



Work Session

WS

Milwaukie City Council

This packet was revised on December 16, 2024.

COUNCIL WORK SESSION

City Hall Council Chambers, 10501 SE Main Street
& Zoom Video Conference (www.milwaukieoregon.gov)

REVISED AGENDA

DECEMBER 17, 2024

(Revised December 16, 2024)

Council will hold this meeting in-person and by video conference. The public may come to City Hall, join the Zoom webinar, or watch 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-work-session-362>.
Written comments may be delivered to City Hall or emailed to ocr@milwaukieoregon.gov.

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

Page #

- 1. Downtown Open Container Policy – Discussion**
(Moved to the December 17, 2024, regular session agenda)
Staff: Ryan Burdick, Police Chief

Council Reports (4:00 p.m.) (added to the agenda)

13

66
- 3. Parks Update – Discussion** (4:30 p.m.) (moved up the agenda)
Staff: Emma Sagor, City Manager

56
- 2. Annual Joint Session with the Planning Commission** (5:00 p.m.)
Council will hold a joint session meeting with the Planning Commission to discuss the Commission’s workplan. A quorum of the Commission may be present at this meeting.
Staff: Laura Weigel, Planning Manager

56
- 4. Adjourn** (6:00 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.



CITY OF MILWAUKIE

Memorandum

To: City Council
From: Joseph Briglio, Assistant City Manager
CC: Emma Sagor, City Manager
Date: December 17, 2024
Re: Community Development Department Monthly Update

Community Development, Economic Development, & Housing	Planning	Building	Engineering
<ul style="list-style-type: none"> ▪ Economic Development ▪ Affordable Housing 	<ul style="list-style-type: none"> ▪ Comprehensive Plan Implementation ▪ Planning Commission ▪ Land Use/ Development Review 	<ul style="list-style-type: none"> ▪ November Review 	<ul style="list-style-type: none"> ▪ CIP ▪ Traffic/Parking Projects ▪ Right-of-Way Permits ▪ PIP ▪ Document Administration

COMMUNITY DEVELOPMENT/ECONOMIC DEVELOPMENT/HOUSING

Economic Development

- [The Business of Milwaukie](#), a city-wide business association, has launched and held a successful "Meet Milwaukie" event on November 1st at Milwaukie Floral, as well as a Small Business Saturday campaign called "Sip Shop Support."

Downtown:

- Downtown Alliance Milwaukie (DAM) has started meeting regularly and taken the place of the now defunct Downtown Milwaukie Business Association (DMBA). Multiple city staff members have participated in their meetings and discussions and will continue to partner as much as resources allow. The group is currently working on its 2025 priorities.
- The sale of the Collectors Mall, along with the adjacent store fronts, closed in late summer 2024 and is actively soliciting for new tenants in the vacant spaces: [Updated Lease Flyer](#)
 - Community Development Staff have been in conversations with a number of potential businesses that are considering a lease.
- [Good Measure](#), an artisanal grocer at the northwest corner of Main and Jefferson Street, is nearly finished with its tenant improvements and anticipating opening soon.
- [SaunaGlo](#), a Nordic-style spa along SE Jefferson Street, completed its improvements and held their grand opening on December 6.

- [Moving Forward Staying Present Yoga Studio](#) is going to be taking over 10560 SE Main Street, the former home of Elk Rock Yoga.
- Historic City Hall: [pFriem Beer](#) and [Keeper Coffee](#) announced their new locations at Historic City Hall and the press has been very positive - <https://www.oregonlive.com/beer/2024/03/pfriem-family-brewers-to-open-first-portland-area-taproom.html>
 - The pFriem, Keeper, and Milwaukie flags are flying in front of the building.
 - Henry Point Development has completed the demolition portion of the project as of March 2024. They have approved building permits and anticipate construction completion by the end of January 2025.
 - They are still on track for an April 2025 Grand Opening.
- The Libbie's property is still currently for sale: <https://www.loopnet.com/Listing/11056-11070-SE-Main-St-Milwaukie-OR/31458135/>
- The former Chase Bank property is currently listed for sale - <https://www.loopnet.com/Listing/Former-Bank-Attached-Building/31903098/> - but is under contract. The potential new owners have submitted a planning application related to transportation review for a proposed 44-unit residential development.
- [Cloud Pine](#) is officially closed but a new business is coming! [Sewcial Studies](#), a retail fabric store that will offer sewing classes and workshops, is in the preliminary process of taking over the space. There is no timeline for opening yet.
- The prominent corner of Jackson/Main, specifically 10801 SE Main Street (Formerly Sunshine Early Learning Center/Dary Care), is rumored to have a new tenant. Hopefully, more news coming.
- *Milwaukie Station*: All cart spaces are currently occupied.

Milwaukie Marketplace:

- The Rite Aid is closing on December 11. It is unclear what Kimco is planning to do next with the site.
- Building permits have been issued to Pietro's Pizza for building renovation plans for the old McGrath's Fish House. It is currently under construction and no opening date is set.
- Shari's Café & Pies has closed. <https://www.oregonlive.com/business/2024/10/struggling-sharis-cafe-pies-closes-additional-locations.html>

Enterprise Zone:

- Portland Polymers, a plastics recycler, is relocating to Milwaukie's north innovation area and recently received approval to take advantage of the North Clackamas Enterprise Zone tax incentives.

- The Overland Van Project was also approved a few months ago. Alpine Foods is in their final application stages and should receive approval soon. Swagelock has withdrawn its interest for now.

Urban Renewal Area Economic Development Programs:

- The Milwaukie Redevelopment Commission Citizen Advisory Committee (MRCCAC) convened in November and January to discuss the draft criteria and provide feedback on the emerging economic development programs.
- Staff presented the MRCCAC recommended program parameters on March 19th to the Milwaukie Redevelopment Commission and launched the programs earlier this month. There is a dedicated webpage with application and overview materials here: <https://www.milwaukieoregon.gov/economicdevelopment/economic-development-business-improvement-grants>
- Staff have executed 10 grant agreements – Decibel, Studio 21, SaunaGlo, Spoke & Word Books, Chan's Steakery, Milwaukie Oddfellows Lodge, Purdy's Auto Service, The Office Bar, Ovation, and Good Measure Grocery.

Affordable Housing

Sparrow Site:

- The city purchased the parcel ("main property") at the northeast corner of SE Sparrow Street and the Trolley Trail from TriMet for the purpose of land banking to support affordable housing several years ago. More recently, staff received a Metro Brownfields grant to support due diligence for the acquisition of 12302 SE 26th Avenue ("auxiliary property") from TriMet in order to help rectify access constraints to the main property. The city closed on the 12302 SE 26th Ave ("auxiliary") property and is considering next steps.
- Staff appeared before council to discuss development goals on September 17, 2024. At that meeting, the council requested additional information about affordable housing ownership models. Staff and council will be discussing home ownership models at its December 10th meeting with Shortstack Milwaukie and Proud Ground.
- On December 10th, the Council held a study session with Jessy Ledesma, founder of Homework Development and developer of Shortstack Milwaukie, to discuss home ownership model for affordable housing. The next step is for council to confirm the Sparrow Site development goals, which is slated to happen on December 17th.

Coho Point:

- The Developer presented an update to the city council during its February 21, 2023, work session and requested a 12-month extension of the Disposition and Development Agreement (DDA) due diligence period because of extenuating circumstances involving supply chain and subcontractor timing issues related to the COVID-19 pandemic. The due diligence period was officially extended to March 31, 2024.
- Staff were notified on May 10, 2023, that Black Rock had submitted the CLOMR to FEMA. The review process typically takes several months, and FEMA has requested additional information from the applicant in September 2023, January 2024, and March 2024. The applicant has 90 days to address FEMA's comments and resubmit. In order to allow for the completion of the CLOMR/FEMA process, the City agreed to a fifth due diligence extension

of December 31, 2024.

- Given that FEMA has expanded the scope of the CLOMR, Black Rock will need additional time to complete the process. Another extension is likely through winter.

Construction Excise Tax (CET) Program:

- The CET Program was established by the city council in 2017 and codified within chapter 3.60 (Affordable Housing Construction Excise Tax) of the municipal code. The CET levy's a one percent tax on any development over \$100,000 in construction value. In example, a property owner who is building an addition that has an assessed construction value of \$100,000 would have to pay \$1,000 in CET to the city. As development continues throughout the city, the CET fund increases in proportionality.
- The city released its inaugural competitive bid process for CET funds through a formal Request for Proposals (RFP). This resulted in Hillside Park Phase I being awarded \$1.7M (requested \$2M) and the Milwaukie Courtyard Housing Project (Now called Milwaukie Shortstack) with \$300K (requested \$600K).
- On March 7, 2023, the city council authorized the city manager to execute the necessary grant agreements in the amounts listed above. The grants agreements for both projects have been signed and executed, and initial funding disbursements have occurred. Staff will now work with the applicants to ensure that their projects meet the conditions for funding.

PLANNING

Comprehensive Plan Implementation

- Neighborhood Hubs: Following a series of public workshops and an online survey, planning and community development staff moved forward with proposed code amendments and an economic development toolkit for the Neighborhood Hubs project. Council approved the Phase 2 code amendments on [August 6](#). Staff and Council had a discussion about Phase 3 in a work session on November 5. Council provided staff with direction for future work session topics for Phase 3. A work session to discuss Phase 3 has been tentatively scheduled for February 18.

Transportation Systems Plan (TSP)

- The TSP kicked off in October 2023. To date, the Technical and Advisory Committees have each met six times, most recently in November to review transportation system needs and gaps. On December 5, twenty-five Milwaukians attended a community open house at the Ledding Library to provide feedback on existing conditions and identified system deficiencies.

Planning Commission

- HR-2024-002: A Type III application to allow exterior modifications to the home at 1920 SE Waverly Dr, which is listed as a Significant Historic Resource. The public hearing with the Planning Commission was held on December 10th and was continued until January 28th, 2025.
- HR-2024-003: A Type III application to allow a partial remodel and an addition to the home at 9712 SE Cambridge Ln, which is listed as a Significant Historic Resource. At the December 10 public hearing the Planning Commission unanimously approved the application. The Notice of Decision was issued on December 11. The appeal period ends on December 26.
- ZA-2024-002: A Type V code amendment package related to Oregon Senate Bill 1537 (SB1537). Council held a work session on October 15 and provided direction to staff regarding code amendments. A public hearing with the Planning Commission is tentatively scheduled for January 28.

Land Use/Development Review¹

- EXT-2024-001: A Type II application to extend approval of primary file #VR-2022-009, which approved a warehouse addition for Alpha Stone Works at 2149 SE Moores St. Without an extension, the application would expire on December 29, 2024. The request is for a two-year extension to acquire permits and begin construction by December 2026, with project completion by December 2028. The Notice of Decision approving the request was sent November 26 and the appeal period ended without appeal on December 11.
- PLA-2024-003: A Type II application to adjust the boundaries of the underlying lots that comprise the property at 4404 SE Monroe St, to put the existing house on one parcel and establish a vacant parcel for development. The proposal includes a request for an administrative variance to adjust the lot width of the existing house parcel by less than 1 ft.

¹ Only land use applications requiring public notice are listed.

The application is being reviewed for completeness before being referred out for departmental review and public comment.

- The Planning Commission will hold its annual joint meeting with City Council during the Council work session on December 17th.

Other Updates

- Natural Resources code update: Staff is working to finalize the package of proposed amendments to the natural resource code (Milwaukie Municipal Code (MMC) Section 19.402), with the hearings process for adoption anticipated to begin in Feb/Mar 2025.
- Flood hazard code update: Staff held a public information meeting on December 5 regarding the project to amend MMC Title 18 (Flood Hazard Regulations) to maintain the City's eligibility to participate in the National Flood Insurance Program (NFIP). About a dozen people attended and had a chance to ask questions about the needed amendments. The official adoption process will begin with a recommendation hearing scheduled with the Planning Commission for January 14, 2025, and adoption hearing by the Council scheduled for February 4.

BUILDING

Permit data for	November	FY to Date:
New single-family houses:	1	3
New ADU's	1	2
New Solar	5	43
Res. additions/alterations	2	30
Commercial new	0	4
Commercial Alterations	6	62
Demo's	3	7
Cottage Clusters	6	6
Total Number of Permits issued: (includes fire, electrical, mechanical, plumbing, and other structural)		699
Total Number of Inspections:		1764
Total Number of active permits:		1037

ENGINEERING

Capital Improvement Projects (CIP):

CIP 2018-A13 Washington Street Area Improvements

Summary: This project combines elements of the SAFE, SSMP, Water, Stormwater, and Wastewater programs. SAFE improvements include upgrading and adding ADA compliant facilities along 27th Ave, Washington St, and Edison St. Street Surface Maintenance Program improvements are planned for Washington Street, 27th Avenue, and Edison Street. The Spring Creek culvert under Washington Street at 27th Avenue will be removed, and a new structure added. The water system along Washington Street will be upsized from a 6" mainline to an 8" mainline. The stormwater system along Washington Street will be upsized from 18" to 24" storm lines. The project is being designed by AKS Engineering and Forestry.

Update: Construction is on-going. Currently, the new water line has been installed under Washington Street. Edison Street, 35th Avenue, and Washington Street asphalt paving will continue at the start of January.

CIP 2016-Y11 Meek Street Storm Improvements

Summary: Project was identified in the 2014 Stormwater Master Plan to reduce flooding within this water basin. The project was split into a South Phase and a North Phase due to complications in working with UPRR.

Update: Contractor has completed installation of the pipeline between the Murphy Site and the Balfour Pond. The forebay and southern cell of the Balfour Pond have been excavated, and rock buttress installed. The contractor is currently installing pipeline between the Balfour Pond and Roswell Pond. In December, the contractor performed a horizontal boring at Kelvin, for a waterline crossing beneath the railroad.

CIP 2021-T58 Milwaukie Downtown Streets and Curbs

Summary: The project includes SAFE improvements to downtown sidewalks by replacing existing sidewalk with pervious concrete sidewalk. Stormwater improvements include installing 5 storm inlets and 5 manholes. The project will use a specialized product, Silva Cells, to deter sidewalk uplift from tree roots. This project is out to bid and is expected to select contractor by January 14th.

CIP 2022-W56 Harvey Street Improvements

Summary: The project includes water improvements and stormwater improvements on Harvey Street from 32nd Avenue to the east end, on 42nd Avenue from Harvey Street to Johnson Creek Boulevard, 33rd Avenue north of Harvey Street, 36th Avenue north of Harvey Street, Sherry Street west of 36th Avenue, 41st Street north of Wake Court, and Wake Court. Sanitary sewer work will be done on 40th Avenue between Harvey Street to Drake Street. The project also includes the installation of an ADA compliant sidewalk on Harvey Street from 32nd Avenue to 42nd Avenue and 42nd Avenue from Harvey Street to Howe Street. Roadway paving will be done throughout the project area.

Update: Century West Engineering was contracted for the design in July 2023. The project is currently at 90% design and is estimated to get 100% plans by the end of January. In process to get an easement at 8930 SE 42nd Avenue for a rapid flash beacon. Another open house will be scheduled after completion of design.

CIP 2021-W61 Ardenwald North Improvements

Summary: Project includes street repair on Van Water Street, Roswell Street, Sherrett Street, 28th Avenue, 28th Place, 29th Avenue, 30th Avenue, and 31st Avenue with a shared street design for bicycles, pedestrians, and vehicles. The sidewalk will be replaced on the north side of Roswell Street between 31st and 32nd Avenue. Stormwater catch basins in the project boundary will be upgraded, the water system will be upsized on 29th Avenue, 30th Avenue, 31st Avenue, and Roswell Street, and there will be wastewater improvements on 28th Avenue, 29th Avenue, and 31st Avenue to address multiple bellies and root intrusion to reduce debris buildup.

Update: Bid process has recently finished with Landis & Landis Construction winning the project contract. The contract process is underway. Staff is working with Landis preparing for the start of this construction project.

CIP 2022-A15 King Road Improvements

Summary: King Road (43rd Avenue to city limits near Linwood Avenue) SAFE/SSMP Improvements will replace existing sidewalk and bike lane with a multi-use path, improve stormwater system, replace water pipe, and reconstruct roadway surface.

Update: City received the 90% design plans, and cost estimate. The 90% design is under internal review and updates. The design is being used to prepare and send Permits of Entry (POEs) to the property owners that will have catch basins, pedestrian paths, trees and driveways installed or updated. The intent is to hear from property owners to implement changes to the 100% design. The cost estimate is being revised to have a project price ready to prepare the budget and bid documents during the first quarter of 2025.

Waverly Heights Sewer Reconfiguration

Summary: Waverly Heights Wastewater project was identified in the 2010 Wastewater System Master Plan. The project may replace approximately 2,500 feet of existing clay and concrete pipe.

Update: Authorization for the design contract with Stantec was approved by the Council on August 1, 2023. An engineering services agreement was executed with Stantec on Sept. 19, and the design effort was kicked off in early October of 2023. A flow monitoring program was initiated in October, and will continue through the wet season, concurrent with design. A public engagement plan was prepared in Fall of 2023, and a first set of informational material was mailed out to neighbors in the area in November, along with permit of entry forms. Stantec commenced with early site investigations in December of 2023, and completed 30 percent design in January 2024. In March of 2024, the design team met with select residents on properties that may be more impacted from the project (i.e. properties that might require spot repairs or open trenching). A public open house was held on May 9th, 2024, at City Hall. The City reviewed Stantec's 60 percent design in July of 2024. The design team is currently working through the 90 percent design, and preparing for acquisition of Temporary Construction Easements.

Monroe Street Greenway

Summary: The Monroe Street Greenway will create a nearly four-mile, continuous, low-stress bikeway from downtown Milwaukie to the I-205 multi-use path. Once complete, it will serve as the spine of Milwaukie's active transportation network connecting users to the Max Orange Line, Max Green Line, Trolley Trail, 17th Avenue Bike Path, I-205 path, neighborhoods, schools, and parks. Funding grants through ODOT and Metro will allow the city to complete our 2.2-mile section of the Monroe Greenway from the Trolley Trail to Linwood Ave.

Segment Update:

East Monroe Greenway (37th to Linwood): Staff have come to an agreement with ODOT and contracted CONSOR for the design. CONSOR has submitted the Design Approval Package to ODOT (approximately 60% design). The Plans, Specifications, and Estimate (PS&E) submittal will be provided to ODOT in March 2025. Final project design is expected in December 2025, and the project is expected to go to construction in Summer 2026. Open-Houses were hosted on February 29th for all of the Monroe Greenway, ODOT's Highway-224 project, the City's TSP, and Kellogg Creek Restoration and Community Enhancement Project, and on September 12 for the East segment of the Monroe Greenway. The City received mixed feedback for moving forward with the project. Feedback from the February and September open houses has been incorporated into the design and city staff prepared an engagement plan to share with the public. City staff presented the status of the East Segment of the Monroe Greenway to the City Council on December 3. Members of the public to attended the presentation and participated in the public comments portion of the city council meeting. City staff applied for approximately \$1.7 million of additional funding through the Regional Flexible Funds Allocation (RFFA) grant program to mitigate scope reductions due to inflation. The award for this additional funding is expected in March 2025.

Monroe Street & 37th Avenue (34th to 37th): This segment is complete. It was constructed as part of the private development of the 7 Acres Apartments.

Western Monroe Greenway (Downtown to 34th): The city and ODOT have signed an IGA that will transfer \$1.55 M in STIP funding to the city to construct this segment of the Monroe Street Greenway. City staff have contracted with 3J Consulting to negotiate work at the Oak Street and 37th Avenue railroad crossings. A request for qualifications will be posted in January 2025 for the design of the western portion of the greenway, excluding the railroad crossings.

Monroe Street & Highway-224 Intersection: This project has now been combined with a larger project which will mill and overlay Highway-224 from 17th Avenue to Rusk Road in Fiscal Year 2026. An Open-House was hosted on February 29th for all of the Monroe Greenway, ODOT's Highway-224 project, the City's TSP, and Kellogg Creek Restoration and Community Enhancement Project. The City received concerns regarding the development of Highway-224 and Monroe Greenway pushing traffic from Monroe Street onto Penzance Street. The city has awarded a contract to Landis and Landis construction to replace the underlying water main by the end of December 2024.

Downtown Monroe Greenway (Trolley Trail to 21st Avenue): The city is investigating funding to enhance the Monroe Greenway through downtown Milwaukie.

Kellogg Creek Restoration and Community Enhancement Project

Summary: Project to remove the Kellogg Creek dam, replace the McLoughlin Blvd. bridge, improve fish passage, and restore the wetland and riparian area. City of Milwaukie staff are part of the project Leadership Team, Core Technical Team, and the Technical Advisory Committee. The Leadership Team and Core Technical Team both meet monthly. In addition to city staff, these groups include staff from North Clackamas Watershed Council (NCWC), Oregon Department of Transportation (ODOT), and American Rivers. The Technical Advisory Committee (TAC) for the Kellogg Creek Restoration & Community Enhancement Project involves all collaborative partners that include the Confederated Tribes of the Warm Springs Indian Reservation of Oregon, the Confederated Tribes of Grand Ronde, Clackamas Water Environment Services, Metro, North Clackamas Parks and Recreation District, Oregon Department of Environmental Quality, Oregon

Department of Fish and Wildlife, Oregon Division of State Lands, the Native Fish Society, and the Natural Resources Office of Governor.

Update: The Summer 2024 Geotechnical and Sediment Sampling/Evaluation Study is complete. Material is being analyzed in the lab and we are awaiting the results. On December 12th, Metro will be announcing whether the project will receive [large scale community visions grant funds](#) (the project requested \$10M). Additional details and updates are available at the project website: <https://www.milwaukieoregon.gov/kellogg/project-status>

Traffic / Parking Projects, Issues

None.

Right-Of-Way (ROW) Permits (includes tree, use, construction, encroachment)

Downtown Trees and Sidewalks

Update: Staff have a contract with AKS; working on what type of design works best now and in the future with both the trees and sidewalks & curbs.

Private Development – Public Improvement Projects (PIPS)

1600 Lava

Update: This development on Lava drive will add a new 13-unit multi-family building. Public improvements for this project include a new sidewalk, an ADA ramp, and minor street widening. Building permits have been issued and on-site construction has begun. A Right of Way permit has been issued, and the Contractor is gearing up for sidewalk and roadway improvements.

Hillside

Update: Hillside currently has issued permits for the first building and public improvements to be constructed under phase I. The remaining two buildings and public improvements to be constructed during this phase are still under review. City staff is meeting with the developer on a weekly basis to ensure the project moves smoothly. Public improvements for this development include new roadway alignment, new sidewalk, ADA ramps, and new asphalt paving. Work has started on the first building and associated public improvements.

Seven Acres Apartments (formerly Monroe Apartments) – 234 units

Update: Seven Acres has completed construction and is currently occupied. Public improvements for this development included a new bike path and sidewalk from Oak Street and Monroe Street to 37th Avenue and Washington Street. Public improvements are currently under warranty and will receive a final inspection after a one-year period before shifting over to the City for ownership.

Henley Place (Kellogg Bowl redevelopment)- 175 units

Update: Construction is complete, and the building is occupied.

Elk Rock Estates – 5 lot subdivision at 19th Ave & Sparrow St.

Update: All public improvements have been completed; the project is in the punch-list and cleanup phase. The land use entitlements have recently expired, so they will need to go back through the process to build units.

Shah & Tripp Estates – 8-lot subdivision at Harrison Street and Home Ave.

Update: Design plans have been approved. Construction began in August of 2024, including improvements to the Harrison roadway.

Jackson / 52nd – 5-unit development.

Update: Project is nearing completion. The sewer main extension has been installed and tested. Per a development agreement, the developer repaved Jackson between Home Ave. and 52nd Ave in July 2024. The developer will be reimbursed for paved areas outside of their responsibility. All work was completed in August 2024.

Walnut Estates

Update: Walnut estates have completed the majority of their construction and is currently in the final punch-list and cleanup phase. Public improvements for this development include a new sidewalk, storm water facilities, and a new asphalt roadway. Once the final work is completed, this development will enter the one-year warranty period.

Bonaventure Senior Living – 170-units

Update: ROW permits have been issued and public improvements are currently under construction.

Document Administration

Plans

Summary: WSC is preparing the Stormwater System Plan.



This agenda item was moved to the 12/17/24 RS.

**WS 1.
12/17/24**

OCR USE ONLY

COUNCIL STAFF REPORT

To: Mayor and City Council

Date Written: Dec. 5, 2024

Reviewed: Dan Harris, Events & Emergency Management Coordinator, and
Tim Salyers, Code Compliance Coordinator

From: Ryan Burdick, Chief of Police

Subject: **Open Container Discussion**

ACTION REQUESTED

Council is asked to receive a public safety review for allowing open containers of alcohol in the downtown Milwaukie business area.

HISTORY OF PRIOR ACTIONS AND DISCUSSIONS

1993: Milwaukie Municipal Code (MMC) 9.06 Alcohol Regulations is adopted by ordinance. This code states:

“It is unlawful for any person to drink or consume any alcoholic liquor or have in their possession any bottle, can, or other receptacle containing any alcoholic liquor which has been opened, or unsealed, or the contents of which have been partially removed, while in or upon any public street or sidewalk, school, park, public boat landing, dock, and other attendant facilities, municipal building, and premises used in connection with public passenger transportation. However, the City Council or its designee may permit the service and consumption of alcoholic liquors in any public place or within designated municipal buildings on such terms and conditions as the Council may provide. Nothing in this section shall be deemed to prohibit drinking or alcoholic liquor in any establishment wherein the same may be sold for on-premises consumption under the laws of the State, or when a permit has been granted by the City Council, or its designee.”

ANALYSIS

In September 2024, City Council received a public comment asking the city to consider allowing “open container” alcoholic beverages in downtown, particularly as more businesses open in the city’s core.

In response, Council asked that staff put a discussion of open container policy on an upcoming agenda. The idea of allowing open containers of alcohol in the downtown area may seem attractive for promoting a vibrant atmosphere, but it also comes with significant risks and challenges. The proximity to Portland also creates potential issues we will be evaluating as it pertains to this issue. In addition, follow up is being conducted with our law enforcement partners who have experience with open container related zones and their potential impacts. Outreach is ongoing with

communities like Hood River to see what the potential impacts are as it pertains to public safety.

To inform this discussion, staff from the city's public safety department summarized some potential challenges and concerns for Council to consider:

1. Public Safety Concerns

- **Increased Risk of Disorderly Behavior:** Open consumption of alcohol can lead to public intoxication, fights, or disruptive behavior, potentially creating an unsafe environment for residents and visitors.
- **Strain on Law Enforcement:** Monitoring and managing alcohol-related incidents will likely require additional police presence, increasing costs and diverting resources from other areas.

2. Impact on Business Environment

- **Deterring Family-Friendly Atmosphere:** Businesses aiming to attract families or non-drinking clientele may suffer if the area is perceived as alcohol-centric or unsafe.
- **Potential Damage to Property:** Alcohol consumption in public spaces can lead to littering, vandalism, and damage to property, negatively affecting businesses and requiring more maintenance.

3. Public Health Implications

- **Alcohol Abuse Concerns:** Open container policies can contribute to excessive drinking and normalize alcohol consumption in public spaces, raising public health concerns.
- **Risk to Vulnerable Populations:** An open container policy may exacerbate challenges faced by vulnerable groups, such as those struggling with addiction or experiencing homelessness.

4. Noise and Nuisance Issues

- **Increased Noise Levels:** Public drinking can lead to louder gatherings, which may disturb nearby residents and businesses.
- **Complaints from Community Members:** Noise, rowdiness, and a general decline in perceived quality of life could result in pushback from the community.

5. Legal and Liability Concerns

- **Compliance Challenges:** Enforcing boundaries and ensuring responsible consumption may prove difficult, potentially leading to liability issues for the city and businesses.

- **Potential Increase in Litigation:** Incidents related to alcohol consumption in open container areas could lead to legal disputes or claims against the municipality.

6. Perception and Reputation Risks

- **Negative Public Image:** If poorly managed, the area could develop a reputation as disorderly or unsafe, discouraging investment and tourism.
- **Conflict with Community Values:** Some community members may view such a policy as incompatible with their cultural or social values.

City staff appreciate local business' interest in identifying ways to revitalize downtown, activate main street, and encourage community building. To mitigate the concerns above while supporting these goals, staff would recommend exploring a way to permit specific events within the city to allow for alcohol consumption in defined right-of-way or public areas and within defined times. For example, First Fridays or other festivals could be designed and permitted to allow certain blocks to have open container provisions during the course of the event, with proper protocols taken to ensure safety and compliance with other nuisance codes and regulations.

Staff would also like to better understand what problem this proposal is trying to solve and what behaviors are not currently allowed via the city's event permitting process to better inform what potential solutions we could develop.

BUDGET, CLIMATE & EQUITY IMPACTS

Not applicable.

WORKLOAD IMPACT

Increasing rates of homelessness and behavioral health challenges in our community put a strain on limited city resources and staff workload. The above-mentioned concerns will impact the police department resulting in increased calls for service.

Current projects such as Clackamas County's Hillside Park redevelopment, the Clackamas County Sheriff Office's (CCSO's) 23 Hour Stabilization Center, and additional apartment complexes in Milwaukie will continue to push the limited resources of staff at the police department. Additional enforcement requirements in the downtown business area for open container related enforcement will add to this workload and can lead to public safety related issues.

COORDINATION, CONCURRENCE, OR DISSENT

The events and emergency management coordinator broadly concurs with the content of this staff report. The event permitting process has been intentionally designed to have low barriers to compliance. Past street festivals, including last spring's Shamrockin' Good Times Fest, have been able to operate safely and successfully without an open container area.

STAFF RECOMMENDATION

While fostering a prosperous and business friendly downtown area is an important goal, the potential drawbacks of implementing an open container policy for alcohol would likely outweigh the benefits. Alternative strategies, such as organizing controlled, licensed events or promoting responsible drinking within existing establishments, may achieve the same goals with decreased risk. Permitted events which serve alcohol are preferred to open container zones.

ALTERNATIVES

Council could direct staff to do further research or develop draft proposals for code amendments that are more permissive of open container consumption.

ATTACHMENTS

1. Council Comments
2. Article on Open Container Laws and Alcohol Involved Crashes
3. Article related to California SB 76 regarding Alcoholic Beverages
4. SF Entertainment Zone Article
5. Public comment received earlier this year on this topic

Attachment 1.1.

From: [Justin Gericke](#)
To: [Lisa Batey](#); [_City Council](#); [Joseph Briglio](#); [Ryan Burdick](#)
Subject: RE: views of the Mayor of Hood River on their open container alcohol policy
Date: Wednesday, October 2, 2024 2:09:19 PM

[PLEASE DO NOT REPLY]

All,

In addition to not replying to the Mayor's email (not just a Do Not Reply All), please do not discuss this issue among yourselves until the item is presented on the dais. Serial conversations (email and otherwise) about city business, even among less than a quorum, are a violation of the public meetings law if multiple conversations have occurred. Please help me to keep us in compliance with the public meetings law.

Scott – please make sure the Mayor's email makes it into the record when this item is placed on the agenda.

Best,

Justin

JUSTIN D. GERICKE

City Attorney
o: 503.786.7529
City of Milwaukie
10501 SE Main St • Milwaukie, OR 97222

From: Lisa Batey <BateyL@milwaukieoregon.gov>
Sent: Wednesday, October 2, 2024 11:47 AM
To: _City Council <CityCouncil@milwaukieoregon.gov>; Joseph Briglio <BriglioJ@milwaukieoregon.gov>; Ryan Burdick <BurdickR@milwaukieoregon.gov>
Subject: views of the Mayor of Hood River on their open container alcohol policy

All: [Informational only – please do not reply all]

As noted last night, I asked that the Beer Store's request be added to some future agenda. As we're going into the wet season, I don't see this as pressing, but it's an interesting conversation to have as next spring we will have two new watering holes opening in town. It

does occur to me that the food cart pods, both old and new, might not like the idea as it could cut into their on-site alcohol sales.

I did reach out to Mayor Paul Blackburn of Hood River about their experience. Blackburn has been on and off the Council over the past 20 years, and has been mayor since 2014 with a three-year break in there. For simplicity, I am going to refer to the Beer Store's proposal as an "open container" law/policy.

First off, Blackburn clarified that Hood River (HR) did not make an affirmative decision to allow open containers. Rather, at some point the city discovered that they had no ordinance on the books and in the absence of any prohibition, open containers were allowed. He emphasized the same OLCC limitation mentioned in the Beer Store's request – that people cannot leave a bar/restaurant with a glass of beer or other alcoholic drink, that it only applied to beverages in cans/bottles, which are sold sealed and opened by the purchaser off-premises of the seller. Which, of course, is a big part of Beer Store's business model.

Blackburn said that eight years ago, the HR Council started talking about an ordinance that would have restricted the open container practice. But a lot of members of the community came out in opposition, and they dropped that effort.

Blackburn recommended against opening the open container Pandora's box, although he did acknowledge that they haven't had any major New Orleans-style public drunkenness problems. He felt that the city shouldn't be promoting/facilitating broader alcohol use from a public health perspective, more than any particular law enforcement concerns. Apparently their PD remained fairly neutral at the time of those discussions eight years ago.

Lisa M. Batey, Mayor (she/her)
City of Milwaukie
E-mail: bateyl@milwaukieoregon.gov
Message line: 503-786-7512

From: [William Anderson](#)
To: [City Council](#)
Subject: Something to Include in the Packet on Open Containers
Date: Wednesday, October 2, 2024 8:09:27 PM

Hi Y'all,

FOR SUBMISSION TO THE FUTURE PACKET, PLEASE DO NOT REPLY

In the spirit of data driven policy making, I spent some time today looking into some academic articles about the impacts of open container laws. I'll be frank, I was a bit disappointed with the studies (or lack there of) that I found. Nevertheless, I wanted to submit this to the record for our packet when we do eventually discuss this in a meeting. Here is a quick summary.

If you poke around yourself, you might be excited to see studies about open container laws and their impact on drunk driving ([there is no statistically significant change](#)); however these the open container laws in these studies are not what we would consider. These laws allow for open containers of alcohol while driving, not in public spaces.

The [one study](#) I could find was quite comprehensive. The study found street drinking bans can bring negative consequences: they negatively impact marginalized groups and are enforced inconsistently. However they do improve perceptions of neighborhoods and are supported by police, traders and older people. There was no clear impact on the amount of alcohol-related crime or harm. The one clear problem of this study is that it does not bring ing evidence from the United States, instead drawing from the UK, New Zealand and Australia, with very different drinking cultures.

California recently passed [a law](#) allowing cities to create "Entertainment Zones" in which, amongst other provisions, would allow for open containers. [San Fransisco recently became the first city in California](#) to create an entertainment zone. This raises the question of wether or not Milwaukie would consider an open container provision within a specific zone (GMU/downtown) or city wide. This law was passed with broad support from California restaurant, entertainment, and commercial interests, as well as many local governments who saw it as a stimulus for downtown economic activity.

If other folks can find studies to expand our understanding of this topic, I would encourage them to bring it forward to our eventual work session on this topic. Cheers!

Will Anderson • City Councilor
City of Milwaukie

he•him•his [Learn why pronouns matter](#)
o: 503.786.7510 • c: 541.480.9204



U.S. Department
of Transportation
**National Highway
Traffic Safety
Administration**



DOT HS 809 426

April 2002

Open Container Laws & Alcohol Involved Crashes:

Some Preliminary Data

This publication is distributed by the U.S. Department of Transportation, National Highway Traffic Safety Administration, in the interest of information exchange. The opinions, findings and conclusions expressed in this publication are those of the author(s) and not necessarily those of the Department of Transportation or the National Highway Traffic Safety Administration. The United States Government assumes no liability for its content or use thereof. If trade or manufacturer's names or products are mentioned, it is because they are considered essential to the object of the publication and should not be construed as an endorsement. The United States Government does not endorse products or manufacturers.

1. Report No. DOT HS 809 426	2. Government Accession No.	3. Recipient's Catalog No.	
4. Title and Subtitle Open Container Laws and Alcohol Involved Crashes: Some Preliminary Data		5. Report Date April 2002	
7. Author(s) Jack Stuster, PhD; Marcelline Burns, PhD; and, Dary Fiorentino, MA		6. Performing Organization Code n/a	8. Performing Organization Report No. n/a
9. Performing Organization Name and Address Anacapa Sciences, Inc. P.O. Box 519 Santa Barbara, CA 93102		10. Work Unit No. (TRAIS)	
12. Sponsoring Agency Name and Address National Highway Traffic Safety Administration 400 Seventh Street, SW Washington, D.C. 20590		11. Contract No. DTNH22-98-D-05079	
13. Type of Report and Period Covered Final Report		14. Sponsoring Agency Code	
15. Supplemental Notes Paul J. Tremont, PhD was the Contracting Officer's Technical Representative (COTR) for this project.		16. Abstract <p>This report presents the results of a study conducted for the National Highway Traffic Safety Administration (NHTSA) to assess the highway safety effects of laws that prohibit open containers of alcoholic beverages to be located in the passenger compartment of motor vehicles operated on public roadways. These laws are commonly referred to as "Open Container Laws." The Transportation Equity Act for the 21st Century (TEA-21), H.R. 2400, P.L. 105-178, was passed by the Senate and the House of Representatives on 22 May 1998, signed into law on 9 June 1998, and amended by a technical corrections bill, entitled the TEA-21 Restoration Act, P.L. 105-206, on 22 July 1998. The TEA-21 Restoration Act established a program to encourage states to enact and enforce open container laws that conform to a Federal Standard. States without conforming Open Container laws are subject to a transfer of highway construction funds.</p> <p>Four states passed legislation in 1999 in response to the TEA-21 Restoration Act (Iowa, Maine, Rhode Island, and South Dakota). Analyses indicated that three of the four states appeared to decline in their proportions of alcohol-involved fatal crashes during the first six months after enforcement of the conforming laws; however, the declines were not statistically significant.</p> <p>In addition to the before and after analyses, crash data (from 1999) were compared among states that have had fully-conforming laws since the enactment of the TEA-21 Restoration Act on July 22, 1998; states that enacted fully-conforming laws as of October 1, 2000, the date on which the first transfer of funds took effect; states that had partially-conforming laws as of October 1, 2000; and, states that had no Open Container laws at all, as of October 1, 2000. This analysis showed that states without Open Container Laws experienced significantly greater proportions of alcohol-involved fatal crashes than states with partially-conforming or fully-conforming laws. Also, it was noted that survey data show support for Open Container laws by a substantial majority of the general public, even in states without such laws.</p>	
17. Key Words Traffic Safety, Transportation Equity Act, TEA-21, Open Container Law, Alcohol, DWI, DUI		18. Distribution Statement	
19. Security Classif. (of this report) Unclassified	20. Security Classif. (of this page) Unclassified	21. No. of Pages	22. Price

Form DOT 1700.7

OPEN CONTAINER LAWS AND ALCOHOL INVOLVED CRASHES

SOME PRELIMINARY DATA

EXECUTIVE SUMMARY

This report presents the results of a study conducted for the National Highway Traffic Safety Administration (NHTSA) to assess the highway safety effects of laws that prohibit open containers of alcoholic beverages to be located in the passenger compartment of motor vehicles operated on public roadways. These laws are commonly referred to as "Open Container laws." The Transportation Equity Act for the 21st Century (TEA-21), H.R. 2400, P.L. 105-178, was passed by the Senate and the House of Representatives on 22 May 1998, signed into law on 9 June 1998, and amended by a technical corrections bill, entitled the TEA-21 Restoration Act, P.L. 105-206, on 22 July 1998. The TEA-21 Restoration Act established a program to encourage states to enact and enforce open container laws that conform to a Federal standard. A percentage of a state's Federal-aid highway construction funds will be transferred for use in drinking and driving countermeasures programs, law enforcement, and hazard elimination if the state fails to enact and enforce a conforming "Open Container law." To avoid the transfer of funds, a state must enact and enforce a law that prohibits the possession of any open alcoholic beverage container, and the consumption of any alcoholic beverage, in the passenger area of any motor vehicle located on a public highway, or the right-of-way of a public highway, in the state.

Four states passed legislation in 1999 following enactment of the TEA-21 Restoration Act (Iowa, Maine, Rhode Island, and South Dakota). Analyses of data obtained from the states found that three of the four states appeared to decline in the proportions of all fatal crashes that were alcohol-involved during the first six months following the beginning of enforcement of the compliant laws. The changes were in the direction expected; however, the differences were not statistically significant.

In addition to the before and after analyses, crash data (from 1999) were compared among states that had fully-conforming laws (as of the enactment of the TEA-21 Restoration Act on July 22, 1998), states that enacted fully-conforming laws as of October 1, 2000, the date on which the first transfer of funds took place; states that had partially-conforming laws, as of October 1, 2000 and states that had no Open Container laws at all, as of October 1, 2000. This analysis showed that states without Open Container laws experienced significantly greater proportions of alcohol-involved fatal crashes than states with partially conforming or fully conforming laws.

It is also noted that NHTSA's 1999 national survey on drinking and driving revealed that a substantial majority of the general public supports Open Container laws, even in states without such laws.

TABLE OF CONTENTS

	Page
BACKGROUND.....	1
PURPOSE OF SECTION 154	2
OPEN CONTAINER LAW INCENTIVES.....	3
OPEN CONTAINER LAW CONFORMANCE CRITERIA	3
STATUS OF CONFORMANCE: OCTOBER 2000.....	5
EVALUATION OF THE EFFECTS OF OPEN CONTAINER LAWS	5
Before and After Comparison of the Four States	5
Comparisons Of Data From States That Had Conforming Laws, Adopted Conforming Laws, Had Partially Conforming Laws, And Had No Open Container Laws	8
PUBLIC OPINION CONCERNING OPEN CONTAINER LAWS.....	9
CONCLUSIONS	10
ACKNOWLEDGMENTS.....	11
REFERENCES	12
APPENDIX A: DATA TABLES	13

TABLE

Table		Page
1	SUMMARY OF PREVIOUS OPEN CONTAINER LAWS IN THE FIRST FOUR STATES TO ENACT LAWS TO CONFORM WITH TEA-21 REQUIREMENTS	6

FIGURES

Figure		Page
1	Percent of All Fatal Crashes That Were Alcohol-Involved: Six-Month Period After Enforcement Began Compared to the Same Period in the Previous Year	7
2	Nighttime Hit-and-Run Crashes: Six-Month Period After Enforcement Began Compared to the Same Period in the Previous Year.....	7
3	Percent of All Fatal Crashes That Were Alcohol-Involved.....	8
4	Percent of Residents Who Believe Their States Should Have An Open Container Law	10

OPEN CONTAINER LAWS AND ALCOHOL INVOLVED CRASHES

SOME PRELIMINARY DATA

This report presents the results of a study conducted for the National Highway Traffic Safety Administration (NHTSA) to assess the highway safety effects of laws that prohibit open containers of alcoholic beverages to be located in the passenger compartment of motor vehicles operated on public roadways. These laws are commonly referred to as Open Container laws.

BACKGROUND

The Transportation Equity Act for the 21st Century (TEA-21), H.R. 2400, P.L. 105-178, was passed by the Senate and the House of Representatives on 22 May 1998 and signed into law on 9 June 1998. On 22 July 1998, a technical corrections bill, entitled the TEA-21 Restoration Act, P.L. 105-206, was enacted to restore provisions that were agreed to by the conferees to H.R. 2400, but were not included in the TEA-21 conference report.¹ Section 1405 of the Act amended chapter 1 of title 23, United States Code (U.S.C.), by adding Section 154, which established a transfer program under which a percentage of a state's Federal-aid highway construction funds will be transferred to the state's apportionment under Section 402 of Title 23 of the United States Code, if the state fails to enact and enforce a conforming Open Container law. The transferred funds are to be used for alcohol-impaired driving countermeasures or the enforcement of drinking and driving laws, or states may elect to use all or a portion of the funds for hazard elimination activities, under 23 U.S.C. Section 152.

To avoid the transfer of funds, Section 154 requires that a state must enact and enforce a law that prohibits the possession of any open alcoholic beverage container, and the consumption of any alcoholic beverage, in the passenger area of any motor vehicle (including possession or consumption by the driver of the vehicle) located on a public highway, or the right-of-way of a public highway, in the state.

PURPOSE OF SECTION 154

The TEA-21 Restoration Act added Section 154 to Chapter 1 of Title 23, United States Code (U.S.C.), to reduce alcohol-impaired driving, a serious national public safety problem. Nearly 1.4 million people have died in traffic crashes in the United States since 1966, the year the National Traffic and Motor Vehicle Safety Act was passed. During the late 1960s and early 1970s more than 50,000 people lost their lives each year on our

¹ Prior to TEA-21, Congress had enacted 23 U.S.C. Section 410 (the Section 410 program) to encourage states to enact and enforce effective impaired driving measures (including open container laws). Under this program, states could qualify for supplemental grant funds if they were eligible for a basic Section 410 grant, and they had an open container law that met certain requirements. TEA-21 changed the Section 410 program and removed the open container incentive grant criterion. The conferees to that legislation had intended to create a new open container transfer program to encourage states to enact open container laws, but the new program was inadvertently omitted from the TEA-21 conference report; the program was included instead in the TEA-21 Restoration Act. (Information presented in this report about TEA-21 and the open container regulations, was obtained from the TEA-21 website, maintained by the U.S. Department of Transportation, www.fhwa.dot.gov/tea21.)

nation's public roads and more than half of the motorists killed had been drinking. Traffic safety has improved considerably since that time: the annual death toll has declined to about 40,000, even though the numbers of drivers, vehicles, and miles driven all have greatly increased. The improvements in traffic safety are reflected in the change in fatality rate per 100 million vehicle miles traveled: The rate fell from 5.5 in 1966 to 1.5 in 1998 (FARS—Fatality Analysis Reporting System—98), a 73 percent improvement. When miles traveled are considered, the likelihood of being killed in traffic in 1966 was more than three times what it is today.

Despite the significant improvements in traffic safety during the past two decades, an average of more than 115 people still die each day from motor vehicle crashes in the United States. In addition to the human costs, the economic losses from crashes are estimated to be more than \$150 billion annually, including \$19 billion in medical and emergency expenses, \$42 billion in lost productivity, \$52 billion in property damage, and \$37 billion in other crash-related costs (FARS—98). It is estimated that approximately 40 percent of fatal crashes involve a drinking driver and 29 percent of the drivers who die in crashes have blood alcohol concentrations (BACs) of 0.10 percent or greater.

Drinking and driving laws and the efforts of law enforcement personnel have contributed to the substantial decline in the incidence of alcohol-involved crashes (Stuster & Burns, 1998). The enactment and enforcement of uniformly strong Open Container laws provides another potential means to help reduce drinking and driving, and could lead to further reductions in the numbers of alcohol-involved crashes. Previous research on the relationship between Open Container laws and traffic safety is limited; however, there is evidence that, from a traffic safety perspective, the most dangerous form of alcohol-consumption is drinking in a vehicle (Ross, 1992). For example, a study of drivers who were arrested for DWI in San Diego, California, found that more than half of the violators had consumed alcohol in their vehicles soon after purchasing it from liquor stores, convenience stores, or gasoline minimarts.² The study found that the incidence of alcohol drinking in cars was nearly three times greater when the beverages were purchased at gas stations, compared to all other outlets (Segars & Ryan, 1986; Wittman, 1986). Similarly, a study of DWI offenders in Santa Fe County, New Mexico found that 37 percent of the offenders who bought package liquor prior to arrest bought their alcohol at a drive-up window, compared to 14 percent at a convenience/drug store. Further, the offenders who bought at a drive-up window were 67 percent more likely to have been drinking in their vehicle prior to arrest, and 67 percent more likely to be problem drinkers, than those who bought package liquor elsewhere (Lewis, Lapham, & Skipper, 1998).

In addition to problem drinkers, officers report that underage youth exhibit a preference for drinking in vehicles. The danger associated with underage drinking and driving is compounded by a tendency to consume all of the alcoholic beverage available (because usually it cannot be stored). Other factors, including a lack of driving experience and skill, exacerbate this problem.

² Various terms are used throughout the United States for offenses involving drinking and driving. In this report, Driving While Impaired (DWI) is used to refer to all occurrences of driving at or above the legal blood alcohol concentration (BAC) of a jurisdiction.

OPEN CONTAINER LAW INCENTIVES

According to Section 154, if a state does not meet the statutory requirements by October 1, 2000 or October 1, 2001, an amount equal to one and one-half percent of the funds apportioned to the state on those dates under each of Sections 104(b)(1), (3) and (4) of title 23 of the United States Code will be transferred to the state's apportionment under Section 402 of that title to be used for alcohol-impaired driving countermeasures or enforcement, hazard elimination, or related administration and planning.³ If a state does not meet the statutory requirements by October 1, 2002, an amount equal to three percent of the funds apportioned to the state on that date under Sections 104(b)(1), (3) and (4) will be transferred. An amount equal to three percent will continue to be transferred on October 1 of each subsequent fiscal year, if the state does not meet the requirements on those dates.⁴

OPEN CONTAINER LAW CONFORMANCE CRITERIA

The regulations resulting from the TEA-21 Restoration Act specify six elements that state Open Container laws must include to conform to the Federal Standard and to enable a state to avoid the transfer of Federal-aid highway construction funds. The required elements are described in the following paragraphs.⁵

To fully conform to the federal requirements, an Open Container law must...

1. Prohibit possession of any open alcoholic beverage container and the consumption of any alcoholic beverage in a motor vehicle.

A state's open container law must prohibit the possession of any open alcoholic beverage container and the consumption of any alcoholic beverage in the passenger area of any motor vehicle that is located on a public highway or right-of-way. However, state laws and proposed legislation that prohibit possession without prohibiting consumption also have been found to be in conformance with the

³ The Act also provides that states may elect to use all or a portion of the transferred funds for hazard elimination activities under 23 U.S.C. 152.

⁴ The amount of the apportionment to be transferred may be derived from one or more of the apportionments under Sections 104(b)(1), (3) and (4). In other words, the total amount to be transferred from a non-conforming state will be calculated based on a percentage of the funds apportioned to the state under each of Sections 104(b)(1), (3) and (4). However, the actual transfers need not be evenly distributed among these three sources. The transferred funds may come from any one or a combination of the apportionments under Sections 104(b)(1), (3) or (4), as long as the appropriate total amount is transferred from one or more of these three sections. The rule specifies that all of the affected state agencies should participate in deciding how transferred funds should be directed.

⁵ Section 154 provides that nonconforming states will be subject to the transfer of funds beginning in fiscal year 2001. To avoid the transfer, each state must submit a certification demonstrating conformance. The certifications submitted by the states under this Part will provide the National Highway Traffic Safety Administration and the Federal Highway Administration with the basis for finding states in conformance with the Open Container requirements. Until a state has been determined to be in conformance with these requirements, it must submit a certification by an appropriate state official that the state has enacted and is enforcing a conforming open container law. Once a state has been determined to be in conformance with the requirements, the state would not be required to submit certifications in subsequent fiscal years, unless the state's law had changed or the state had ceased to enforce the open container law. States are required only to submit a certification that they are enforcing their laws to demonstrate enforcement under the regulation.

possession and consumption criterion because in order to consume an alcoholic beverage, an individual must first have that beverage in their possession.

2. *Specify the passenger area of any motor vehicle.*

The open container law must apply to the passenger area of any motor vehicle. "Passenger area" is defined as the area designed to seat the driver and passengers while the motor vehicle is in operation and any area that is readily accessible to the driver or a passenger while in their seating positions, including the glove compartment. Vehicles without trunks may have an open alcoholic beverage container behind the last upright seat or in an area not normally occupied by the driver or passengers. A law that permits the possession of open alcoholic beverage containers in an unlocked glove compartment, however, will not conform to the requirements. "Motor vehicle" is defined in the regulation to mean a vehicle driven or drawn by mechanical power and manufactured primarily for use on public highways. The term does not include a vehicle operated exclusively on a rail or rails.

3. *Apply to all alcoholic beverages.*

The open container law must apply to all alcoholic beverages. "Alcoholic beverage" is defined in the regulation to include all types of alcoholic beverages, including beer, wine and distilled spirits. Beer, wine, and distilled spirits are covered by the definition if they contain one-half of one percent or more of alcohol by volume. An "open alcoholic beverage container" is any bottle, can, or other receptacle that contains any amount of alcoholic beverage, and that is open or has a broken seal, or the contents of which are partially removed.

4. *Apply to all occupants.*

The open container law must apply to all occupants of the motor vehicle, including the driver and all passengers. The statute provides for two exceptions, however, to the all-occupant requirement. A law will be deemed to apply to all occupants if the law prohibits the possession of any open alcoholic beverage container by the driver, but permits possession of alcohol by passengers in "the passenger area of a motor vehicle designed, maintained or used primarily for the transportation of persons for compensation" (e.g., buses, taxis, limousines) and passengers "in the living quarters of a house coach or house trailer."

5. *Specify on a public highway or the right-of-way of a public highway.*

The open container law must apply to a motor vehicle while it is located anywhere on a public highway or the right-of-way of a public highway. The agencies have defined "public highway or the right-of-way of a public highway" to include a roadway and the shoulder alongside of it.

6. *Specify primary enforcement.*

A state must provide for primary enforcement of its open container law. Under a primary enforcement law, officers have the authority to enforce the law without the need to show that they had probable cause to believe that another violation had been committed. An open container law that provides for secondary enforcement does not conform to the requirements of the regulation.

STATUS OF CONFORMANCE: OCTOBER 2000

The overall status of states' conformity to the Federal Standard is constantly changing. However, the status of conformance as of October 2000 is presented below.⁶

Fully Conforming States Before Enactment of the TEA 21 Restoration Act

The following States had in effect open container laws that conformed fully with the Federal open container requirements contained in 23 U.S.C. § 154 and the agency's implementing regulations, 23 CFR Part 1270, as of October 1, 2000. Accordingly, these States were not subject to a transfer of funds under the Section 154 program on that date. The laws were in effect in these states and the District of Columbia before July 22, 1998, when the Section 154 program was established by the Transportation Equity Act for the 21st Century (TEA 21) Restoration Act, and have not been amended since.

California	Michigan	Ohio	Washington
District of Columbia	Nevada	Oklahoma	Wisconsin
Illinois	New Hampshire	Oregon	
Kansas	North Dakota	Utah	

States that Became Fully Conforming Since Enactment of the TEA-21 Restoration Act

The following States had open container laws in effect that conformed fully with the Federal open container requirements contained in 23 U.S.C. § 154 and the agency's implementing regulations, 23 CFR Part 1270, as of October 1, 2000. Accordingly, these States were not subject to a transfer of funds under the Section 154 program on that date. The laws in these states were amended since July 22, 1998, when the Section 154 program was established by the Transportation Equity Act for the 21st Century (TEA 21) Restoration Act.

Alabama	Iowa	Nebraska	Pennsylvania
Arizona	Kentucky	New Jersey	Rhode Island
Florida	Maine	New York	South Carolina
Hawaii	Minnesota	North Carolina	South Dakota
Idaho			

States with Open Container Laws that Did Not Fully Conform as of October 1, 2000

The following States did not have open container laws in effect that complied fully with the Federal open container requirements contained in 23 U.S.C. § 154 and the agency's implementing regulations, 23 CFR Part 1270, as of October 1, 2000. Accordingly, these States were subject to a transfer of funds under the Section 154 program on that date.

Alaska	Indiana	Missouri	Texas
Arkansas	Louisiana	Montana	Vermont
Colorado	Maryland	New Mexico	Virginia
Delaware	Massachusetts	Tennessee	West Virginia
Georgia			

States With No Open Container Laws as of October 1, 2000

The following States and the Commonwealth of Puerto Rico did not have any open container laws in effect, as of October 1, 2000. Accordingly, these States were subject to a transfer of funds under the Section 154 program on that date.

Connecticut	Mississippi	Puerto Rico	Wyoming
-------------	-------------	-------------	---------

⁶This information was provided by NHTSA's Office of the Chief Counsel.

EVALUATION OF THE EFFECTS OF OPEN CONTAINER LAWS

Two methods were used to assess the effects of Open Container laws on traffic safety: 1) A before and after comparison of data from the four states that enacted legislation in 1999 to modify their Open Container laws to be in conformance with the Federal Standard; and 2) A comparison of data from states that had conforming laws when the TEA-21 Restoration Act was enacted; adopted fully conforming laws by October 1, 2000; had partially-conforming laws by October 1, 2000; and had no Open Container laws at all as of October 1, 2000.

BEFORE AND AFTER COMPARISON OF THE FOUR STATES

Four states (IA, ME, RI, SD) modified existing Open Container laws in 1999 to be in conformance with the Federal requirements established in Section 154 of Chapter 1 of Title 23, United States Code (U.S.C.), and the Act's implementing regulations, 23 CFR Part 1270. As of January 2000, only these four states had enacted Open Container legislation in response to the TEA-21 Restoration Act. One of the states enacted its legislation in May of 1999 and the other three states enacted their legislation in July of 1999. All four states had Open Container laws when the TEA-21 Restoration Act was enacted, but each of those laws contained deficiencies that prevented them from fully conforming with the new Federal requirement. Table 1 summarizes the extent to which those states' previous open container laws complied with the six elements of the Federal requirements. South Dakota had not demonstrated that its law covered all alcoholic beverages and all public highways and rights-of-way; Iowa, Rhode Island, and Maine had not demonstrated that their laws prohibited both possession and consumption, and that they covered the entire passenger area and all occupants of a vehicle. Maine, in addition, had not demonstrated that its law covered all public highways.

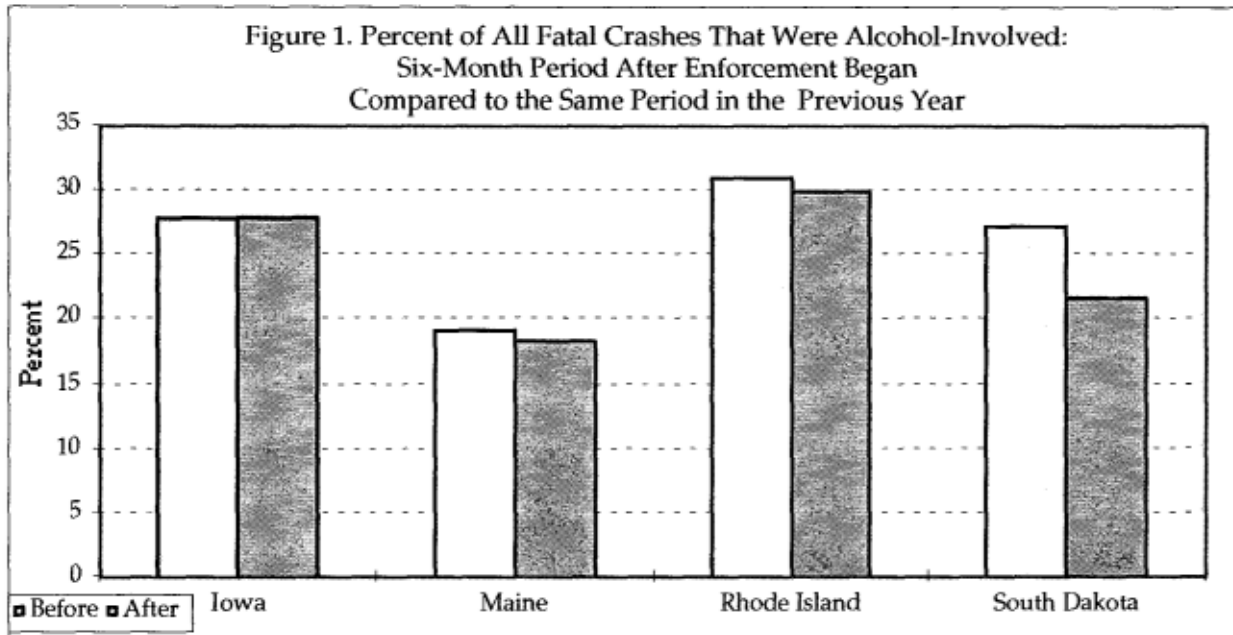
TABLE 1
SUMMARY OF PREVIOUS OPEN CONTAINER LAWS IN THE FIRST FOUR STATES
TO ENACT LAWS TO CONFORM WITH TEA-21 REQUIREMENTS

State	Element Required by TEA-21					
	Possession & Consumption	Passenger Area	All Alcoholic Beverages	All Occupants	All Public Highways	Primary Enforcement
Iowa	no	no	yes	no	yes	yes
Maine	no	no	yes	no	no	yes
Rhode Island	no	no	yes	no	yes	yes
South Dakota	yes	yes	no	yes	no	yes

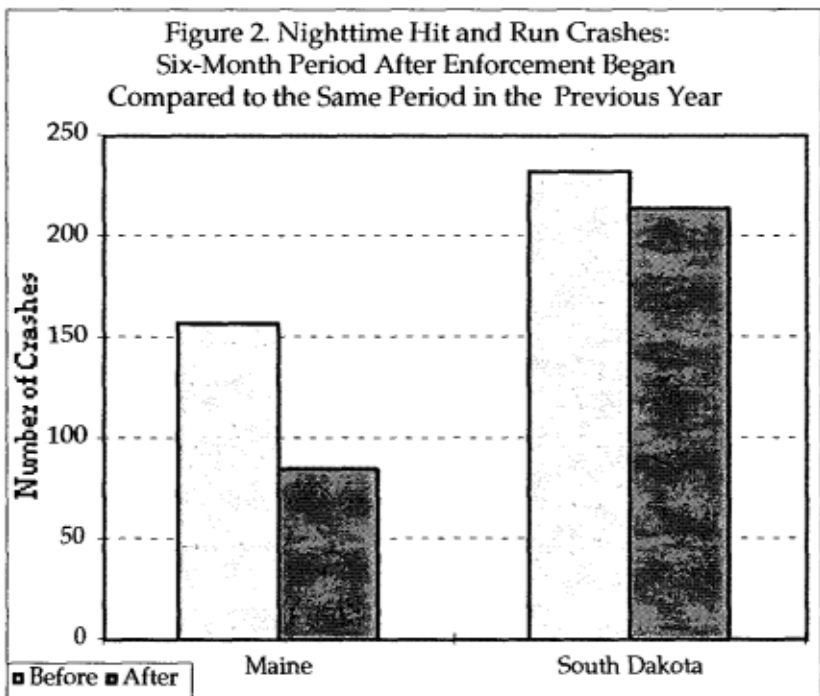
Enforcement of the new conforming laws began on 1 July 1999 in Iowa and South Dakota, on 1 October in Maine, and on 1 January 2000 in Rhode Island. Data were obtained from agencies of the four states to identify effects on traffic safety that might be attributable to changes in the states' Open Container laws. The hypothesis of the evaluation is that conformance with the Federal requirements is associated with a lower incidence of alcohol-involved crashes.

Figure 1 presents the proportions of all fatal crashes that were alcohol-involved in the four states during the six-month periods following the beginning of enforcement of the states' conforming laws, compared to data from the same six-month periods in

the previous year. The figure suggests that the alcohol-involved proportion of fatal crashes in three of the four states was lower during the first six months following enforcement of conforming Open Container laws.⁷ Iowa had no apparent change; however, the apparent change observed in the other three states is in the direction expected if the laws had an impact; however, the declines were not statistically significant (z test at 0.05).



Hit-and-run crashes, particularly during nighttime hours, provide an indirect measure of the incidence of drinking and driving; it is well-known to law enforcement that many drivers flee the scene of a nighttime crash to conceal their alcohol-impairment. Figure 2 presents the numbers of nighttime hit and run crashes (in the two states for which data are available) during the six-month periods following the beginning of enforcement of the states' conforming laws, compared to data from the same six-month



⁷ Data illustrated in all figures are presented in Appendix A.

periods in the previous year.⁸ The figure shows that the numbers of hit-and-run crashes declined in both states during the first six months after enforcement of their conforming laws began, compared to the same six-month periods one year earlier. Chi Square tests found the difference to be statistically significant for Maine, but not for South Dakota ($p=0.05$).

COMPARISONS AMONG STATES THAT HAD CONFORMING LAWS PRIOR TO TEA-21, STATES THAT ENACTED CONFORMING LAWS BY OCTOBER 1, 2000, STATES WITH PARTIALLY-CONFORMING LAWS BY OCTOBER 1, 2000, AND STATES WITH NO OPEN CONTAINER LAWS BY OCTOBER 1, 2000

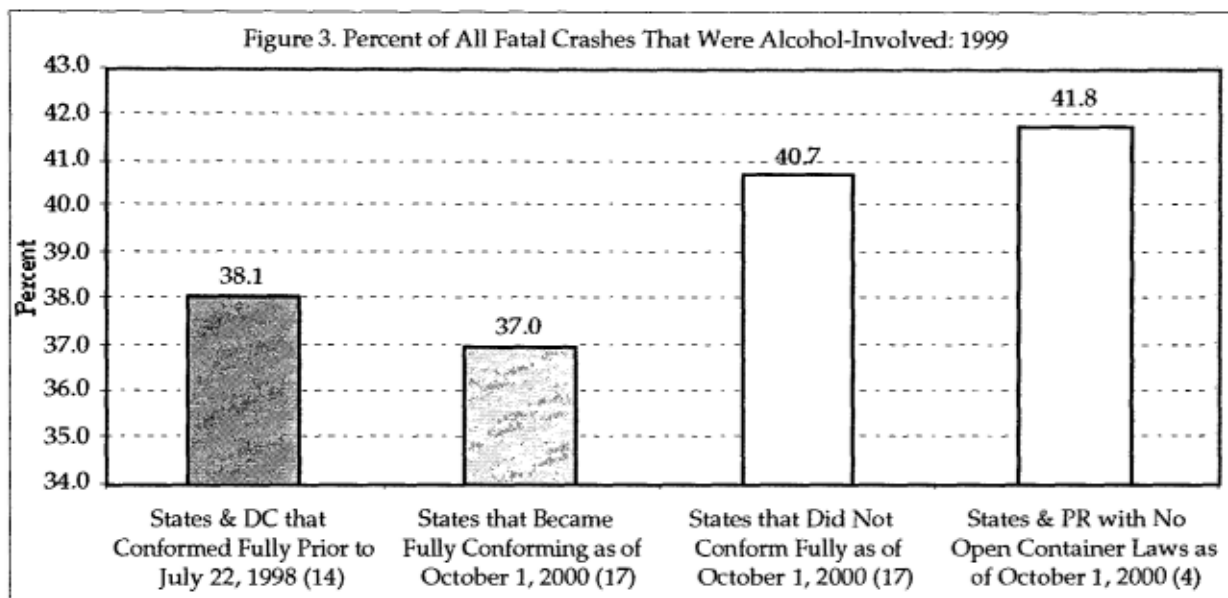
The previous section compared measures of traffic safety before and after changes to Open Container laws took effect in the four states that enacted TEA-21 conforming legislation in 1999. Another method for assessing the effects of Open Container laws is to compare traffic safety data from states that had conforming laws prior to the amendment of the TEA-21 Restoration Act to data from other states, including states that adopted fully conforming laws, states with only partially-conforming laws, and states with no Open Container laws at all, as of October 1, 2000.

Thirteen states and the District of Columbia had laws that conformed fully with the Federal Standard prior to July 22, 1998, when the Section 154 program was established by the TEA-21 Restoration Act. Seventeen states amended their laws to become fully conforming between July 1998 and October 2000; the first four of those states to amend their laws were the subjects of the previous analysis. Twenty states and the Commonwealth of Puerto Rico had not amended their laws to conform to the Federal Standard by October 2000. Seventeen of those states had partially-conforming laws; three of those states (CT, MS, WY) and Puerto Rico had no Open Container laws at all.

Figure 3 shows the percentages of alcohol-involved fatal crashes during 1999 in the four categories: 1) States with Open Container laws that conformed fully to the Federal requirements prior to July 22, 1998 (13 states and the District of Columbia); 2) States that became fully-conforming by October 1, 2000 (17 states); 3) States with laws that did not fully conform by October 2000 (17 states); and 4) States with no Open Container laws at all as of October 1, 2000 (three states and Puerto Rico).

Figure 3 shows that states without laws prohibiting the possession and consumption of alcoholic beverages in a motor vehicle have higher proportions of alcohol-involved fatal crashes than states with either partially-conforming or fully-conforming laws. The differences illustrated in the figure amount to ten percent more alcohol-involved fatal crashes in states without Open Container laws, compared to states with either partially or fully-conforming laws. The differences between the No Law states and the other states, combined, are statistically significant (z test at 0.05). The figure also shows that states that became fully-conforming in response to the TEA-21 Restoration Act (i.e., between July 22, 1998 and October 1, 2000) experienced alcohol involvement rates in fatal crashes in 1999 that were comparable to the states that had fully-conforming laws in effect prior to July 22, 1998. The results of the analysis illustrated in Figure 3 are consistent with the expectation that conformity to the Federal requirements has an effect on the incidence of alcohol-involved crashes.

⁸ Data for Iowa and Rhode Island are not available; the states' crash investigation forms lack data fields for hit and run crashes.



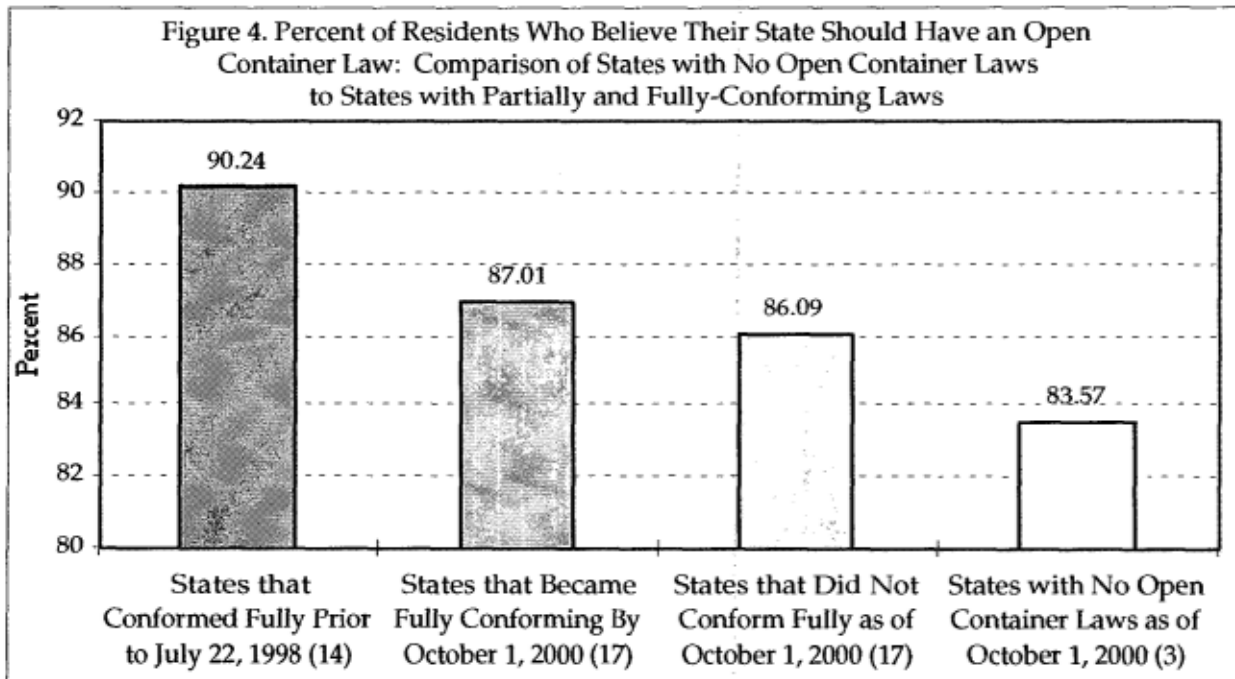
Of course, focusing exclusively on the presence or absence of Open Container laws does not permit a complete understanding of the many issues that contribute to drinking while driving. In particular, many of the states that lacked fully-conforming Open Container laws in 1999 had laws that contained many elements of a law that met the Federal requirements. In addition, some cities and counties in states that lack Open Container laws have their own regulations prohibiting open containers, which contribute to public perceptions that open containers of alcoholic beverages are prohibited on all roads and highways in the state, despite the absence of state Open Container laws. Other factors that may contribute include other state laws currently in effect and the level of enforcement and publicity dedicated to state and local laws.

PUBLIC OPINION CONCERNING OPEN CONTAINER LAWS

NHTSA's most recent biennial National Survey of Drinking and Driving, conducted in 1999 by The Gallup Organization (Royal, 2000) included two questions concerning Open Container laws. The first question asked, "To the best of your knowledge, does your state have any law that makes it illegal to have an open container of alcohol inside a car while someone is driving?" The percentage of respondents who believed that their states had such laws ranged from a high of 95 percent to a low of 56 percent. Overall, 86 percent of the people surveyed believed their states to have Open Container laws, including a majority of those surveyed in states that did not have Open Container Laws at the time (i.e., 82% in CT, 76% in MS, 73% in LA, and 56% in WY).

The second survey question asked, "Do you think your state should have this type of open container law?" The responses to this question are presented in Figure 4 according to the categories of states used in the previous analyses. The figure shows that more than 90 percent of respondents from states that had fully-conforming Open Container laws prior to the enactment of the TEA-21 Restoration Act, believed their states should have those laws. Similarly, 87 percent of the respondents from states that had enacted fully conforming laws between 22 July 1998 and 1 October 2000 and 86

percent of the respondents from states with partially-conforming laws as of 1 October 2000 agreed that Open Container laws are appropriate. Perhaps most important, more than 83 percent of the people surveyed in states without Open Container laws reported that their states should have Open Container laws. The data presented in the figure show support for Open Container laws by a vast majority of citizens, including the residents of states that lack Open Container laws.



(Note: Data from Puerto Rico were not available to include in this analysis, therefore, n=3 in the No Open Container law category in Figure 4.)

CONCLUSIONS

The analysis of data from the first four states that enacted Open Container laws in 1999 in response to the TEA-21 Restoration Act, found that measures of alcohol-involvement in crashes appeared to decline during the six-month periods following the beginning of enforcement, compared to the same six-month periods one year earlier. The changes were in the direction expected if the laws have an impact; however, the differences were not statistically significant.

Comparisons of crash data showed that states that lacked Open Container laws had significantly greater percentages of alcohol-involved fatal and single-vehicle crashes than the states with partially or fully-conforming laws. Although the differences cannot be attributed with certainty to the presence or absence of Open Container laws, the results of the analyses suggest that conformance with some or all of the six elements of the Federal requirements contributes measurably to traffic safety.

Further, states that enacted conforming laws in 1999 and 2000 experienced the lowest proportion of alcohol-involved fatal crashes of the four categories of states, suggesting that public consideration and subsequent adoption of proposed laws may increase awareness of the issues and lead to safety benefits. Perhaps equally important

when considering whether such laws should be enacted, the national survey found that a substantial majority of the driving-age public support Open Container laws, and thus, appears to recognize their value in contributing to traffic safety.

ACKNOWLEDGMENTS

We are grateful for the cooperation and crash data provided by Scott Falb, Iowa Office of Driver Services, Research and Training Division; Greg Costello, Maine Department of Transportation, Accident Records Section, and Sandra Carroll, Maine Judicial Branch, Violations Bureau; Joseph A. Bucci and Michael Sprague, Rhode Island Department of Transportation, Engineering Division; and, Pat Winters, South Dakota Department of Transportation, Accident Records Section.

REFERENCES

- Lewis, N.O., Lapham, S.C., and Skipper, B.J. Drive-up liquor windows and convicted drunk drivers: A comparative analysis of place of purchase. *Accident Analysis and Prevention* (30) 6, pp. 763-772, 1998.
- National Highway Traffic Safety Administration. *Multiple Imputation of Missing Blood Alcohol Concentration (BAC) Values in FARS*. Research Note: U.S Department of Transportation (NHTSA), October 1998.
- Ross, H.L. *Confronting Drunk Driving: Social Policy for Saving Lives*. Yale University Press: New Haven, CT, 1992.
- Royal, D. *National Survey of Drinking and Driving, Attitudes and Behavior: 1999*, U.S Department of Transportation (NHTSA), December 2000.
- Segars, L. and Ryan, M. Survey of off-site purchase and consumption locations of convicted drinking drivers. Unpublished report. San Diego County Department of Health Services, 1986.
- Stuster, J. and Burns, M. *Validation of the Standardized Field Sobriety Test Battery at BACs Below 0.10 Percent*. U.S. Department of Transportation, National Highway Traffic Safety Administration, Report DOT HS 809 839, August 1998.
- U.S. Department of Transportation, Federal Highway Administration, Transportation Equity Act for the 21st Century (TEA-21) Web Site, www.fhwa.dot.gov/tea21, March 2000 update. [Note: Some material from this source is used in this report with only minor modification to ensure accuracy when discussing legal issues.]
- Wittman, F. Local control of alcohol availability to prevent alcohol problems: Challenges for city and county planners. Unpublished paper. Prevention Research Center: Berkeley, CA, 1986.

APPENDIX A

DATA TABLES

FIGURE 1 DATA
 PERCENT OF ALL FATAL CRASHES THAT WERE ALCOHOL-INVOLVED:
 SIX-MONTH PERIOD AFTER ENFORCEMENT BEGAN
 COMPARED TO THE SAME PERIOD IN THE PREVIOUS YEAR

State	Before Enforcement			After Enforcement			Percent Change
	Fatal Crashes	Alcohol-Involved	Percent AI-Involved	Fatal Crashes	Alcohol-Involved	Percent AI-Involved	
Iowa	263	74	28.1	277	78	28.2	0
Maine	73	14	19.2	49	9	18.4	-4.0
Rhode Island	45	14	31.1	43	13	30.2	-2.8
South Dakota	121	33	27.3	115	25	21.7	-20.5

Source: State agencies/FARS

FIGURE 2 DATA
 NIGHTTIME HIT-AND-RUN CRASHES:
 SIX-MONTH PERIOD AFTER ENFORCEMENT BEGAN
 COMPARED TO THE SAME PERIOD IN THE PREVIOUS YEAR

State	Crashes Before Enforcement	Crashes After Enforcement	Percent Change
Iowa	n/a	n/a	n/a
Maine	158	85	-46.2
Rhode Island	n/a	n/a	n/a
South Dakota	233	215	-7.7

Source: State agencies

FIGURE 3 DATA
PERCENT OF ALL FATAL CRASHES THAT WERE ALCOHOL-INVOLVED:
COMPARISON OF STATES WITH FULLY-CONFORMING LAWS ON 22 JULY 1998,
STATES THAT BECAME FULLY-CONFORMING BETWEEN 22 JULY 1998 AND 1 OCTOBER 2000,
STATES WITH PARTIALLY-CONFORMING LAWS ON 1 OCTOBER 2000, AND
STATES WITH NO OPEN CONTAINER AND NO ALCOHOL CONSUMPTION LAWS
AS OF 1 OCTOBER 2000

Category	Total Crashes	1999 Alcohol-Involved	Percent Alcohol-Involved
Full Law on July 22, 1998 (13 states & DC)	11907	4542	38.1
Became Fully Conforming Since TEA-21 (17 states)	14393	5321	37.0
Partial Law on October 1, 2000 (17 states)	13794	5619	40.7
No Law on October 1, 2000 (3 states & PR)	1975	825	41.8

Source: FARS

FIGURE 4 DATA
PERCENT OF RESIDENTS WHO BELIEVE THEIR STATE SHOULD HAVE AN OPEN CONTAINER LAW:
COMPARISON OF STATES WITH FULLY-CONFORMING LAWS ON 22 JULY 1998,
STATES THAT BECAME FULLY-CONFORMING BETWEEN 22 JULY 1998 AND 1 OCTOBER 2000,
STATES WITH PARTIALLY-CONFORMING LAWS ON 1 OCTOBER 2000, AND
STATES WITH NO OPEN CONTAINER AND NO ALCOHOL CONSUMPTION LAWS
AS OF 1 OCTOBER 2000

Category	Percent Responding "Yes"
Full Law on July 22, 1998 (13 states & DC)	90.24
Became Fully Conforming Since TEA-21 (17 states)	87.01
Partial Law on October 1, 2000 (17 states)	86.09
No Law on October 1, 2000 (3 states)	83.57

Source: NHTSA's National Survey of Drinking and Driving, 1999

DOT HS 809 426
April 2002



U.S. Department
of Transportation
**National Highway
Traffic Safety
Administration**

NHTSA
People Saving People
www.nhtsa.dot.gov

Digital Democracy is updated with the newly-elected legislators for the 2025-26 session. Data for some features will be displayed as the session proceeds.



Bills

Share

SB 76: Alcoholic beverages: music venue license: entertainment zones: consumption.

Session Year: 2023-2024

House: Senate

Current Status:

PASSED ✓

(2023-10-10: Chaptered by Secretary of State. Chapter 700, Statutes of 2023.)

- ✓ Introduced
- ✓ First Committee Review
- ✓ First Chamber
- ✓ Second Committee Review
- ✓ Second Chamber
- ✓ Enacted

[Summary](#) [Bill Text](#) [Status](#) [Votes](#) [Supporters & Opponents](#) [Analysis](#)

Version:

(1) The Alcoholic Beverage Control Act contains various provisions regulating the application for, the issuance of, the suspension of, and the conditions imposed upon alcoholic beverage licenses by the Department of Alcoholic Beverage Control. Existing law provides for various annual fees for the issuance of alcoholic beverage licenses, depending upon the type of license issued. Existing law authorizes the department to issue a music venue license, as defined, that allows the licensee to sell beer, wine, and distilled spirits at retail for consumption on the premises in a music entertainment facility, as defined. Existing law makes selling, giving, delivering, or purchasing an alcoholic beverage between the hours of 2 a.m. and 6 a.m. of the same day a misdemeanor. Existing law further limits a music venue licensee's authorization to sell, serve, and permit consumption of alcoholic beverages to the time period from 2 hours before a live performance until one hour after the live performance. Existing law authorizes the department to make any examination of the books and records of any licensee and makes any person who fails to preserve the books for inspection guilty of a misdemeanor.

This bill would authorize a licensee under a music venue license to apply to the department for a duplicate license or licenses, as prescribed. The bill would also authorize a music venue licensee to sell, serve, and permit consumption of alcoholic beverages during private events or private functions not open to the general public within any hours of operation permitted by its license, regardless of whether any live performance occurs. The bill would exempt the licensee from having to meet certain requirements generally imposed on a music entertainment facility in connection with and during a private event or private function if specified conditions are met. The bill would require the licensee to keep records demonstrating compliance with these provisions for the preceding 3 calendar years and to provide these records to the department upon request. The bill would make a licensee's failure to keep the required records or provide them to the department grounds for disciplinary action punishable as a misdemeanor and would, therefore, expand the scope of a crime, thereby imposing a state-mandated local program.

(2) Under existing law, any person possessing an open container of an alcoholic beverage in any city, county, or city and county-owned public place, as specified, or any regional park or recreation and park district, is guilty of an infraction if the city or county has enacted an ordinance that prohibits the possession of those containers or the consumption of alcoholic beverages in those areas, except as specified.

Existing law, the Planning and Zoning Law, authorizes the legislative body of any city or county to adopt ordinances regulating zoning within its jurisdiction, as specified.

Existing law authorizes a licensed beer manufacturer, a licensed winegrower, and any on-sale licensee to sell certain alcoholic beverages for consumption on or off the premises, as specified.

This bill, additionally, would authorize a licensed beer manufacturer, a licensed winegrower, and any on-sale licensee to permit consumers to leave the premises with open containers of alcoholic

beverages for consumption off the premises within an entertainment zone, subject to certain conditions. The bill would define entertainment zone for purposes of the Alcoholic Beverage Control Act as a zone created by ordinance on or after January 1, 2024, in the City and County of San Francisco, that authorizes consumption of one or more types of alcoholic beverages on public streets, sidewalks, or public rights-of-way adjacent to and during a special event permitted or licensed by the department. The bill would require the City and County of San Francisco, if it establishes an entertainment zone, to provide specified information relating to the entertainment zone to the department and establish a process or procedure by which persons in possession of alcoholic beverages in the entertainment zone may be readily identifiable as being 21 years of age or older.

This bill would make legislative findings and declarations as to the necessity of a special statute for City and County of San Francisco.

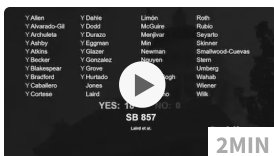
(3) This bill would incorporate additional changes to Section 23357 of the Business and Professions Code proposed by SB 788 to be operative only if this bill and SB 788 are enacted and this bill is enacted last.

This bill would incorporate additional changes to Section 23358 of the Business and Professions Code proposed by AB 1704 to be operative only if this bill and AB 1704 are enacted and this bill is enacted last.

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

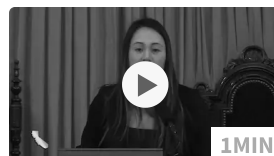
This bill would provide that no reimbursement is required by this act for a specified reason.

Discussed in Hearing



Sep 14, 2023

Senate Floor



Sep 13, 2023

Assembly Floor



Sep 7, 2023

Assembly Floor



Jul 12, 2023

Assembly Standing Committee on Governmental Organization

[View Older Hearings](#)

Bill Author



[Scott Wiener](#) 

Bill Co-Author(s):



[Angelique Ashby](#) 



[Laura Friedman](#) 



[Matt Haney](#) 

Journalists backed by artificial intelligence bringing transparency and accountability to California's policy choices.

[About Digital Democracy](#)

[Data & Methodology](#)

[Visit CalMatters](#)

Support this nonprofit initiative

Digital Democracy informs Californians, holds officials accountable, and builds a stronger community. Brought to you by the 501(c)(3) nonprofit and nonpartisan CalMatters newsroom.

Support Our Work

Sign up for news and updates

Receive updates about Digital Democracy and CalMatters' daily newsletter that brings transparency to state government.

Email

Sign Up

By signing up, you agree to the [terms](#).



Copyright © 2024 CalMatters

[Terms & Conditions](#) [Privacy Policy](#)

**News**

San Francisco to Become First City in California to Create New Entertainment Zones

Authorized under new state law, the first Entertainment Zone will be in Downtown San Francisco on Front Street under Mayor Breed's legislation approved today. Other EZ locations being considered include Union Square, Mid-Market, and Thrive City.

June 25, 2024

San Francisco, CA – Today, the Board of Supervisors gave final approval to Mayor London N. Breed's legislation to make San Francisco the first city in the state to create new Entertainment Zones in Downtown and neighborhoods across the City. The legislation is authorized under Senate Bill 76, a bill authored by State Senator Scott Wiener that went into effect this year. Within the new EZs, restaurants and bars will be permitted to sell alcoholic beverages for consumption during outdoor events and activations.

In May, Mayor Breed announced Front Street, between California and Sacramento streets, as the first entertainment zone to be designated in San Francisco. Today's approval expands the pilot program to bring additional entertainment zones across the City to permit the operation of the sale of alcohol within the zones. Businesses and organizations across San Francisco have expressed interest in establishing entertainment zones in their areas, including in Union Square, Mid-Market, and Thrive City in Mission Bay.

"We are focused on bringing opportunities that are good for business but that are also exciting for residents and visitors across our City," **said Mayor London Breed.**

"Entertainment Zones bring new economic opportunities that will help strengthen San Francisco's Downtown and neighborhoods citywide. Our local bars and restaurants are an important part of what makes this City unique and fun, and as the first and only city in California to work with this concept, we are thrilled to bring new energy to our City while supporting our small businesses. I want to thank Senator Wiener and all of our partners involved to make this happen."

"Our downtown thrives when we bring people into the streets and support the small businesses that make it such a vibrant space," **said Senator Scott Wiener.** "We should have a space where San Franciscans can enjoy drinks outside with their loved ones. Entertainment Zones are an idea whose time has come, and I'm delighted to see Mayor Breed and the Board of Supervisors prioritize them so highly."

"The approval of the City's first Entertainment Zone is a major boost for our downtown revitalization efforts," **said Sarah Dennis Phillips, Executive Director of the Office of the Economic and Workforce Development.** "This legislation sends a strong signal to our local bars and restaurants that the City is poised to support them as they experiment with new strategies to grow their businesses while bringing more vitality to our public spaces. I can't wait to see the Front Street Entertainment Zone in full effect and for residents and visitors to experience our Downtown in new and exciting ways."

The legislation would designate an approved area to become an entertainment zone, allowing restaurants and bars to sell open beverages for consumption during special events within the zone. Per the ordinance, the designated zone must comply with certain parameters, including

- Open beverages sold within the zone must be in an approved non-metal or non-glass container. If authorized by the Board, a zone could include sales of cocktails, beer, and wine.
- Only restaurants, bars, breweries, and wineries can sell open containers within an entertainment zone. Liquor stores may not sell open beverages for consumption within the zone and the consumption of alcoholic beverages not purchased from a restaurant or bar within the zone is not permitted.

San Francisco's proposed Entertainment Zones build off of Senate Bill (SB) 76, introduced by Senator Wiener and passed at the California Legislature last year. The Entertainment Zone Act paved the way for San Francisco, currently the only city in California to designate entertainment zones to operate during special events permitted by the California Department of Alcoholic Beverage Control (ABC). Under the bill, San Francisco could establish entertainment zones through the adoption of a local ordinance by the Mayor and the Board of Supervisors.

Currently, the Mayor's legislation enables three bars along Front Street (Schroeder's, Harrington's, and Royal Exchange) to sell open beverages for consumption during special events in the zone. These bars, along with the Downtown SF Partnership and BOMA San Francisco, are working to launch a new recurring street closure on this block that could involve live entertainment and other activities during the zone's operation. Similar programs have been successful in supporting small businesses and commercial districts in other states, including Michigan, Ohio, and North Carolina.

"Seeing small businesses like ours working together on our block to organize new activities and events that will attract people to our local spots is a major milestone," **said Ben Bleiman**, Owner of Harrington's Bar & Grill and President of the Entertainment Commission. "We are telling residents, visitors, and businesses that we are ready to see Downtown San Francisco activated with exciting public spaces because when people have fun it benefits local businesses, Downtown, and the entire city."

"Downtown San Francisco needs a nightlife renaissance post-pandemic. Launching California's first ever entertainment zone on Front Street is significant and will catalyze more reasons to come downtown," **said Robbie Silver, Executive Director of the Downtown SF Partnership**. "Rethinking the use of public space by opening streets for pedestrians is a proven economic strategy to reinvigorate downtown. The Downtown SF

Partnership will optimize Front Street with fun programming, building off its signature activations like Let's Glow SF, Drag Me Downtown, and Landing at Leidesdorff."

The Office of Economic Workforce and Development (OEWD) will continue to engage with stakeholders, including Market Street Arts, Thrive City and the Union Square Alliance, who have expressed significant interest in pursuing entertainment zones, across City agencies, and with ABC to ensure the successful implementation of this groundbreaking program.

"Creating an Entertainment Zone in Mid-Market will support local businesses, including large cultural venues, small businesses, and arts organizations by drawing foot traffic, positive media attention, and new programming to the neighborhood," **said Steve Gibson, Executive Director of the Mid-Market Foundation.** "Spanning the wide sidewalks on Market Street between 5th and 6th, the Entertainment Zone would add another layer to our larger collective effort, Market Street Arts, a multi-year, public-private initiative working to uplift Mid Market as a world-class arts and entertainment district, a place where creatives from the region, country and around the world come together to inspire joy and connection among the diverse communities that intersect at the center of the City."

"Union Square is the heart of San Francisco's Downtown and we are seeing a wave of energy pour in that is undeniable," **said Marisa Rodriguez, CEO, Union Square Alliance.** "Union Square is already a magnet for nightlife and outdoor dining, and with upgrades coming to Powell Street, we are building back stronger than ever. We are excited for the opportunity to explore how entertainment zones can work for Union Square. But if it's good for our businesses and visitors, then we are all in. The possibilities are endless when you have creative policies that are working for this City."

To support activations in entertainment zones and throughout Downtown, Mayor Breed has also directed OEWD to partner with San Francisco New Deal to launch the Downtown ENRG (Entertainment & Nightlife Revitalization Grant) Program, a program that will offer up to \$50,000 to fund new economic revitalization projects to support new activities, events, and campaigns to attract patrons and increase downtown activity.

The creation of entertainment zones and grants program are components of the Mayor's Roadmap to San Francisco's Future, and build on a series of recently announced entertainment initiatives designed to showcase and support the

San Francisco music and entertainment sector, boost neighborhood vitality, activate open spaces and enhance the City's economic revitalization through arts and culture. Combined, the goal is to secure an important new source of revenue to boost San Francisco restaurants and bars while transforming Downtown as a 24/7 destination.

Mayor Breed's two-year budget proposes investing \$15 million for the revitalization of the Union Square and Yerba Buena hospitality districts and the continuation of the Vacant to Vibrant program to address storefront vacancies, which expanded this month to include 11 new pop-up businesses in the East Cut, Financial District, and Yerba Buena.

In April, Mayor Breed announced the City's SF Live Concert Series, which debuted on May 4 at the Golden Gate Park Bandshell. Additional events will take place at locations citywide through November. More information about all upcoming SF Live events may be found at www.sflivefest.com. The first event as part of the Bhangra and Beats Night Market series this year took place on May 10 and will be back for three additional dates: July 12, September 13, and November 15.

###

Departments

[Office of the Mayor](#)

[Office of Economic and Workforce Development](#)

[Roadmap to San Francisco's Future](#)

Was this page helpful?

Yes

No

Report something wrong with this page

Jobs with the City

Contact us

About this website

Disclaimer

Privacy policy

City and County
of San Francisco

Scott Stauffer

From: Mike Lesch <mikelesch@hotmail.com>
Sent: Friday, September 20, 2024 12:18 PM
To: _City Council
Cc: Lesch, Michael; Nate Noble
Subject: Milwaukie Open Container Proposal

Hello Milwaukie City Council,

Thank you for allowing us (Beer Store Milwaukie) the opportunity to provide you with this proposal to allow “Open Container” alcoholic beverages in Downtown Milwaukie. We initially brought this proposal to City Counsel a few years ago during a regular session monthly meeting however, the idea did not seem to gain any traction when first proposed. In the time since our initial proposal, our city leadership team has evolved and changed. Perhaps the environment is right to make this proposal again and see if there are opportunities to at least entertain certain aspects of this proposal for the city’s future.

The City of Hood River Oregon does not have an ordinance making the consumption of alcohol in public spaces illegal. This means a person inside the Hood River City limits can legally walk down the street, enjoy time in the waterfront park, or take their dog for a walk with an open container of alcohol. All Oregon Liquor and Cannabis Commission (OLCC) laws and rules still apply. A person cannot take their pint glass of beer from a restaurant and simply walk away with it. Alcohol must be purchased in a sealed package like a can or bottle, the purchaser must leave the premises from which the alcohol was purchased, and then the purchaser may open and consume the product as they go about their business on foot.

Nuisance laws do still exist in Hood River to discourage public drunkenness and offensive behavior so the idea is not to remove all boundaries but to instill responsible guidelines that allow people to move about on foot, from business to business, while enjoying an alcoholic beverage.

We would like to propose that the City of Milwaukie review Hood River’s ordinances and adopt similar legislation to allow open container and public consumption of alcohol in downtown Milwaukie and Milwaukie Bay Park. As the City of Milwaukie evolves with new residential buildings, new business construction, and improved infrastructure projects, so should the laws that guide our use of these areas and how we enjoy our open spaces.

During current Milwaukie First Friday events, anyone wishing to consume an alcoholic beverage must do so while remaining in one place – the place in which the alcoholic beverage was purchased. This limits movement between venues and reduces the flow of people throughout the city during an event that, by nature, is designed to bring people to the downtown area to showcase our local businesses. Switching to a model that more closely resembles Hood River’s open container policies would allow people with alcoholic beverages in hand to move freely throughout the downtown Milwaukie area during events such as First Friday and could improve participation (turnout) and encourage attendees to explore the entire downtown business section, not just the areas that cater to food and beverages.

As we develop the Milwaukie Bay Park waterfront area, we should consider new legislation that allows visitors the option to bring their own alcohol to enjoy responsibly while attending events or when picnicking on the grass. This natural area has so much potential and the mixed use opportunities are endless. We should employ every available resource and open our waterfront with more progressive and inclusive designs that allow for open consumption of alcoholic beverages.

A member of the Hood River community is slated to become a member of our Milwaukie community as well – pFriem Family Brewers. pFriem has operated in Hood River for more than ten years and would be a great resource for developing a legislative plan that provides for Milwaukie's growing needs and addresses concerns for public safety. We will have an organization with firsthand experience in an open container environment located in the heart of our downtown. We should glean as much information from pFriem as they are willing to contribute and develop an encompassing implementation plan. We may be able to learn a lot from pFriem's experiences.

Thank you again for considering this proposal. We appreciate the opportunity to present this idea again to the City Counsel and perhaps we are ready to take a closer look at the pros and cons of allowing open containers in the Milwaukie downtown area.

Best regards,

Mike Lesch

Nate Noble

Beer Store Milwaukie

503.799.3581

COUNCIL STAFF REPORT

To: Mayor and City Council
Emma Sagor, City Manager

Reviewed: Emma Sagor, City Manager, and
Joseph Briglio, Assistant City Manager

From: Laura Weigel, Planning Manager

Subject: **Joint Meeting — Planning Commission Work Program**

Date Written: Dec. 5, 2023

ACTION REQUESTED

Each year Council holds a joint meeting with the Planning Commission to discuss the upcoming work program and bylaws. The Planning Commission bylaws were updated in 2021. As a result, this item is limited to a discussion of the work program.

HISTORY OF PRIOR ACTIONS AND DISCUSSIONS

On [April 20, 2021](#) Council held a joint session with the Commission to discuss the 2021 workplan and proposed updates to the Commission bylaws. On [June 15, 2021](#) Council adopted the revised Commission bylaws.

On [April 19, 2022](#) Council held a joint session with the Commission to discuss the 2022 workplan.

On [August 1, 2023](#) Council held a joint session with the Commission to discuss the 2023 workplan.

DISCUSSION

The Commission serves the city by reviewing and advising on matters related to planning and zoning, as set forth in the Comprehensive Plan and zoning, sign, and land division ordinances. The Commission does this by presiding over land use and development applications, guiding the development of long-range plans, and proposing updates and amendments to the Milwaukie Municipal Code (MMC) and Comprehensive Plan. Planning department staff works closely with the Commission to make progress in all these areas. The major accomplishments of the last year and the work program for the coming year are outlined below.

A. Work since August 2023

The Commission worked on several significant projects since last discussing its work program with Council.

Projects included state-initiated code amendments:

- Climate Friendly Equitable Communities (CFEC) Rulemaking Code Updates as Required

Non-state-initiated projects, included:

- Updates to Title 17 Land Division
- Neighborhood Hubs
- Natural Resources code amendments
- Transportation System Plan

Since August of 2023 the Commission has held 17 public hearings on 15 different land use applications including:

- Comprehensive Plan Implementation
- Zoning Code Updates
- 1 Variance Requests
- 3 modifications to Community Service Use
- 2 Conditional Use
- 1 Willamette Greenway Review
- 2 Downtown Design Review
- 1 Non-Conforming Use
- 2 Historic Resource Reviews

B. 2025 Work Program

The purpose of the joint meeting on December 17th between the Commission and Council is to provide an opportunity for discussion and to build a mutual understanding of goals and priorities for the next few years.

Development Review

Before discussing the numerous projects slated for 2025 it is important to note that development review can account for a large amount of Commission and staff time. Development review projects are unpredictable and, as a result, long-range project progress can be impacted. That said, staff works hard to keep long-range projects on schedule.

Comprehensive Plan Implementation

Work Underway:

- Planning and Engineering staff have been working on a new Transportation System Plan (TSP) since receiving a \$250,000 Transportation Growth Management (TGM) from Oregon Department of Transportation (ODOT). To date there have been six TSP Advisory and Technical Committee meetings, a sidewalk inventory with advisory committee members and two community events. Staff anticipate completing the project in late 2025.
- Staff completed phase two of the Neighborhood Hubs project and continues discussing a potential phase three of the Hubs work with Council and subsequently the Commission.
- Natural Resources Code Amendments are underway with adoption slated for early 2025.
- Staff are exploring the usefulness of developing a Public/Overlay Zone as outlined in the Comprehensive Plan. Part of that work may include a review of the Community Service Use code.

Other Code Projects:

- **Federal Emergency Management Agency (FEMA)** - Ensure that the city's flood hazard protections are compliant with new requirements related to integration of the Endangered Species Act (ESA) with the National Flood Insurance Program (NFIP). Staff are working on the code updates now for adoption in January of 2025.
- **Housing Production Strategy** - Develop Affordable Housing Code Incentives. Staff are bringing a draft code package to a Council work session early next year and anticipates code adoption in the spring of 2025.
- **Oregon Senate Bill (SB) 1537 Compliance** – Council directed staff to change the code to allow for variances to the maximum density for single-detached dwellings and multi-

unit development to be eligible for an exemption from the required variances (adjustments) in SB1537. The Commission will review the related code changes in early 2025 and staff will apply for the exemption once the code change has been made.

C. 2025 and Beyond

Staff anticipates revisiting the Planning Work Forecast with Council early next year. In addition to the work listed above there are several future projects related to Comprehensive Plan implementation, required housing production strategy (HPS) implementation, and potential Neighborhood Hubs work to consider. Projects may include, but are not limited to:

- HPS Implementation– Increase density in the High Density Residential (HDR) Zone, develop pre-approved Plan Sets for ADUs and Middle Housing Typologies.
- Revising the Willamette Greenway zone to establish two tiers of review and create a clear and objective path for housing.
- Reviewing/consolidating/updating Downtown and Central Milwaukie Plans.
- Updating the Historic Resources Inventory.
- Updating the Business Industrial and Manufacturing Zone.
- Expanding floodplain protection.

D. Planning Commission Bylaws

The Commission proposed an updated bylaws document as a result of the Comprehensive Plan update. Council adopted the updated Commission bylaws in 2021. The Commission intends to review its bylaws to reflect the bylaw template that was approved by Council in later 2021 going forward.

E. Planning Commission membership and recruitment

Due to commissioner turn over, the Planning Commission currently has five members, with one of those members planning on resigning once a replacement can be appointed. Given this, staff recommend launching a recruitment process in early 2025 prior to the annual BC recruitment period in the spring.

BUDGET IMPACT

The planning department has sufficient funding to carry out the objectives outlined in this report for the current biennium unless substantial projects are added for Hubs phase three work or other efforts. The budget would need to be reviewed and adjusted if necessary.

WORKLOAD IMPACT

The work for the current biennium has been assigned to specific staff and workloads are being adjusted to accommodate projects in addition to providing a high level of customer service for development review.

CLIMATE IMPACT

Several of the projects for 2025 can have an impact on climate goals for the community. Updating the city's TSP, which will focus on how the city can reduce vehicle miles travelled and greenhouse gas emissions and facilitate energy efficiency through improvements to the transportation system with a particular focus on prioritizing actions that will help vulnerable populations and impacted communities adapt to climate change impacts. Infrastructure improvements around Neighborhood Hubs will be included in the TSP.

EQUITY IMPACT

Planning department staff work closely with the Commission and Council for transparency, accessibility and community-driven outcomes. Several of planning projects share equity values. This includes the CFEC Rulemaking Code Updates and TSP. The projects and programs advanced as part of the city's planning work will be designed to support the diversity, equity, and inclusion, particularly creating opportunities for historically disenfranchised communities.

COORDINATION, CONCURRENCE, OR DISSENT

Planning, community development, engineering, and public works staff have a role in the work forecasted.

STAFF RECOMMENDATION

Staff recommends that the Council and Commission review and discuss the workplan.

ALTERNATIVES

None.

ATTACHMENTS

1. Planning Commission Bylaws

MILWAUKIE PLANNING COMMISSION BYLAWS

ARTICLE I NAME

The name of this commission is the Planning Commission (Commission).

ARTICLE II PURPOSE, AUTHORITY, AND OBJECTIVE

- A. **Purpose.** The purpose of the Commission is to serve as an advisory body to, and a resource for, the City Council in land use matters. In addition, the Commission will carry out the roles and responsibilities as assigned under Milwaukie Municipal Code (MMC) Section 2.16.010.
- B. **Authority.** The Commission is authorized by ORS 227 and MMC Chapter 2.16.
- C. **Objective.** The Commission's objectives include articulating the community's values and commitment to socially and environmentally responsible uses of its resources as reflected in the Comprehensive Plan.
- D. **Open Meetings.** All meetings of the Commission are open to the public. The Commission has the authority to conduct an executive session under ORS 192.660.

ARTICLE III MEMBERSHIP

- A. **Appointment.** Each Commission member will be appointed by the Mayor with the consent of Council, consistent with MMC 2.10.030 G. Members will serve at the pleasure of the Council.
- B. **Term of Office.** Terms are for a period of four years. Commission members may serve no more than two consecutive full terms, unless there is an interval of at least one term prior to reappointment. The Council may waive this limitation if it is in the public interest to do so.
- C. **Membership.** The Commission consists of seven members. No more than two members may be non-residents, and no more than two members can be engaged in the same kind of occupation, business, trade, or profession. No member may be a City of Milwaukie officer, agent, or employee; and no more than two voting members of the Commission may engage principally in the buying, selling, or developing of real estate for profit as individuals; or members of any partnership, or officers or employees of any corporation that engages principally in the buying, selling, or developing of real estate for profit.
- D. **Vacancies and Removal.** Vacancies are filled in the same manner as the original appointments. A member of the Commission may be removed by the appointing authority, after hearing, for misconduct or nonperformance of duty.
- E. **Attendance.** Upon failure of any member to attend three consecutive meetings, the Commission may recommend termination of that appointment to the Council, and the Council may remove the incumbent from the Commission and declare the position vacant to be filled in the manner of a regular appointment.

- F. **Compensation.** Commission members will receive no compensation for their service, but will be fully reimbursed for all duly authorized expenses.

ARTICLE IV OFFICERS AND STAFFING

- A. **Officers.** The officers consist of a Chair and a Vice Chair who will be selected by the membership and who will serve at the pleasure of the membership for one year. Nominations and election of new officers will be taken from the floor at the Commission's first meeting of the calendar year. Officers may be re-elected. In the event that an officer is unable to complete the specified term, a special election will be held for the completion of the term.
- B. **Chair.** The Chair will preside at all deliberations and meetings of the Commission and call special meetings in accordance with these Bylaws and review Commission agendas with the staff liaison.
- C. **Vice Chair.** During the absence, disability, or disqualification of the Chair, the Vice Chair will exercise or perform all duties and be subject to all the responsibilities of the Chair. In the absence of the Chair and Vice Chair, the remaining members present will elect an acting Chair.
- D. **Staff.** The City of Milwaukie Planning Department will provide staff support to the Commission for: land use issues, meeting notifications, postponements, final disposition of matters, and other steps taken or acts performed by the Commission, which include administrative housekeeping functions such as word processing, minutes preparation, copying, and information gathering to the extent the budget permits.

ARTICLE V ORGANIZATIONAL PROCEDURES

- A. **Meetings.** The Commission will hold meetings as necessary at a time and place designated by staff consistent with Oregon Public Meetings Law. Typically, the Commission meets at least once a month on the second and/or fourth Tuesday at 6:30 p.m. at City Hall. Commission meetings will end no later than 10:00 p.m., unless extended by majority vote of the Commissioners present and participating in the Agenda item that is under consideration at that time. An extension to 10:30 p.m. is allowed by Commission action. If a meeting has not concluded at 10:30 p.m., the Commission may vote on the Agenda item, consider another extension of up to 30 minutes, or vote to continue the item to the next available meeting.
- B. **Quorum.** A quorum is four of the voting membership of the Commission. If a quorum is not attained fifteen minutes following the scheduled time of call to order, the meeting will be cancelled. In the event it is known by the Director prior to a meeting that a quorum will not be present at any meeting, the Director will notify the Commission members. All items scheduled for the meeting will be automatically continued to a regularly scheduled meeting unless the Director determines that a special meeting is needed. The Director will post notice of the continuance on the exterior doors of City Hall notifying the public of the continuance and specifying the date and time when the continued items will be before the Commission. The Notice will remain through the evening on which the meeting is originally scheduled.

- C. Order of Business.** The Chair will have the authority to arrange the order of business as is deemed necessary to achieve an orderly and efficient meeting. In general, the order of business will be as follows:
1. Call to order – Procedural Matters
 2. Minutes
 3. Information Items
 4. Audience Participation
 5. Public Hearings
 6. Worksession Items
 7. Planning Department Other Business/Updates
 8. Planning Commission Discussion Items
 9. Forecast for Future Meetings.
- D. Voting.** All members who are present at a Commission Meeting, including the Chair and Vice Chair, are allotted one vote each on all motions. The concurrence of a majority of the Commission members present will be required to decide any matter. In the case of a tie vote, the matter is not complete. One new motion may be made. If a majority vote is not obtained on that motion the agenda item fails. A motion may be made by any Commissioner with the exception of the presiding officer. All Commissioners, when a vote is taken, will vote unless he or she abstains from voting and cites the reason for the record. Staff will call the roll, altering the order of members called. The Chair will vote last.
- E. Reconsideration of Actions Taken.** A member who voted with the majority may move for a reconsideration of an action at the same meeting only. The second of a motion may be a member of the minority. Once a matter has been reconsidered, no motion for further reconsideration will be made without unanimous consent of the Commission.
- F. Minutes.** A staff representative or designee will be present at each meeting and will provide for a sound, video, or digital recording, or written minutes of each meeting. The record of the meeting, whether preserved in written minutes or sound, video, or digital recording, will include at least the following information:
- Names of the Commission members present;
 - All motions and proposals, and their disposition;
 - The results of all votes and the vote of each Commission member by name;
 - The substance of any discussion on any matters; and,
 - A reference to any document discussed at the meeting;

Written minutes need not be a verbatim transcript, but give a true reflection of the matters discussed at the meeting and the views of the participants.

Minutes shall be reviewed and voted upon by the Commission at a regular meeting.

Upon approval of the minutes by the Commission, a staff representative will sign and make the minutes available to the public within a reasonable time after the meeting.

- G. **Repeal or Amendments.** The Commission may review these bylaws periodically and forward suggested revisions to the Council for approval. These bylaws may be repealed or amended, or new bylaws may be adopted by a majority vote of the Council on its own initiative, or upon a recommendation from the Commission.
- H. **Meeting Conduct.** The meeting conduct for this Commission is these bylaws except where superseded by or local, state, or federal law.
- I. **Statement of Economic Interest.** Commissioners are required to file annual statements of economic interest as required by ORS 244.050 with the Oregon Government Standards and Practices Commission.

ARTICLE VI DUTIES OF OFFICERS

- A. **Duties of the Chair.** The Chair or Vice Chair, in addition to the duties in Article IV, will preserve the order and decorum of the meeting.
 - 1. The Chair may assess the audience at the beginning of the meeting, and, with the consent of the Commission, announce reasonable time limits.
 - 2. The Chair will direct the planning staff to summarize the issues to be addressed and the criteria to be applied by the Commission during its deliberations, following the conclusion of public hearing testimony.
 - 3. The Chair will summarize the hearing results and state the appeal process at the conclusion of the public hearing.
- B. **Requesting Response and Opinion.** The Chair will ask for response and opinion from the members of the Commission.
- C. **Appointments to Specific Projects on Committees.** The Chair may appoint Commissioners to specific projects or committees, and may select a Commissioner to be spokesperson for the Commission when the Chair or Vice Chair is unavailable.
- D. **Confer with Director.** The Chair or Vice Chair shall confer with the Planning Director (Director) on a regular basis outside scheduled meetings concerning the direction each expects of the Commission.
- E. **Orientation of New Members.** The Chair, in conjunction with the Director, will orient new members.

ARTICLE VII DUTIES OF THE COMMISSION

- A. **Duty of Commissioner.** Commissioners will address all those who come before the Commission in a formal and courteous manner.
- B. **Absence From a Meeting.** If a Commissioner is unable to attend a meeting, it is that Commissioner’s responsibility to inform the Community Development staff and/or the Commission Chair of that fact prior to the meeting to be missed.

C. Site Visits. Prior to Commission meetings, Commissioners are encouraged to visit sites that are subjects for land use actions. If a Commissioner visits a site, he or she will report on the record any information gained from the site visit that is not consistent with the information included in the application or staff report.

D. Method of Handling Conflicts by Members. In accordance with ORS 244.135: (1) A member of the Commission will not participate in any Commission proceeding or action in which any of the following has a direct or substantial financial interest:

1. The Commission or the spouse, brother, sister, child, parent, father-in-law, mother-in-law of the Commissioner; or
2. Any business in which the Commissioner is then serving or has served within the previous two years; or
3. Any business with which the Commissioner is negotiating for or has an arrangement or understanding concerning prospective partnership or employment.

Any actual or potential interest must be disclosed at the meeting of the Commission where the action is being taken.

E. Meeting Preparation. Commissioners will prepare for participation at a meeting by fully reviewing the staff report and materials provided by the Director. If a Commissioner is unable to attend a hearing on a quasi-judicial application that is continued to another hearing, the Commissioner will not take part in the continuance hearing unless the Commissioner:

1. Reviews the staff report and materials provided by the Director as well as:
 - a. all materials submitted at the hearing, and
 - b. any additional materials prepared by the planning staff applicable to the application, and
 - c. either the audio recording of the hearing or the draft minutes of the hearing.
2. Declares that they are prepared to participate.

F. Duties Assigned by Council. The Commission will carry out the duties assigned to it by Council relating to development, updating, and general maintenance of the Milwaukie Zoning Ordinance and the Milwaukie Comprehensive Plan.

- a. The Commission will serve as the Community Involvement Advisory Committee (CIAC). Each Commissioner will be considered appointed to the CIAC at the same time as he or she is appointed to the Commission and will serve on the CIAC for the duration of their term. The CIAC will implement the City's community involvement program pursuant to the requirements and relevant guidelines set forth in Statewide Planning Goal 1 and the Comprehensive Plan specific to land use that addresses:

- Opportunities for widespread public involvement
 - Effective two-way communication with the public
 - The ability for the public to be involved in all phases of the planning process
 - Making technical information easy to understand
 - Feedback mechanisms for policy-makers to respond to public input, and
 - Adequate financial support for public involvement efforts.
- b. The Planning Commission will reserve time on every agenda to meet as needed as the CIAC, and will convene for an annual meeting.
2. **Other Duties.** At least once per year, the Commission will hold a meeting to which Neighborhood District Association (NDA) leaders (e.g., the NDA chair and the chair of the land use committee) are invited to discuss land use issues and community outreach with the Commission.

ARTICLE VIII GOALS AND OBJECTIVES

- A. **Annual Goal Review.** The Commission will review the Council goals annually for establishment of Commission goals which enhance and augment those of the Council.
- B. **Establishment of Commission Goals.** The Commission will establish goals, at a minimum, annually.

**WS 2. 12/17/24
PRESENTATION**

Joint City Council &
Planning Commission
Work Session

December 17, 2024

Laura Weigel, Planning Manager



INTRODUCTIONS AND PURPOSE

Each year boards and commissions in the city meet with City Council to re-cap work accomplished and look ahead to the upcoming year.



DEVELOPMENT REVIEW

- 1 Variance Requests
- 3 modifications to Community Service Use
- 2 Conditional Use
- 1 Willamette Greenway Review
- 2 Downtown Design Review
- 1 Non-Conforming Use
- 2 Historic Resource Reviews



COMP PLAN IMPLEMENTATION

- Neighborhood Hubs
- Natural Resources code amendments
- Transportation System Plan

- Other
 - Updates to Title 17 Land Division



2024 STATE REQUIRED CODE REVISIONS

- Climate Friendly Equitable Communities



ANNUAL JOINT MEETING PC & NDA's

Due to scheduling conflicts and current Planning Commission vacancies the 2023 annual meeting will occur in early 2024 after the vacant positions are filled.



PLANNING COMMISSION VACANCIES

- Two now
- One more in the new year
- Staff would like to start the recruitment process now instead of waiting until the annual recruitment cycle



Development Review

- Unpredictable!



Comprehensive Plan Implementation

- Neighborhood Hubs
- Transportation System Plan
- Natural Resources Code Update
- Public Overlay or Zone potential



Other Required Code Projects:

- FEMA floodplain required code update
- Affordable Housing Code Incentives
 - Housing Production Strategy work
- Senate Bill 1537
 - Revise code to allow city to apply for an exemption to having to allow for up to 10 variances for housing



BEYOND 2025

- Hubs
- Revise the Willamette Greenway zone
- Review/consolidate/update Downtown and Central Milwaukie plans to potentially create one plan
- Update Historic Resources Inventory
- Expand floodplain protection
- Housing Production Strategy Implementation
 - Increase Capacity in HDR zone (may happen sooner)
 - Develop per-approved plan sets for ADU's and Middle Housing





Thank you!



This item was added to the 12/17/24 WS agenda.

**WS 12/17/24
Exhibit
Mayor Batey**

From: [Lisa Batey](mailto:Lisa.Batey@cityofmilwaukie.gov)
To: [City Council](mailto:City.Council@cityofmilwaukie.gov)
Subject: FW: Urgent Behavioral Healthcare Issue re: Care Oregon
Date: Tuesday, December 10, 2024 3:52:35 PM

Scott – Please add to the record for the next meeting. I note the author does not have a Milwaukie address.

From: Fox Convey <fox@foxconvey.com>
Sent: Tuesday, December 10, 2024 2:00 PM
To: Lisa Batey <BateyL@milwaukieoregon.gov>; Rebecca Stavenjord <StavenjordR@milwaukieoregon.gov>; William Anderson <AndersonW@milwaukieoregon.gov>; Robert Massey <MasseyR@milwaukieoregon.gov>; Adam Khosroabadi <KhosroabadiA@milwaukieoregon.gov>
Subject: Urgent Behavioral Healthcare Issue re: Care Oregon

This Message originated outside your organization.

To the Honorable Mayor and City Council,

I am writing to call your attention to a problem unfolding around mental health/behavioral health Medicaid coverage with Care Oregon, and ask for your help in solving the access crisis that it will cause.

This past week, a large number of mental health providers received a letter from Care Oregon which states that non-contracted Associates must immediately stop accepting new Care Oregon clients, and must cease all services to Care Oregon clients—which means referring out existing clients—by July 31, 2025. As you can imagine, this has sent an absolute shock wave through the mental health community, and will cause a massive disruption in care to OHP clients.

This personally impacts me in a tremendous way. In my practice, I see 8 clients whose CCO is Care Oregon. Many of them have had a horrendous time finding and securing consistent and dedicated care, especially care that is attuned to their specific needs. I am a CLSS provider who offers educated and compassionate culturally specific care to the queer community—a marginalized, neglected, abused, and exploited community. Removing me from my clients is wrong, hurtful, and unfair. We have spent years investing in these relationships that will be ripped away from us in July if this change happens. This could lead to unimaginable deleterious impacts for my clients. It could lead to relapses in treatment, and I guarantee you it will in some cases, and could even be deadly.

Multiply this by hundreds of Registered Associates across the state.

Given the ongoing mental healthcare crisis, we know there is already a gap between client need and the availability of behavioral health providers for Oregonians on Medicaid. This gap was reduced significantly by changing the contracting process with Care Oregon, and by allowing Associates and non-contracted licensed providers to provide care. Rolling this back amidst the shortages in community mental health providers is a short-sighted decision that will have a devastating impact on the mental healthcare of thousands of Oregonians.

I hope the Behavioral Health Committee and state legislature will take action this session to address this issue with Care Oregon and ensure that Associates and non-contracted licensed providers may continue to see clients—providing necessary and critical care to Oregonians covered by Care Oregon.

Sincerely,

WS66

Fox Aven Convey ([she/they](#)), MA, Registered Associate, Yoga RYT-500

6002 SE Morris St. Portland, OR 97206

Tele: 210.551.4707.

[Client Portal](#) / www.softworldrising.com

Supervisor: [Michelle Vosika-Cooper, LPC](#)

Queer Crisis Hotlines:

- **[The Trevor Project](#)**: Providing confidential support for LGBTQ youth and young adults in crisis, 24 hours a day, 7 days a week.
- **TrevorLifeline**: [1-866-488-7386](tel:1-866-488-7386): Crisis intervention and suicide prevention phone service available 24/7/365
- **TrevorChat**: Confidential [online instant messaging](#) with a Trevor counselor, available 24/7. Access through a computer.
- **TrevorText**: Text START to 678-678. Confidential text messaging with a Trevor counselor, available 24/7/365. *Standard messaging rates may apply.*
- **Trans Lifeline**: A 24/7 hotline available in the U.S. and Canada staffed by transgender people for transgender people. [1-877-565-8860](tel:1-877-565-8860) (United States) Confidential, 24/7 crisis support.

General Crisis Lines/Resources (Not queer specific):

- **All US Territories 24/7 Mental Health Support**: Call 988 or text "HOME" to 741741 for text mental health support. This includes crisis counseling through texting.
- **Multnomah Mental Health Support Line, 24/7**: Call 503-988-4888
- **Project Respond, Multnomah Mobile Crisis Services**: Call 503-988-4888. They will come to you as soon as they are able to check on you and offer support!
- **Cascadia Mental Health Urgent Walk-in Clinic, no cost**: 4212 SE Division St, Portland, Open daily, 7am-10:30pm.

Confidentiality Notice: The information contained in this email is confidential and legally privileged. It is intended only for use of the individual named. If you are not the intended recipient, you are hereby notified that the disclosure, copying, distribution, or taking of any action in regards to the contents of this email - except its direct delivery to the intended recipient - is strictly prohibited. If you have received this email in error, please notify the sender immediately and delete this email from your system, if applicable.

From: [Lisa Batey](#)
To: [City Council](#)
Subject: upcoming BCC meeting agendas include
Date: Monday, December 16, 2024 11:18:53 AM

All: [Scott, please add this to packet for tomorrow's meeting]

The BCC has yet another executive session tomorrow morning on NCPRD (and WES) matters.

[Executive Sessions: BCC, WES and NCPRD - Dec. 17, 2024 | Clackamas County](#)

It says the topics are “*potential* litigation” and “exempt records.”

* * * * *

Following that ES, they have their Issues and Updates meeting at 10am.

[Issues & Updates - Dec. 17, 2024 | Clackamas County](#)

This is the meeting where they discuss items which would typically then appear on a consent agenda on Thursday. This includes a number of issues that folks might find of interest, including approval of the funding for various city-led initiatives coming out of SHS funding. The list includes the Clackamas Service Center project on which Councilor Stavenjord has been working, along with other cities' requests for houseless liaison and behavioral health positions and other projects. I do not see our cooling center among the items queued up for approval.

A couple of other things caught my eye, such as that they are funneling all unused ARPA funds into the pot for purchase of the Clackamas School for the Recovery Center.

And also that they are putting in for CDBG funding for a new crosswalk and rapid-flashing beacon on King Road in our UGMA: [Grant Application Lifecycle Process Form v. 3.xlsx](#)

There's also their \$1mil grant application to Metro for their “development-ready land” work, which is focused along the UGB.

[Grant Application Lifecycle Process Form v. 3.xlsx](#)

I do wish they would put similar focus to housing production in the urban unincorporated areas, such as along 99E. . .

Lisa M. Batey, Mayor (she/her)
City of Milwaukie
E-mail: bateyl@milwaukieoregon.gov
Message line: 503-786-7512

From: [Lisa Batey](#)
To: [City Council](#)
Subject: Council Report -- SHS compilation: views from Clackamas County plus notes from recent MMC and Chamber meetings
Date: Monday, December 16, 2024 11:48:56 AM
Attachments: [SHS Reform.msg](#)

Scott: Please include this in the record for tomorrow's meeting.

All:

I sent more extensive notes on the SHS discussions back on December 2. This is my council report on the more recent conversations I have been in. I understand that Metro plans to make the draft ordinance public later this week.

Below are notes sent from County staff, with an attached communication from Chair Smith to Metro President Lynn Peterson from 11 days ago. As I understand it, all of the counties have expressed concern about needing more lead time to plan for the reduction in funding that would result.

The MMC held its last meeting of the year on December 5 – the main event was to discuss the legislative agenda for the new term (I will circulate that separately), and to bid farewell to outgoing mayors (Wilsonville, Hillsboro, Portland, Durham, King City). The new incoming mayor from Wilsonville also joined us.

The discussion of SHS was pretty passionate – mayors generally understand and agree with the need to modify and extend the program, but feel like there is far too much yet to be worked out by way of details to go to the ballot in May. Some of the key concerns:

- The \$15mil proposed allocation to cities is woefully inadequate
- The model for allocation to cities should follow the ARPA model – direct allocation with guardrails and a clawback provision
- Some mayors have tales of county overreach, such as buying land for a shelter in their city without consultation with the city. As a result they would like to see a format for funding allocation to the counties (acknowledging that the bulk of funding should go to counties) which puts cities more squarely at the table for discussions of how funds are used
- Lots of concern about the proposed HPAC oversight committee (I will note that existing Metro committees, MPAC and JPACT, have only elected officials or government agency reps, but apparently Metro proposes to deviate from that model here)
- Many mayors want to see a more reliable and steady stream of SHS funding before more goes into creating large affordable housing sites
- SHS was passed in 2020, and implemented rather hurriedly through a series of IGAs with the counties that are flawed and apparently impede better data collection and transparency. But if those need to be fixed, they should be fixed independent of any new ballot measure. Indeed, much of what Metro wants to accomplish can be done through

their own processes without going to the ballot. It is the extension that requires going to the ballot, but going in 2027 would still be well ahead of the end of the current measure in 2031.

There was also a zoom call on December 9 with a number of mayors (mostly Washington County mayors, plus LO Mayor Joe Buck and me) and chamber of commerce entities, with Angela Martin from Here Together and Andrew Hoan from the Portland Metro Chamber. As previously distributed, those two groups issued a joint letter of endorsement for Metro's core proposal a couple of months ago. I think they were taken aback by the strength of concerns and objections from the mayors, and may have a better appreciation that cities should have been brought to the table earlier.

Thanks,
Lisa

Lisa M. Batey, Mayor (she/her)
City of Milwaukie
E-mail: bateyl@milwaukieoregon.gov
Message line: 503-786-7512

From: Klepper, Emily <EmilyKle@clackamas.us>
Sent: Monday, December 9, 2024 8:04 AM
To: 'Brian Hodson' <hodsonb@canbyoregon.gov>; 'seandrinkwine@cityofestacada.org' <seandrinkwine@cityofestacada.org>; WES - Michael Milch <milch@ci.gladstone.or.us>; 'tome@happyvalleyor.gov' <tome@happyvalleyor.gov>; 'jbuck@ci.oswego.or.us' <jbuck@ci.oswego.or.us>; Lisa Batey <BateyL@milwaukieoregon.gov>; 'Scott Keyser' <skeyser@cityofmolalla.com>; Denyse McGriff <dmcgriff@orcitecity.org>; 'mayor@cityofrivergrove.com' <mayor@cityofrivergrove.com>; 'spulliam@ci.sandy.or.us' <spulliam@ci.sandy.or.us>; 'Frank Bubenik' <fbubenik@tualatin.gov>; 'Bialostosky, Rory' <RBialostosky@westlinnoregon.gov>; 'fitzgerald@ci.wilsonville.or.us' <fitzgerald@ci.wilsonville.or.us>
Cc: 'Eileen Stein' <steine@canbyoregon.gov>; 'Melanie Wagner' <Wagner@cityofestacada.org>; Jacque Betz <betz@ci.gladstone.or.us>; BCS - Jason Tuck <jasont@happyvalleyor.gov>; 'Bennett, Martha' <mbennett@ci.oswego.or.us>; Emma Sagor <SagorE@milwaukieoregon.gov>; 'DHuff@cityofmolalla.com' <DHuff@cityofmolalla.com>; Tony Konkol <tkonkol@orcitecity.org>; 'tdeems@ci.sandy.or.us' <tdeems@ci.sandy.or.us>; 'slombos@tualatin.gov' <slombos@tualatin.gov>; John Williams <jwilliams@westlinnoregon.gov>; 'Bryan Cosgrove' <cosgrove@ci.wilsonville.or.us>; Schmidt, Gary <GSchmidt@clackamas.us>; Klepper, Emily <EmilyKle@clackamas.us>
Subject: Clackamas County update on SHS Reform

This Message originated outside your organization.

Hello Mayors,

As most of you know Metro has been working on reforming the SHS program, with a timeline to wrap up by the end of the year or very early in the new year.

Health, Housing and Human Services department staff presented to the Board of County Commissioners on Tuesday, November 26 about Metro's SHS Reform activities, impacts and priorities. The materials can be found [here](#). They include the financial scenarios Metro submitted to the counties for consideration along with preliminary information about how these could impact county programs. The current scenarios call for a 25-34% decrease in county funding.

Chair Smith recently sent the attached communication to Metro councilors summarizing key concerns. And, the counties continue to come to the table and are preparing a counterproposal to the financial scenarios Metro prepared. This work is ongoing.

We remain concerned that these reform activities will impede the county's progress in serving our homeless community.

Please reach out if you have any questions.

Thank you,
Emily

Emily Klepper
Senior Policy Advisor
971-219-4461
emilykle@clackamas.us

An Overview of Entities Engaged at Willamette Falls

Willamette Falls Trust, chaired by former Governor Kate Brown

[Willamette Falls Trust \(https://www.willamettefallstrust.org/\)](https://www.willamettefallstrust.org/)

Willamette Falls Locks Authority, a public corporation established in 2021

[Willamette Falls Locks Authority \(https://www.willamettefallslocks.org/\)](https://www.willamettefallslocks.org/)

Willamette Falls and Landings Heritage Area, a nonprofit that will be opening an interpretive center in the Historic West Linn City Hall

[Home - Willamette Falls & Landings Heritage Area Coalition \(https://www.wflha.org/\)](https://www.wflha.org/)

Tumwata Village, the Confederated Tribes of the Grand Ronde's plans for the significant property they own at the falls

[Return to Tumwata - Tumwata Village \(https://www.tumwatavillage.org/\)](https://www.tumwatavillage.org/)

Council Reports (Batey) – December 17, 2024



Council Reports (Batey) – December 17, 2024



Council Reports (Batey) – December 17, 2024

