued within 100 days from when the application was deemed complete. Pursuant to MMC 17.12.020.G, the final decision for a middle housing or expedited land division as defined in, and subject to the applicable provisions of ORS 92.010 to 92.192 and further referenced in ORS 197.360 and ORS 197.380, must be issued within 63 days from when the application was deemed complete, or extended by the city not to exceed 120 days.

19.1005.6 Appeal of a Type II Decision

A Type II decision may be appealed by filing a written appeal within 15 days from the date that the notice of decision was mailed. The appeal authority for a Type II decision is the Planning Commission. Appeal requirements and procedures are outlined in Section 19.1010.

Appeals of a Type II decision for a middle housing or expedited land division are processed subject to the applicable provisions found in ORS 197.360 – ORS 197.375.

Title 17 Land Division

CHAPTER 17.12 APPLICATION PROCEDURE AND APPROVAL CRITERIA

17.12.010 PURPOSE

The purpose of this chapter is to specify the process and procedures for lot consolidation, property line adjustment, partition, subdivision, and replat. (Ord. 1907 (Attach. 1), 2002)

17.12.020 APPLICATION PROCEDURE

A. Applications for land division and property boundary changes shall be processed in accordance with Chapter 19.1000 Type I, Type II, and Type III procedures as indicated in this section.

B. Applications for property boundary changes shall be processed in accordance with Table 17.12.020 based on the type of change requested. The Planning Manager may modify the procedures identified in Table 17.12.020 as follows:

1. Type III review may be changed to Type II review, or a Type II review may be changed to a Type I review, upon finding the following:
 - a. The proposal is consistent with applicable standards and criteria;
 - b. The proposal is consistent with the basis and findings of the original approval; and
 - c. The proposal does not increase the number of lots.
2. Type III review may be required in the following situations:
 - a. When the Planning Commission approved the original land use action; and
 - b. The proposed change is inconsistent with the original approval.

Table 17.12.020 Boundary Change Review Procedures			
Boundary Change Action	Type I	Type II	Type III
1. Lot Consolidation Other Than Replat			
a. Legal lots created by deed.	X		
2. Property Line Adjustment			
a. Any adjustment that is consistent with the ORS and this title.	X		
b. Any adjustment that modifies a plat restriction.		X	
3. Partition Replat			
a. Any modification to a plat that was decided by the Planning Commission.			X
b. Parcel consolidation.	X		
c. Actions not described in 3(a) or (b).		X	
4. Subdivision Replat			
a. Any modification to a plat affecting 4 or more lots.			X
5. Expedited and Middle Housing Land Division			
a. Any land division as defined by ORS 197.360 Expedited Land Division and/or land division of a middle housing project per ORS 197.758.		X	

C. An increase in the number of lots within the original boundaries of a partition plat shall be reviewed as a subdivision when the number of existing lots that are to be modified combined with the number of proposed new lots exceeds 3.

D. Partitions

1. Applications for preliminary partition plat shall be processed in accordance with Section 19.1005 Type II Review. Should any associated application subject to Type III review be submitted in conjunction with a partition, the partition application shall be processed according to Section 19.1006 Type III Review.

2. Full compliance with all requirements for subdivision may be required if the Planning Commission should determine that the entire parcel being partitioned is in the process of being divided for the purpose of subdivision. This provision applies if the land to be partitioned exceeds 2 acres and within a year is being partitioned into more than 2 parcels, any one of which is less than 1 acre.

E. Subdivisions

Applications for subdivision preliminary plat applications shall be processed in accordance with Section 19.1006 Type III Review, except that subdivision applications that meet the approval criteria for middle housing or expedited land divisions may be processed pursuant to MMC 17.12.020.G and MMC 17.12.020.H respectively.

F. Final Plats

Applications for final plats of partitions and subdivisions shall be processed in accordance with Section 19.1004 Type I Review. (Ord. 2168 § 2, 2019; Ord. 2025 § 3, 2011; Ord. 2001 § 2, 2009; amended during Supp. No. 2; Ord. 1907 (Attach. 1), 2002)

G. Middle Housing Land Divisions

A middle housing land division is a partition or subdivision of a lot or parcel on which a middle housing project has been developed or approved for development under the provisions of this Code and ORS 197.758. Middle housing land divisions are regulated by this Code and ORS Chapter 92. Following the land division, the units of land created in a middle housing land division will be collectively considered a single lot along with the parent lot for all but platting and property transfer purposes under city code and state rules and statutes, including:

- a. lot standards such as size, setback, lot coverage, and lot width and depth;
- b. definition of unit types (e.g. a detached quadplex development where each unit is on its own lot through a middle housing land division would still be considered a detached quadplex development rather than single detached units);
- c. Allowed number of dwelling units and accessory dwelling units; and
- d. Compliance with Middle Housing rules and statutes in ORS 197 and OAR 660-046.

Applications for any land division affecting middle housing as provided in ORS 197.758 (2) must be processed as an expedited land division process as outlined in ORS 197.360 to

197.380. Pursuant to the expedited land division process, a middle housing land division will be processed according to Section 19.1005 Type II Review. Further division of the resulting lots or parcels in an approved middle housing land division is prohibited.

H. Expedited Land Division

Expedited land divisions are defined by ORS 197.360(1) and are processed according to Section 19.1005 Type II Review. The Expedited Land Division/Middle Housing Land Division review process provides for review by the planning manager of an application based on provisions specified in this land use code. The application process includes notice to nearby occupants and property owners to allow for public comments prior to the planning manager's decision. Eligibility and approval criteria are detailed in Subsection 17.12.040.A.7.

17.12.040 APPROVAL CRITERIA FOR PRELIMINARY PLAT

A. Approval Criteria

The approval authority may approve, approve with conditions, or deny a preliminary plat based on the following approval criteria:

1. The proposed preliminary plat complies with Title 19 of this code and other applicable ordinances, regulations, and design standards, including Title 16.32 Tree Code.
2. The proposed division will allow reasonable development and will not create the need for a variance of any land division or zoning standard.
3. The proposed subdivision plat name is not duplicative and the plat otherwise satisfies the provisions of ORS 92.090(1).
4. The streets and roads are laid out so as to conform to the plats of subdivisions already approved for adjoining property as to width, general direction, and in all other respects unless the City determines it is in the public interest to modify the street or road pattern.
5. A detailed narrative description demonstrating how the proposal conforms to all applicable code sections and design standards.
6. Approval of a preliminary plat for a middle housing land division will be granted if the Planning Manager finds that the applicant has met all of the following criteria:
 - a. The middle housing development complies with the Oregon residential specialty code and the applicable MMC middle housing regulations. To demonstrate compliance with this criterion, the applicant must submit approved building permits or concurrent building permits demonstrating that existing or proposed structures comply with the Oregon Residential Specialty Code and MMC middle housing regulations in Titles 12 and 19.
 - b. The middle housing development is in compliance with the land use regulations applicable to the parent lot allowed under ORS 197.758 (5).
 - c. Separate utility service connections for public water, sewer, and stormwater will be provided for each dwelling unit.

- d. Easements will be provided as necessary for each dwelling unit on the site for:
 - i. Locating, accessing, replacing, and servicing all utilities;
 - ii. Pedestrian access from each dwelling unit to a private or public road;
 - iii. Any common use areas or shared building elements;
 - iv. Any dedicated driveways or parking; and
 - v. Any dedicated common area.
 - e. Exactly one dwelling unit will be located on each resulting lot except for lots or tracts used as common areas, on which no dwelling units will be permitted.
 - f. Buildings or structures on a resulting lot will comply with applicable building codes provisions relating to new property lines.
 - g. Structures or buildings located on the newly created lots will comply with the Oregon Residential Specialty Code.
 - h. Where a resulting lot abuts a street that does not meet City standards, street frontage improvements will be constructed and, if necessary, additional right-of-way will be dedicated, pursuant to MMC 19.700.
 - i. The proposed middle housing land division will not cause any existing improvements on the middle housing lots to be inconsistent with applicable standards in this land use code.
7. If an applicant elects to use the expedited land division procedure, the application must meet the following additional approval criteria:
- a. The proposed partition only includes land zoned for residential uses;
 - b. The parcels created will only be developed for residential use, including recreational or open space accessory to residential use;
 - c. The land division satisfies minimum street or other right-of-way connectivity standards established by the City's Transportation System Plan, Public Works Standards, and MMC 19.700;
 - d. The land division will not provide for dwellings or accessory buildings to be located on land that is specifically mapped and designated in the comprehensive plan and land use regulations for full or partial protection of natural features under the statewide planning goals that protect:
 - i. Open spaces, mapped historic properties as identified on Map 3 on the comprehensive plan, and mapped natural resources as regulated by MMC 19.402; or
 - ii. The Willamette River Greenway as regulated by MMC 19.401.
 - e. The land division will result in development that either:
 - i. Creates enough lots or parcels to allow building residential units at 80 percent or more of the maximum net density permitted by the zoning designation of the site; or
 - ii. Will be sold or rented to households with incomes below 120 percent of the median family income for Clackamas County.

B. Conditions of Approval

The approval authority may attach such conditions as are necessary to carry out the applicable ordinances and regulations and may require access control strips be granted to the City for the purpose of controlling access to adjoining undeveloped properties. (Ord. 1965 §§ 6, 7, 2006; Ord. 1907 (Attach. 1), 2002)

1. The City will attach conditions of approval of a preliminary plat for a middle housing land division to:
 - a. Require that a notation appear on the final plat indicating:
 - i. The middle housing lots shown on the tentative plan were created pursuant to a middle housing land division and may not be further divided.
 - ii. The middle housing developed on the middle housing lots shown on the preliminary plat shall remain middle housing and shall not be considered to be any other housing type as a result of the middle housing land division.
 - iii. Accessory dwelling units are not permitted on new lots resulting from a middle housing land division.
 - iv. Ensure that improvements associated with review criteria in MMC 17.12.040 are provided.
 - b. The preliminary plat approval of a middle housing land division is void if and only if a final middle housing land division plat is not approved within three years of the tentative approval.

CHAPTER 17.20 PRELIMINARY PLAT

17.20.010 SUBMISSION OF PLANS

Applicants for partition, subdivision, expedited land division, middle housing land division, and replat shall prepare a preliminary plat and such improvement plans and other supplemental material including as may be required to describe and represent the objectives of the proposal. (Ord. 1907 (Attach. 1), 2002)

17.20.060 PROPOSED CONDITIONS

- A. The plat shall include the following information:
 1. Date, north point, scale, address, assessor reference number, and legal description;
 2. Name and address of the record owner or owners and of the person who prepared the site plan;
 3. Approximate acreage and square feet under a single ownership, or if more than 1 ownership is involved, the total contiguous acreage of all landowners directly involved in the partition;

4. For land adjacent to and within the area to be divided, the locations, names, and existing widths of all streets, driveways, public safety accesses, easements, and rights-of-way; location, width, and purpose of all other existing easements; and location and size of sewer and waterlines, drainage ways, power poles, and other utilities;
5. Location of existing structures, identifying those to remain in place and those to be removed;
6. Lot design and layout, showing proposed setbacks, landscaping, buffers, driveways, lot sizes, and relationship to existing or proposed streets and utility easements;
7. Existing development and natural features for the site and adjacent properties, including those properties within 100 feet of the proposal, showing buildings, mature trees as required in MMC 16.32, topography, and other structures;
8. Elevation and location of flood hazard boundaries;
9. The location, width, name, and approximate centerline grade and curve radii of all streets; the relationship of all streets to any projected streets planned by the City; whether roads will continue beyond the plat; and existing and proposed grade profiles. No street name may be used which will duplicate or be confused with the name of an existing street, except for extensions of existing streets. Street names and numbers shall conform to the established pattern in the surrounding area.
10. For middle housing land divisions, in addition to the items in MMC 17.20.060.A, the following must be provided and shown on the preliminary plat:
 - a. separate utility connections for each dwelling unit;
 - b. proposed easements necessary for each dwelling unit on the plan for:
 1. Locating, accessing, replacing and servicing all utilities;
 2. Pedestrian access from each dwelling unit to a private or public road;
 3. Any common use areas or shared building elements;
 4. Any dedicated driveways or parking; and
 5. Any dedicated common area.
 - c. Copies of all required easements in a form approved by the City Attorney.
 - d. A description of the manner in which the proposed division complies with each of the provisions of 17.12.040.A.6 including copies of approved building permits, or concurrent building permits, and other evidence necessary to demonstrate:
 1. How buildings or structures on a resulting lot will comply with applicable building codes provisions related to new property lines; and
 2. Notwithstanding the creation of new lots, how structures or buildings located on the newly created lots will comply with the Oregon Residential Specialty Code.

- B. A conceptual plan shall be provided for complete subdivision or partitioning of the property, as well as any adjacent vacant or underutilized properties, so that access issues may be addressed in a comprehensive manner. The concept plan shall include documentation that all options for access have been investigated including shared driveways, pedestrian accessways, and new street development.
- C. A detailed narrative description demonstrating how the proposal meets all applicable provisions of this title, Title 19, Subsection 16.32, and City design standards, including the Public Works Standards.
- D. Plans and drawings as necessary to demonstrate compliance with all applicable provisions of chapters of this title, Title 19, Subsection 16.32, and City design standards, including the Public Works Standards.
- E. A drainage summary report and plan prepared in accordance with the applicable Public Works Standards.
- F. Proposed deed restrictions, if any, in outline form.
- G. Improvements to be made by the developer and the approximate time such improvements are to be completed. Sufficient detail regarding proposed improvements shall be submitted so that they may be checked for compliance with the objectives of this title, State law, and other applicable City ordinances. If the nature of the improvements is such that it is impractical to prepare all necessary details prior to approval of the preliminary plat, the additional details shall be submitted with the request for final plat approval.

CHAPTER 17.24 FINAL PLAT

17.24.010 REQUIRED PLAT INFORMATION

In addition to that otherwise specified by law, the following information shall be shown on the final plat:

- A. The date, scale, north point, legend, plat boundary, and controlling topography such as creeks and highways;
- B. Legal description of the tract boundaries;
- C. Name of the owner(s), applicant(s), and surveyor.
- D. Reference points of existing surveys identified, related to the plat by distances and bearings, and referenced to a field book or map as follows:
 - 1. Stakes, monuments, or other evidence found on the ground and used to determine the boundaries of the subdivision;
 - 2. Adjoining corners of adjoining subdivisions;
 - 3. Other monuments found or established in making the survey of the subdivision or required to be installed by provision of this title.
- E. The exact location and width of streets and easements intersecting the boundary of the tract.

- F. Lines with dimensions, bearings or deflection angles, radii, arcs, points of curvature, and tangent bearings for tract, lot, and block boundaries, and street right-of-way and centerlines. Tract boundaries and street bearings shall be shown to the nearest second with basis of bearings approved in advance by the County Surveyor. All distances shall be shown to the nearest hundredth of a foot. No ditto marks may be used.
- G. The width of the portion of streets being dedicated, the width of any existing right-of-way, and the width of each side of the centerline. For streets on curvature, curve data shall be based on the street centerline and, in addition to the centerline dimensions, the radius and central angle shall be indicated.
- H. Easements denoted by fine dotted lines, clearly identified and, if already of record, their recorded reference. If an easement is not definitely located of record, a statement of the easement. The width of the easement, its length and bearing, and sufficient ties to locate the easement with respect to the subdivision must be shown. If the easement is being dedicated by the map, it shall be properly referenced in the owner's certificates of dedication.
- I. Lot numbers beginning with the number "1" and numbered consecutively.
- J. Land tracts to be dedicated or reserved for any purpose, public or private, as distinguished from residential lots intended for sale.
- K. References to any agreements including conditions of approval or special building restrictions that will be recorded with the plat.
- L. The following certificates, which may be combined where appropriate:
 - 1. A certificate signed and acknowledged by all parties having any record title interest in the land, consenting to the preparation and recording of the plat;
 - 2. A certificate signed and acknowledged as above, dedicating all parcels of land shown on the final map as intended for any public use without any reservation or restriction whatsoever, except those parcels which are intended for the exclusive use of the lot;
 - 3. A certificate signed by the engineer or the surveyor responsible for the survey and final map. The seal and signature of the engineer or surveyor.
- M. For middle housing land divisions, the following notations:
 - 1. The middle housing lots shown on the tentative plan were created pursuant to a middle housing land division and may not be further divided.
 - 2. The middle housing developed on the middle housing lots shown on the final plat shall remain middle housing and shall not be considered to be any other housing type as a result of the middle housing land division.

(Ord. 1907 (Attach. 1), 2002)

17.24.030 APPROVAL OF FINAL PLAT

Approval of the final plat shall be indicated by signature of the Planning Manager and Engineering Director. (Ord. 1907 (Attach. 1), 2002)

17.24.040 FILING

Within 6 months of City approval of the preliminary plat, the applicant shall submit the final plat for City signatures. Approval of the final plat shall be null and void if the plat is not submitted within the time specified or if the plat is not recorded within 30 days after the date the last required signature has been obtained. One copy of the recorded plat shall be supplied to the City.

A notice of middle housing land division shall be recorded for each middle housing lot with Clackamas County that states:

- (1) The middle housing lot may not be further divided.
- (2) No more than one unit of middle housing may be developed on each middle housing lot.
- (3) The dwelling developed on the middle housing lot is a unit of middle housing and is not a single attached or detached dwelling, or any other housing type.

For middle housing and expedited land divisions, the approval of a preliminary plat is void if and only if a final plat is not approved within three years of the preliminary plat approval. Within that time, any conditions of approval must be fulfilled and the final plat, as approved by the city, must be recorded by the applicant with Clackamas County.



**RS 8. B. 5/17/22
Presentation**

SB 458

PROPOSED CODE AMENDMENTS

City Council

May 17, 2022

Vera Kolas, Senior Planner

SB 458 BACKGROUND

- Land Divisions for middle housing
- Follow up to House Bill 2001 (HB2001)
- Applies to middle housing land divisions permitted on or after 6/30/2022
- Allows lot divisions for middle housing, enabling units to be sold or owned individually.
 - ADUs NOT eligible for land division



SB 458 - REQUIREMENTS

- All middle housing types
- Land division must result in 1 dwelling per lot
- Separate utilities for each dwelling
- Easements
 - Ped access; common areas; driveways and parking areas; utilities
- Building code compliance
- Expedited review time frame – compressed Type II review



SB 458 – REQUIREMENTS (OPTIONAL)

- Street frontage improvements ✓
- Concurrent review X
- Preliminary/final plats ✓
- Building permits/final plat ✓

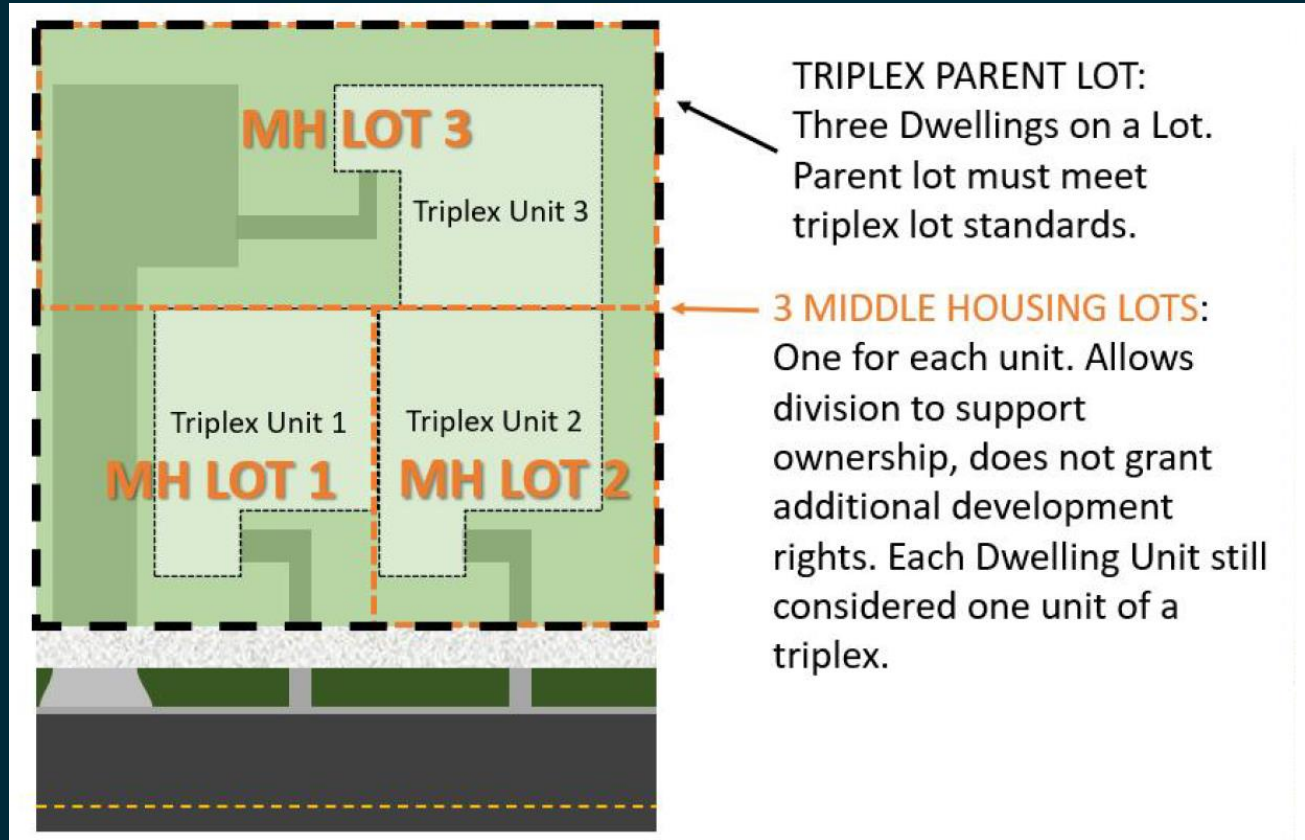


SB 458 – CANNOT REQUIRE

- Street frontage for new lots
- Parking or driveway to each lot
- Min. lot size or dimensions – but yes on the “parent” lot
- Other review criteria
 - ONLY what is in SB 458
- Conditions of approval
 - ONLY what is in SB 458



SB 458 - EXAMPLE



SB 458 – PROPOSED AMENDMENTS

- Applies to both detached and attached units
- Amendments to Title 17 – Land Division
- Amendments to Title 19 – Type II review



SB 458 – PROPOSED AMENDMENTS

Following the land division, the units of land created in a middle housing land division will be collectively considered a single lot along with the parent lot for all but platting and property transfer purposes under city code and state rules and statutes, including:

- a. lot standards such as size, setback, lot coverage, and lot width and depth;
- b. definition of unit types (e.g. a detached quadplex development where each unit is on its own lot through a middle housing land division would still be considered a detached quadplex development rather than single detached units);
- c. Allowed number of dwelling units and accessory dwelling units; and
- d. Compliance with Middle Housing rules and statutes in ORS 197 and OAR 660-046.



SB 458 – SUBDIVISIONS

The city can:

- Require that applicants for a partition or subdivision specify the anticipated development of Middle Housing for the purpose of public facilities planning.
- Should an applicant submit a proposal for the development of Middle Housing exceeding the planned public facilities of a partition or subdivision, the city may withhold issuance of building permits until the public facility deficiency is addressed.
- Require a mix of housing types, including Middle Housing, within a partition or subdivision.
- Require Middle Housing to provide the same right-of-way dedication and frontage improvements that apply to detached single-family dwellings.



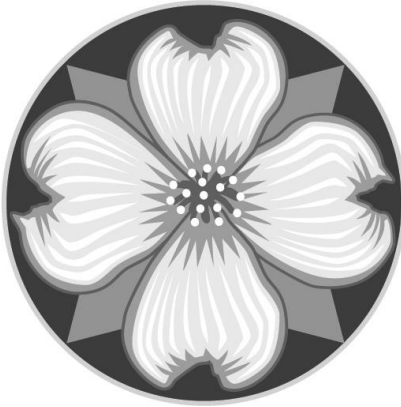
CODE REVIEW SCHEDULE

- April 12: PC voted to recommend approval
- Tonight: Council hearing – Adoption
 - Effective date: June 17



QUESTIONS?





RS Agenda Item

9

Council Reports

Draft body of letter on the ODOT Rail Needs Inventory – comment period closes May 22nd

The City of Milwaukie appreciates the opportunity to comment on the Oregon Department of Transportation (ODOT) Rail Needs Inventory, but notes that we only learned of this through a posting on the League of Oregon Cities, not through any direct contact with the City of Milwaukie (COM) by ODOT. This is troubling given that there are projects here of significance to the Milwaukie – namely projects numbered 17, 71 and 72.

Project 17, a grade-separated solution at the Harmony Road interchange, is something for which the COM has long recognized the need. Concerns about the safety of that intersection, the flow of traffic at an intersection that is already at or near failing during rush hour, and the problem of impeding the ability of emergency vehicles to get to parts of our community put us resolutely in support of that project, while acknowledging that it comes with formidable challenges and will be costly.

We would further note that Chapter 9 of Milwaukie’s Transportation System Plan (TSP), available here, calls for grade separation of rail and vehicle traffic at Harrison Street, where the crossing is adjacent to our Public Safety Building, which houses the Milwaukie Police Department as well as one station of Clackamas Fire District #1. The COM is just now launching into an update of the TSP, and we anticipate a public discussion of whether grade separation makes sense at Harrison or one of the other crossings near Central Milwaukie, such as at 37th Avenue.

Commented [LB1]: Link to https://www.milwaukieoregon.gov/sites/default/files/fileattachments/planning/page/42751/ch_9_freight_element_10-20-18.pdf

As for projects 71 and 72, we do not object to the projects themselves, but think they should only be pursued with conditions. Project 72 would double-track the main line through the entire length of the COM. We can see some benefits as well as concerns with this project. But in our view, it absolutely should not be pursued until the aforementioned grade separation at Harmony Road has been achieved.

Project 71 would add an additional siding from the Willsburg Junction to the Brooklyn Yard. This stretch of rail runs between the North Milwaukie Innovation Area to the west, and the Ardenwald residential neighborhood to the east. Idling trains, which belch diesel fumes and particulate matter into the air, as well as creating disruptive noise and vibrations, have intermittently been a problem in this stretch, as well as along the Portland and Western “Tillamook branch” line on the southern edge of Milwaukie. The COM objects to creating an additional siding unless and until ODOT imposes restrictions on the idling and emissions of trains that would use this siding. Such restrictions should, at a minimum, require that all locomotives be equipped with an Automatic Engine Stop/Start (AESS) systems to reduce idling times as well as updated diesel emissions controls.

The COM would welcome the opportunity for more direct dialogue with ODOT on our concerns with these projects. We would be happy to have ODOT representatives come to a Milwaukie City Council meeting later this year so that the wider community would also have an opportunity to understand the plans and impacts of these items on the Rail Needs Inventory.

[Mayor’s signature block]