



FINAL AGENDA

FORREST C. SOTH CITY COUNCIL CHAMBER
4755 SW GRIFFITH DRIVE
BEAVERTON, OR 97005

REGULAR MEETING
JUNE 6, 2005
6:30 P.M.

CALL TO ORDER:

ROLL CALL:

PRESENTATIONS:

05103 Presentation - Beaverton Arts Commission Annual Awards

VISITOR COMMENT PERIOD:

COUNCIL ITEMS:

STAFF ITEMS:

CONSENT AGENDA:

Minutes of the Regular Meetings of May 2 and May 16, and the Special Meeting of May 26, 2005

05104 Liquor License: New Outlet - Friends Café & Pub

05105 Authorize Intergovernmental Agreement with Washington County Cooperative Library Services Regarding the Provision of Telephone Reference Service

PUBLIC HEARINGS:

05106 Adopt Resolution and Authorize Implementation of Site Development Permit Fee Increases (Resolution No. 3817)

ORDINANCES:

First Reading:

05107 An Ordinance Adopting TA 2005-0003 to Amend Development Code Chapter 20 and 90 (Self Storage Text Amendment) (Ordinance No.4354)

- 05108 An Ordinance Annexing One Parcel Located at 7185 SW Oleson Road to the City of Beaverton: Annexation 2005-0004 (Ordinance No. 4355)
- 05109 An Ordinance Amending Chapter One of the Beaverton City Code by Adding a New Section Relating to the Service of Legal and Administrative Process (Ordinance No. 4356)

EXECUTIVE SESSION:

In accordance with ORS 192.660 (2) (h) to discuss the legal rights and duties of the governing body with regard to litigation or litigation likely to be filed and in accordance with ORS 192.660 (2) (e) to deliberate with persons designated by the governing body to negotiate real property transactions and in accordance with ORS 192.660 (2) (d) to conduct deliberations with the persons designated by the governing body to carry on labor negotiations. Pursuant to ORS 192.660 (3), it is Council's wish that the items discussed not be disclosed by media representatives or others.

ADJOURNMENT

This information is available in large print or audio tape upon request. In addition, assistive listening devices, sign language interpreters, or qualified bilingual interpreters will be made available at any public meeting or program with 72 hours advance notice. To request these services, please call 503-526-2222/voice TDD.

AGENDA BILL

Beaverton City Council
Beaverton, Oregon

SUBJECT: Presentation – Beaverton Arts Commission Annual Awards **FOR AGENDA OF:** 06-06-05 **BILL NO:** 05103

Mayor's Approval: 
DEPARTMENT OF ORIGIN: Mayor's 
DATE SUBMITTED: 05-26-05

CLEARANCES: None

PROCEEDING: Presentation

EXHIBITS: None

BUDGET IMPACT

EXPENDITURE REQUIRED \$-0-	AMOUNT BUDGETED \$-0-	APPROPRIATION REQUIRED \$-0-
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HISTORICAL PERSPECTIVE:

Every year the Beaverton Arts Commission recognizes outstanding achievements in the arts made by individuals and organizations in the Beaverton community. In addition, the Commission acknowledges those individuals and businesses which have made valuable contributions to the arts this past year.

INFORMATION FOR CONSIDERATION:

2005 Award Winners:

Volunteers of the Year

- Arlene Fromer
- Jeanette Jones

Member of the Year

- Rosie Apodaca

President's Award

- Beaverton Women's Club

Heart of the Arts Award

- Phyllis Meyer, Artists Against Hunger

Outstanding Business Support of the Arts

- Frame World
- Rivermark Community Credit Union

Outstanding Corporate Support of the Arts

- Beaverton Toyota

Visual Art in the Community Award

- Tri-Met Westside MAX Light Rail Public Art Program

Performing Art in the Community Award

- Westview High School Drama Department

Outstanding Achievement in the Visual Arts by an Elementary School Student

- Thomas Nelson, Raleigh Hills Elementary School
- Annelise Peake, Bethany Elementary School
- Riley McGregor, Cooper Mountain School

Outstanding Achievement in the Performing Arts by an Elementary School Student

- Rachel Li, Scholls Heights Elementary
- Jon Luc Hefferman, Raleigh Park Elementary
- Madison Fitzpatrick, Terra Linda Elementary

Outstanding Achievement in the Visual Arts by a Middle School Student

- Hanna Ho, Highland Park Middle School

Outstanding Achievement in the Performing Arts by a Middle School Student

- Kurt Muramatsu, Conestoga Middle School

Outstanding Achievement in the Visual Arts by a High School Student

- Clayton Standley, Arts and Communication Magnet Academy
- Kalie Stanton, Arts and Communication Magnet Academy
- Molly Sultany, Sunset High School
- Genevieve Hudspeth, Aloha High School

Outstanding Achievement in the Performing Arts by a High School Student:

- Andrew Christenson, Westview High School
- Clair Sharp, Sunset High School

Outstanding Art Educators

- Bill Schlegel, Sunset High School
- Jon Gottshall, Arts and Communication Magnet Academy

RECOMMENDED ACTION:

Hear Presentation.

DRAFT

BEAVERTON CITY COUNCIL
REGULAR MEETING
MAY 2, 2005

CALL TO ORDER:

The Regular Meeting of the Beaverton City Council was called to order by Mayor Rob Drake in the Forrest C. Soth City Council Chamber, 4755 SW Griffith Drive, Beaverton, Oregon, on Monday, May 2, 2005, at 6:39 p.m.

ROLL CALL:

Present were Mayor Drake, Couns. Catherine Arnold, Betty Bode, Dennis Doyle and Fred Ruby. Coun. Cathy Stanton was excused. Also present were City Attorney Alan Rappleyea, Chief of Staff Linda Adlard, Finance Director Patrick O'Claire, Community Development Director Joe Grillo, Engineering Director Tom Ramisch, Operations/Maintenance Director Gary Brentano, Library Director Ed House, Human Resources Director Nancy Bates, Police Chief David Bishop, Development Services Manager Steven Sparks, Senior Planner John Osterberg, Senior Planner Don Gustafson and Deputy City Recorder Catherine Jansen.

Mayor Drake explained that after the Proclamations, Council would consider the Consent Agenda and the Ordinances, and then the regular agenda.

PROCLAMATIONS:

Asian Pacific American Heritage Month May, 2005

Mayor Drake read the proclamation for Asian Pacific American Heritage Month in its entirety. He introduced Holden Leung, Executive Director of the Asian Health & Service Center.

Holden Leung said it was an honor to be invited for the proclaiming of Asian Pacific American Heritage Month by the City. He said the Center was awarded a grant from the Oregon Arts Commission and the National Endowment for the Arts, which helped start the "Arts Build Communities Project." He said the goals of the project were to encourage Asian immigrants to share their artistic talent with the communities, to engage people from diverse Asian communities in the arts classes in Portland and Beaverton, and to display Asian art exhibits in public venues and hospitals in Portland and Beaverton. He said art exhibits featuring Asian artists were currently on display at Beaverton City Hall, St. Vincent's Medical Center, the Beaverton Resource Center and the Portland Medical Center. He thanked the City and their sponsors for support of this project.

Coun. Bode said she was fortunate to work with Asian employees every day at the Virginia Garcia Clinic. She said they were charming and genuine people, with an engaging sense of humor; she felt it had enriched her life. She said their presence and involvement in the community was a bonus for Beaverton.

Leung recognized all the artists present whose work was displayed.

Coun. Doyle congratulated Mr. Leung for all his work at the Asian Center. He said he was happy the artists chose a medium of expression that did not need language. He thanked them all for coming and asked them to keep up their good work.

Mayor Drake presented the framed proclamation to Mr. Leung.

Emergency Medical Services Week

Mayor Drake read the proclamation for Emergency Medical Services Week, May 15-21, 2005 in its entirety.

J. D. Fuiten, owner and Robert Sabo, dispatcher, Metro West Ambulance, said they were personally honored that the City trusted Metro West Ambulance to serve the community. Sabo said Emergency Medical Services (EMS) Week was May 15-21, 2005, and this proclamation was important to the many emergency medical technicians in the community. He invited the City Council to a barbecue on Friday, May 20, 2005, at the Emergency Medical Services Headquarters in Hillsboro.

Mayor Drake presented the framed proclamation to Mr. Fuiten.

Mr. Fuiten presented a plaque to Mayor Drake thanking the City for its support of EMS personnel in the City.

Mayor Drake also proclaimed: Days of Remembrance, May 1 – 8, 2005; Municipal Clerks Week, May 1 - 7, 2005; Building Safety Week, May 8-14, 2005; and National Day of Prayer, May 5, 2005.

Mayor Drake welcomed members of Boy Scout Troop 162, from the Pilgrim Lutheran Church, who were working on their citizenship badges.

CONSENT AGENDA:

Coun. Bode MOVED, SECONDED by Coun. Doyle, that the Consent Agenda be approved as follows:

Minutes of the Regular Meeting of April 18 and Special Meeting of April 22, 2005

05086 Approval of the City of Beaverton 2005 Action Plan and 2005-2010 Consolidated Plan Submission to Washington County

05087 Traffic Commission Issues No. TC 574-576

05088 Authorize the Mayor to Enter Into an Intergovernmental Agreement for Shared Use of a Public Communication Network to Access the Portland Police Data System (PPDS)

Contract Review Board:

05089 Contract Award for Printing and Mailing of City Newsletter

Coun. Bode said she would abstain from voting on the minutes of April 18 and 22, 2005, as she not at those meetings.

Question called on the motion. Couns. Arnold, Bode, Doyle and Ruby voting AYE, the MOTION CARRIED unanimously. (4:0) Coun. Bode abstained from voting on the minutes of April 18 and 22, 2005.

ORDINANCES:

Coun. Doyle MOVED, SECONDED by Coun. Ruby, that the rules be suspended, and that the ordinance embodied in Agenda Bill 05091, be read for the first time by title only at this meeting, and for the second time by title only at the next regular meeting of the Council. Couns. Arnold, Bode, Doyle and Ruby voting AYE, the MOTION CARRIED unanimously. (4:0)

First Reading:

City Attorney Alan Rappleyea read the following ordinance for the first time by title only:

05091 An Ordinance Annexing Property Located Immediately North of the Sunset Highway and Generally Southwest of NW Barnes Road to the City of Beaverton: Expedited Annexation 2004-0015 (Ordinance No. 4353)

Second Reading:

Rappleyea read the following ordinances for the second time by title only:

05080 An Ordinance Annexing Nine Parcels Located in the Cornell Oaks Corporate Center to the City of Beaverton: Annexation 2005-0002 (Ordinance No. 4349)

05081 An Ordinance Annexing Five Parcels Located in the Vicinity of the Cornell Oaks Corporate Center, Owned by Leupold & Stevens, Inc., to the City of Beaverton: Annexation 2005-0003 (Ordinance No. 4350)

05082 An Ordinance Adopting TA 2004-0009 to Amend Development Code Section 50.25.7 (Completeness Processing Amendment) (Ordinance No. 4351)

05083 An Ordinance Amending Beaverton Code Chapter 2 by Repealing Sections 2.03.141 to 2.03.148 Providing for a Historic Resource Review Committee (Ordinance No. 4352)

Rappleyea referred to Ordinance Nos. 4349 and 4350 regarding the Cornell Oaks Corporate Center (Agenda Bills 05080 and 05081) and said supplemental staff reports were added to these staff reports and he asked that these reports be added to Exhibit C for each of these ordinances, as part of the findings.

Coun. Ruby MOVED, SECONDED by Coun. Doyle, that the ordinances embodied in Agenda Bills 05080, 05081, 05082 and 05083, including the Supplemental Staff Reports on Agenda Bills 05080 and 05081 as noted by the City Attorney, now pass. Roll call vote. Couns. Arnold, Bode, Doyle, Ruby voting AYE, the MOTION CARRIED unanimously. (4:0)

PRESENTATIONS:

05084 Asian Pacific Heritage Month Art Exhibit

Mayor Drake said the Asian Pacific Heritage Month Art Exhibit was currently displayed on the second and third floors of Beaverton City Hall and the public could view the exhibit Monday through Friday between the hours of 8:00 a.m. and 5:00 p.m.

05085 Highway 217 Corridor Study Presentation and Update

Bridget Weighart, Manager of Corridor and Freight Planning, Metro, updated the Council on the status of the Highway 217 Corridor Study. She presented a Power Point presentation entitled "*Choices for Highway 217*" that described the options under consideration in Phase 2 of the Study (in the record). She said the pictures in the presentation illustrated concepts since details would need to be worked out.

She said Highway 217 was the major north/south connection in Washington County; it currently carried 120,000 vehicles per day and was important to businesses and commuters as it connected businesses and shoppers throughout the region. She said in a 2001 Prioritization Study, Metro recognized Highway 217 as one of the five corridors most needing improvement in the region. She showed a computer animation of traffic on the north/south corridor (in the record). She said the Study was developing multi-modal transportation solutions for traffic problems on Highway 217 and the other corridors. She said Metro was leading the Study in partnership with ODOT, Washington County, TriMet and the cities of Beaverton, Lake Oswego and Tigard. She said the Highway 217 Policy Advisory Committee, made up of community members, business representatives and elected officials, provides guidance to the Study team and Metro Council.

Weighart said Phase 1 of the Study considered six alternatives to improve the highway. She said in December of 2004 the Policy Advisory Committee narrowed the Study's focus to three options. She said all the options included interchange improvements and a new traffic lane on Highway 217. The options were: 1) Adding a new general travel lane in each direction; 2) Express toll lane; and 3) Express tolled ramp meter bypass. She said the Study would be expected to conclude in the Fall of 2005 when the Policy Advisory Committee makes a final recommendation on which options should be carried forward for planning and design. She said the Study was about improving the entire corridor. She said the Policy Advisory Committee was studying improvements to arterial roads and bike routes that would proceed with any highway option. She said all options would include a general increase in transit services. She said the tolled highway options would include new bus service on Highway 217 that would benefit from express routes.

Weighart said the Study identified two major problems on Highway 217: safety and congestion. She said the safety problem was linked to the closely-spaced interchanges. She said the Study team was examining braided ramps and consolidated interchanges as possible solutions to this problem. She said concerning congestion, the conclusion was reached that a new lane was needed. She reviewed how braided ramps would appear, with traffic ramps that entered the highway crossing under ramps exiting the highway; creating the braid. She said without braided ramps, traffic entering and leaving a highway would have to merge in short distances which would be unsafe. She showed a computer animation of traffic flows on braided ramps and commented that braided ramps were under consideration for several locations on Highway 217. She said another solution to closely-spaced interchanges was to consolidate interchanges, the way Canyon Road and the Beaverton-Hillsdale Highway ramps operate today. She said

this option was less expensive than braided ramps and provides off-highway access between the arterials.

Weighart said Highway 217 was congested and a new lane in each direction would be required to keep traffic moving; if nothing was done, Highway 217 would be operating at capacity for eight to ten hours each day by the Year 2025. She reviewed in detail three options for addressing the congestion problems: 1. Addition of a general travel lane in each direction open to all traffic on Highway 217; 2) Building a new express toll lane in each direction on Highway 217; the tolls would be collected electronically and the current existing lanes would still be available for all drivers; and 3) Tolloed ramp meter bypass option that would offer drivers an express lane on the freeway ramps where they could bypass the line at the ramp meter by paying a toll. She said under this scenario a new lane would still be added to Highway 217 but it would be a general travel lane available to all drivers. She showed computer animations of each of these options. She said express toll lanes have been successfully implemented in other communities in the United States and internationally. She said the express toll lanes have been widely accepted because they provide a reliable trip and revenue for building transportation projects. She said express toll lanes would be considered for other transportation corridors in the region.

Weighart said one of the key challenges to the Study was to determine how to pay for the improvements. She said the cost for any of the options would be around \$500 million, and it could not be paid with existing sources from State and Federal grants over the next twenty years. She said only \$40 million could be expected from existing funding sources for any project on Highway 217. She said the express toll lanes and toll ramps could provide revenues for the improvements; however, there would still be funding gaps that would have to be filled from other sources. She said the funding gap for the express toll lane was \$124 million and \$404 million for the toll ramp meter. She said the funding gap for the general travel lane was \$457 million. She said these funding gaps could be filled by increased gas taxes, vehicle registration fees, property taxes or a street utility fee. She said Phase 2 of the Study would examine the assumptions used to arrive at the funding gaps and may result in some revisions.

She said Phase 2 of the Study was focused on developing a better understanding of the tradeoffs between options. She said Metro will hold open houses for citizens in the fall to share what would be learned during Phase 2. She said the progress of the Study can be tracked on Metro's Web site, along with information on when open houses will be held and how citizens can provide input on line. She said citizen feedback would be important to help form decisions concerning which options merit further consideration. She said after citizens have an opportunity to provide comment, the Policy Advisory Committee will recommend to the Metro Council alternatives for further study and implementation. The Metro Council will adopt final Study recommendations during the Fall of 2005.

Coun. Arnold asked what resources would fund the \$40 million for the general road improvements.

Weighart replied that was ODOT's (Oregon Department of Transportation) estimate of what would be expected from the State from such sources as gas taxes or Federal funds. She said this project was not in the financially constrained Regional Transportation Plan.

Coun. Arnold asked why the State would allocate funding when nothing could be built with it.

Weighart replied pieces of the Highway 217 project could be broken up into smaller projects which could be built.

Coun. Arnold asked about the time frame for the availability of the funds for the general travel lane.

Weighart said the Policy Advisory Committee would study this over the next several months. She said the Committee would make recommendations on the funding and timeframes, but they did not have the answers yet.

Coun. Arnold referred to the express toll option and said she assumed the difference came from the anticipated revenue from the toll. She asked when this would happen.

Weighart said Phase 1 was projected for 2014; ten years from now. She said the \$400 million estimate was developed by looking at anticipated revenues over 30 years, with the assumption that it could be bonded. She said they will look at this estimate more closely in Phase 2.

Coun. Arnold said it sounded as if larger trucks would not be able to use the express toll lane.

Weighart said that was the assumption at this phase of the Study because drivers would not want to sit in a toll line and be delayed. She said delivery vans could use the lane.

Coun. Arnold referred to the option referring to drivers bypassing the timed lanes for entering the freeway and asked if they would lengthen the amount of time for the other two lanes.

Weighart said because that option assumes the addition of a new lane on the highway, it would also assume that you would allow more traffic onto the highway. She said the drivers on the metered ramp would not see a greater delay than before; there would be a number of different ways this could work depending on the volume of traffic.

Coun. Bode said the presentation was interesting and it brought up a question in terms of social policy for the State. She said the State's beaches were open to everyone; now they were looking at traffic lanes that would not be open to everyone. She said the ability to ride in the toll lane will limit people according to their income. She said when you review sources of revenue; anyone who owns a car has paid a registration fee, regardless of income and also paid gas taxes and property taxes if they own a home, it seems they are looking to become exclusive in limiting the highway. She said Highway 217 won't belong to everyone; three of the lanes are open to everyone but the added lane would belong to those with a higher income. She said another concern was that if it becomes more expensive for a delivery van to go from one point to another, it will drive up the price to all consumers because they will pass the toll charges on to the consumer. She said she saw it as interesting that they were speaking in terms of traffic congestion when the bigger question was social policy for the State and fairness for all the people who pay gas taxes, registration fees, and property taxes. She said she would like to see Metro be responsible and develop a social policy that drives their decisions on how Highway 217 develops.

Mayor Drake thanked Weighart for the presentation.

RECESS:

Mayor Drake called for a brief recess at 7:27 p.m.

RECONVENED:

Mayor Drake reconvened the meeting at 7:39 p.m.

VISITOR COMMENT PERIOD:

David James, Chair, Five Oaks/Triple Creek Neighborhood Association Committee, said he sent a letter to the City Council that included a copy of Washington County's Traffic Study for Cornell Road. He said he wanted to highlight several things about the Study. He said there was a map in the Study that showed the area of Cornell Road that would be widened, from Evergreen Parkway to Bethany Boulevard. He said the Traffic Study indicated the junctions of Cornell Road at Evergreen Parkway, 173rd Street and 167th Street, are operating acceptably today. He said the Study says the Bethany junction will not be failing in 2025 if it is left as it is today. He said the Study highlights that the two junctions outside the project area, 158th and Cornell Road, and Bethany Boulevard and the freeway, are failing today and they are causing problems for the Cornell Road/Bethany Boulevard junction. He said if this section of Cornell Road is widened, the traffic volume coming into the problem areas will increase. He said this project will be discussed at the next meeting of the Washington County Coordinating Committee (WCCC). He said when looking at Cornell Road, one has to ask if this is really the highest priority. He requested that Council ask the WCCC to re-examine this project and its priority, to see if it would be the highest priority project.

Mayor Drake asked Engineering Director Tom Ramisch if he had any comments.

Engineering Director Tom Ramisch said he saw the Executive Summary for the Traffic Study that was attached to Mr. James letter. He said he had the Traffic Engineer look at the Study and while there are some intersections outside of this project area that are troublesome, the Cornell Road stretch also has its own problems and the improvements that the County is planning under the Major Streets Transportation Improvement Program (MSTIP) are valid and warranted. He said the MSTIP program cannot address all the needs in the County. He said they have asked the Washington County Coordinating Committee (WCCC) to address how County staff evaluated and prioritized the projects. He said that will be addressed at the next WCCC meeting. He said there weren't sufficient funds to fix everything in the area at one time. He noted part of this project would involve the State. He said it takes a lot of money to fix these problems so the projects are done one at a time as funding permits through MSTIP.

James said his comments were not to expand the boundaries of this project to include the problem areas. He said the proposed Cornell Road widening of a one-mile section would cost \$7.5 million and he wanted to ensure Council would review this project to see if it really has the highest priority or should this funding go to a more deserving project.

Coun. Doyle said he understood Mr. James' question. He said this was a valid question and it would get a thorough hearing.

Henry Kane, Beaverton, said he would submit a letter concerning the Highway 217 proposal later this week and it would include a copy of a New York Times article from April 28, 2005. He said his letter would elaborate about why toll lanes on Highway 217 would not be a good idea. He said limiting access and adding toll roads would force more traffic onto neighborhood streets. He said he preferred to have City staff look at this and not just Metro staff, as Metro was only concerned with the big picture. He said his letter would address financial aspects of this proposal.

Mayor Drake said Mr. Kane's picture was two dimensional, rather than three. He said it was not just Metro Transportation staff working on this proposal; ODOT, Washington County and Beaverton staff were also involved. He said in any study one looks at all alternatives before deciding on a final option and it would not be prudent to pre-ordain an answer. He said he was involved in this from the beginning and Mr. Kane had attended the meetings. He said one of the best transportation engineers in the state, DKS, was consulted and was a regular participant on this project. He said this was not done in a planning vacuum and there were many challenges with this project. He stressed City staff and exceedingly credible people from the community, business and industry were involved in this project. He said this was a huge team effort and they waited until they had something concrete to consider, not just conceptual ideas, before bringing this to Council. He said the solutions were not easy and would be expensive.

Coun. Doyle added that the Committee's task is to present a recommendation to Metro and it will be intensely discussed at that time.

COUNCIL ITEMS:

Coun. Ruby said on Thursday, May 5, at 7:00 p.m., the speaker at the Beaverton Forum series would be Dr. Norm Winningstad, a pioneer of high technology in this area. He said he was pleased the City assembled a fine list of speakers for the Forum series.

Coun. Doyle said Council was informed by Chief of Staff Linda Adlard that the City was applying for an Edward Byrne Memorial Justice Assistance Grant in the amount of \$30,000 to begin a program entitled *Beaverton Safe*. He said this program was a campaign of public outreach and education to address financial fraud targeted towards senior citizens. He said he served on the Washington County Advisory Committee that dealt with these issues for seniors and disadvantaged citizens. He said he hoped this grant would be approved so something could be done about this growing problem. He wished Ms. Adlard luck on the application.

Mayor Drake said Ms. Adlard and her staff deserved a great deal of credit for preparing this application. He said there were two prongs to this issue; the enforcement issue and the need for education to teach and advise seniors to be more proactive in helping themselves. He said this program will dovetail the Police Department's program; it will not be a duplication of programs. He said this has become a big issue and the goal is to help seniors help themselves so they are not victims of fraud.

Coun. Arnold said as liaison to the Senior Citizen Advisory Committee, the Committee was concerned about this problem and was working in conjunction with the City on this issue.

STAFF ITEMS:

There were none.

PUBLIC HEARINGS:

05090 APP 2005-0002 Appeal of Garden Grove Preliminary PUD (CU 2004-0021), and Decision on Final PUD Development Plan

Mayor Drake opened the public hearing.

Community Development Director Joe Grillo read a prepared statement defining the process that needed to be followed for the hearing, including the various required disclosure statements (in the record).

Grillo asked if any Councilor had a potential or actual conflict of interest.

There were none.

Grillo asked if any Councilor had an ex parte contact to declare.

Coun. Arnold said she visited the site twice.

Grillo asked if any Councilor wished to declare any site visits beyond the one just mentioned.

Mayor Drake and Coun. Doyle stated they had visited the site.

Grillo asked if any member of the audience wished to challenge the right of the Council to consider this matter or challenge the right of any Councilor to participate in this hearing, or wished to request a continuance of the hearing to a later date.

There were none.

Development Services Manager Steven Sparks and Senior Planner John Osterberg reviewed the staff report. Sparks said the Planning Commission approved the Garden Grove Planned Unit Development (PUD). He said the City Development Code contained two types of PUDs; the Preliminary PUD and a Final PUD. He said the Preliminary PUD was used by an applicant to show the Planning Commission how a site might be developed, in general terms and concepts; the applicant then receives general feedback from the City in support or opposition to his concept. He said the next step was the Final PUD, which implements the Preliminary PUD approval. He said in this case, the applicant applied for a Preliminary PUD but presented a Final PUD application to the City. He said prior to the appeal hearing originally scheduled for April 4, 2005, staff discovered this mistake and the hearing was continued to this evening to provide legally-sufficient notice for the Final PUD. He said at this time, staff was asking Council to hear the original appeal and also take action on the Final PUD.

Sparks said the approval criteria for the Preliminary PUD and Final PUD were virtually identical. He said the main difference was that in the Final PUD there were two criteria related to the Preliminary PUD. These two criteria were: 1) Is it substantially the same as what was approved in the Preliminary PUD; and 2) Has the Final PUD application been filed within two years of the prior approval. He said since both of these criteria were not applicable to this application, staff believed this was a correctable oversight on everyone's part, and it could be corrected by redoing the notice on the public hearing to include the Final PUD and the appeal of the Planning Commission's decision, to be

heard as a de novo hearing. He said staff was recommending denial of the appeal and approval of the Final PUD.

Mayor Drake clarified that the minor error was corrected by re-noticing and holding a de novo hearing.

Sparks replied that was correct.

Coun. Arnold referred to the proposed Homeowners' Association (HOA) and asked about the City's experience with HOAs for smaller sites and how well did they function.

Sparks said the bulk of the City's experience with HOAs was with larger developments such as Murrayhill. He said prior to two years ago, PUDs had a four-acre size limitation; if developments were four acres or less, an applicant could not do a PUD. He said with the Code update, that restriction was removed and therefore the City was seeing PUDs on smaller sites, which will have HOAs. He said due to the short time span, most of the PUDs the City has approved over the past two years were currently under construction and did not have active HOAs as yet.

Coun. Arnold said since the Code was just updated, the City would see over time how well it was working.

Sparks said all HOAs, regardless of size, had common issues of adequate funding, reasonable dues for amenities and maintenance, and active membership. He said it would depend on the people within the HOA. He said he could envision a 20-unit condominium project where everyone was very active and he had seen HOAs with thousands of units fall apart due to lack of interest.

Coun. Arnold asked if the HOA were to become inactive, how would that be remedied and who would be responsible for maintenance of the property.

Sparks responded the HOA would remain responsible for the tracts; as the plat was recorded, tracts would be set aside and the ownership of those tracts would be identified as the HOA. If the tract was overgrown with weeds and the City received complaints about it, part of the City's Code Enforcement Services would be to identify the property owner and notify them of the situation. He said if there was no active HOA, notices would be sent to every property owner to remind them of their obligation as an HOA to maintain the tract in question. He said he did not recall a circumstance where the HOA had not complied.

City Attorney Alan Rappleyea said he had some experience with defunct HOAs. He said sometimes with defunct HOAs the taxes were not paid, so eventually the property ends up in public ownership; with Covenants, Conditions and Restrictions (CC&R's) those properties would not be buildable. He said there was usually some solution for these parcels.

Coun. Bode asked if the HOA was part of the criteria being considered at this meeting.

Senior Planner John Osterberg said the HOA was indirectly related to criteria. He said there were standards under the open space regulations for PUDs that refer to how open spaces or parks were to be dedicated to either a park district or an HOA. He said there was Facilities Review criterion that addressed the matter of maintenance of privately

held common facilities and open spaces. He said this matter was subject to the criteria for approval of a PUD.

Mayor Drake said initially one has to assume the applicant will follow through. He said they have had examples where HOAs did not maintain their properties and there was an enforcement mechanism for compliance; in most instances the land was maintained.

Sparks said the Facilities Review criterion Osterberg referred to was at the top of page 95 of the staff report.

Coun. Ruby referred to Planning Commissioner Maks' comment at the hearing that he was not impressed with the design and it reminded him of army barracks. He asked staff if they knew why Commissioner Maks abstained from voting at that hearing.

Sparks said Commissioner Maks had not declared any conflict or bias before the hearing; he did not elaborate on why he abstained.

Mayor Drake said that over time he has observed private streets were fine until the streets needed maintenance. He asked staff to comment on why developers use private streets and a portion of a street could be private versus public.

Sparks said he recalled this street could not meet public street standards for width and angles. He said the City does allow private streets with a cul-de-sac at the end of a street to provide turn-around space. He said private streets are the homeowners' responsibility and sometimes people do not read all their papers when they purchase a home and don't realize private streets are not maintained by the City. He said it was an issue they struggled with constantly because with in-fill development, one cannot always provide a public street. He said on this property, the frontage along the southern property line was Multnomah Boulevard and the ultimate alignment between Canby Street and Multnomah Boulevard was a straight north/south line, with no bend in the road. He said they were planning ahead for the future to provide a straight road between Canby Street and Multnomah Boulevard; that could be maintained by the City.

Mayor Drake said he recalled a situation where a citizen wanted to know why the City was not sweeping his street. He said it turned out it was a private street that was developed in the County. He said he was concerned about future calls from citizens asking why the City was not maintaining the street.

Coun. Arnold asked if this was a flag lot.

Sparks replied it was not a flag lot. He said a flag lot was a driveway stem out to the street with a building parcel in the back; flag lots were usually for two or three parcels.

Coun. Arnold asked if the HOA was responsible for paying for maintenance.

Sparks said that was correct. He said the CC&Rs and HOA Rules define how the HOA would fund maintenance of its facilities. He said the City had no involvement in that process. He said the City's involvement was to ensure there was nothing illegal in the CC&Rs or HOA Rules.

Coun. Arnold asked if the HOA could decide not to comply with the CC&Rs.

Osterberg replied at the time of the Final Platt Application, as part of the Land Division Application, staff would review a copy of the final CC&Rs. He added this was not before Council at this meeting. He said staff would review the CC&Rs to ensure they do not state that the City will maintain these facilities. He said the HOA would not be able to change the CC&Rs arbitrarily as it is a recorded document. He said the focus would be to ensure the CC&Rs were consistent with the land use decision.

Rappleyea said the City has had little direct involvement with the CC&Rs; it is a private contract between property owners. He said the City reviews the CC&Rs to ensure they are legal and to ensure that any specific clause the City has required is included. He added it was a very rare instance when the City would get involved in the CC&Rs.

Coun. Doyle asked if staff was satisfied there was adequate parking for the proposed 15 units.

Osterberg replied staff was satisfied; parking would meet Development Code standards. He said parking would be provided with each single family home; each home will have a driveway and garage. He said parking might be tight during times of special gatherings, such as family events or holidays. He added on-street parking would be provided on one side of SW Kelsi Street.

Coun. Arnold questioned which lots would have on street parking.

Osterberg said Lots 11 through 15 would have on-street parking in front of the parcels. He said where the street width is 20 feet; there would be no street parking.

Coun. Doyle noted this was no different than other areas in the City, especially on cul-de-sacs.

Coun. Bode referred to the traffic analysis and said 85% speed would be 28 miles per hour (mph). She asked if the City did the analysis.

Osterberg said City crews did a brief traffic count, not a full analysis. He referred the question to Transportation Division Planner Don Gustafson.

Gustafson said the development generated fewer than 200 trips per day which was the threshold to require a traffic analysis. He said they estimated it would be 150 trips per day for the 15 units. He said the traffic counts were done with traffic counters, for 24-hour periods, for three days (one weekday and two weekend days). He said the posted speed limit was 25 mph and the 85 percentile meant that 85% of the traffic on the street was going 28 mph or less.

Kirsten Van Loo, Principal Planner representing CES Northwest, applicant, introduced Carl Jensen, Principal Engineer, CES Northwest. She thanked staff for catching her error in filing for a Preliminary PUD instead of a Final PUD. She said it was her mistake as the City's process was a bit different from other PUD processes.

Van Loo said this property was very difficult to work with because of its dimensional shape. She said in addition they had a public arterial controlled by the City of Portland on the south end of the site, a local street with limited frontage on the north end (Canby Street), there were three large areas taken out of the property through prior sales, and on the northeast corner there was a viable non-conforming commercial use. She referred to an earlier question of why they had a public street connected to a private

street that was then connected to an emergency vehicle connection. She said the original design was to extend SW Kelsi Street in a circuitous pattern south to Multnomah Boulevard. She said City of Portland staff opposed a public connection all the way through in that alignment because it created a dangerous off-set intersection with the extension of SW Kelsi Street on the south side of Multnomah Boulevard. She said because of this, they were not permitted to take a public street all the way through in their original alignment. She said SW Kelsi Street was stubbed into the middle of the adjacent property to the south because that was the long-term extension of that street into Multnomah Boulevard. She said she could not say when that would happen and this was the only alignment the City of Portland would allow for this project. She said alternatively, Portland gave them permission for an emergency vehicle connection, pedestrian connection and bicycle connection in the location shown on the plans in the staff report.

Van Loo agreed this was a difficult project and they have worked on it for three years. She said it started as a subdivision and they found they could not meet any of the dimensional criteria on any lot and build a public street. She said during the time the applicant was resolving encroachment issues on this site, the Code changed and they were given the opportunity to do a PUD which was one of only two viable options for developing this property. She said the only other option was to submit an application for a subdivision with a long list of variances. She said it was hard to gain approval for variances and the new PUD ordinance appeared to be tailor-made for this project. She said the project was designed and went before the Planning Commission; the Commission had concerns regarding open space and sent the project back for additional work. She said they remodeled the project to meet all the dimensional criteria required for open space. She said they took the project back to the Planning Commission and addressed all the requirements for open space, public streets and street trees. She said the Planning Commission was satisfied with the changes and approved the project.

Van Loo said there was parking on both sides of SW Kelsi Street on Lots 4, 5, 6, 7, 11, 12, 13, 14 and 15. She said there was no on-street parking on the rest of the street. She said the project was unique in that they had to deal with a very constrained site. She said there were also constraints off-site, so they had to change the project from having an open water-quality detention facility to underground detention and underground water quality, to deal with vertical elevation challenges to get the storm water off the site. She said the project had three open spaces; one large site to buffer the project from Multnomah Boulevard; one central tract in the center of the project; and a landscaped area at the entrance. She said the open space at the entrance was done because the underground water quality treatment facility was under that open space and it provided a street presence to buffer the lots from the street. She said there were no corner lots in this project; all were interior lots. She said the project was compatible with surrounding areas and each lot was wide enough to provide a 40-foot wide footprint as the maximum width, which provides a huge variety of options for building houses between 1600 and 3000 square feet. She said there were a variety of lot sizes from 3700 to 6000 square feet. She said she appreciated the Planning Commission's concern about the barracks design but stressed there was no building proposal yet. She said they felt strongly they could find 15 different footprints to put on these lots. She said they submitted the draft CC&Rs which were in the staff report. She said it was the intent of this developer to put together a HOA that would maintain all of the tracts and the private driveway. She said the numbers in the proposed budget were reasonable and within the norm for HOAs.

Mayor Drake said he realized this was not site-specific, but he wondered if common-wall housing could be put on these lots; where the common wall would be the divider between the two lots with a utility easement on either side.

Van Loo said she supposed someone could do that if the project was sold to another developer. She said it was never their intent to do common-wall housing or attached housing on this project. She said it might be possible but the materials in the record would not facilitate such a development without some type of amendment.

Coun. Arnold read Code Section 60.35.05 concerning the purpose of the PUD and said this showed the PUD was intended to bring in good development. She asked how the open space design in this project added to the neighborhood and immediate area.

Van Loo replied the Garden Home area was a unique part of the greater metropolitan Portland area between Beaverton and Portland. She said it was developed with large lots and over the past 50 years the land surrounding this parcel has been developed. She said the subdivision to the east was built in 1971 and the standards for developing property in 1971 were radically different from today. She said the smaller subdivision to the northwest was developed in Washington County in the early 1980's, with a private tract serving four lots that will not be used. She said the land across the street to the north developed over time as individual lots, not part of a subdivision. She said the subdivision to the northwest was platted in the mid to late 1980's. She said the land to the west was platted as large lots 50 to 70 years ago. She said when she read the definition of a PUD and it said they were supposed to *preserve the value, spirit, character and integrity of surrounding areas*, she read that to mean they should not harm the area and they should develop a product that achieves the City of Beaverton's and Metro's goals while being compatible and similar to surrounding area. She said in this area the surrounding projects were primarily detached single-family homes. She said they were proposing detached single-family homes of approximately the same square footage. She said the project had three-quarters of an acre of maintained open space in three areas: an entrance treatment; a central pocket park; and a half acre of open space to buffer the project from Multnomah Boulevard and provide emergency vehicle access for the entire community. She said she believed this design solved many difficult planning and engineering problems while providing a compact urban form within an area that has a full range of urban services, such as churches, schools, pubs, restaurants, bus stops and a recreation center all within walking distance. She said this was the best plan they were able to develop to meet the goals of the property owner, the community and the developer, and still meet the Development Code requirements.

Coun. Arnold said she was not sure there was an area where people could walk safely as there weren't any sidewalks or crosswalks. She noted the various amenities in the area; this was not an area where people would walk to these facilities. She said she was not sure about the "condensed urban form" discussion.

Mayor Drake said even if this area was developed as R5, with larger lots, none of the conditions Coun. Arnold noted would change other than the area on Canby.

Coun. Arnold asked if they had looked at R7 or R5 development.

Van Loo said they spent considerable time in three pre-application conferences with City staff exploring every potential option for development of this site. She said they considered everything from Comprehensive Plan changes, de-annexation, zone changes, PUDs and variances.

Coun. Arnold said under the PUD the minimum number of units allowed was 7 and the maximum was 17; the applicant was proposing 15 units. She referred to the HOA budget on page 292 of the staff report. She said in her mind this was a subdivision and the PUD language was being used to make a subdivision. She said when she read the purpose of the PUD, she was looking for the benefits of this development. She said she was concerned about maintenance of the open space and if the open space was really adding benefit as required by the PUD criteria. She said she was wondering about the cost reflected in the HOA budget and she asked Van Loo if she could elaborate on it.

Van Loo said she could not; for the budget was developed by her client. She said her client was a professional developer who had been in the business for 30 years and it would be inappropriate for her to examine those numbers.

Mayor Drake said that may be more detail than what Council should be concerned with at this time because nothing wrong had occurred. He said that was more detail than what would normally be provided.

Coun. Arnold said her concern was that the open space was supposed to provide benefit to the community. She said she was concerned about the cost because she spoke to two property management companies and a planner who dealt with smaller HOAs. She said she was concerned that the open space be maintained and look nice and that it not end up back in the City's lap. She said when she spoke with others about the cost, she was told it was about \$10,420 annually which came to \$700 per unit per year, which seemed a high rate for homeowners to pay.

Mayor Drake said based on the experience of HOAs; that was not outrageous.

Coun. Arnold asked how the open areas would be developed and how would they add value to the neighborhood.

Van Loo said the open spaces would be landscaped and the preliminary plans were in the staff report. She said the entrance area would be landscaped in zeroscape, Tract D would be grass and trees, and Tract C would be like an arboretum with pasture grass and a variety of native trees. She said the pedestrian walkway would be a grasscrete to support emergency vehicles and pedestrians and still look residential in nature.

Mayor Drake said the landscaping plans were in the staff report (pages 163-170) and were very detailed.

RECESS:

Mayor Drake called for a brief recess at 9:03 p.m.

RECONVENED:

Mayor Drake reconvened the meeting at 9:15 p.m. and stated the City Attorney had a statement for Council.

Rappleyea said during the break there was discussion about the prior testimony. He said Coun. Arnold mentioned she talked to a few people and she had not included these in her ex parte contacts. He said Coun. Arnold wished to clarify that now.

Coun. Arnold said she talked to three sources to gain neutral information. She said she spoke to two property management companies to get an idea of the cost to run an HOA. She said she spoke to a Metro planner to see how they look at meeting density requirements and if that applied to the criteria in this application. She said the Metro planner had prior experience in a city where there were small HOAs.

Rappleyea asked if the applicant wanted to ask for a continuance to address any issues that were raised by Coun. Arnold's statement.

Van Loo said she did not wish a continuance. She said this issue was discussed at length at the Planning Commission level and it was one of the four reasons why the project was brought back to the Commission. She said Commissioner De Harrport, who was a developer in Beaverton, was concerned about CC&Rs and HOA maintenance costs. She said it was at his request that her client generated the material in the packet. She said Commissioner De Harrport was satisfied with the materials based on his and his family's professional experience in the industry. She said that was how the issue was satisfied at the Commission level.

APPELLANT:

Susan Greer, Portland, appellant, said she filed the appeal of the Planning Commission's approval of the Garden Grove PUD, because the proposed 15 lot development and the City's review of the application failed to adequately address important features of the Comprehensive Plan. She said her main concerns were traffic impact on existing streets and residences, and the high-density row-house layout of the proposed development. She said the houses were six feet apart at the foundation and three feet apart at the eaves.

Greer recalled the nature and history of the Maplewood neighborhood. She said it was originally platted in 1875; the Maplewood area was well known for its Swiss/German dairies, its timber and as a freight and passenger railroad intersection with its own station. She said the Maplewood Water District, founded in 1911, was Oregon's oldest water district when part of the community was annexed into Portland in 1964. She said this history shows Maplewood and Garden Home were not pop-up subdivisions in prime, flat agricultural land within the Urban Growth Boundary. She said the Maplewood/Garden Home area was more than commuter subdivisions. She said the residents valued and utilized the natural and enhanced resources in the area. She said residents knew each other and walked or biked to local resources and community facilities. She added the residents supported various parks and recreation districts with their tax dollars. She said the neighborhood consisted of a diverse housing mix ranging from modest to high-end homes, which range in age from turn-of-the-century farm houses to new contemporaries. She said the neighborhood was annexed to Beaverton in the late 1990's though they were not assigned to a Neighborhood Association Committee.

Greer said SW Canby Street residents had seen the construction of over 50 residential units in the last 15 years; many yielding as many as 500 additional vehicle trips per day. She said residents and pets must negotiate this narrow residential land when walking or biking, without benefit of curbs, sidewalks, speed bumps, safety signing or street lighting. She said this area and SW Canby Street were long overdue for action on traffic calming policies. She said a few feet of sidewalk fronting SW Canby Street, from the Garden Grove PUD, did little to compensate for the hazards, noise and air pollution resulting from the additional 150 vehicle trips per day on SW Canby Street.

Greer said she had several conversations with City of Portland planners. She said this site plan had been around since 2001. She said two concepts were presented to the City of Portland for intersecting with Multnomah Boulevard: a full access intersection and a pedestrian emergency intersection which was indicated on the current site plan. She said Portland preferred a full intersection, to be built in the future, which would align SW Kelsi Street with Kelsi Street on the other side of Multnomah Boulevard.

Greer said this was a difficult site, especially with the wetlands, but she felt it should have been developed as a subdivision with less density. She said a traffic analysis that covered three days, two of which were weekends, did not show what traffic was like on SW Canby Street. She said SW Canby Street connected to Vermont Street, Oleson Road and Multnomah Boulevard and people use it as a cut through for those streets. She asked that the Planning Commission and Council review and revise the PUD ordinance because the proposal would barely meet the requirements of the ordinance and would offer little innovative site design, and would have to address Zoning regulations and Comprehensive Plan objectives in a manner responsive to the unique characteristics of the parent neighborhood.

Coun. Doyle asked Greer if the entire neighborhood where she lived was in the City of Beaverton.

Greer replied it was an unusual area and a detailed map was needed to determine which lot was in which jurisdiction; either Portland, Beaverton or the County.

Coun. Arnold referred to Greer's letter of appeal which stated this development did not meet Comp Plan Policy 3.13.1C that addressed compatibility. She asked Greer to elaborate on why she felt it was not compatible with the neighborhood.

Greer said traffic was a big concern as well as the capacity of the retention vault which is proposed to handle the runoff. She said Hideaway Park, which was downstream from this development, was already experiencing flooding on the east end of the park, which is where the runoff from the development will flow. She said they were also looking ahead to when the Oleson Road improvements begin and people will use SW Canby Street even more to get around the Oleson Road stoppages and construction.

Catherine Darby, Beaverton, said she has lived in Beaverton for 17 years. She said this development borders her property to the west and south, next to SW Kelsi Street and Lot 15. She said many of the properties in this area are quarter-acre lots. She said she was concerned with the high density of this development and that it would not keep the neighborhood feeling of the area. She said the proposed open space was more of a buffer area rather than being used as recreational facilities for the entire general area. She said she was concerned that houses can be six feet apart at the foundation and two feet apart at the eaves. She said she would favor the development if the open space was more central to the development and if there were only 11 to 12 houses. She said she supported the Urban Growth Boundary and development of this area, but not to this high a density. She said this would impact their neighborhood greatly. She asked that the Council send this back to the developer for a better development plan.

Mayor Drake asked Darby if two units were joined at the property line would that be better; as it would create ten buildings.

Darby replied it would be better if there was more space between the houses.

Mayor Drake said he thought it would be less invasive.

Darby said she was pleased with the location of the access road as it was a buffer for her parcel. She said her real concern was the number of houses and the way the open space was laid out. She said the road and Lot 15 buffered her land from this development.

Barbara Neil, Portland, said the lots were too small for the area which was zoned R7 and she did not believe it was the intent of the PUD ordinance to give away unbuildable land and allow it to be zoned to half the size of the current zoning. She said the difficulty in planning this development was in putting 15 lots on 2 ½ acres. She said they could have done the same thing with seven or eleven lots. She said 15 units in the middle of a community would look like Army barracks. She said she felt what they had was a good PUD rule administered at its worst. She said it was bad planning and against the intent of the PUD ordinance, which was to preserve the value, spirit and integrity of the surrounding area. She said only the builder and contractor benefit from this plan. She said she considered it political negligence to approve this plan and asked that Council lower the density. She referred to Goal 6, *Manage Growth and Respond to Change Consistent with Maintaining Livability*, and said putting barracks in the Garden Home neighborhood was not the answer.

Mayor Drake asked Neil if there was ever a single family home or farmstead at that site.

Neil said there was large horse ranch northeast of there.

Mayor Drake asked if this site was a remnant parcel from the ranch.

Neil replied she did not think so.

Jeremy Inman, Canby Lane, Portland, said he wished to echo what everyone else said. He said he was concerned with traffic issues. He said the traffic on these streets was fast and hazardous. He said he would like to have the traffic enhancement policies for this development reviewed or the number of lots should be reduced. He said reducing the density was the only way this would be an acceptable development to the neighborhood. He said Tract C, the open space tract, was set on Multnomah Boulevard which has a lot of traffic. He said if that open space is intended to be used as a kids play area, he would question the safety of that environment. He said this was a busy road with the majority of traffic traveling 45 mph and higher.

Coun. Arnold said in the application there was a Comprehensive Plan criterion that referred to meeting the "big picture" plans, such as Metro Title 1. She asked if that came from staff or the applicant.

Osterberg said there were three different policies that overlap in similar subject matter, such as dealing with Metro Title 1 and minimum density standards. He said staff addressed those and he wanted to add the comment that staff addressed those by stating what the applicant was proposing. He said it could have been clearer by simply stating that all of those Plan policies that deal with that subject matter could have been addressed with a brief finding that those policies were simply met by the Development Code and were implemented by the Development Code's Residential Minimum Density Standards. He said if an applicant meets the Development Code, they would be meeting those policies.

REBUTTAL:

Van Loo said when the land was annexed from Washington County to Beaverton it was zoned R5, which meant this site could have between 14 and 17 lots. She stressed they were not at maximum density. She said they were at the same density as if it had been developed in Beaverton in the late 1970's or early 1980's. She said the houses could be a minimum of six feet apart, as that was the minimum side yard setbacks. She said that did not mean the eaves would only be three feet apart; the eaves have to be more than three feet apart to meet Uniform Building Code requirements. She said those were the minimums and that did not mean every house would be built exactly to the minimum side yard setback. She said that was why they have a variety of lot sizes. She said the appellant was correct in stating she had not seen any elevations, so the comment that these units were packed in was inappropriate as there were only lots at this time.

Van Loo said the traffic issue was addressed earlier. She said real traffic counts showed there was less traffic than there was five years ago; trips of 900 to 1,000 vehicle trips per day on a local street were well within acceptable standards for local street trip generation. She said the addition of 150 trips per day will still keep this local street well under the threshold, which is between 1200 and 1500 vehicle trips per day for a local street. She said they designed the proposed profile for the extension of SW Kelsi Street through to Multnomah Boulevard, which was in the plans before Council, and it is achievable. She said this was verified in their preliminary engineering plans. She said the development of this property will detain and contain water, and it will slow and minimize the impacts of flooding from gully-washer flooding downstream. She said they did do a proposal for consolidated open space, with open space at each end of the site and the remainder of the land was divided into small open spaces between each lot to provide the concept Mayor Drake proposed earlier. She said the Planning Commission did not like the idea. She said they presented a PUD to the Planning Commission at the encouragement and support of the City's planning staff who have years of experience. She said they reviewed the Code and did the best job they could and it was approved by the Planning Commission. She asked the Council to support this project.

Mayor Drake closed the public hearing.

Coun. Ruby MOVED, SECONDED by Coun. Doyle, that Council deny the Appeal of Garden Grove Preliminary PUD (APP 2005-0002) and uphold the decision of the Planning Commission and approve CU 2004-0021 as a Final PUD and direct staff to prepare findings and a final order that embodies the Council's decision.

Coun. Bode said this was a first-time experience of reviewing criteria for many people concerned with the proposal. She said she sometimes found the criteria to be competing in nature, especially when speaking about the benefits of urban density. She said this proposal was within Metro 1 goals for infill and urban density. She suggested citizens might want to have future discussions on urban density if they were unsure of its benefits. She agreed this area of Multnomah was a charming place. She commented on the variety within the proposed development and said this proposal did meet the PUD criteria and was within density requirements. She said based on that, she would have to uphold the oath she took to follow the law and support the motion. She thanked everyone for their participation and comments.

Coun. Arnold said she would not support this motion because maximum density was based on the old days of minimums, which said this could not be smaller than 7,000 square feet. She said the maximum was achieved by taking the area, looking at the

minimum, and that minimum became the maximum, which was a gross number. If there was a rectangular piece of property already on a street, one could go for the maximum density; but on a site where streets have to be built, you could not get the maximum density. She said this looked like a way to get the 20 percent open space PUD requirement. She said the Planning Commission denied it and sent it back for more work, including redoing the open space so it was not part of the yards between the homes.

Coun. Arnold said when she reviewed the PUD requirements, she did not see that this proposal preserved any natural features or provided a benefit as described in the PUD purpose statement. She read from page 27 of the staff report *"...although the application met the Development Code CU/PUD criteria for approval, the PUD proposal was not particularly creative in design and layout and did not provide the amenities that they have in mind when considering the best PUD developments. The three Commission members indicated that PUD development standards may need to be addressed through a future Development Code text amendment; but as proposed, the Garden Grove PUD meets all of the Code criteria for approval."* She said she thought they ruled that it met the criteria because they interpreted the Code to say if they had 20% open space; it wouldn't matter if it was weeds. She said it did not have anything to do with meeting the maximum density requirements for Metro. She said she did not feel this met the criteria and she felt the neighbors had valid complaints. She said because of this she would not support the motion.

Coun. Doyle said as he read through the staff report, it did indicate the applicant had met the criteria because the PUD process allowed them to meet the density. He referred to the section read by Coun. Arnold and noted they had met the criteria. He said there were two ways to look at everything and this was just a difference of opinion.

Coun. Arnold said she also heard Commissioner Johansen say *"that if the purpose of a PUD was to stuff as many units on a piece of property as we can, then this met the requirement, but I don't think it is."* She said Johansen's comments were in the staff report.

Question called on the motion. Couns. Bode, Doyle and Ruby voting AYE, Coun. Arnold voting NAY, the MOTION CARRIED. (3:1)

ADJOURNMENT:

There being no further business to come before the Council at this time, the meeting was adjourned at 10:08 p.m.

Catherine Jansen, Deputy City Recorder

APPROVAL:

Approved this day of , 2005.

Rob Drake, Mayor

DRAFT

BEAVERTON CITY COUNCIL
REGULAR MEETING
MAY 16, 2005

CALL TO ORDER:

The Regular Meeting of the Beaverton City Council was called to order by Mayor Rob Drake in the Forrest C. Soth City Council Chamber, 4755 SW Griffith Drive, Beaverton, Oregon, on Monday, May 16, 2005, at 6:36 p.m.

ROLL CALL:

Present were Mayor Drake, Couns. Catherine Arnold, Dennis Doyle, Fred Ruby, and Cathy Stanton. Coun. Betty Bode was excused. Also present were City Attorney Alan Rappleyea, Chief of Staff Linda Adlard, Finance Director Patrick O'Claire, Community Development Director Joe Grillo, Engineering Director Tom Ramisch, Operations/Maintenance Director Gary Brentano, Library Director Ed House, Human Resources Director Nancy Bates, Police Chief David Bishop and Deputy City Recorder Catherine Jansen.

PROCLAMATIONS:

National Police Week and Peace Officers' Memorial Day

Mayor Drake said Peace Officers' Memorial Day was May 15, 2005, and National Police Week was May 15-21, 2005.

Mayor Drake recognized Police Chief Dave Bishop who recently received the Max Patterson Award from the Oregon Association of Chiefs of Police for his work with youth. He said Bishop provided excellent leadership and the framework for many outstanding and innovative police programs. He said he wanted to link this with National Police Week, as he knew Bishop would be the first to acknowledge that his success was because of all the men and women who worked in the Police Department. He said he wished to acknowledge Bishop for his leadership. He said Bishop began the Peer Court in 1995; it has been a successful program, modeled by dozens of other cities. He said Bishop grew up in S.E. Portland and attended a Police Athletic League (PAL) Club as a youth. He said Bishop was successful in establishing a PAL Club in Beaverton which provided great community outreach. He said a Student Academy was started in 2001; police officers go to the schools and teach students about the Police Department which builds links with the community's youth. Mayor Drake showed the audience the plaque that was awarded to Chief Bishop by the Police Chiefs' Association.

Bishop accepted the award and thanked the Mayor. He said while his name was on the award, it should list all the members of the Beaverton Police Department. He said he was accepting the award in honor of all the members of the agency.

Mayor Drake acknowledged the police officers present and read the proclamation for National Police Week and Police Officers' Memorial Day in its entirety. He said he had known Bishop since they were both undergraduate students in 1969 and over the years Bishop always said that his job was to ensure his men and women go home to their families every night. He thanked the City's police officers for their work and dedication. He presented the framed proclamation to Chief Bishop.

National Public Works Week

Mayor Drake said he was very proud of the work done in the City. He said the City's Operations Department (Public Works) also provides service to the citizens 24 hours a day/seven days a week to handle service calls for water, streets and sewer. He read the proclamation for National Public Works Week, May 15-21, 2005, in its entirety and thanked all public works employees for the contributions they make every day to the health, safety and comfort of all citizens. He presented the framed proclamation to Operations/Maintenance Director Gary Brentano.

Mayor Drake also proclaimed May, 2005, National Bike Month. He said over the years the City has developed an outstanding bike system.

PRESENTATIONS:

05093 Beaverton Human Rights Advisory Commission Human Rights Essay Contest Award Presentation

Human Rights Advisory Commission Chair Jim Maguire said the Human Rights Advisory Commission sponsored a human rights essay contest. He said the contest provided the opportunity for the students to express themselves in a variety of media, including writing, painting, film, etc. He said they received many excellent entries and it was hard to select the winners and runners up. He presented certificates and prizes to the winners. The prizes were gift certificates to Powell's Books: \$25.00 certificates for the runners up and \$50 certificate the winners.

Elementary School: The winner was Emily Cowell, Grade 5, for her painting "We Can All Be Loved." Runners up were Matthew Twete, Grade 5, for his poem "Emancipation" and Toya Sirimongkarakorn, Grade 3 for her essay "What Toya Thinks About Civil Rights".

Middle School: The winner was Eleah Neubouer, Grade 8, for her essay "You, but Not YOU." Runners up were: Lauren Deots, Grade 7, for her essay "The Rights We Are Given" and Elizabeth Fennelly, Grade 6, for her essay "Human Rights for Gays and Lesbians."

High School: The winner was Monica Mohan, Grade 9, for her artwork "A Hand In Nature."

Maguire thanked all the students who participated and said the Commission would run the contest again next year. He said all the entries were displayed in the room next to the Council Chambers and he invited everyone to view the exhibit.

Mayor Drake thanked Maguire and the Commissioners for this work.

Mayor Drake said the Consent Agenda would be heard at this time at the request of Coun. Doyle.

CONSENT AGENDA:

Coun. Doyle MOVED, SECONDED by Coun. Stanton, that the Consent Agenda be approved as follows:

- 05094 Liquor License Application: New Outlet – Beaverton Tobacco Warehouse, Express Mart, Haggen Food & Pharmacy # 31
- 05095 Resolution Supporting City of Beaverton 2005-2007 Transportation and Growth Management Grant Application (Resolution No. 3815)
- 05096 HOME Consortium Cooperation Agreement between Washington County, the City of Hillsboro and the City of Beaverton for FY 2006-2008 and Selection of HOME Option for 2006-2008
- 05097 Boards and Commissions Appointment: Wendy Kroger to Planning Commission

Contract Review Board:

- 05098 Contract Renewal Between Unlimited Choices, Inc. and the City of Beaverton for the Adapt-A-Home Program
- 05099 Contract Renewal for Intergovernmental Agreement Between the Portland Development Commission (PDC) and the City of Beaverton for the Management of the Citywide Housing Rehabilitation Program

Coun. Stanton said she was pleased the City was again participating in the HOME Consortium agreement with Hillsboro and Washington County, and in the intergovernmental agreement with the Portland Development Commission for the Citywide Housing Rehabilitation Program. She said much was accomplished using the Federal funds from these projects.

Coun. Doyle added the City also participated in the Adapt-A-Home Program which was an excellent program.

Coun. Ruby thanked Planning Commissioner Gary Bliss, retiring member of the Planning Commission, for his work on the Commission. He said Bliss made strong contributions to the Commission.

Mayor Drake said Bliss contributed well to the Planning Commission as he had been the Vice-Chair of his Neighborhood Association Committee and he was a strong advocate for the development community. He said Bliss saw issues from a unique perspective and he would be missed.

Question called on the motion. Couns. Arnold, Doyle, Ruby and Stanton voting AYE, the MOTION CARRIED unanimously. (4:0)

VISITOR COMMENT PERIOD:

Gary Rowell, District Administrator for Oregon Little League, Portland and Craig J. (Jeff) Lipps, President Beaverton Area Little League, Beaverton, addressed the Council concerning the Senior Little League Baseball Tournament that would be held in Beaverton this year. Rowell distributed an informational letter about Little League (in the record). He said Little League was the only Federal-chartered youth program in the country and it was continuing to grow. He said there were six Little League charters in the Beaverton/Aloha area, and several charters in other cities. He said they were currently concentrating on bringing older youth into Little League. He said they started their effort by bidding for and winning the Junior Little League Western Region which will be hosted in Forest Grove. He said the Junior League was for 13 and 14 year old boys. He said because of the success they had with the Junior program, they have been asked to coordinate and run the Senior Little League Western Region, which is for 15 and 16 year old boys. He said the Beaverton Area Little League agreed to host the Senior League.

Rowell said these tournaments take a lot of time to organize and financing was needed. He said they were looking for a way to communicate with corporate Beaverton and to promote this as a City of Beaverton event. He said visitors from each state would be coming to this tournament and they will bring a great deal of financial resources into the community. He asked if the City could promote a Little League Week for the week of August 1 -10, 2005, to let the out-of-state-citizens coming to the tournament know that the City would support this event. He said he appreciated the time and consideration the Councilors make in terms of bringing Little League tournament baseball to the community.

Mayor Drake invited Rowell to come back to Council closer to the tournament and make an additional request. He said he felt the community supported baseball and suggested he give this information to the press.

Rowell said he would accept the offer to return.

Jack Franklin, Beaverton, Schiffler Park Watch Committee, said he was speaking for Committee Chair Dorothy Fisher who was unable to attend due to illness. He said last summer the Committee asked the Tualatin Hills Parks District to remove the non-functional electrical panel boards that were placed in the park several years ago by the City for Good Neighbor Days. He said there were four in the grassy areas of the park, one by the handball wall and one by the pavilion. He said he thought the one by the pavilion was used for the security light. He said the Park District said this was the City's responsibility. He said the City's Operations Department said it was too expensive to remove the panels. He asked that the City Council consider removing the panels as they were not needed, unattractive and an attraction for graffiti. He said they did not wish to lose the path lights on the south side of the park, so if the path lights were powered by the panels it would not be difficult to rewire the lights to the panel next to the pavilion.

Mayor Drake said he would work with the Operations Director to determine the issues. He said the park belongs to the Tualatin Park District and more information was needed before he committed to anything; but he would look into it.

Franklin asked that the City respond back to Committee Chair Dorothy Fisher at 503-644-6867.

Henry Kane, Beaverton, said at the May 2, 2005 Council meeting, Mayor Drake said City staff was involved in the Highway 217 improvement proposals. He said he would provide a copy of a letter from a Metro staff member who was assisting the Highway 217 Project Advisory Committee. He said the southbound on-ramp from Allen Boulevard to Highway 217 would be closed, the northbound on-ramp from Denney Road to Highway 217 would be closed, the southbound off-ramp to Denney Road would be closed and the northbound off-ramp to Allen Boulevard would be closed. He said this was an example of ideology over common sense. He said he used Allen Boulevard and Denney Road to get to Highway 217 during the commute hours and there was no backup that delayed traffic at these points. He said he had no objection to toll roads that work, but this would not work as there were too many ways to bypass the road using local streets. He said he hoped Council would get a map that showed all the closures and a staff analysis identifying the benefits of the proposal.

Coun. Stanton clarified Kane's comments. She said when he referred to closing the Denny Road southbound access to Highway 217 and the Allen Boulevard northbound access to Highway 217, and then switched it and said southbound Allen Boulevard and northbound Denney Road on Highway 217, those were two different options; they were not closing all four ramps. She said in the closure of the ramps there would be frontage roads connecting Allen Boulevard and Denney Road, so there would be an access to the closest interchange to Highway 217. She said she was not saying she thought either proposal was best, but she wanted to clarify that they were not closing all four ramps.

Mayor Drake said he was on the Committee studying this issue along with the Oregon Department of Transportation, Metro Councilor Carl Hosticka and several citizens and business people from the City of Beaverton. He said nothing definitive has been recommended; they were working to narrow choices at this time.

RECESS:

Mayor Drake called for a brief recess at 7:24 p.m.

RECONVENED:

Mayor Drake reconvened the meeting at 7:34 p.m.

Coun. Doyle left the meeting during break as he had another meeting to attend. He returned later in the evening during the executive session.

COUNCIL ITEMS:

There were none.

STAFF ITEMS:

There were none.

PUBLIC HEARINGS:

05100 Proposed Water Consumption Rate and Demand (Meter) Charge Increase for Operating the City's Water System (Resolution No.3816)

Finance Director Patrick O'Claire reviewed the staff report. He said the proposed Water Consumption Rate increase was 2.7%, going from a current charge of \$1.82 per CCF (100 cubic feet of water) to \$1.87 per CCF. He said that would produce an additional \$72, 200 in water fund revenue beginning January 1, 2006. He said the Demand Charge was a flat rate based on meter size and the proposed 3% increase was equivalent to an additional \$0.22 per month (\$2.64 per year) for a single-family home. He said that would produce an additional \$50,500 in operating revenue for Fiscal Year 2005-06. The Demand Charge increase would be effective July 1, 2005. He said both increases cover the additional cost of operating and maintaining the water system. He said this was the first time the Demand Charge had been increased since 1998.

Coun. Stanton confirmed with O'Claire that the Water Consumption Rate increase was \$6.25 per year for the average resident. She said that was a reasonable increase and it ensured that operations, maintenance and future planning stayed current.

O'Claire said this included revenue bond debt service used to build capital infrastructure, such as reservoirs and treatment facilities, through the Joint Water Commission.

Coun. Stanton said next Monday, October 23, 2005, Washington County Commission Chair Tom Brian, would speak on future water needs for Washington County. She said some funds from this increase would go towards providing for future water needs for the next decade.

Mayor Drake opened the public hearing and asked if anyone wished to testify.

There was no testimony,

Mayor Drake closed the public hearing.

Coun. Stanton MOVED, SECONDED by Coun. Ruby that Council approves the proposed Water Consumption Rate increase to \$1.87 per CCF and the Demand (Meter) Charge Increase of three percent (3%), for Operating the City's Water System as presented in Resolution No. 3816 (Agenda Bill 05100). Couns. Arnold, Ruby and Stanton voting AYE the MOTION CARRIED unanimously. (3:0)

05101 Proposed Storm Drain Monthly Rate Increase for System Operations

O'Claire reviewed the staff report. He said the Fiscal Year 2005-06 Proposed Budget includes a recommendation for a \$0.25 monthly rate increase for the Storm Drain Services base charge, which covers the storm drain system's maintenance and operations. He said this would increase the monthly rate from \$3.75 to \$4.00. He said

the proposed \$0.25 rate increase would result in an additional \$3.00 per year for a single-family residence and would produce \$156,000 in annual revenues. The increase would become effective July 1, 2005.

Mayor Drake opened the public hearing and asked if anyone wished to testify.

There was no public testimony.

Mayor Drake closed the public hearing.

Coun. Stanton said she thought a \$3.00 annual increase was reasonable and she appreciated having storm drains in the City to move all that water. She said as she drove up Lombard Avenue this evening, she thought it was wonderful that Lombard Gardens would not flood anymore as they now have storm drain improvements. She said this was the best money the City could spend to ensure the systems were clean and functioning.

Coun. Ruby MOVED, SECONDED by Coun. Arnold, that Council approves Agenda Bill 05101, which authorizes the \$0.25 increase to the Storm Drain monthly base charge, effective July 1, 2005. Couns. Arnold, Ruby and Stanton voting AYE, the MOTION CARRIED unanimously. (3:0)

ORDINANCES:

Second Reading:

City Attorney Alan Rappleyea read the following ordinance for the second time by title only:

05091 An Ordinance Annexing Property Located Immediately North of the Sunset Highway and Generally Southwest of NW Barnes Road to the City of Beaverton: Expedited Annexation 2004-0015 (Ordinance No 4353)

Coun. Stanton MOVED, SECONDED by Coun. Ruby, that the ordinance embodied in Agenda Bill 05091 now pass. Roll call vote. Couns. Arnold, Ruby and Stanton voting AYE, the MOTION CARRIED unanimously. (3:0)

EXECUTIVE SESSION:

Coun. Stanton MOVED, SECONDED by Coun. Ruby, that Council move into executive session in accordance with ORS 192.660(2)(h) to discuss the legal rights and duties of the governing body with regard to litigation or litigation likely to be filed. Couns. Arnold, Ruby and Stanton voting AYE, the MOTION CARRIED unanimously. (3:0)

The executive session convened at 7:54 p.m.

COUN. DOYLE RETURNED TO THE COUNCIL MEETING DURING EXECUTIVE SESSION.

The executive session adjourned at 8:50 p.m.

The regular meeting reconvened at 8:50 p.m.

ACTION:

Coun. Doyle **MOVED, SECONDED** by Coun. Arnold that Council authorize the Mayor to conclude negotiations with the developer as discussed during Executive Session. Couns. Arnold, Doyle, Ruby and Stanton voting **AYE**, the **MOTION CARRIED** unanimously. (4:0)

ADJOURNMENT

There being no further business to come before the Council at this time, the meeting was adjourned at 8:53 p.m.

Catherine Jansen, Deputy City Recorder

APPROVAL:

Approved this day of , 2005.

Rob Drake, Mayor

DRAFT

BEAVERTON CITY COUNCIL
SPECIAL MEETING
MAY 26, 2005

CALL TO ORDER:

The Special Meeting of the Beaverton City Council was called to order by Mayor Rob Drake in the Second Floor Conference Room at City Hall, 4755 SW Griffith Drive, Beaverton, Oregon, on Thursday, May 26, 2005, at 7:20 p.m.

ROLL CALL:

Present were Mayor Drake, Couns. Catherine Arnold, Betty Bode, Dennis Doyle and Cathy Stanton. Coun. Fred Ruby was excused. Also present were City Attorney Alan Rappleyea, Chief of Staff Linda Adlard, Finance Director Patrick O'Claire, Assistant Finance Director Shirley Baron Kelly, and Recording Secretary Nancy Earp.

PUBLIC HEARING:

05092 A Resolution Adopting a Supplemental Budget (#S-05-2) for the Fiscal Year Commencing July 1, 2004, and Making Appropriations Therefrom. (Resolution No. 3814)

Finance Director Patrick O'Claire said this was the time for consideration of Supplemental Budget S-05-2, as amended by the Budget Committee to reflect amendments to the General Fund and State Shared Revenue Fund, and to appropriate an additional \$110,000 in both revenue expenditure categories for the creation of a utility fund yet to be determined.

Mayor Drake asked if there had been any changes to the Supplemental Budget since the Budget Committee acted upon it and the City Council reviewed the document.

O'Claire replied there were no changes.

Mayor Drake opened the public hearing and asked for public comment.

There was no one present who wished to speak.

Mayor Drake closed the public hearing.

Coun. Stanton MOVED, SECONDED by Coun. Doyle that Council approves Agenda Bill 05092, A Resolution Adopting a Supplemental Budget (#S-05-2) for the Fiscal Year commencing July 1, 2004, and Making Appropriations Therefrom, as amended. (Resolution No. 3814) Couns. Arnold, Bode, Doyle and Stanton voting AYE, the MOTION CARRIED unanimously. (4:0)

Coun. Stanton MOVED, SECONDED by Coun. Doyle that Council set a public hearing date of June 20, 2005, to consider the Fiscal Year 2005-06 Budget, as adopted by the Budget Committee, and the proposed uses of State Revenue Sharing Funds. Couns. Arnold, Bode, Doyle and Stanton voting AYE, the MOTION CARRIED unanimously. (4:0)

ACTION ITEM:

05102 Intergovernmental Agreement with Tualatin Hills Park and Recreation District for the Purchase of Phase II of the Mt. Williams Property

Mayor Drake asked if the Council had any questions on this item.

There were none.

Coun. Bode MOVED, SECONDED by Coun. Doyle that Council approves Agenda Bill 05102, the Intergovernmental Agreement with Tualatin Hills Park and Recreation District for the Purchase of Phase II of the Mt. Williams Property (Dernbach Property) for \$125,000. Couns. Arnold, Bode, Doyle and Stanton voting AYE, the MOTION CARRIED unanimously. (4:0)

ADJOURNMENT

There being no further business to come before the Council at this time, the meeting was adjourned at 7:25 p.m.

Nancy Earp, Recording Secretary

APPROVAL:

Approved this day of , 2005.

Rob Drake, Mayor

AGENDA BILL

Beaverton City Council
Beaverton, Oregon

SUBJECT: LIQUOR LICENSE

FOR AGENDA OF: 06/06/05 **BILL NO:** 05104

NEW OUTLET

Friends Café & Pub
3203 SW 153rd, Suite 419
Beaverton, OR

MAYOR'S APPROVAL: 

DEPARTMENT OF ORIGIN: Police 

DATE SUBMITTED: 05/24/05

PROCEEDING: Consent Agenda

EXHIBITS: None

BUDGET IMPACT

EXPENDITURE REQUIRED \$ 0	AMOUNT BUDGETED \$ 0	APPROPRIATION REQUIRED \$ 0
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HISTORICAL PERSPECTIVE:

A background investigation has been completed and the Chief of Police finds that the applicant has met the standards and criteria as set forth in B.C. 5.02.240. The City has published in a newspaper of general circulation a notice specifying the liquor license application.

INFORMATION FOR CONSIDERATION:

Edward and Bonnie Whitloe are opening a new establishment and have made application for a Limited On-Premises Sales License under the trade name of Friends Café & Pub. The establishment will serve American food. It will operate seven days a week, serving lunch and dinner from 10:00 a.m. to 10:00 p.m. There will be no entertainment offered. A Limited On-Premises Sales license allows the sale of malt beverages, wine, and cider for consumption at the licensed business, and the sale of kegs of malt beverages to go.

RECOMMENDED ACTION:

The Chief of Police for the City of Beaverton recommends City Council approval of the OLCC license application.

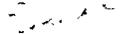
AGENDA BILL

**Beaverton City Council
Beaverton, Oregon**

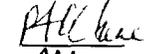
SUBJECT: Authorize Intergovernmental Agreement with Washington County Cooperative Library Services Regarding the Provision of Telephone Reference Service.

FOR AGENDA OF: 06-06-05 BILL NO: 05105

Mayor's Approval: 

DEPARTMENT OF ORIGIN: Library 

DATE SUBMITTED: 05-20-05

CLEARANCES: Finance 
City Attorney 

PROCEEDING: Consent Agenda

EXHIBITS: Intergovernmental Agreement with Attachment A

BUDGET IMPACT

EXPENDITURE REQUIRED \$0	AMOUNT BUDGETED \$0	APPROPRIATION REQUIRED \$0
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HISTORICAL PERSPECTIVE:

The Beaverton City Library has provided telephone reference service for the Washington County Cooperative Library Service (WCCLS) on a contractual basis since July 1994. The current one-year Intergovernmental Agreement (IGA) for services expires June 30, 2005.

INFORMATION FOR CONSIDERATION:

Staff is proposing a one-year extension of the current IGA. The City currently receives \$6,666 per month for the provision of telephone reference services. Under the one-year extension, the City will continue to receive \$6,666 per month for FY2005-06.

RECOMMENDED ACTION:

Council authorize the Mayor to sign the attached IGA, which extends telephone reference services for a one-year period ending June 30, 2006 to the Washington County Cooperative Library Service

INTERGOVERNMENTAL AGREEMENT

This Agreement is entered into, by and between Washington County, a political subdivision of the State of Oregon, and the City of Beaverton.

WHEREAS ORS 190.010 authorizes the parties to enter into this Agreement for the performance of any or all functions and activities that a party to the Agreement has authority to perform.

Now, therefore, the parties agree as follows:

- 1) The effective date is: July 1, 2005, or upon final signature, whichever is later.

The expiration date is: June 30, 2006; unless otherwise amended.
- 2) The parties agree to the terms and conditions set forth in Attachment A, which is incorporated herein, and describes the responsibilities of the parties, including compensation, if any.
- 3) Each party shall comply with all applicable federal, state and local laws; and rules and regulations on non-discrimination in employment because of race, color, ancestry, national origin, religion, sex, marital status, age, medical condition or handicap.
- 4) To the extent applicable, the provisions of ORS 279C.500 through 279C.870 are incorporated by this reference as though fully set forth.
- 5) Each party is an independent contractor with regard to each other party(s) and agrees that the performing party has no control over the work and the manner in which it is performed. No party is an agent or employee of any other.
- 6) No party or its employees is entitled to participate in a pension plan, insurance, bonus, or similar benefits provided by any other party.
- 7) This Agreement may be terminated, with or without cause and at any time, by a party by providing 60 (30 if not otherwise marked) days written notice of intent to the other party(s).
- 8) Modifications to this Agreement are valid only if made in writing and signed by all parties.
- 9) Subject to the limitations of liability for public bodies set forth in the Oregon Tort Claims Act, ORS 30.260 to 30.300, and the Oregon Constitution, each party agrees to hold harmless, defend, and indemnify each other, including its officers, agents, and employees, against all claims, demands, actions and suits (including all attorney fees and costs) arising from the indemnitor's performance of this Agreement where the loss or claim is attributable to the negligent acts or omissions of that party.
- 10) Each party shall give the other immediate written notice of any action or suit filed or any claim made against that party that may result in litigation in any way related to this Agreement.

- 11) Each party agrees to maintain insurance levels or self-insurance in accordance with ORS 30.282, for the duration of this Agreement at levels necessary to protect against public body liability as specified in ORS 30.270.
- 12) Each party agrees to comply with all local, state and federal ordinances, statutes, laws and regulations that are applicable to the services provided under this Agreement.
- 13) This Agreement is expressly subject to the debt limitation of Oregon Counties set forth in Article XI, Section 10 of the Oregon Constitution, and is contingent upon funds being appropriated therefor.
- 14) This writing is intended both as the final expression of the Agreement between the parties with respect to the included terms and as a complete and exclusive statement of the terms of the Agreement.

WHEREAS, all the aforementioned is hereby agreed upon by the parties and executed by the duly authorized signatures below.

Jurisdiction

Signature

Date

Printed Name

Title

Address: _____

WASHINGTON COUNTY:

Signature

Date

Printed Name

Title

Address:

155 N First Avenue
Mail Stop # 58
Hillsboro, OR 97214

ATTACHMENT A

Statement of Work /Schedule/Payment Terms

This AGREEMENT is made and entered into by and between Washington County for Washington County Cooperative Library Services (hereafter the "Cooperative"), a political subdivision of the State of Oregon, and the City of Beaverton for the Beaverton City Library (hereafter "Library").

I. Services to be provided by Library

Beaverton City Library agrees to provide Telephone Reference Service to all residents of Washington County all hours the library is open to the public. Library agrees to maintain statistics related to the number of calls received and forward those statistics to the Cooperative monthly.

II. Payment Terms

The Cooperative shall pay Library \$6666 per month for services provided. Payments shall be made by the 15th of the month.

AGENDA BILL

**Beaverton City Council
Beaverton, Oregon**

SUBJECT: Adopt Resolution and Authorize
Implementation of Site Development Permit
Fee Increases

FOR AGENDA OF: 6-06-05 **BILL NO:** 05106

Mayor's Approval: *Bob Drake*

DEPARTMENT OF ORIGIN: CDD *Judy*

DATE SUBMITTED: 5-02-05

CLEARANCES: Finance *AC*
City Attorney *MS*

PROCEEDING: Public Hearing

EXHIBITS: 1. Resolution (proposed new fees)
2. Current Fee Schedule

BUDGET IMPACT

EXPENDITURE REQUIRED \$0	AMOUNT BUDGETED \$0	APPROPRIATION REQUIRED \$0
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HISTORICAL PERSPECTIVE:

Within the Community Development Department, the Site Development Division is responsible for coordinating the review of engineering design and performing the construction inspection of site improvements and all public works construction in the City. Each budget year, revenues and expenditures are evaluated to determine if adjustments are needed. Permit fees associated with site development were last adjusted January 1, 2004. Costs associated with the operation of the division have risen above revenues generated by the permit fees. Additionally, analysis of the fee adjustment done in December of 2002 to collect larger permit fees from smaller projects and decrease the fees for the largest projects actually resulted in an overall revenue decrease experienced over the last two fiscal years. Historically, the division's activities have required general fund subsidy as fees collected do not cover all expenses.

INFORMATION FOR CONSIDERATION:

The Site Development Division is involved "from cradle to grave" for all projects involving privately-financed, public improvements and certain regulated private improvements such as site grading and parking lot construction. The public improvements include water provision, sanitary sewer, storm sewer and surface drainage, streets, street access, driveway aprons, sidewalks, street lighting and traffic signals. The Division also is responsible for issuing permits for street cuts, street tree removal and planting, and regulating franchise utility installations. City inspectors are assigned to monitor every project involving public improvements. The typical site development permit lasts two to three years; therefore, fees collected in one fiscal year must cover expenses extending well into the future as some large projects can run three to five years. In the analysis performed by staff, it is found that the fee decrease given to the larger projects (collecting only a 2.5 percent fee for projects \$500,000 and greater in value) did not take this fact into account. Therefore, the recommended fee schedule restores the highest rate back to the 5.5 percent level in effect prior to January 2003 for projects valued greater than \$500,000. Other minor fee adjustments are recommended to adequately compensate typical expenses associated with the various services provided by the Division.

RECOMMENDED ACTION:

City Council to hold a public hearing and adopt the attached resolution authorizing a new Site Development fee schedule.

RESOLUTION NO. 3817

A RESOLUTION AMENDING RESOLUTION NOS. 3741 & 3689 AND ESTABLISHING A NEW FEE SCHEDULE FOR SITE DEVELOPMENT

WHEREAS, it is City policy to annually adjust fees to reflect processing expenses and the current site development fee schedule as adopted by resolution does not generate sufficient revenue to off-set operating costs; and,

WHEREAS, Beaverton Code Section 9.05.032 allows the Council by resolution to set certain fees for permits relating to site development; and,

WHEREAS, the Council has previously adopted fees for those services and now desires to adopt a new fee schedule that will amend and supersede those formerly adopted; therefore,

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF BEAVERTON, OREGON:

Section 1: The Council adopts the Site Development Engineering Review and Inspection Fee schedule attached as Exhibit A to this Resolution. The fee schedule shall be effective for all complete applications for site development received on and after July 1, 2005.

Section 2: This Resolution supersedes anything to the contrary in Resolution Nos. 3741 & 3689 and in all prior resolutions setting such fees.

Section 3: This Resolution shall take effect July 1, 2005.

Adopted by the Council this ____ day of _____, 2005.

Approved by the Mayor this ____ day of _____, 2005.

Ayes: _____ Nays: _____

Attest:

Approved:

Sue Nelson, City Recorder

Rob Drake, Mayor

PROPOSED FEE SCHEDULE

Exhibit A

SITE DEVELOPMENT ENGINEERING REVIEW & INSPECTION FEES
Effective July 1, 2005

Research Fee	\$ 50.00
FEMA Floodplain Elevation Determination Fee (per tax lot).....	\$ 25.00
Floodplain, Floodway and Wetland Modification Fee	\$ 500.00 per permit
House Move Permit Fee	\$ 100.00 per permit
Re-Inspection Fee	\$ 50.00
Right-of-Way (ROW) and Facilities Permit Application Fee	\$ 75.00
Individual tree cut (<i>street tree</i>); sidewalk & driveway repair, replacement, or installation: street cut.	
Engineering Review of Building Permit Plans Fee	\$ 40.00 per permit

SITE DEVELOPMENT PERMIT FEES

Site Development Application Fee (payment with initial submittal):

The applicant shall pay a site development permit application fee of \$750. For projects associated with at least 4 residential units or affecting an area at least 1 acre, an additional fee of \$1500 will be paid plus \$150 per acre or fraction thereof.

Site Development, ROW, and Facilities Permit Fee (payment prior to permit issuance):

The applicant shall pay a permit fee based on the final construction cost estimate prior to permit issuance as determined below.

<u>Construction Cost Estimate</u>	<u>Fee</u>
\$0 - \$10,000	7.5 percent of value
\$10,000 - \$100,000	\$750.00 plus 10 percent of value over \$10,000
\$100,000 - \$500,000	\$9,750.00 plus 8 percent of value over \$100,000
Over \$500,000	\$41,750.00 plus 5.5 percent of value over \$500,000

EROSION CONTROL FEES (approximately 40% is Plan Review, 60% is Inspection)

A. Erosion control with a building permit:

\$0 to \$25,000	\$50
\$25,001 to \$50,000	\$75
\$50,001 to \$100,000	\$100
\$100,001 and above	\$100 plus \$75 per \$100,000 or the fraction thereof exceeding the first \$100,000

B. Erosion Control with no building permit (part of a Site Development or ROW permit):

0 to 0.99 acre	\$250
1 acre and greater	\$250 plus \$100/acre or fraction thereof.

CURRENT FEE SCHEDULE (per R solutions 3741 & 3689)

SITE DEVELOPMENT ENGINEERING REVIEW & INSPECTION FEES

Effective January 1, 2004

Research Fee	\$ 50.00
FEMA Floodplain Elevation Determination Fee (per tax lot).....	\$ 20.00
Floodplain, Floodway and Wetland Modification Fee	\$ 500.00 per permit
House Move Permit Fee	\$ 84.00 per permit
Re-inspection Fee	\$ 32.00
Right-of-Way (ROW) Permit Fee (calculation per tables on application form)...	\$ 67.50 (minimum)
Individual tree cut (<i>street tree</i>); sidewalk & driveway repair, replacement, or installation; street cut.	
Engineering Review of Building Permit Plans Fee	\$ 33.75 per permit

SITE DEVELOPMENT PERMIT FEES

Site Development Plan Review Fee (payment with initial submittal):

The applicant shall pay 40 percent (plan review fee) of the site development preliminary construction cost estimate as determined below, or \$760, whichever is greater, at the time of submission of plans for review.

Site Development Permit Inspection Fee (payment with final submittal prior to issuance):

The applicant shall pay 60 percent (inspection fee) of the site development final construction cost estimate prior to permit issuance as determined below.

<u>Construction Cost Estimate</u>	<u>Fee</u>
\$0.00-\$7,500.00	\$760.00
\$7,501.00-\$75,000.00	\$760.00 plus 10 percent of value over \$7,500.00
\$75,001.00-\$437,375.00	\$7,510.00 plus 8 percent of value over \$75,000.00
Over \$437,375.00	\$36,500.00 plus 2.5 percent of value over \$437,375.00

EROSION CONTROL FEES (approximately 40% is Plan Review, 60% is Inspection)

A. Erosion control with a building permit:

\$0 to \$25,000	\$41.25
\$25,001 to \$50,000	\$57.75
\$50,001 to \$100,000	\$82.50
\$100,001 and above	\$82.50 plus \$52.80 per \$100,000 or the fraction thereof exceeding the first \$100,000

B. Erosion Control with no building permit (part of a Site Development or ROW permit):

0 to 1 acre	\$165.00
Over 1 acre	\$165.00 plus \$41.25/acre or fraction exceeding the first acre

AGENDA BILL

**Beaverton City Council
Beaverton, Oregon**

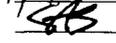
SUBJECT: An Ordinance Adopting TA 2005-0003 to Amend Development Code Chapter 20 and 90 (Self Storage Text Amendment)

FOR AGENDA OF: 06-06-05 **BILL NO:** 05107

Mayor's Approval: 

DEPARTMENT OF ORIGIN: CDD 

DATE SUBMITTED: 05-16-05

CLEARANCES: City Attorney 
Dev. Serv. 

PROCEEDING: First Reading

- EXHIBITS:**
1. Ordinance
 2. Land Use Order No. 1791
 3. Draft PC Minutes
 4. Proposed Text Amendment
 5. Staff Report dated 04-13-05

BUDGET IMPACT

EXPENDITURE REQUIRED \$0	AMOUNT BUDGETED \$0	APPROPRIATION REQUIRED \$0
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HISTORICAL PERSPECTIVE:

On April 20, 2005, the Planning Commission held a public hearing to consider TA 2005-0003 to update Development Code Chapter 20 and Chapter 90 (Self Storage Text Amendment) to allow "self storage facilities" in the General Commercial (GC) land use district. For consistency, Chapter 20 will also be amended to identify all uses currently described as "mini storage" as "self storage facilities." The term "mini storage" is an outdated term no longer used in the storage industry. In addition, the amendment will include an amendment to Chapter 90 for the addition of a definition for the term "self storage facilities."

Following the close of the public hearing on April 20, 2005, the Planning Commission voted 6-0 (Barnard absent) to recommend approval of the proposed text amendment to Chapter 20 and Chapter 90, as memorialized in Land Use Order No. 1791.

INFORMATION FOR CONSIDERATION:

Attached to this Agenda Bill are Land Use Order No. 1791, the recommended text, the draft Planning Commission meeting minutes, and the staff report.

RECOMMENDED ACTION:

Staff recommend the City Council approve the recommendation of the Planning Commission for TA 2005-0003 (Self Storage Text Amendment) as set forth in Land Use Order No. 1791. Staff further recommends the Council conduct a First Reading of the attached ordinance.

ORDINANCE NO. 4354

AN ORDINANCE AMENDING ORDINANCE NO. 2050,
THE DEVELOPMENT CODE, CHAPTER 20 (LAND USE)
AND CHAPTER 90 (DEFINITIONS); TA 2005-0003 (Self
Storage Text Amendment)

WHEREAS, the Beaverton Community Development Department has proposed a text amendment to: Development Code Chapter 20 and Chapter 90 to allow "self storage facilities" in the General Commercial (GC) land use district. For consistency, Chapter 20 will also be amended to identify all uses currently described as "mini storage" as "self storage facilities". In addition, the amendment will include an amendment to Chapter 90 for the addition of a definition for the term "self storage".

WHEREAS, pursuant to Section 50.50.2-4 of the Development Code, the Beaverton Community Development Department conducted required public noticing for the Text Amendment application; and,

WHEREAS, pursuant to Section 50.50.5 of the Development Code, the Beaverton Community Development Department, on April 13, 2005, published a written staff report and recommendation a minimum of seven (7) calendar days in advance of the scheduled public hearing before the Planning Commission on April 20, 2005; and,

WHEREAS, on April 20, 2005, the Planning Commission conducted a public hearing for TA 2005-0003 (Self Storage Text Amendment) at the conclusion of which the Planning Commission voted to recommend the Beaverton City Council adopt the proposed amendments to the Development Code as summarized in Planning Commission Land Use Order No. 1791; and,

WHEREAS, no written appeal pursuant to Section 50.75 of the Development Code was filed by persons of record for TA 2005-0003 (Self Storage Text Amendment) following the issuance of the Planning Commission Land Use Order No. 1791; and,

WHEREAS, in accordance with City Council Rules of Procedure, the Council conducted a first reading of the ordinance on June 6, 2005; and,

WHEREAS, specific to the proposed amendments to Chapter 20 and Chapter 90 of the Development Code as summarized in Planning Commission Land Use Order No. 1791, the Council adopts as to facts and findings for this Ordinance the materials described in Land Use Order No. 1791 dated April 27, 2005, all of which the Council incorporates by their reference herein and finds constitute an adequate factual basis for this Ordinance; now, therefore,

THE CITY OF BEAVERTON ORDAINS AS FOLLOWS:

Section 1. Ordinance No. 2050, effective through Ordinance No. 4332, the Development Code, Chapter 20 (Land Uses), is amended as follows:

Section 1: The Development Code, Ordinance No. 2050, Ordinance 4302, Chapter 20 District Standards and Uses, Sections 20.05.35.2.B.3, 20.05.40.2.B.2, 20.15.10.2.B.9, 20.15.15.2.A.18, 20.20.05.2.C.11, 20.20.10.2.C.12, 20.20.15.2.C.13, 20.20.20.2.B.C.14, 20.20.25.2.C.16, 20.20.25.2.C.17, 20.20.30.2.C.9, 20.20.35.2.C.13, 20.20.40.2.C.13, 20.20.43.2.B.16, 20.20.45.2.C.12, and 20.20.47.2.C.12 will be amended to read as follows:

X. Self Storage Facilities

An insertion to Section 20.10.15.2.A will be added to read as follows:

20. Self Storage Facilities

Section 2: The Development Code, Ordinance No. 2050, Ordinance 4302, Chapter 90 Definitions, will be amended to read as follows:

Self Storage Facilities. A business that provides individual storage spaces for customers to store personal or business goods. This term is often used synonymously with “mini-storage” and “mini-warehouse”.

Section 2. Severance Clause.

The invalidity or lack of enforceability of any terms or provisions of this Ordinance or any appendix or part thereof shall not impair or otherwise affect in any manner the validity, enforceability or effect of the remaining terms of this Ordinance and appendices and said remaining terms and provisions shall be construed and enforced in such a manner as to effect the evident intent and purposes taken as a whole insofar as reasonably possible under all of the relevant circumstances and facts.

First reading this ___ day of _____, 2005.

Passed by the Council this ___ day of _____, 2005.

Approved by the Mayor this ___ day of _____, 2005.

ATTEST:

SUE NELSON, City Recorder

APPROVED:

ROB DRAKE, Mayor

**BEFORE THE PLANNING
COMMISSION FOR THE CITY OF
BEAVERTON, OREGON**

After recording return to:
City of Beaverton, City Recorder:
4755 SW Griffith Drive
P.O. Box 4755
Beaverton, OR 97076

IN THE MATTER OF A REQUEST TO)	ORDER NO.1791
AMEND BEAVERTON DEVELOPMENT)	TA2005-0003 RECOMMENDING APPROVAL
CODE (CHAPTER 20 AND CHAPTER 90)	OF SELF STORAGE TEXT AMENDMENT.
SELF STORAGE FACILITIES). CITY OF)	
BEAVERTON, APPLICANT.)	
)	

The matter of TA2005-0003 (Self Storage Text Amendment) was initiated by the City of Beaverton, through the submittal of a text amendment application to the Beaverton Community Development Department.

Pursuant to Ordinance 2050 (Development Code), effective through Ordinance 4332, Section 50.50 (Type 4 Application), the Planning Commission conducted a public hearing on April 20, 2005, and considered oral and written testimony and exhibits for the proposed amendment to the Beaverton Development Code.

TA2005-0003 proposes to allow "self storage facilities" as a permitted use in the General Commercial (GC) land use district. For consistency, Chapter 20 will also be amended to identify all uses currently described as "mini storage" as "self storage facilities". The term "self storage facility" is the current terminology within the self storage industry, which is more widely used particularly for newer facilities. In addition, the amendment will include an amendment to Chapter 90 for the addition of a definition for the term "self storage".

The Planning Commission adopts by reference the April 20, 2005, report as to criteria contained in Section 40.85.15.1.C.1-7 applicable to this request and the supplemental findings contained herein; now, therefore:

IT IS HEREBY ORDERED that pursuant to Section 50.50.1 of the Beaverton Development Code, the Planning Commission **RECOMMENDS APPROVAL** TA2005-0003 (Self Storage Text Amendment). The Planning Commission finds that evidence has been provided demonstrating that all of the approval criteria specified in Section 40.85.15.1.C.1-7 are satisfied.

Motion **CARRIED** by the following vote:

AYES: Pogue, DeHarpport, Bliss, Maks, Winter, and Johansen.
NAYS: None.
ABSTAIN: None.
ABSENT: Barnard.

Dated this 27th day of April, 2005.

To appeal the decision of the Planning Commission, as articulated in Land Use Order No. 1791, an appeal must be filed on an Appeal form provided by the Director at the City of Beaverton Recorder's Office by no later than 5:00 p.m. on Monday, May 9, 2005.

PLANNING COMMISSION
FOR BEAVERTON, OREGON

ATTEST:

Liz Jones

LIZ JONES
Associate Planner

Steven A. Sparks

STEVEN A. SPARKS, AICP
Development Services Manager

APPROVED:

Eric H. Johansen

ERIC H. JOHANSEN
Chairman

PLANNING COMMISSION MINUTES

April 20, 2005

CALL TO ORDER:

Chairman Eric Johansen called the meeting to order at 6:30 p.m. in the Beaverton City Hall Council Chambers at 4755 SW Griffith Drive.

ROLL CALL:

Present were Chairman Eric Johansen, Planning Commissioners Gary Bliss, Dan Maks, Shannon Pogue, Alan DeHarpport, and Scott Winter. Planning Commissioner Bob Barnard was excused.

Development Services Manager Steve Sparks, AICP, Senior Planner Colin Cooper, AICP, Associate Planner Liz Jones, Assistant City Attorney Ted Naemura and Recording Secretary Sheila Martin represented staff.

The meeting was called to order by Chairman Johansen who presented the format for the meeting.

VISITORS:

Chairman Johansen asked if there were any visitors in the audience wishing to address the Commission on any non-agenda issue or item. There were none.

STAFF COMMUNICATION:

Staff indicated that there were no communications at this time.

NEW BUSINESS:

Chairman Johansen opened the Public Hearing and read the format for Public Hearings. There were no disqualifications of the Planning Commission members. No one in the audience challenged the right of any Commissioner to hear any of the agenda items, to participate in the hearing or requested that the hearing be postponed to a later date. He asked if there were any ex parte contact, conflict of interest or

1 disqualifications in any of the hearings on the agenda. There was no
2 response.

3
4 **PUBLIC HEARINGS:**

5
6 A. **TC-MU COMMERCIAL RESTRICTION**

7 1. TA2004-0012 – TEXT AMENDMENT

8 (*Request for continuance to May 25, 2005*)

9 Development Code Section 20.20.30, proposed by Gramor
10 Development, Inc., to add an exception to the existing standard that
11 restricts individual retail uses over 50,000 square feet located within a
12 Town-Center Multiple Use zone to those sites that are 3 acres or less
13 and bound on at least three sides by a private or public street. The
14 applicant proposes to allow a building footprint as large as 90,000
15 square feet on a site that is more than three net acres when 12 specific
16 site and building design standards are met.

17
18 On behalf of the applicant, Gramor Development, Inc., Mr. Steven
19 Abel, attorney, requested a continuance regarding the proposed text
20 amendment application. He pointed out that Gramor Development
21 will submit any additional materials for staff's review the week of May
22 9th, which will then be forwarded to the Commission one week before
23 the hearing.

24
25 Chairman Johansen questioned if there were any members in the
26 audience who wished to provide public testimony. There were none.

27
28 Commissioner DeHarpport **MOVED** and Commissioner Maks
29 **SECONDED** a motion to continue TA2004-0012 – TC-MU Commercial
30 Restriction to a date certain of May 25, 2005.

31
32 B. **SELF STORAGE TEXT AMENDMENT**

33 2. TA2005-0003 – TEXT AMENDMENT

34 The applicant proposes a Text Amendment to Chapter 20 of the
35 Development Code to allow “self storage facilities” in the General
36 Commercial (GC) land use district. For consistency, Chapter 20 will
37 also be amended to identify all uses currently described as “mini
38 storage” as “self storage”. The term “mini storage” is an outdated term
39 no longer used in the industry. In addition, the amendment will
40 include an amendment to Chapter 90 for the addition of a definition for
41 the term “self storage”.

42
43 Associate Planner Liz Jones presented the Staff Report and pointed
44 out that the applicant is requesting amendments to Chapter 20 of the

1 Development Code to add "self-storage facilities" as a permitted use
 2 within the R-1, R-2, and R-3.5 and General Commercial (GC) zoning
 3 districts. She noted that the proposed text amendment also includes a
 4 request to adopt a new definition in Chapter 90 for the term "self-
 5 storage facility". Concluding, she stated that staff has recommended
 6 approval for the proposed text amendment as a permitted use within
 7 the General Commercial (GC) land use district, and that staff does not
 8 recommend approval with regard to the Residential, R-1, R-2, and R-
 9 3.5 land use districts as adequate analysis had not been provided.

10
 11 **APPLICANT**

12
 13 **LANS STOUT**, planning consultant with *T.M. Rippey Consulting*
 14 *Engineers* representing the applicant, Shurgard Storage, had
 15 commended staff on a job well done with describing the nature of their
 16 proposal within the Staff Report. He made a point of clarification
 17 regarding the submitted narrative, noting that it had implied that the
 18 applicant was requesting that storage be allowed as a use by right in
 19 the residential zones, adding that they had proposed to use "self-
 20 storage" initially within the CS and TC zones, and dropped the
 21 proposal at the suggestion by staff. Concluding, he offered to respond
 22 to questions.

23
 24 Commissioner's Winter, Bliss, Pogue, DeHarpport, Maks and
 25 Chairman Johansen support the application as meeting the approval
 26 criteria.

27
 28 Commissioner Pogue **MOVED** and Commissioner DeHarpport
 29 **SECONDED** a motion to approve TA2005-0003 – Self Storage Text
 30 Amendment, based upon the testimony, reports and exhibits, and new
 31 evidence presented during the Public Hearings on the matter, and
 32 upon the background facts, findings, and conclusions found in the Staff
 33 Report dated April 20, 2005, as amended.

34
 35 Motion **CARRIED** by the following vote:

- 36
 37 **AYES:** Pogue, DeHarpport, Bliss, Maks, Winter, and
 38 Johansen.
 39 **NAYS:** None.
 40 **ABSTAIN:** None.
 41 **ABSENT:** Barnard.

42
 43
 44

1 **APPROVAL OF MINUTES:**

2

3 Minutes of the meeting of March 30, 2005, were submitted.
 4 Commissioner Maks **MOVED** and Commissioner Winter **SECONDED**
 5 a motion that the minutes be amended as written. Commissioner
 6 DeHarpport abstained.

7

8 Motion **CARRIED**, unanimously.

9

10 **MISCELLANEOUS BUSINESS:**

11

12 The meeting adjourned at 6:45 p.m.

13

14

15

CALENDAR

16

17

18 MAY 25 6:30 PM CONTINUANCE TA2004-0012
 19 TC-MU Commercial
 20 Restriction Text Amendment
 21 (Continued from 4/20/05)

22

23

24 CONTINUANCES CU2004-0025
 25 DR2004-0136
 26 LD2004-0047
 27 TP2004-0029
 28 Arbor Woods
 29 (Continued from 5/11/05)

30

31 JUN 1 6:30 PM PUBLIC HEARING CPA2005-0002
 32 Transportation Maps
 33 Amendment

34

35 JUN 15 6:30 PM CONTINUANCE TA2005-0002
 36 Beaverton Creek Station Area
 37 Text Amendment
 38 (Continued from 3/16/05)

Section 1: The Development Code, Ordinance No. 2050, Ordinance 4302, Chapter 20 District Standards and Uses, Sections 20.05.35.2.B.3, 20.05.40.2.B.2, 20.15.10.2.B.9, 20.15.15.2.A.18, 20.20.05.2.C.11, 20.20.10.2.C.12, 20.20.15.2.C.13, 20.20.20.2.B.C.14, 20.20.25.2.C.16, 20.20.25.2.C.17, 20.20.30.2.C.9, 20.20.35.2.C.13, 20.20.40.2.C.13, 20.20.43.2.B.16, 20.20.45.2.C.12, and 20.20.47.2.C.12 will be amended to read as follows:

X. Self Storage Facilities

An insertion to Section 20.10.15.2.A will be added to read as follows:

20. Self Storage Facilities

Section 2: The Development Code, Ordinance No. 2050, Ordinance 4302, Chapter 90 Definitions, will be amended to read as follows:

Self Storage Facilities. A business that provides individual storage spaces for customers to store personal or business goods. This term is often used synonymously with "mini-storage" and "mini-warehouse".



CITY of BEAVERTON

4755 S W Griffith Drive, P.O. Box 4755, Beaverton, OR 97076 General Information (503) 526-2222 V/TDD

CITY OF BEAVERTON STAFF REPORT AND RECOMMENDATION

TO: Planning Commission

STAFF REPORT DATE: Wednesday, April 13, 2005

STAFF: Liz Jones, Associate Planner *lj cc*

SUBJECT: TA 2005-0003 (Self Storage Text Amendment)

REQUEST: The applicant proposes a Text Amendment to Chapter 20 of the Development Code to allow "self storage facilities" in the General Commercial (GC) land use district. For consistency, Chapter 20 will also be amended to identify all uses currently described as "mini storage" as "self storage". The term "mini storage" is an outdated term no longer used in the industry. In addition, the amendment will include an amendment to Chapter 90 for the addition of a definition for the term "self storage".

APPLICANT: City of Beaverton - Development Services Division

AUTHORIZATION: Ordinance 2050 (Development Code), effective through Ordinance 4332)

APPLICABLE CRITERIA: Section 40.85.15.1.C.1-7 (Text Amendment Approval Criteria)

HEARING DATE: Wednesday, April 20, 2005

RECOMMENDATION: Staff recommend APPROVAL of text amendment application TA 2005-0003 (Self Storage Text Amendment)

I. Proposed Legislative Text Amendment

The applicant proposes a Text Amendment to Chapter 20 of the Development Code to allow “self storage facilities” in the General Commercial (GC) and Residential R-1, R-2, and R-3.5 land use districts. For consistency, the applicant is also proposing Chapter 20 be amended to identify all uses currently described as “mini storage” and “storage facilities” as “self storage”. The term “self storage facility” is the current terminology within the self storage industry, which is more widely used particularly for newer facilities. The text amendment also includes the request to adopt a new definition in Chapter 90 for the term “self storage facility”.

As outlined in the proposed text amendment to this report staff has concluded that the applicant’s proposal to allow “self storage” as a permitted use within the General Commercial is consistent with the purpose statement of that zone and the other permitted and conditional uses within the GC zone. However, staff have concluded that expanding the existing permitted and conditional uses to allow “self storage” within the Residential R-1, R-2, and R-3.5 land use districts is not appropriate with significant additional study. Staff also find that the definition of self storage facility that proposes ancillary retail sales is unnecessary because the Development Code currently allows for accessory uses for a primary allowed business.

Currently there are 13 “self storage” facilities within the City that staff has identified. Six (6) are located within industrial zoning districts, five (5) are located within Multiple-Use zoning districts, and two (2) are located within the General Commercial zoning district.

The following table illustrates the proposed text amendments to Chapter 20, as it will affect various Code Sections, as necessary to provide consistency to the matter of storage type use categories. The table is for illustrative purposes and the actual proposed text amendment text is identified following the table.

CHAPTER 20 DISTRICT STANDARDS AND USES			
Zoning	Permitted	Conditional	Prohibited
Residential			
R-2		(20.05.35.2.B.3) Mini storage facilities housing storage only and no activities; and storage yards. (ORD 3522) Self Storage Facilities	
R-1		(20.05.40.2.B.2) Mini storage facilities housing storage only and no activities; and storage yards. (ORD 3522) Self Storage Facilities	

Zoning	Permitted	Conditional	Prohibited
Commercial			
GC	(20.10.15.2.20) Self Storage Facilities		
Industrial			
IP		(20.15.10.2.B.9) Mini-storage facilities (ORD 3177; June 1980) Self Storage Facilities	
LI	(20.15.15.2.A.18) Mini-storage Self Storage Facilities		
Multiple Use Districts			
SA-MU			(20.20.05.2.C.11) Mini-Storage Facilities Self Storage Facilities
SA-MDR			(20.20.10.2.C.12) Mini-Storage Facilities Self Storage Facilities
SC-MU			(20.20.15.2.C.13) Mini-Storage Facilities Self Storage Facilities
SC-HDR			(20.20.20.2.B.C.14) Mini-Storage facilities Self Storage Facilities
SC-E			(20.20.25.2.C.16 in Sub Areas 1 and 2) and (20.20.25.2.C.17 in Sub Area 3) Mini-Storage facilities Self Storage Facilities
TC-MU			(20.20.30.2.C.9) Mini-Storage Facilities Self Storage Facilities
TC-HDR			(20.20.35.2.C.13) Mini-Storage Facilities Self Storage Facilities
TC-MDR			(20.20.40.2.C.13) Mini-Storage Facilities Self Storage Facilities
RC-TO			(20.20.43.2.B) Storage Facilities Self Storage Facilities
RC-OT			(20.20.45.2.C.12) Storage Facilities Self Storage Facilities
RC-E			(20.20.47.2.C.12) Storage Facilities Self Storage Facilities

Section 1: The Development Code, Ordinance No. 2050, Ordinance 4302, Chapter 20 District Standards and Uses, Sections 20.05.35.2.B.3, 20.05.40.2.B.2, 20.15.10.2.B.9, 20.15.15.2.A.18, 20.20.05.2.C.11, 20.20.10.2.C.12, 20.20.15.2.C.13, 20.20.20.2.B.C.14, 20.20.25.2.C.16, 20.20.25.2.C.17, 20.20.30.2.C.9, 20.20.35.2.C.13, 20.20.40.2.C.13, 20.20.43.2.B.16, 20.20.45.2.C.12, and 20.20.47.2.C.12 will be amended to read as follows:

X. Self Storage Facilities

An insertion to Section 20.10.15.2.A will be added to read as follows:

20. Self Storage Facilities

Section 2: The Development Code, Ordinance No. 2050, Ordinance 4302, Chapter 90 Definitions, will be amended to read as follows:

Self Storage Facilities. A business that provides individual storage spaces for customers to store personal or business goods. This term is often used synonymously with “mini-storage” and “mini-warehouse”.

The proposed amendments to the Development Code text as shown above are attached in Exhibit 1.1.

II. Facts and Findings

Section 40.85.15.1.C of the Development Code specifies that in order to approve a Text Amendment application, the decision-making authority shall make findings of fact, based on evidence provided by the applicant, that all of the criteria specified in Section 40.85.15.1.C.1-7 are satisfied. The following are the findings of fact for TA 2005-0003 (Self Storage Text Amendment):

- 1. The proposal satisfies the threshold requirements for a Text Amendment application.**

Section 40.85.15.1.A specifies that an application for a text amendment shall be required when there is proposed any change to the Development Code, excluding changes to the zoning map. TA 2005-0003 (Self Storage Text Amendment) proposes to amend Chapter 20 and Chapter 90 of the Beaverton Development Code currently effective through Ordinance 4332 (January 2005).

Therefore, staff find that approval criterion 1 one has been met.

2. All City application fees related to the application under consideration by the decision-making authority have been submitted.

The applicant submitted the required fee of \$2,115.00 for a Text Amendment application on February 2, 2005.

Therefore, staff find that approval criterion 2 has been met.

3. The proposed text amendment is consistent with the provisions of the Metro Urban Growth Management Functional Plan.

Metro's Urban Growth Management Functional Plan is comprised of the following titles:

- Title 1: Requirements for Housing and Employment Accommodations
- Title 2: Regional Parking Policy
- Title 3: Water Quality and Flood Management Conservation
- Title 4: Retail in Employment and Industrial Areas
- Title 5: Neighbor Cities and Rural Reserves
- Title 6: Regional Accessibility
- Title 7: Affordable Housing
- Title 8: Compliance Procedures and
- Title 9: Performance Measures

TA 2005-0003 proposes to amend Development Code Chapter 20 and 90 to add a new permitted use for "Self Storage Facilities" to the GC district and to update text references to "Mini Storage Facilities" to read "Self Storage Facilities". The applicant also proposes to add a definition to Chapter 90 for "Self Storage Facilities". With the exception of the added permitted use to the GC district, the proposed text changes are to provide clarity and consistency to the Development Code. The proposed text amendment will not have any negative impact on the City's ability to achieve the job targets as required by Title 1, and in fact may lessen pressure on limited industrial land by increasing opportunities within the General Commercial zoning district.

Therefore, staff finds that approval criterion 3 has been met.

4. The proposed text amendment is consistent with the City's Comprehensive Plan.

The following policies apply to the text amendment as it relates to the proposed addition of "storage facilities" to be a permitted use in the GC district.

- 3.10.1 a) *Regulate new development in Corridors to provide a mix of commercial and residential uses with pedestrian amenities.*
- 3.10.1.b) *Apply the Corridor land use designation consistent with the Metro 2040 Regional Urban Growth Concept Map.*
- 3.10.1.c) *Apply zoning districts as shown in subsection 3.14 Comprehensive Plan and Zoning District Matrix.*
- 3.10.1.d) *The community shall endeavor to improve the appearance of commercial areas.*
- 3.10.1.e) *Commercial facilities shall be allocated in a reasonable amount and in a planned relationship to the people they will serve.*

Through the City's application of GC zoning designation on Corridor designated property, the Comprehensive Plan has been appropriately implemented. The applicant proposes to increase the uses outright permitted in the GC zone to provide for the addition of "storage facilities", which is a commercial use not currently permitted in the district. The proposed "storage facilities" use will provide greater flexibility for commercial business uses to establish themselves in the GC district and through the increase of options for properties, will provide the opportunity to locate storage facilities in closer proximity to the people they serve. The specific design and functionality, including pedestrian amenities and appearance of new storage facilities within the GC district will be reviewed at the time of future land use applications.

Therefore, staff finds that approval criterion 4 has been met.

5. The proposed text amendment is consistent with other provisions within the City's Development Code.

The proposed amendments do not create impacts or conflicts with other provisions within the Development Code. This text amendment proposes substantially similar language for storage facilities within Chapter 20 and proposes to add a permitted use to the GC district. The GC district is intended purpose is to provide an area for businesses that require extensive outdoor storage and/or display of merchandise, equipment or inventory. While storage facilities can differ, they are a business that in some cases, contain outdoor storage components. Therefore, staff find the

proposed use will be consistent with the purpose of the zone and will be consistent with other provisions of the Development Code.

Therefore, staff finds that approval criterion 5 has been met.

6. The proposed amendment is consistent with all applicable City ordinance requirements and regulations.

The current Development Code and Ordinance No. 4187, which adopted the current Comprehensive Plan, are applicable to the proposed text amendment and are addressed in the findings of fact for approval criterion four and five. Staff did not identify any other applicable City ordinance requirements and regulations that would be affected by or would conflict with the proposed text amendments.

Therefore, staff finds that approval criterion 6 has been met.

7. Applications and documents related to the request, which will require further City approval, shall be submitted to the City in the proper sequence.

Staff have determined that there are no other applications and documents related to the request that will require further City approval.

Therefore, staff finds that approval criterion 6 has been met.

III. Conformance with Statewide Planning Goals

Because the proposal is for a text amendment to the Development Code, a demonstration of compliance with the Statewide Planning Goals is not required. ORS 197.225 requires that Statewide Planning Goals only be addressed for Comprehensive Plan Amendments. Nevertheless, the Statewide Planning Goals are useful to support the City's position on the proposed amendments. The proposed text amendment's conformance to relevant Statewide Planning Goals is briefly discussed below:

GOAL ONE - CITIZEN INVOLVEMENT

To develop a citizen involvement program that insures the opportunity for citizens to be involved in all phases of the planning process.

The City is in compliance with this Statewide Planning Goal through the establishment of a Committee for Citizen Involvement (CCI). The City has gone even further by establishing Neighborhood Association Committees (NACs) for the purpose of providing widespread citizen involvement, and distribution of

information. The proposed text amendments to the Development Code will not change the City of Beaverton's commitment to providing opportunity for citizen involvement, or place the City out of compliance with Statewide Planning Goal One.

GOAL TWO - LAND USE PLANNING

To establish a land use planning process and policy framework as a basis for all decisions and actions related to use of land and to assure an adequate factual base for such decisions and actions.

The City of Beaverton has adopted a Comprehensive Plan that includes text and maps (Ordinance 1800, and most recently amended by Ordinance 4187) along with implementation measures such as the Development Code (Ordinance 2050, effective through Ordinance No. 4332). These land use planning processes and policy framework form the basis for decisions and actions, such as the subject text amendment proposal. The proposed Development Code amendment has been processed in accordance with Section 40.85 (Text Amendment) and Section 50.50 (Type 4 Application) of the Development Code. Section 40.85 contains specific approval criteria for the decision-making authority to apply during its consideration of the text amendment application. Section 50.50 (Type 4 Application) specifies the minimum required public notice procedures to insure public input into the decision-making process. The City of Beaverton's Comprehensive Plan is consistent with Statewide Planning Goal 2.

IV. Conclusion and Staff Recommendation

Based on the facts and findings presented, staff conclude that the proposed amendment to the Development Code is consistent with all the text amendment approval criteria of Section 40.85.15.1.C.1-7. Therefore, staff recommend the Planning Commission **APPROVE** TA 2005-0003 (Self Storage Text Amendment) at the April 20, 2005 regular Commission hearing.

V. Exhibits

Exhibit 1.1 Proposed Text Amendment

Exhibit 1.2 Facilities Review Committee Technical Review and Recommendations

Section 1: The Development Code, Ordinance No. 2050, Ordinance 4302, Chapter 20 District Standards and Uses, Sections 20.05.35.2.B.3, 20.05.40.2.B.2, 20.15.10.2.B.9, 20.15.15.2.A.18, 20.20.05.2.C.11, 20.20.10.2.C.12, 20.20.15.2.C.13, 20.20.20.2.B.C.14, 20.20.25.2.C.16, 20.20.25.2.C.17, 20.20.30.2.C.9, 20.20.35.2.C.13, 20.20.40.2.C.13, 20.20.43.2.B.16, 20.20.45.2.C.12, and 20.20.47.2.C.12 will be amended to read as follows:

X. **Self Storage Facilities**

An insertion to Section 20.10.15.2.A will be added to read as follows:

20. Self Storage Facilities

Section 2: The Development Code, Ordinance No. 2050, Ordinance 4302, Chapter 90 Definitions, will be amended to read as follows:

Self Storage Facilities. A business that provides individual storage spaces for customers to store personal or business goods. This term is often used synonymously with “mini-storage” and “mini-warehouse”.

**FACILITIES REVIEW COMMITTEE
TECHNICAL REVIEW AND RECOMMENDATIONS**

Major Issues

No issues identified.

Section 40.03 Facilities Review Committee:

The Facilities Review Committee has conducted a technical review of the application, in accordance with the criteria contained in Section 40.03 of the Development Code. The Committee's findings and recommended conditions of approval are provided to the decision-making authority. As they will appear in the Planning Commission Decision and Order, the Facilities Review Conditions may be re-numbered and placed in different order.

The decision-making authority will determine whether the application as presented meets the Facilities Review approval criteria for the subject application and may choose to adopt, not adopt, or modify the Committee's findings, below.

The Facilities Review Committee Criteria for Approval will be reviewed for all criteria that are applicable to the Text Amendment application as identified below:

- The Text Amendment application, TA2005-0003, only is applicable to criterion #11.
 1. *All critical facilities and services related to the development have, or can be improved to have, adequate capacity to serve the proposal at the time of its completion.*
 2. *Essential facilities and services are available or can be made available prior to occupancy of the development. In lieu of providing essential facilities and services, a specific plan strategy may be submitted that demonstrates how these facilities, services, or both will be provided within five years of occupancy.*
 3. *The proposal is consistent with all applicable provisions of Chapter 20 (Land Uses) unless the applicable provisions are subject to an Adjustment, Planned Unit Development, or Variance which shall be already approved or considered*

concurrently with the subject proposal.

4. *The proposal is consistent with all applicable provisions of Chapter 60 (Special Regulations) and that all improvements, dedications, or both required by the applicable provisions of Chapter 60 (Special Regulations) are provided or can be provided in rough proportion to the identified impact(s) of the proposal.*
5. *Adequate means are provided or can be provided to ensure continued periodic maintenance and necessary normal replacement of the following private common facilities and areas: drainage ditches, roads and other improved rights-of-way, structures, recreation facilities, landscaping, fill and excavation areas, screening and fencing, ground cover, garbage and recycling storage areas and other facilities, not subject to periodic maintenance by the City or other public agency;*
6. *There are safe and efficient vehicular and pedestrian circulation patterns within the boundaries of the site.*
7. *The on-site vehicular and pedestrian circulation system connects to the surrounding circulation system in a safe, efficient, and direct manner.*
8. *Structures and public facilities and services serving the site are designed in accordance with adopted City codes and standards at a level which will provide adequate fire protection, including, but not limited to, fire flow, and protection from crime and accident, as well as protection from hazardous conditions due to inadequate, substandard or ill-designed development;*
9. *Grading and contouring of the site is designed to accommodate the proposed use and to mitigate adverse effect(s) on neighboring properties, public right-of-way, surface drainage, water storage facilities, and the public storm drainage system.*
10. *That access and facilities for physically handicapped people are incorporated into the site and building design, with particular attention to providing continuous, uninterrupted access routes.*

Finding for Criteria 1-10:

Criteria 1-10 address the technical and physical aspects of development, which the Committee find are not applicable to the subject text amendment request to add “self-storage facility” as a permitted use in the GC district. The applicant is not proposing any physical development nor is proposing to alter the properties within the General Commercial (GC) zoning designation. The scope of the current text amendment application is limited to Development Code changes to add a permitted use to the GC zone and to amend all uses currently described as “mini storage” to the term “self-storage”. In addition, the applicant is proposing to amend Chapter 90 of the Development Code to insert a definition for the term “self-storage”. The new “self-storage” permitted use will apply to land in the GC district and existing buildings. Criteria 1-10 could be applicable and may be required to be addressed by future applicants at the time of future land use applications for new buildings or for proposed modifications to existing buildings and properties in the GC district. The applicant is not proposing to impact critical facilities or services, essential facilities, circulation, public facilities, or topography with this application. Therefore, the Committee finds criteria 1-10 are not applicable.

Therefore, the Committee find the proposal is not applicable to criteria for approval 1-10.

11. The proposal contains all applicable application submittal requirements as specified in Section 50.25.1 of the Development Code.

The applicant submitted the applications on January 31, 2005 and was deemed complete on February 23, 2005. In the review of the materials during the application review, the Committee find that all applicable application submittal requirements, identified in Section 50.25.1 are contained within this proposal.

Therefore, the Committee find the proposal meets the criterion for approval.

Recommendation By The Facilities Review Committee:

The Facilities Review Committee finds that the proposal complies with all the technical criteria. The Committee recommends that the decision-making authority in APPROVING the proposal with no specific conditions of approval associated with Facilities Review Committee technical review.

AGENDA BILL

**Beaverton City Council
Beaverton, Oregon**

SUBJECT: An Ordinance Annexing One Parcel
Located at 7185 SW Oleson Road to the
City of Beaverton: Annexation 2005-0004

FOR AGENDA OF: 06/06/05 **BILL NO:** 05108

Mayor's Approval: *[Signature]*

DEPARTMENT OF ORIGIN: CDD *[Signature]*

DATE SUBMITTED: 5/23/05

CLEARANCES: City Attorney *[Signature]*
Planning Services *[Signature]*

PROCEEDING: First Reading

EXHIBITS: Ordinance
Exhibit A - Map
Exhibit B - Legal Description
Exhibit C - Staff Report

BUDGET IMPACT

EXPENDITURE REQUIRED \$0	AMOUNT BUDGETED \$0	APPROPRIATION REQUIRED \$0
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HISTORICAL PERSPECTIVE:

This request is to annex one tax parcel located at 7185 SW Oleson Road to the City of Beaverton. The property is approximately 0.95 acres and is developed with a single family house. The property owner has consented to the annexation. This consent allows this to be processed as an expedited annexation under ORS 222.125 and Metro Code 3.09.045 and no public hearing is required.

INFORMATION FOR CONSIDERATION:

This ordinance and the staff report address the criteria for annexation in Metro Code Chapter 3.09.

Beaverton Code Section 9.06.035A provides the City Council the option of adding property to an appropriate Neighborhood Association Committee (NAC) area at the time of annexation. This parcel is not currently within a NAC. The Neighborhood Office is recommending that this parcel not be added to a NAC at this time.

Staff recommends that the City Council adopt an ordinance annexing the referenced property, effective 30 days after Council approval and the Mayor's signature on this ordinance or the date the ordinance is filed with the Secretary of State as specified by ORS 222.180, which ever is later.

RECOMMENDED ACTION:

First Reading

ORDINANCE NO. 4355

AN ORDINANCE ANNEXING ONE PARCEL, LOCATED AT 7185
SW OLESON ROAD, TO THE CITY OF BEAVERTON:
ANNEXATION 2005-0004

- WHEREAS,** This expedited annexation was initiated under authority of ORS 222.125, whereby the owner of the property, with no electors, has consented to annexation; and
- WHEREAS,** This property is in Beaverton's Assumed Urban Services Area and Policy 5.3.1.d of the City's acknowledged Comprehensive Plan states: "The City shall seek to eventually incorporate its entire Urban Services Area."; and
- WHEREAS,** This property is in area "A" as set forth in the "Beaverton-Washington County Intergovernmental Agreement Interim Urban Service Plan" and, as prescribed by the agreement, the Washington County Board of Commissioners has agreed not to oppose annexations in area "A"; and
- WHEREAS,** Council Resolution No. 3785 sets forth annexation policies for the City and this action implements those policies; now, therefore,

THE CITY OF BEAVERTON ORDAINS AS FOLLOWS:

- Section 1.** The properties shown on Exhibit A and more particularly described in Exhibit B are hereby annexed to the City of Beaverton, effective 30 days after Council approval and signature by the Mayor.
- Section 2.** The Council accepts the staff report attached hereto as Exhibit C, and finds that:
- a. This annexation is consistent with provisions in the agreement between the City and the Tualatin Valley Water District adopted pursuant to ORS 195.065 that are directly applicable to this annexation; and
 - b. This annexation is consistent with the City-Agency agreement between the City and Clean Water Services.
- Section 3.** The Council finds this annexation will promote and not interfere with the timely, orderly, and economic provision of public facilities and services, in that:
- a. The properties will be withdrawn from the Washington County Urban Road Maintenance District and the Washington County Enhanced Sheriff Patrol District ; and
 - b. The properties that lie within the Washington County Street Lighting District #1, if any, will be withdrawn from the district; and
 - c. The City having annexed into the Tualatin Valley Fire and Rescue District in 1995, the properties to be annexed by this Ordinance shall remain within that district; and
 - d. The territory will remain within the boundaries of the Tualatin Valley Water District.

Section 4. The Council finds that this annexation complies with all other applicable criteria set out in Metro Code Chapter 3.09 as demonstrated in the staff report attached as Exhibit C.

Section 5. The City Recorder shall place a certified copy of this Ordinance in the City's permanent records, and the Community Development Department shall forward a certified copy of this Ordinance to Metro and all necessary parties within five working days of adoption.

Section 6. The Community Development Department shall transmit copies of this Ordinance and all other required materials to all public utilities and telecommunications utilities affected by this Ordinance in accordance with ORS 222.005.

First Reading _____
Date

Second Reading and Passed _____
Date

Approved by the Mayor _____
Date

ATTEST:

APPROVED:

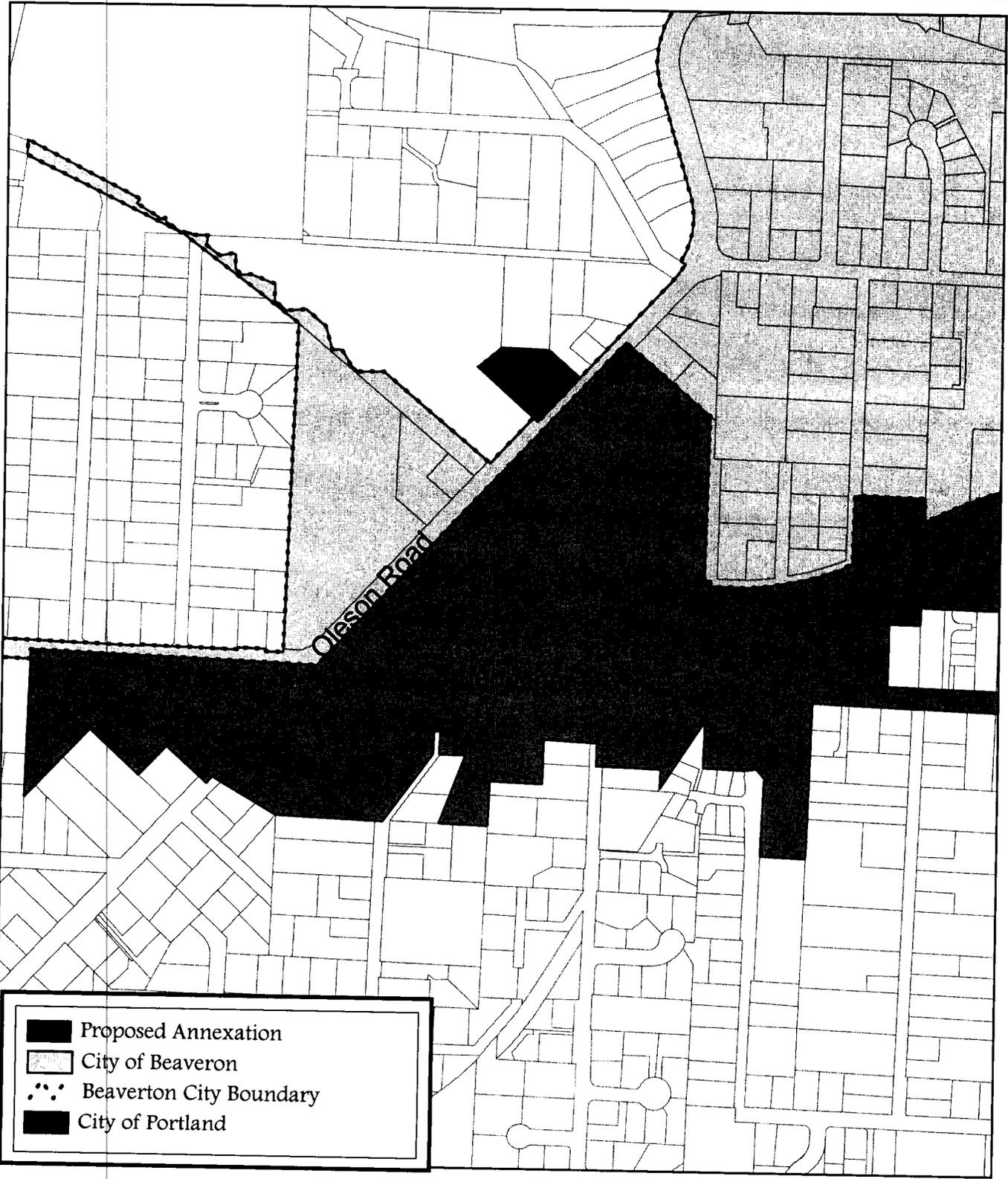
SUE NELSON, City Recorder

ROB DRAKE, Mayor

VICINITY MAP

Ordinance No. 4355

EXHIBIT "A"



CITY OF BEAVERTON

7185 Oleson Rd Expedited Annexation

COMMUNITY DEVELOPMENT DEPARTMENT

Planning Services Division

5/16/05
Map #
1s124DB01900



Application #
ANX 2005-0004

ANNEXATION
City of Beaverton
ANX 2005-0004

That tract of land described in Fee Number 2004-148577 of Washington County, Oregon Deed Records. Said tract of land being more particularly described as follows:

A portion of Lots 10 and 11, GARDEN HOME, in the County of Washington and the State of Oregon, described as follows:

BEGINNING at a point on a line 480 feet Easterly from and parallel with a line running Northerly and Southerly through the center of Section 24, Township 1 South, Range 1 West, of the Willamette Meridian, in the County of Washington and the State of Oregon, which point is 287.5 feet Southerly from a line running Easterly and Westerly through the center of said section; running thence Southeasterly by an angle with said Easterly and Westerly center line $37^{\circ}27'$ (South $52^{\circ}00'$ East) 368.2 feet to the Northwestern side of the road; thence Northeasterly along said line of said county road 186.3 feet; thence Northwesternly 134 feet to a point 305.9 feet Easterly from the point of beginning; thence Westerly on a line 287.5 feet Southerly from and parallel with said line; running Easterly and Westerly through the center of said section 305.9 feet to the place of beginning.

EXCEPT the portion thereof described as being the most Westerly corner of said tract; thence South 52° East 100 feet; thence North $45^{\circ}9'$ East 94.13 feet; thence West 150 feet to the place of beginning.



CITY of BEAVERTON

4755 S.W. Griffith Drive, P.O. Box 4755, Beaverton, OR 97076 General Information (503) 526-2222 V/TDD

STAFF REPORT

TO: City Council

REPORT DATE: May 10, 2005

AGENDA

DATE: June 6, 2005

FROM: Community Development Department
Alan Whitworth, Senior Planner *Alan*

SUBJECT: 7185 SW Oleson Road Expedited Annexation (ANX 2005-0004)

ACTIONS: Annexation to the City of Beaverton of one parcel located at 7185 SW Oleson Road. The property is shown on the attached map, identified as tax lot 1S124DB 01900, and more particularly described by the attached legal description. The annexation of the property is owner initiated (petition attached) and is being processed as an expedited annexation under ORS 222.125 and Metro Code 3.09.045.

NAC: This property is not currently within a Neighborhood Association Committee (NAC). The Neighborhood Office is recommending that this property not be added to a NAC at this time.

AREA: Approximately 0.95 acres

TAXABLE BM 50 ASSESSED VALUE: \$ 146,830

ASSESSOR'S REAL MARKET VALUE: \$ 283,290

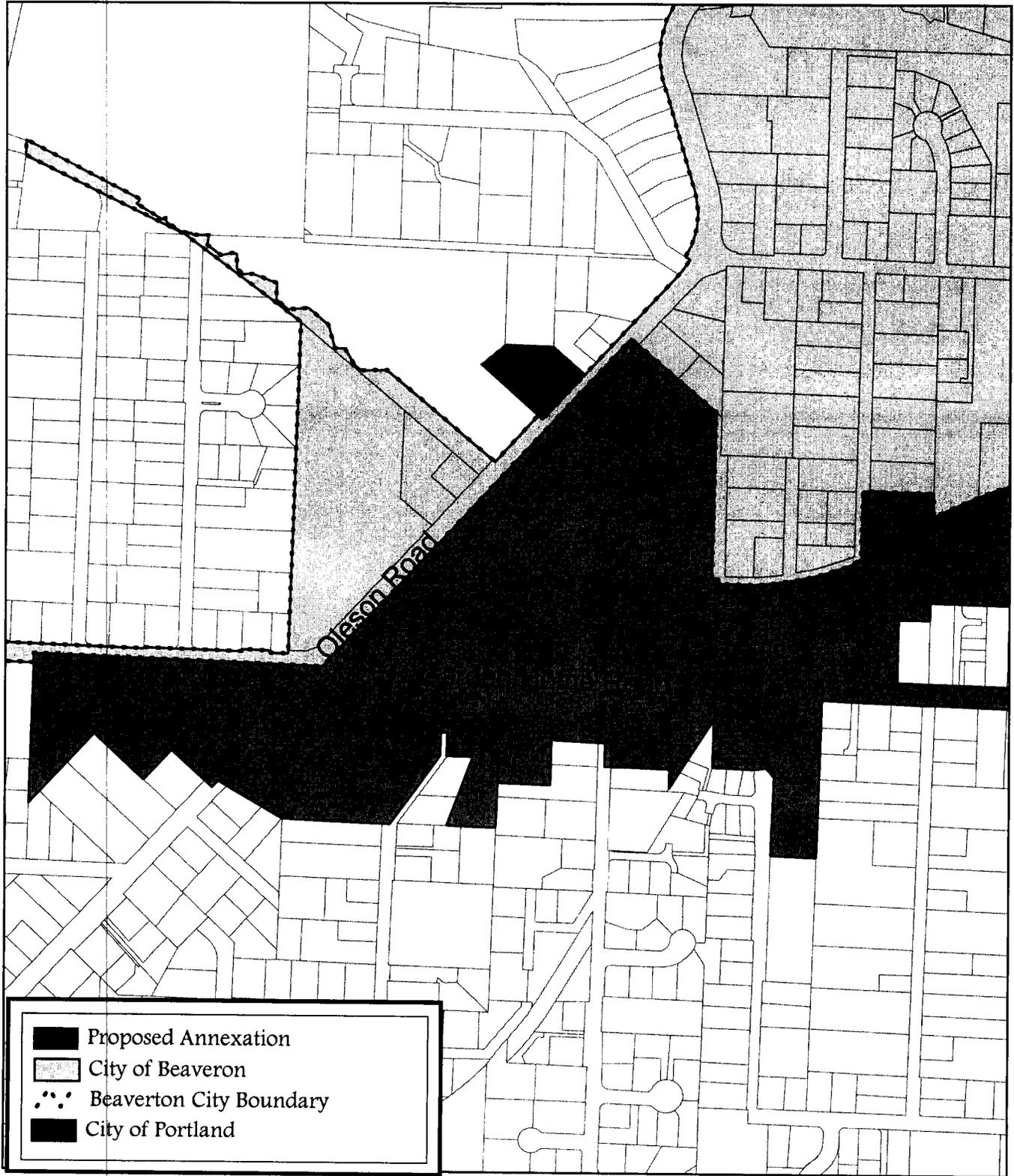
NUMBER OF LOTS: 1

EXISTING COUNTY ZONE: Residential - 5 units to the acre

RECOMMENDATION

Staff recommends the City Council adopt an ordinance annexing the referenced property, effective thirty days after the Mayor's signature or the date the ordinance is filed with the Secretary of State as specified by ORS 222.180, which ever is later.

VICINITY MAP



-  Proposed Annexation
-  City of Beaverton
-  Beaverton City Boundary
-  City of Portland



CITY OF BEAVERTON

7185 Oleson Rd Expedited Annexation

COMMUNITY DEVELOPMENT DEPARTMENT

Planning Services Division

5/16/05

Map #
1s124DB01900

N



Application #
ANX 2005-0004

BACKGROUND

The request is to annex one tax parcel located at 7185 SW Oleson Road. The parcel is approximately 0.95 acres and is occupied by a single-family house. The property owner has consented to the annexation. This consent allows this to be processed as an expedited annexation under ORS 222.125 and Metro Code 3.09.045 and no public hearing is required.

The Neighborhood Office is recommending that this property not be added to a Neighborhood Association Committee at this time. The Neighborhood Program Manager has informed staff, however, that the City is working with city residents in the area to form a new NAC, which would include this property. It is anticipated the new NAC will be established this fall.

In December, the City and Washington County entered into an Intergovernmental Agreement that established an area "A", in which the City could proceed with annexations without County consent, and an area "B", in which the City would need to obtain County consent to proceed with annexation. This proposed annexation is in area "A".

EXISTING CONDITIONS

SERVICE PROVISION:

The following analysis details the various services available to the property to be annexed. Cooperative, urban service and intergovernmental agreements affecting provision of service to the subject property are:

- The City has entered into ORS Chapter 195 cooperative agreements with Washington County, Tualatin Valley Fire and Rescue District, Tualatin Hills Parks and Recreation District, Tualatin Valley Water District and Clean Water Services.
- The City has entered into an agreement with Tualatin Valley Water District that has been designated an ORS 195.065 Urban Service Agreement by the parties. (No other ORS Chapter 195 Urban Service Agreements have been executed that would affect this decision.)
- The City has entered into an ORS Chapter 190 intergovernmental agreement with Clean Water Services.
- The City has been a party to a series of ORS Chapter 190 intergovernmental agreements "for Mutual Aid, Mutual Assistance, and Interagency Cooperation Among Law Enforcement Agencies Located in Washington County, Oregon", the last of which was signed by Beaverton Mayor Rob Drake on August 9, 2004. This agreement specifies the terms under which a law enforcement agency may provide assistance in response to an emergency

situation outside its jurisdiction when requested by another law enforcement agency.

- On December 22, 2004 the City entered into an intergovernmental agreement with Washington County defining areas that the City may annex for ten years from the date of the agreement without opposition by the County. The property proposed for annexation by this application is included in the areas the City may annex without County opposition.

This action is consistent with those agreements.

POLICE: The property to be annexed currently receives police protection from the Washington County Enhanced Sheriff's Patrol District (ESPD). The property will be withdrawn from the ESPD and the City will provide police service upon annexation. In practice whichever law enforcement agency is able to respond first, to an emergency, does so in accordance with the mutual aid agreement described above.

FIRE: Tualatin Valley Fire & Rescue (TVF&R) provides fire and ambulance service to the property. The City annexed its own fire services to TVF&R in 1995. TVF&R is designated as the long-term service provider to this area.

SEWER: There currently is an 8-inch sanitary sewer line in SW Oleson Road that is available to serve this property. Upon annexation the City will be responsible for billing.

WATER: Tualatin Valley Water District (TVWD) provides water service to the area. ORS 222.520 allows cities to assume water service responsibilities when annexing less than an entire district. However, the City entered into an intergovernmental agreement with TVWD in 2002 that we would not withdraw property from the District when we annex it. TVWD will continue to provide service, maintenance and perform billing.

STORM WATER DRAINAGE: The property is currently going through the development process with Washington County and storm drainage will be reviewed as part of that process. Upon annexation, billing responsibility will transfer to the City.

STREETS and ROADS: Access to this property is via SW Oleson road, which is a County maintained arterial road.

PARKS and SCHOOLS:

The proposed annexation is within both the Beaverton School District and the Tualatin Hills Parks and Recreation District. Neither services nor district boundaries associated with these districts will be affected by the proposed annexation.

PLANNING, ZONING and BUILDING:

Washington County currently provides long-range planning, development review and building inspection for the property. Upon annexation, the City will provide those services. Pursuant to the Urban Planning Area Agreement (UPAA) between the City and County, City Comprehensive Plan and Zoning Designations should be applied to this parcel in a separate action within six months of annexation.

PUBLIC INVOLVEMENT

Consistent with Metro Code Section 3.09.045, the City will send notice of the proposed annexation on or before May 17, 2005 (20 days prior to the agenda date) to all necessary parties including Washington County, Metro, affected special districts and County service districts. Additionally, the City sent notice to the following parties:

- Gail Oldham, President, Evergreen Pacific Development Inc., 9117 SW Burnham Road, Tigard, OR, 97223, the property owner;
- Trisha Clark, Blue Sky Planning, Inc., 8835 SW Canyon Lane, # 302, Portland, OR, 97225, the listed contact person; and,
- The Raleigh West Neighborhood Association Committee and the West Slope/Raleigh Hills/Garden Home Citizen Participation Organization; interested parties as set forth in City Code Section 9.06.035.

The notice and a copy of this staff report will be posted on the City’s web page.

CRITERIA FOR APPROVAL

REGIONAL ANNEXATION CRITERIA:

In December 1998 the Metro Council adopted Metro Code Chapter 3.09 (Local Government Boundary Changes). Metro Code Section 3.09.050 includes the following minimum criteria for annexation decisions:

3.09.050 (d) An approving entity’s final decision on a boundary change shall include findings and conclusions addressing the following criteria:

(1) Consistency with directly applicable provisions in an urban services provider agreement or annexation plan adopted pursuant to ORS 195.065;

Findings: This staff report addresses the provision of services in detail and the provision of these services is consistent with cooperative agreements between Beaverton and the service providers. The City has not yet entered into an urban services provider agreement under ORS 195.065 that relates to all potential urban service providers in and around the city, although discussion with other urban services providers on the content of an agreement have occurred sporadically over the last several years, and the City has proposed an agreement that is acceptable to most of the parties. Because a comprehensive urban service agreement has not been completed, it is not possible to consider adoption of an annexation plan. The City has entered into one agreement that has been designated an ORS 195.065 Urban Service Agreement with Tualatin Valley Water District and this proposed action is consistent with that agreement, as explained in the findings above under existing conditions relating to water service .

As previously noted, On December 22, 2004 the City entered into an intergovernmental agreement with Washington County, titled the "Beaverton-Washington County Intergovernmental Agreement Interim Urban Services Plan" defining areas that the City may annex for ten years from the date of the agreement without opposition by the County, and referencing ORS 195.065(1). The property proposed for annexation by this application is within the ten year annexation area. No other ORS Chapter 195 Urban Service Agreements have been executed that would affect this proposed annexation.

(2) Consistency with directly applicable provisions of urban planning or other agreements, other than agreements adopted pursuant to ORS 195.065, between the affected entity and a necessary party;

Findings: The City has entered into an ORS Chapter 190 intergovernmental agreement with Clean Water Services, which was updated as of July 1, 2004. Exhibit 'A' to the new agreement defines areas within the "Beaverton Area of Assigned Service Responsibility" where, subsequent to annexation, specified maintenance responsibilities for sanitary sewer lines under 24 inches in diameter and for certain storm drainage facilities and surface water management functions would transfer to the City of July 1 of any year if so requested by the City by January 1 of that year. This property is currently served by an 8-inch sanitary sewer line in Oleson Road, which is maintained by the City of Beaverton. No storm sewer lines are included as part of this annexation. The above mentioned agreement does not apply to this annexation.

The acknowledged Washington County – Beaverton Urban Planning Area Agreement (UPAA) does not contain provisions directly applicable to City decisions regarding annexation. The UPAA does address actions to be taken by the City after annexation, including annexation related Comprehensive Plan Land Use Map amendments and rezones. These actions will occur through a separate process.

(3) Consistency with specific directly applicable standards or criteria for boundary changes contained in comprehensive land use plans and public facilities plans;

Findings:

Comprehensive Plans: *The only relevant policy of the City of Beaverton’s Comprehensive Plan is Policy 5.3.1.d, which states “The City shall seek to eventually incorporate its entire Urban Services Area.” The subject territory is within Beaverton’s Assumed Urban Services Area, which is Figure V-1 of the City of Beaverton’s Acknowledged Comprehensive Plan.*

After reviewing the Washington County Comprehensive Framework Plan for the Urban Area on the County’s web site (reflecting changes through County Ordinance No. 598) as well as ordinances adopted subsequently up to the date of this staff report that amended the Comprehensive Framework Plan, staff finds that the following provisions may be applicable to this proposed annexation:

- *A paragraph in the “County-Wide Development Concept” at the beginning of the Comprehensive Framework Plan which states:*

As development occurs in accordance with this development concept, issues of annexation or incorporation may arise. Annexation or incorporation issues will necessarily relate to various other planning issues such as community identity, fiscal impacts of growth and service provision, coordination between service providers to achieve efficiencies and ensure availability, etc. As such issues arise; the County should evaluate community identity as an issue of equal importance with public service provision issues when developing policy positions on specific annexation or incorporation proposals.

Staff views this statement as direction to the County itself in how to evaluate annexation proposals, and not guidance to the City regarding this specific proposal. As a necessary party, the County has an opportunity to comment on and appeal this proposed boundary change if they believe the boundary change is inconsistent with the approval criteria (see Metro Code section 3.09).

- ***Policy 15 of the Comprehensive Framework Plan, relating to Roles and Responsibilities for Serving Growth, says:***

It is the policy of Washington County to work with service providers, including cities and special service districts, and Metro, to ensure that facilities and services required for growth will be provided when needed by the agency or agencies best able to do so in a cost effective and efficient manner.

Two implementing strategies under Policy 15 that relate to annexation state:

The County will:

- f. If appropriate in the future, enter into agreements with service providers which address one or more of the following:*
 - 3. Service district or city annexation*
- g. Not oppose proposed annexations to a city that are consistent with an urban service agreement or a voter approved annexation plan.*

The City of Beaverton, Washington County and the other urban service providers for the subject area have been working off and on for several years to arrive at an urban service area agreement for the Beaverton area pursuant to ORS 195.065 that would be consistent with Policy 15 and the cited implementing strategies. Unfortunately, although most issues have been resolved, a few issues remain between the County and the City that have prevented completion of the agreement. These issues do not relate to who provides services or whether they can be provided when needed in an efficient and cost effective manner so much as how the transfer of service provision responsibility occurs, particularly the potential transfer of employees and equipment from the County to the City. As previously noted the County and the City have entered into an intergovernmental agreement that sets an interim urban services plan area in which the County commits to not oppose annexations by the City.

Staff has reviewed other elements of the County Comprehensive Plan, particularly the Raleigh Hills-Garden Home Community Plan that includes the subject property, and was unable to identify any provision relating to this proposed annexation.

Public Facilities Plans: The City's public facilities plan consists of the Public Facilities and Services Element of the Comprehensive Plan, the Transportation Element of the Comprehensive Plan, the City's Capital Improvements Plan, and the most recent versions of master plans adopted by providers of the following facilities and services in the City: storm water drainage, potable water, sewerage conveyance and processing, parks and

recreation, schools and transportation. Where a service is provided by a jurisdiction other than the City, by adopting the master plan for that jurisdiction as part of its public facilities plan, the City has essentially agreed to abide by any provisions of that master plan. No relevant urban services as defined by Metro Code Section 3.09.020(m) will change subsequent to this annexation.

Staff could not identify any provisions in the Washington County Public Facilities Plan relevant to this proposed annexation.

- (4) Consistency with specific directly applicable standards or criteria for boundary changes contained in the Regional Framework Plan or any functional plan;

Findings: The Regional Framework Plan (which includes the RUGGOs and the Urban Growth Management Functional Plan) does not contain policies or criteria directly applicable to annexation decisions of this type.

- (5) Whether the proposed change will promote or not interfere with the timely, orderly and economic provisions of public facilities and services;

Findings: The Existing Conditions section of this staff report contains information addressing this criterion in detail. The proposed annexation will not interfere with the provision of public facilities and services. The provision of public facilities and services is prescribed by urban services provider agreements and the City's capital budget.

- (6) The territory lies within the Urban Growth Boundary; and

Findings: The property lies within the Urban Growth Boundary.

- (7) Consistency with other applicable criteria for the boundary change in question under state and local law.

Findings: OAR 660-001-0310 states "A city annexation made in compliance with a comprehensive plan acknowledged pursuant to ORS 197.251(1) shall be considered by Land Conservation and Development Commission to have been made in accordance with the goals...". Compliance with the Comprehensive Plan was addressed in number 3 above. The applicable Comprehensive Plan policy cited under number 3 above was acknowledged pursuant to Department of Land Conservation and Development Order 001581 on December 31, 2003, meaning it became unnecessary for the City to address the Statewide Planning Goals after that date in considering proposed annexations. There are no other criteria applicable to this boundary change in State Law or local ordinances. The City of Beaverton does have Annexation Policies (attached) adopted by resolution and this

proposed annexation is consistent with those policies. Staff finds this voluntary annexation with no associated development or land use approvals is consistent with State and local laws for the reasons stated above.

3.09.050 (g) Only territory already within the defined Metro Urban Growth Boundary at the time a petition is complete may be annexed to a city or included in territory proposed for incorporation into a new city. However, cities may annex individual tax lots partially within and without the Urban Growth Boundary.

Findings: This criterion is not applicable to this application because the territory in question has been inside of the Portland Metro Urban Growth Boundary since the boundary was created.

Exhibits: Annexation Petition
 Legal Description
 City Annexation Policies

Annexation Petition



CITY OF BEAVERTON
 COMMUNITY DEVELOPMENT DEPARTMENT
 PLANNING SERVICES
 4755 S.W. GRIFFITH DRIVE
 P.O. BOX 4755
 BEAVERTON, OR 97076-4755
 PHONE: (503) 350-4039

PETITION FOR A CONSENT
 ANNEXATION
 PURSUANT TO ORS 222.125

PLEASE USE ONE PETITION PER TAX LOT

FOR OFFICE USE	FILE NAME: <u>7185 SW Oleson Road Expedited Annexation</u>
	FILE NUMBERS: <u>ANX2005-0004</u>

MUST BE SIGNED BY ALL OWNERS. IF THE OWNER IS A CORPORATION OR AN ESTATE THE PERSON SIGNING MUST BE AUTHORIZED TO DO SO. MUST ALSO BE SIGNED BY NOT LESS THAN 50 PERCENT OF ELECTORS (REGISTERED VOTERS), IF ANY, RESIDING ON THE PROPERTY.

PROPERTY INFORMATION

MAP & TAX LOT	STREET ADDRESS (IF ASSIGNED)	# OF OWNERS	# OF RESIDENT VOTERS	# OF RESIDENTS
15124 DB 1900	7185 SW OLESON ROAD	1	0	0

CONTACT PERSON USE MAILING ADDRESS FOR NOTIFICATION

<u>TRISHA CLARK</u>	<u>BLUE SKY PLANNING, INC.</u>	<u>503 292 5339</u>
PRINT OR TYPE NAME	BUSINESS NAME	PHONE #
<u>8835 SW CANYON LAKE # 302 PORTLAND, OR 97225</u>		
ADDRESS		

SIGNATURES OF OWNERS AND ELECTORS CONSENTING TO ANNEXATION (CONTINUED ON BACK)

<u>EVERGREEN PACIFIC INC</u>	<u>[Signature]</u>	<u>02.24.05</u>	<input checked="" type="checkbox"/> OWNER
PRINT OR TYPE NAME	SIGNATURE	DATE	<input type="checkbox"/> ELECTOR
<u>9117 SW BURNHAM ROAD TIGARD OR 97223</u>			
MAILING ADDRESS IF DIFFERENT FROM PROPERTY ADDRESS			

LEGAL DESCRIPTION

ANNEXATION

City of Beaverton

ANX 2005-0004

That tract of land described in Fee Number 2004-148577 of Washington County, Oregon Deed Records. Said tract of land being more particularly described as follows:

A portion of Lots 10 and 11, GARDEN HOME, in the County of Washington and the State of Oregon, described as follows:

BEGINNING at a point on a line 480 feet Easterly from and parallel with a line running Northerly and Southerly through the center of Section 24, Township 1 South, Range 1 West, of the Willamette Meridian, in the County of Washington and the State of Oregon, which point is 287.5 feet Southerly from a line running Easterly and Westerly through the center of said section; running thence Southeasterly by an angle with said Easterly and Westerly center line $37^{\circ}27'$ (South $52^{\circ}00'$ East) 368.2 feet to the Northwesterly side of the road; thence Northeasterly along said line of said county road 186.3 feet; thence Northwesterly 134 feet to a point 305.9 feet Easterly from the point of beginning; thence Westerly on a line 287.5 feet Southerly from and parallel with said line; running Easterly and Westerly through the center of said section 305.9 feet to the place of beginning.

EXCEPT the portion thereof described as being the most Westerly corner of said tract; thence South 52° East 100 feet; thence North $45^{\circ}9'$ East 94.13 feet; thence West 150 feet to the place of beginning.

ANNEXATION POLICY

RESOLUTION NO. 3785

A RESOLUTION ESTABLISHING CITY OF BEAVERTON URBAN SERVICE AREA AND CORPORATE LIMITS ANNEXATION POLICIES

WHEREAS, the City of Beaverton presently has no defined policies regarding annexation of adjacent urban unincorporated areas, including unincorporated islands; and

WHEREAS, the City's progress toward annexing its assumed urban services area has been slow; and

WHEREAS, previous incremental annexations have resulted in City limits that are odd and create confusion about their location, with many unincorporated "islands" surrounded by properties within the City; and

WHEREAS, the City desires to create more logical boundaries and create complete incorporated neighborhoods; and

WHEREAS, a more assertive policy toward annexation of certain types of properties could improve the City's ability to provide services to its residents efficiently and at a reasonable cost; and

WHEREAS, a more assertive annexation policy could result in more City control of development in adjacent unincorporated areas that could affect the City; and

WHEREAS, the Washington County 2000 policy is to have all urban unincorporated areas annexed by cities over time; now, therefore,

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF BEAVERTON, OREGON

Council directs the Mayor to pursue the annexation of properties in adjacent urban unincorporated areas in accordance with the policies in Attachment A to this resolution.

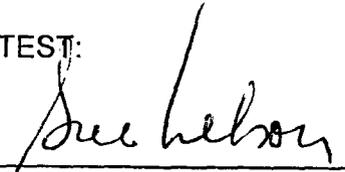
Adopted by the Council this 1st day of November, 2004.

Approved by the Mayor this 2ND day of NOVEMBER 2004.

Ayes: 4

Nays: 0

ATTEST:



SUE NELSON, City Recorder

APPROVED:



ROB DRAKE, Mayor

City of Beaverton Urban Service Area and Corporate Limits Annexation Policies

A. City of Beaverton Urban Service Area Policy

The City remains committed to annexing its urban services area over time, but the City will be selective regarding the methods of annexation it chooses to use. The City of Beaverton prefers to avoid use of annexation methods that may force annexation against the will of a majority of voters in larger unincorporated residential neighborhoods. The City is, however, open to annexation of these areas by other means where support for annexation is expressed, pursuant to a process specified by State law, by a majority of area voters and/or property owners. The City is open to pursuing infrastructure/service planning for the purposes of determining the current and future needs of such areas and how such areas might best fit into the City of Beaverton provided such unincorporated residents pursue an interest of annexing into the City.

B. City of Beaverton Corporate Limits Policy

The City of Beaverton is committed to annexing those unincorporated areas that generally exist inside the City's corporate limits. Most of these areas, known as "islands", generally receive either direct or indirect benefit from City services. The Washington County 2000 Policy, adopted in the mid-1980s, recognizes that the County should not be a long-term provider of municipal services and that urban unincorporated areas including unincorporated islands should eventually be annexed to cities. As such, primarily through the use of the 'island annexation method', the City's objectives in annexing such areas are to:

- Minimize the confusion about the location of City boundaries for the provision of services;
- Improve the efficiency of city service provision, particularly police patrols;
- Control the development/redevelopment of properties that will eventually be within the City's boundaries;
- Create complete neighborhoods and thereby eliminate small pockets of unincorporated land; and
- Increase the City's tax base and minimize increasing the City's mill rate.

In order to achieve these stated objectives, the City chooses to generally pursue the following areas for 'island annexation' into the City of Beaverton:

- Undeveloped property zoned for industrial, commercial uses or mixed uses;
- Developed or redevelopable property zoned for industrial, commercial or mixed uses;
- Undeveloped or redevelopable property zoned for residential use;
- Smaller developed property zoned residential (within a neighborhood that is largely incorporated within the City of Beaverton).

AGENDA BILL

**Beaverton City Council
Beaverton, Oregon**

SUBJECT: An Ordinance Amending Chapter One of the Beaverton City Code by Adding A New Section Relating to the Service of Legal and Administrative Process.

FOR AGENDA OF: 6-06-05 **BILL NO:** 05109

Mayor's Approval: 

DEPARTMENT OF ORIGIN: City Attorney 

DATE SUBMITTED: 05-24-05

CLEARANCES:

PROCEEDING: First Reading.

EXHIBITS: Ordinance
ORCP Rule 7

BUDGET IMPACT

EXPENDITURE REQUIRED\$0	AMOUNT BUDGETED\$0	APPROPRIATION REQUIRED \$0
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HISTORICAL PERSPECTIVE:

In many contexts, the City Code requires the City to provide notice (including summons or other legal or administrative process) to citizens affected by governmental action. Some City Code provisions describe in detail the manner of service to be used to provide the required notice to citizens. Others do not. The proposed ordinance would serve as a "backstop," establishing a procedure for the service of notices, summons and other legal and administrative processes that may be used when uncertainty arises regarding the manner or legal sufficiency of service specifically provided in the City Code.

INFORMATION FOR CONSIDERATION:

The proposed ordinance is meant to supplement, not replace, existing provisions in the City Code regarding the manner of service of notices, summons and other legal and administrative processes. In those instances where an elaborate and detailed manner of service is described in the City Code, reliance on the proposed ordinance would be unnecessary. On the other hand, where notice is required but the manner of providing the notice is not, the proposed ordinance may be relied on to establish the manner of service of the required notice.

The proposed ordinance refers to Rule 7 of the Oregon Rules of Civil Procedure. The Oregon Rules of Civil Procedure govern procedures and practices in court proceedings. Rule 7 sets the legal standards for the service of summons and other documents in a civil case.

RECOMMENDED ACTION:

First Reading.

AN ORDINANCE AMENDING CHAPTER ONE OF THE
BEAVERTON CITY CODE BY ADDING A NEW SECTION
RELATING TO THE SERVICE OF LEGAL AND
ADMINISTRATIVE PROCESS.

WHEREAS, the City Code requires the City to provide notice (including summons or other legal or administrative process) to citizens affected by governmental action, and

WHEREAS, some City Code provisions describe in detail the manner of service to be used to provide required notice to citizens, while other provisions are not clear on the manner of providing notice, and

WHEREAS, the purpose of this ordinance is to establish an alternative manner of service to be used in the event provisions call for notice, yet do not describe the manner of service to be used; Now, therefore,

THE CITY OF BEAVERTON ORDAINS AS FOLLOWS:

BC 1.01.120 is hereby added to read as follows:

“1.01.120 Alternative Manner of Service. In lieu of any manner of service or delivery specifically provided in this Code, and unless otherwise prohibited by any law:

A. A notice, summons or other legal or administrative process required to be served on or delivered to a person by this Code may be served or delivered as allowed by Rule 7 D of the Oregon Rules of Civil Procedure by:

1. any person described in Rule 7 E of the Oregon Rules of Civil Procedure

or

2. any employee or officer of the City who has no personal interest in the underlying proceeding or its outcome. As used in this subsection, “personal interest” is an interest separate from the official interest a City employee or officer regularly has in a proceeding or its outcome.

B. If a notice, summons or other legal or administrative process is served or delivered pursuant to subsection A of this section, then proof of service, mailing or execution of process shall be made as provided in Rule 7 F of the Oregon Rules of Civil Procedure.

C. If a notice, summons or other legal or administrative process is served or delivered pursuant to subsection A of this section, then any failure on the part of the City to comply with a provision of this section relating to service of notice, summons or other legal or administrative process shall not affect the validity of service or delivery or the existence of jurisdiction over the person if the court or administrative tribunal determines that the person actually knew of the substance of the notice, summons or other legal or administrative process. The court or administrative tribunal shall disregard any error in the content or service of a notice, summons or other legal or administrative process that does not materially prejudice the substantive rights of a party. If service is made in any manner complying with Rule 7 D(1) of

the Oregon Rules of Civil Procedure, the court or administrative tribunal shall also disregard any error in the service that does not violate the due process rights of a party.

D. If a notice, summons or other legal or administrative process is served on or delivered to a person in accordance with this section, then any failure on the part of the City to comply with a specific section of this Code relating to the service of notice or other legal or administrative process shall not affect the validity of service or delivery or the existence of jurisdiction over the person.”

First reading this ___ day of _____, 2005.

Passed by the Council this ___ day of _____, 2005.

Approved by the Mayor this ___ day of _____, 2005.

ATTEST:

APPROVED:

SUE NELSON, City Recorder

ROB DRAKE, Mayor

O Defendant defined. For purposes of this rule and Rules 5 and 6, "defendant" includes any party subject to the jurisdiction of the court.

CCP Dec. 2, 1978; § K amended by Laws 1979, c. 284, § 8; § M amended by CCP Dec. 13, 1980; § E amended by CCP Dec. 10, 1988 and Jan. 6, 1989; § K amended by Laws 1993, c. 33, § 364; § J amended by Laws 1995, c. 79, § 401; § K amended by Laws 1995, c. 608, § 40; § K amended by Laws 2003, c. 14, § 13, eff. Jan. 1, 2004.

ORCP 5. Jurisdiction (In rem)

Jurisdiction in rem. A court of this state having jurisdiction of the subject matter may exercise jurisdiction in rem on the grounds stated in this section. A judgment in rem may affect the interests of a defendant in the status, property, or thing acted upon only if a summons has been served upon the defendant pursuant to Rule 7 or other applicable rule or statute. Jurisdiction in rem may be invoked in any of the following cases:

A When the subject of the action is real or personal property in this state and the defendant has or claims a lien or interest, actual or contingent, therein, or the relief demanded consists wholly or partially in excluding the defendant from any interest or lien therein. This section also shall apply when any such defendant is unknown.

B When the action is to foreclose, redeem from, or satisfy a mortgage, claim, or lien upon real property within this state.

CCP Dec. 2, 1978.

ORCP 6. Jurisdiction (Without service)

Personal jurisdiction without service of summons. A court of this state having jurisdiction of the subject matter may, without a summons having been served upon a party, exercise jurisdiction in an action over a party with respect to any counterclaim asserted against that party in an action which the party has commenced in this state and also over any party who appears in the action and waives the defense of lack of jurisdiction over the person, insufficiency of summons or process, or insufficiency of service of summons or process, as provided in Rule 21 G. Where jurisdiction is exercised under Rule 5, a defendant may appear in an action and defend on the merits, without being subject to personal jurisdiction by virtue of this rule.

CCP Dec. 2, 1978.

ORCP 7. Summons

A Definitions. For purposes of this rule, "plaintiff" shall include any party issuing summons and "defendant" shall include any party upon whom service of summons is sought. For purposes of this rule, a "true copy" of a summons and complaint means an exact and complete copy of the original summons and complaint with a certificate upon the copy signed by an attorney of record, or if there is no attorney, by a

party, which indicates that the copy is exact and complete.

B Issuance. Any time after the action is commenced, plaintiff or plaintiff's attorney may issue as many original summonses as either may elect and deliver such summonses to a person authorized to serve summonses under section E of this rule. A summons is issued when subscribed by plaintiff or an active member of the Oregon State Bar.

C(1) Contents. The summons shall contain:

C(1)(a) Title. The title of the cause, specifying the name of the court in which the complaint is filed and the names of the parties to the action.

C(1)(b) Direction to defendant. A direction to the defendant requiring defendant to appear and defend within the time required by subsection (2) of this section and a notification to defendant that in case of failure to do so, the plaintiff will apply to the court for the relief demanded in the complaint.

C(1)(c) Subscription; post office address. A subscription by the plaintiff or by an active member of the Oregon State Bar, with the addition of the post office address at which papers in the action may be served by mail.

C(2) Time for response. If the summons is served by any manner other than publication, the defendant shall appear and defend within 30 days from the date of service. If the summons is served by publication pursuant to subsection D(6) of this rule, the defendant shall appear and defend within 30 days from the date stated in the summons. The date so stated in the summons shall be the date of the first publication.

C(3) Notice to party served.

C(3)(a) In general. All summonses, other than a summons referred to in paragraph (b) or (c) of this subsection, shall contain a notice printed in type size equal to at least 8-point type which may be substantially in the following form:

**NOTICE TO DEFENDANT:
READ THESE PAPERS
CAREFULLY!**

You must "appear" in this case or the other side will win automatically. To "appear" you must file with the court a legal paper called a "motion" or "answer." The "motion" or "answer" must be given to the court clerk or administrator within 30 days along with the required filing fee. It must be in proper form and have proof of service on the plaintiff's attorney or, if the plaintiff does not have an attorney, proof of service on the plaintiff.

If you have questions, you should see an attorney immediately. If you need help in finding an attorney, you may call the Oregon State Bar's Lawyer Referral Service at (503) 684-3763 or toll-free in Oregon at (800) 452-7636.

C(3)(b) **Service for counterclaim.** A summons to join a party to respond to a counterclaim pursuant to Rule 22 D (1) shall contain a notice printed in type size equal to at least 8-point type which may be substantially in the following form:

**NOTICE TO DEFENDANT:
READ THESE PAPERS
CAREFULLY!**

You must "appear" to protect your rights in this matter. To "appear" you must file with the court a legal paper called a "motion" or "reply." The "motion" or "reply" must be given to the court clerk or administrator within 30 days along with the required filing fee. It must be in proper form and have proof of service on the defendant's attorney or, if the defendant does not have an attorney, proof of service on the defendant.

If you have questions, you should see an attorney immediately. If you need help in finding an attorney, you may call the Oregon State Bar's Lawyer Referral Service at (503) 684-3763 or toll-free in Oregon at (800) 452-7636.

C(3)(c) **Service on persons liable for attorney fees.** A summons to join a party pursuant to Rule 22 D(2) shall contain a notice printed in type size equal to at least 8-point type which may be substantially in the following form:

**NOTICE TO DEFENDANT:
READ THESE PAPERS
CAREFULLY!**

You may be liable for attorney fees in this case. Should plaintiff in this case not prevail, a judgment for reasonable attorney fees will be entered against you, as provided by the agreement to which defendant alleges you are a party.

You must "appear" to protect your rights in this matter. To "appear" you must file with the court a legal paper called a "motion" or "reply." The "motion" or "reply" must be given to the court clerk or administrator within 30 days along with the required filing fee. It must be in proper form and have proof of service on the defendant's attorney or, if the defendant does not have an attorney, proof of service on the defendant.

If you have questions, you should see an attorney immediately. If you need help in finding an attorney, you may call the Oregon State Bar's Lawyer Referral Service at (503) 684-3763 or toll-free in Oregon at (800) 452-7636.

D Manner of service.

D(1) **Notice required.** Summons shall be served, either within or without this state, in any manner reasonably calculated, under all the circumstances, to apprise the defendant of the existence and pendency of the action and to afford a reasonable opportunity to appear and defend. Summons may be served in a manner specified in this rule or by any other rule or statute on the defendant or upon an agent authorized

by appointment or law to accept service of summons for the defendant. Service may be made, subject to the restrictions and requirements of this rule, by the following methods: personal service of summons upon defendant or an agent of defendant authorized to receive process; substituted service by leaving a copy of summons and complaint at a person's dwelling house or usual place of abode; office service by leaving with a person who is apparently in charge of an office; service by mail; or, service by publication.

D(2) Service methods.

D(2)(a) **Personal service.** Personal service may be made by delivery of a true copy of the summons and a true copy of the complaint to the person to be served.

D(2)(b) **Substituted service.** Substituted service may be made by delivering a true copy of the summons and the complaint at the dwelling house or usual place of abode of the person to be served, to any person 14 years of age or older residing in the dwelling house or usual place of abode of the person to be served. Where substituted service is used, the plaintiff, as soon as reasonably possible, shall cause to be mailed, by first class mail, a true copy of the summons and the complaint to the defendant at defendant's dwelling house or usual place of abode, together with a statement of the date, time, and place at which substituted service was made. For the purpose of computing any period of time prescribed or allowed by these rules or by statute, substituted service shall be complete upon such mailing.

D(2)(c) **Office service.** If the person to be served maintains an office for the conduct of business, office service may be made by leaving a true copy of the summons and the complaint at such office during normal working hours with the person who is apparently in charge. Where office service is used, the plaintiff, as soon as reasonably possible, shall cause to be mailed, by first class mail, a true copy of the summons and the complaint to the defendant at the defendant's dwelling house or usual place of abode or defendant's place of business or such other place under the circumstances that is most reasonably calculated to apprise the defendant of the existence and pendency of the action, together with a statement of the date, time, and place at which office service was made. For the purpose of computing any period of time prescribed or allowed by these rules or by statute, office service shall be complete upon such mailing.

D(2)(d) Service by mail.

D(2)(d)(i) **Generally.** When required or allowed by this rule or by statute, except as otherwise permitted, service by mail shall be made by mailing a true copy of the summons and the complaint to the defendant by first class mail and by any of the following: certified or registered mail, return receipt requested, or express mail. For purposes of this section, "first class mail" does not include certified or registered, or any other

form of mail which may delay or hinder actual delivery of mail to the addressee.

D(2)(d)(ii) **Calculation of time.** For the purpose of computing any period of time provided by these rules or by statute, service by mail, except as otherwise provided, shall be complete on the day the defendant, or other person authorized by appointment or law, signs a receipt for the mailing, or three days after the mailing if mailed to an address within the state, or seven days after the mailing if mailed to an address outside the state, whichever first occurs.

D(3) **Particular defendants.** Service may be made upon specified defendants as follows:

D(3)(a) **Individuals.**

D(3)(a)(i) **Generally.** Upon an individual defendant, by personal delivery of a true copy of the summons and the complaint to such defendant or other person authorized by appointment or law to receive service of summons on behalf of such defendant, by substituted service or by office service. Service may also be made upon an individual defendant to whom neither subparagraph (ii) nor (iii) of this paragraph applies by mailing made in accordance with paragraph (2)(d) of this section provided the defendant signs a receipt for the certified, registered or express mailing, in which case service shall be complete on the date on which the defendant signs a receipt for the mailing.

D(3)(a)(ii) **Minors.** Upon a minor under the age of 14 years, by service in the manner specified in subparagraph (i) of this paragraph upon such minor, and also upon such minor's father, mother, conservator of the minor's estate, or guardian, or, if there be none, then upon any person having the care or control of the minor or with whom such minor resides, or in whose service such minor is employed, or upon a guardian ad litem appointed pursuant to Rule 27 A(2).

D(3)(a)(iii) **Incapacitated persons.** Upon a person who is incapacitated or financially incapable, as defined by ORS 125.005, by service in the manner specified in subparagraph (i) of this paragraph upon such person, and also upon the conservator of such person's estate or guardian, or, if there be none, upon a guardian ad litem appointed pursuant to Rule 27 B(2).

D(3)(a)(iv) **Tenant of a mail agent.** Upon an individual defendant who is a "tenant" of a "mail agent" within the meaning of ORS 646.221 by delivering a true copy of the summons and the complaint to any person apparently in charge of the place where the mail agent receives mail for the tenant, provided that:

(A) the plaintiff makes a diligent inquiry but cannot find the defendant; and

(B) the plaintiff, as soon as reasonably possible after delivery, causes a true copy of the summons and the complaint to be mailed by first class mail to the defendant at the address at which the mail agent receives mail for the defendant and to any other

mailing address of the defendant then known to the plaintiff, together with a statement of the date, time, and place at which the plaintiff delivered the copy of the summons and the complaint.

Service shall be complete on the latest date resulting from the application of subparagraph D(2)(d)(ii) of this rule to all mailings required by this subparagraph unless the defendant signs a receipt for the mailing, in which case service is complete on the day the defendant signs the receipt.

D(3)(b) **Corporations and limited partnerships.** Upon a domestic or foreign corporation or limited partnership:

D(3)(b)(i) **Primary service method.** By personal service or office service upon a registered agent, officer, director, general partner, or managing agent of the corporation or limited partnership, or by personal service upon any clerk on duty in the office of a registered agent.

D(3)(b)(ii) **Alternatives.** If a registered agent, officer, director, general partner, or managing agent cannot be found in the county where the action is filed, the summons may be served: by substituted service upon such registered agent, officer, director, general partner, or managing agent; or by personal service on any clerk or agent of the corporation or limited partnership who may be found in the county where the action is filed; or by mailing a copy of the summons and complaint to the office of the registered agent or to the last registered office of the corporation or limited partnership, if any, as shown by the records on file in the office of the Secretary of State or, if the corporation or limited partnership is not authorized to transact business in this state at the time of the transaction, event, or occurrence upon which the action is based occurred, to the principal office or place of business of the corporation or limited partnership, and in any case to any address the use of which the plaintiff knows or, on the basis of reasonable inquiry, has reason to believe is most likely to result in actual notice.

D(3)(c) **State.** Upon the state, by personal service upon the Attorney General or by leaving a copy of the summons and complaint at the Attorney General's office with a deputy, assistant, or clerk.

D(3)(d) **Public bodies.** Upon any county, incorporated city, school district, or other public corporation, commission, board or agency, by personal service or office service upon an officer, director, managing agent, or attorney thereof.

D(3)(e) **General partnerships.** Upon any general partnerships by personal service upon a partner or any agent authorized by appointment or law to receive service of summons for the partnership.

D(3)(f) **Other unincorporated association subject to suit under a common name.** Upon any other unincorporated association subject to suit under a common name by personal service upon an officer,

managing agent, or agent authorized by appointment or law to receive service of summons for the unincorporated association.

D(3)(g) Vessel owners and charterers. Upon any foreign steamship owner or steamship charterer by personal service upon a vessel master in such owner's or charterer's employment or any agent authorized by such owner or charterer to provide services to a vessel calling at a port in the State of Oregon, or a port in the State of Washington on that portion of the Columbia River forming a common boundary with Oregon.

D(4) Particular actions involving motor vehicles.

D(4)(a) Actions arising out of use of roads, highways, streets, or premises open to the public; service by mail.

D(4)(a)(i) In any action arising out of any accident, collision, or other event giving rise to liability in which a motor vehicle may be involved while being operated upon the roads, highways, streets, or premises open to the public as defined by law, of this state, if the plaintiff makes at least one attempt to serve a defendant who operated such motor vehicle, or caused it to be operated on the defendant's behalf, by a method authorized by subsection (3) of this section except service by mail pursuant to subparagraph (3)(a)(i) of this section and, as shown by its return, did not effect service, the plaintiff may then serve that defendant by mailings made in accordance with paragraph (2)(d) of this section addressed to that defendant at:

(A) any residence address provided by that defendant at the scene of the accident;

(B) the current residence address, if any, of that defendant shown in the driver records of the Department of Transportation; and

(C) any other address of that defendant known to the plaintiff at the time of making the mailings required by (A) and (B) that reasonably might result in actual notice to that defendant.

Sufficient service pursuant to this subparagraph may be shown if the proof of service includes a true copy of the envelope in which each of the certified, registered or express mailings required by (A), (B) and (C) above was made showing that it was returned to sender as undeliverable or that the defendant did not sign the receipt. For the purpose of computing any period of time prescribed or allowed by these rules or by statute, service under this subparagraph shall be complete on the latest date on which any of the mailings required by (A), (B) and (C) above is made. If the mailing required by (C) is omitted because the plaintiff did not know of any address other than those specified in (A) and (B) above, the proof of service shall so certify.

D(4)(a)(ii) Any fee charged by the Department of Transportation for providing address information concerning a party served pursuant to subparagraph (i) of

this paragraph may be recovered as provided in Rule 68.

(D)(4)(a)(iii) The requirements for obtaining an order of default against a defendant served pursuant to subparagraph (i) of this paragraph are as provided in Rule 69.

D(4)(b) Notification of change of address. Any person who, while operating a motor vehicle upon the roads, highways, streets, or premises open to the public as defined by law, of this state, is involved in any accident, collision, or other event giving rise to liability, shall forthwith notify the Department of Transportation of any change of such defendant's address occurring within three years after such accident, collision or event.

D(5) Service in foreign country. When service is to be effected upon a party in a foreign country, it is also sufficient if service of summons is made in the manner prescribed by the law of the foreign country for service in that country in its courts of general jurisdiction, or as directed by the foreign authority in response to letters rogatory, or as directed by order of the court. However, in all cases such service shall be reasonably calculated to give actual notice.

D(6) Court order for service; service by publication.

D(6)(a) Court order for service by other method. On motion upon a showing by affidavit or declaration that service cannot be made by any method otherwise specified in these rules or other rule or statute, the court, at its discretion, may order service by any method or combination of methods which under the circumstances is most reasonably calculated to apprise the defendant of the existence and pendency of the action, including but not limited to: publication of summons; mailing without publication to a specified post office address of the defendant by first class mail and by any of the following: certified or registered mail, return receipt requested, or express mail; or posting at specified locations. If service is ordered by any manner other than publication, the court may order a time for response.

D(6)(b) Contents of published summons. In addition to the contents of a summons as described in section C of this rule, a published summons shall also contain a summary statement of the object of the complaint and the demand for relief, and the notice required in subsection C(3) shall state: "The 'motion' or 'answer' (or 'reply') must be given to the court clerk or administrator within 30 days of the date of first publication specified herein along with the required filing fee." The published summons shall also contain the date of the first publication of the summons.

D(6)(c) Where published. An order for publication shall direct publication to be made in a newspaper of general circulation in the county where the action is commenced or, if there is no such newspaper, then in

a newspaper to be designated as most likely to give notice to the person to be served. Such publication shall be four times in successive calendar weeks. If the plaintiff knows of a specific location other than the county where the action is commenced where publication might reasonably result in actual notice to the defendant, the plaintiff shall so state in the affidavit or declaration required by paragraph (a) of this subsection, and the court may order publication in a comparable manner at such location in addition to, or in lieu of, publication in the county where the action is commenced.

D(6)(d) Mailing summons and complaint. If the court orders service by publication and the plaintiff knows or with reasonable diligence can ascertain the defendant's current address, the plaintiff shall mail a copy of the summons and the complaint to the defendant at such address by first class mail and by any of the following: certified or registered mail, return receipt requested, or express mail. If the plaintiff does not know and cannot upon diligent inquiry ascertain the current address of any defendant, a copy of the summons and the complaint shall be mailed by the methods specified above to the defendant at the defendant's last known address. If the plaintiff does not know, and cannot ascertain upon diligent inquiry, the defendant's current and last known addresses, mailing of a copy of the summons and the complaint is not required.

D(6)(e) Unknown heirs or persons. If service cannot be made by another method described in this section because defendants are unknown heirs or persons as described in sections I and J of Rule 20, the action shall proceed against the unknown heirs or persons in the same manner as against named defendants served by publication and with like effect; and any such unknown heirs or persons who have or claim any right, estate, lien, or interest in the property in controversy, at the time of the commencement of the action, and served by publication, shall be bound and concluded by the judgment in the action, if the same is in favor of the plaintiff, as effectively as if the action was brought against such defendants by name.

D(6)(f) Defending before or after judgment. A defendant against whom publication is ordered or such defendant's representatives, on application and sufficient cause shown, at any time before judgment, shall be allowed to defend the action. A defendant against whom publication is ordered or such defendant's representatives may, upon good cause shown and upon such terms as may be proper, be allowed to defend after judgment and within one year after entry of judgment. If the defense is successful, and the judgment or any part thereof has been collected or otherwise enforced, restitution may be ordered by the court, but the title to property sold upon execution issued on such judgment, to a purchaser in good faith, shall not be affected thereby.

D(6)(g) Defendant who cannot be served. Within the meaning of this subsection, a defendant cannot be served with summons by any method authorized by subsection D(3) of this section if: (i) service pursuant to subparagraph (4)(a)(i) of this section is not authorized, and the plaintiff attempted service of summons by all of the methods authorized by subsection D(3) of this section and was unable to complete service, or (ii) if the plaintiff knew that service by such methods could not be accomplished.

E By whom served; compensation. A summons may be served by any competent person 18 years of age or older who is a resident of the state where service is made or of this state and is not a party to the action nor, except as provided in ORS 180.260, an officer, director, or employee of, nor attorney for, any party, corporate or otherwise. However, service pursuant to subparagraph D(2)(d)(i) of this rule may be made by an attorney for any party. Compensation to a sheriff or a sheriff's deputy in this state who serves a summons shall be prescribed by statute or rule. If any other person serves the summons, a reasonable fee may be paid for service. This compensation shall be part of disbursements and shall be recovered as provided in Rule 68.

F Return; proof of service.

F(1) Return of summons. The summons shall be promptly returned to the clerk with whom the complaint is filed with proof of service or mailing, or that defendant cannot be found. The summons may be returned by first class mail.

F(2) Proof of service. Proof of service of summons or mailing may be made as follows:

F(2)(a) Service other than publication. Service other than publication shall be proved by:

F(2)(a)(i) Certificate of service when summons not served by sheriff or deputy. If the summons is not served by a sheriff or a sheriff's deputy, the certificate of the server indicating: the time, place, and manner of service; that the server is a competent person 18 years of age or older and a resident of the state of service or this state and is not a party to nor an officer, director, or employee of, nor attorney for any party, corporate or otherwise; and that the server knew that the person, firm, or corporation served is the identical one named in the action. If the defendant is not personally served, the server shall state in the certificate when, where, and with whom a copy of the summons and complaint was left or describe in detail the manner and circumstances of service. If the summons and complaint were mailed, the certificate may be made by the person completing the mailing or the attorney for any party and shall state the circumstances of mailing and the return receipt shall be attached.

F(2)(a)(ii) Certificate of service by sheriff or deputy. If the summons is served by a sheriff or a sheriff's deputy, the sheriff's or deputy's certificate of

service indicating the time, place, and manner of service, and if defendant is not personally served, when, where, and with whom the copy of the summons and complaint was left or describing in detail the manner and circumstances of service. If the summons and complaint were mailed, the certificate shall state the circumstances of mailing and the return receipt shall be attached.

F(2)(b) **Publication.** Service by publication shall be proved by an affidavit or by a declaration.

F(2)(b)(i) A publication by affidavit shall be in substantially the following form:

Affidavit of Publication

State of Oregon)
) ss.
 County of)

I, _____, being first duly sworn, depose and say that I am the _____ (here set forth the title or job description of the person making the affidavit), of the _____, a newspaper of general circulation published at _____ in the aforesaid county and state; that I know from my personal knowledge that the _____, a printed copy of which is hereto annexed, was published in the entire issue of said newspaper four times in the following issues: (here set forth dates of issues in which the same was published).

Subscribed and sworn to before me this _____ day of _____, 2_____.

 Notary Public for Oregon
 My commission expires
 _____ day of _____, 2_____.

F(2)(b)(ii) A publication by declaration shall be in substantially the following form:

Declaration of Publication

State of Oregon)
) ss.
 County of)

I, _____, say that I am the _____ (here set forth the title or job description of the person making the declaration), of the _____, a newspaper of general circulation published at _____ in the aforesaid county and state; that I know from my personal knowledge that the _____, a printed copy of which is hereto annexed, was published in the entire issue of said newspaper four times in the following issues: (here set forth dates of issues in which the same was published).

I hereby declare that the above statement is true to the best of my knowledge and belief, and that I understand it is made for use as evidence in court and is subject to penalty for perjury.

_____ day of _____, 2_____.

F(2)(c) **Making and certifying affidavit.** The affidavit of service may be made and certified before a notary public, or other official authorized to administer oaths and acting as such by authority of the United States, or any state or territory of the United States, or the District of Columbia, and the official seal, if any, of such person shall be affixed to the affidavit. The signature of such notary or other official, when so attested by the affixing of the official seal, if any, of such person, shall be prima facie evidence of authority to make and certify such affidavit.

F(2)(d) **Form of certificate, affidavit or declaration.** A certificate, affidavit or declaration containing proof of service may be made upon the summons or as a separate document attached to the summons.

F(3) **Written admission.** In any case proof may be made by written admission of the defendant.

F(4) **Failure to make proof; validity of service.** If summons has been properly served, failure to make or file a proper proof of service shall not affect the validity of the service.

G Disregard of error; actual notice. Failure to comply with provisions of this rule relating to the form of summons, issuance of summons, or who may serve summons shall not affect the validity of service of summons or the existence of jurisdiction over the person if the court determines that the defendant received actual notice of the substance and pendency of the action. The court may allow amendment to a summons, or affidavit, declaration or certificate of service of summons. The court shall disregard any error in the content of summons that does not materially prejudice the substantive rights of the party against whom summons was issued. If service is made in any manner complying with subsection D(1) of this section, the court shall also disregard any error in the service of summons that does not violate the due process rights of the party against whom summons was issued.

H Telegraphic transmission. A summons and complaint may be transmitted by telegraph as provided in Rule 8 D.

CCP Dec. 2, 1978; amended by Laws 1979, c. 284, § 9; § D amended by CCP Dec. 13, 1980; §§ D, E amended by Laws 1981, c. 893, §§ 4, 5; §§ D, F amended by CCP Dec. 4, 1982; §§ D, F amended by Laws 1983, c. 751, §§ 3, 4; § C (2) amended by CCP Dec. 8, 1984; § D (4) amended by CCP Dec. 10, 1988 and Jan. 6, 1989; § D amended by CCP Dec. 15, 1990; §§ C, E amended by CCP Dec. 12, 1992; § D amended by Laws 1995, c. 79, § 402 and Laws 1995, c. 664, § 99; §§ B, C, D, F, G amended by and D(7) redesignated as D(6)(g) by CCP Dec. 14, 1996; §§ D, E amended by CCP Dec. 12, 1998; § D amended by CCP Dec. 9, 2000; §§ D, F, G amended by Laws 2003, c. 194, § 5, eff. Jan. 1, 2004.