



City of Tigard

## Tigard Business Meeting – Agenda

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### TIGARD CITY COUNCIL AND LOCAL CONTRACT REVIEW BOARD

**MEETING DATE AND TIME:** April 23, 2013 - 6:30 p.m. Study Session; 7:30 p.m. Business Meeting

**MEETING LOCATION:** City of Tigard - Town Hall - 13125 SW Hall Blvd., Tigard, OR 97223

**Agenda Revised on April 18, 2013 - Added Executive Session for Real Property Transaction Negotiations**

#### PUBLIC NOTICE:

Anyone wishing to speak on an agenda item should sign on the appropriate sign-up sheet(s). If no sheet is available, ask to be recognized by the Mayor at the beginning of that agenda item. Citizen Communication items are asked to be two minutes or less. Longer matters can be set for a future Agenda by contacting either the Mayor or the City Manager.

Times noted are *estimated*; it is recommended that persons interested in testifying be present by 7:15 p.m. to sign in on the testimony sign-in sheet. *Business agenda items can be heard in any order after 7:30 p.m.*

Assistive Listening Devices are available for persons with impaired hearing and should be scheduled for Council meetings by noon on the Monday prior to the Council meeting. Please call 503-639-4171, ext. 2410 (voice) or 503-684-2772 (TDD - Telecommunications Devices for the Deaf).

Upon request, the City will also endeavor to arrange for the following services:

- Qualified sign language interpreters for persons with speech or hearing impairments; and
- Qualified bilingual interpreters.

Since these services must be scheduled with outside service providers, it is important to allow as much lead time as possible. Please notify the City of your need by 5:00 p.m. on the Thursday preceding the meeting by calling: 503-639-4171, ext. 2410 (voice) or 503-684-2772 (TDD - Telecommunications Devices for the Deaf).

SEE ATTACHED AGENDA

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VIEW LIVE VIDEO STREAMING ONLINE:

<http://live.tigard-or.gov>

CABLE VIEWERS: The regular City Council meeting is shown live on Channel 28 at 7:30 p.m. The meeting will be rebroadcast at the following times on Channel 28:

|          |            |        |            |
|----------|------------|--------|------------|
| Thursday | 6:00 p.m.  | Sunday | 11:00 a.m. |
| Friday   | 10:00 p.m. | Monday | 6:00 a.m.  |



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**MEETING DATE AND TIME:** April 23, 2013 - 6:30 p.m. Study Session; 7:30 p.m. Business Meeting

**MEETING LOCATION:** City of Tigard - Town Hall - 13125 SW Hall Blvd., Tigard, OR 97223

**Agenda Revised on April 18, 2013 - Added Executive Session for Real Property Transaction Negotiations**

6:30 PM

- **EXECUTIVE SESSION: The Tigard City Council will go into Executive Session under ORS 192.660(2)(e) to discuss real property transaction negotiations.** Representatives of the news media are allowed to attend Executive Sessions, as provided by ORS 192.660(4), but must not disclose any information discussed. No Executive Session may be held for the purpose of taking any final action or making any final decision. Executive Sessions are closed to the public.
  
- **STUDY SESSION**
  - A. Discuss River Terrace Community Plan Consultant Selection
  - B. Discuss Social Gaming Regulations

7:30 PM

1. BUSINESS MEETING - APRIL 23, 2013
  - A. Call to Order
  - B. Roll Call
  - C. Pledge of Allegiance
  - D. Council Communications & Liaison Reports
  - E. Call to Council and Staff for Non-Agenda Items
  
2. CITIZEN COMMUNICATION (Two Minutes or Less, Please)  
7:35 p.m. - estimated time
  - A. Follow-up to Previous Citizen Communication
  - B. Citizen Communication – Sign Up Sheet

3. CONSENT AGENDA: (Tigard City Council and Local Contract Review Board) These items are considered routine and may be enacted in one motion without separate discussion. Anyone may request that an item be removed by motion for discussion and separate action. Motion to:  
7:45 estimated time
  - A. Approve City Council Meeting Minutes for:
    1. January 29, 2013
    2. February 26, 2013
    3. March 19, 2013
  - B. Local Contract Review Board:
    1. Award a Contract for the City's 2013-2014 Pavement Management Program - Slurry Seal Project to Blackline, Inc.
      - *Consent Agenda - Items Removed for Separate Discussion: Any items requested to be removed from the Consent Agenda for separate discussion will be considered immediately after the Council/City Center Development Agency has voted on those items which do not need discussion.*
4. PROCLAMATIONS:  
7:50 p.m. - estimated time
  - A. Proclaim May 5-11 as Be Kind to Animals Week
  - B. Proclaim May as Bike Month
5. DISCUSSION WITH METRO COUNCILOR CRAIG DIRKSEN  
7:55 p.m. - estimated time
6. CONVENE LOCAL CONTRACT REVIEW BOARD:  
8:25 p.m. - estimated time
  - A. Consider Award of a Contract for System Integrator Services to Portland Engineering, Inc.
  - B. Consider Award of a Contract for the FY 2013-2014 Pavement Management Program - Pavement Overlay Project to Eagle Elsner, Inc.
  - C. Consider Award of a Contract for Grounds Maintenance at Various City Facilities, Water and Water Quality Sites to Portland Habilitation Center Northwest, Inc., an Oregon Qualified Rehabilitation Facility
7. SELECT A SOLID WASTE RATE MODEL AND CONSIDER A RESOLUTION TO ADJUST SOLID WASTE RATES BASED ON THE SLECTED RATE MODEL INCLUDING A ONE-PERCENT INCREASE IN THE SOLID WASTE FRANCHISE FEE (PUBLIC COMMENT TO BE HEARD PRIOR TO COUNCIL CONSIDERATION)  
8:40 p.m. - estimated time
8. COUNCIL LIAISON REPORTS  
9:10 p.m. - estimated time
9. NON AGENDA ITEMS

10. EXECUTIVE SESSION: **The Tigard City Council will go into Executive Session under ORS 192.660(2)(e) to discuss real property transaction negotiations.** Representatives of the news media are allowed to attend Executive Sessions, as provided by ORS 192.660(4), but must not disclose any information discussed. No Executive Session may be held for the purpose of taking any final action or making any final decision. Executive Sessions are closed to the public.
11. ADJOURNMENT  
9:20 p.m. - estimated time

AIS-1255

**A.**

**Business Meeting**

**Meeting Date:** 04/23/2013  
**Length (in minutes):** 20 Minutes  
**Agenda Title:** River Terrace Community Plan Consultant Selection  
**Submitted By:** Darren Wyss, Community Development

Council  
Business Mtg

**Item Type:** Update, Discussion, Direct Staff

**Meeting Type:** - Study Sess.

**Public Hearing**

**Newspaper Legal Ad Required?:** No

**Public Hearing Publication**

**Date in Newspaper:**

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**Information**

**ISSUE**

Staff will update Council on the status of the River Terrace project, including the consultant selection process for infrastructure master planning.

**STAFF RECOMMENDATION / ACTION REQUEST**

Council is requested to receive briefing from staff, ask questions and provide input as desired.

**KEY FACTS AND INFORMATION SUMMARY**

The city has commenced its effort to complete a River Terrace Community Plan. For the plan to comply with land use planning regulations and be successful, the city needs to update its infrastructure master plans to include the area, as well as identify the financing strategy to ensure the infrastructure can be built in a timely, efficient and cost-effective manner. The city published a request for proposals for consulting firms to help complete the infrastructure tasks. Proposals were due April 17, 2013 and city staff intends to bring a contract before city council on May 14, 2013 for consideration.

The selected consultant team will conduct the following tasks:

1. Tigard Parks System Master Plan Update
2. Tigard Water System Master Plan Update
3. Tigard Sanitary Sewer Master Plan Update
4. Tigard Transportation System Plan Update
5. River Terrace Stormwater Master Plan
6. River Terrace Infrastructure Financing Strategy
7. Tigard Public Facility Plan (Compilation of 20-year master plan needs)
8. Project Communication and Coordination

The consultant work will be a critical component of the River Terrace Community Plan, particularly the infrastructure financing task. This task will be ongoing throughout the project and will be particularly important in helping the city council decision-making process when it comes time to adopt a financing strategy. The consultant will outline available tools, funding opportunities and policy options the council will need to weigh and consider and ultimately adopt to ensure implementation of the community plan is successful.

The overall project is still on schedule to be completed March 2014. Staff has been working with the technical advisory committee, stakeholder working group and gathering feedback from the community on the zoning and natural resource mapping tasks. An update on these tasks will be given in more detail at the Council's May 21, 2013 meeting. Staff will

returning to Council at regular intervals to give project updates as well as discuss key policy decisions the Council will need to deliberate over the next year. These include: financing the needed infrastructure, holding or amending the recommendations from the West Bull Mt. Concept Plan, the provision of parks and partnering with Beaverton, Clean Water Services and Washington County on various infrastructure improvements for efficiency and cost-effectiveness.

**OTHER ALTERNATIVES**

N/A

**COUNCIL OR CCDA GOALS, POLICIES, MASTER PLANS**

Complete River Terrace Community Plan

**DATES OF PREVIOUS CONSIDERATION**

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**Fiscal Impact**

**Cost:** \$134,100

**Budgeted (yes or no):** Yes

**Where Budgeted (department/program):** CD

**Additional Fiscal Notes:**

Washington County transferred CET funds to the city for completing the community plan. The city has applied for additional CET funds for specific infrastructure master planning and financing strategy tasks.

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**Business Meeting****Meeting Date:** 04/23/2013**Length (in minutes):** 20 Minutes**Agenda Title:** Discuss Social Gaming Regulations**Prepared For:** Kent Wyatt**Submitted By:** Kent Wyatt, City Management  
Council Business Mtg - Study**Item Type:** Update, Discussion, Direct Staff**Meeting Type:** Sess.**Public Hearing:** No**Publication Date:****Information****ISSUE**

The Council has provided prior policy guidance to allow social gaming in Tigard. To what extent should social gaming activities be regulated?

**STAFF RECOMMENDATION / ACTION REQUEST**

Provide input on regulating social gaming in Tigard.

**KEY FACTS AND INFORMATION SUMMARY**

At the March 19, 2013 City Council meeting, the Council discussed whether or not to allow social gaming in Tigard. A majority of the Council expressed an interest in allowing social gaming and requested more time for discussing the extent of regulations on social gaming. Upon further discussion, some guidance was given that less restrictive business regulations were desired.

The purpose of tonight's discussion is for Council to provide consensus direction to staff on regulation that balances:

- the level of restrictions on social gaming desired by the Council;
- the legal parameters for social gaming operations that were set forth by the 2010 Oregon Attorney General's opinion; and
- allowing Tigard Police Department enforcement within existing resources

Staff provides a discussion draft ordinance that lessens restrictions in several areas including allowable floor space for social gaming from 25% to 50%, and allowable number of days a week from one to seven, for social gaming at a business. The revised ordinance also eliminates the requirement that a business must be open six months before hosting social games. These revisions will allow more flexibility for Tigard businesses wishing to offer social games, while allowing the Tigard Police Department to adequately enforce the ordinance with existing resources.

As a point of clarification, staff reviewed draft section 5.22.020, section J of the revised draft ordinance which restricts rental fees for hosting social games. The Oregon Attorney General's opinion addressed this point by stating, "private businesses, private clubs or place of public accommodation that will allow social games and their personnel may not derive any income from the game (including charging cover, usage, or rental charges for the place or equipment)."

Staff also reconsidered the license denial appeal process outlined in the draft ordinance and recommends no change to the section. The proposed appeal process maintains consistency with Police Department administration of permit and appeal as a least-cost and consistent option for due process than involving the Tigard Municipal Court. The appeal process mirrors Tigard Municipal Code rules for Police Department review of liquor license and burglary alarm permits.

In a review of these procedures, city staff consulted the City of Portland's experience with enforcement and concluded that there were legal and enforcement considerations with recommending a less restrictive ordinance. In a few years,

Portland will consider updating their code to create tools to allow more effective enforcement while allowing business to continue offering social games.

Staff and legal counsel believe the revised draft ordinance allows Tigard to comply with state law and locally enforce a revised code without additional enforcement staffing resources.

### **OTHER ALTERNATIVES**

Council may adopt other regulations than the draft ordinance suggests; the proposal is a point of discussion for the Council to provide policy guidance for staff.

Council may approve an ordinance disallowing social gaming in Tigard.

### **COUNCIL GOALS, POLICIES, APPROVED MASTER PLANS**

N/A

### **DATES OF PREVIOUS COUNCIL CONSIDERATION**

March 19, 2013 - Council Workshop

September 18, 2012 - Council Workshop

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### **Attachments**

Draft Social Gaming Ordinance

Attorney General Opinion on Social Gaming

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Revisions highlighted in yellow

**CITY OF TIGARD, OREGON  
TIGARD CITY COUNCIL  
ORDINANCE NO. 13-\_\_\_\_**

AN ORDINANCE AMENDING TIGARD MUNICIPAL CODE TO ADOPT SUBCHAPTER AUTHORIZING SOCIAL GAMING, SUBJECT TO SPECIFIED CONDITIONS.

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WHEREAS, currently the Tigard Municipal Code does not contain provisions relating to the regulation of “social gaming”; and

WHEREAS, ORS 167.121 allows cities to authorize the playing or conducting of a social game in a private business, private club, or place of public accommodation; and

WHEREAS, the Tigard Police Department requests clarification from the City Council on whether they wish to authorize social games in Tigard; and

WHEREAS, the City Council finds that it is in the public interest to amend the Tigard Municipal Code to include a new chapter to set forth terms, rules, regulations, and responsibilities of involved parties, authorizing social games.

NOW, THEREFORE, THE CITY OF TIGARD ORDAINS AS FOLLOWS:

SECTION 1. The Tigard Municipal Code is hereby amended to include and incorporate a new Chapter 5.22 Social Games, attached hereto as Exhibit A.

SECTION 2. This ordinance shall be effective from and after thirty (30) days following its passage and approval by the Mayor.

PASSED: By \_\_\_\_\_ vote of all Council members present after being read by number and title only, this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

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Catherine Wheatley, City Recorder

APPROVED: Approved by Tigard City Council this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

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John L. Cook, Mayor

Approved as to form:

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City Attorney

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Date

Ordinance No.13-\_\_\_\_

**EXHIBIT “A”**

**Chapter 5.22 - SOCIAL GAMES**

**Sections:**

**5.22.010 Definitions**

**5.22.020 Social Games – Authorization and Conditions**

**5.22.030 Responsibilities of Owner and Person in Charge**

**5.22.040 Inspection of Social Games Premises**

**5.22.050 Notice of Social Games Required**

**5.22.060 License; License Fee; Civil Penalties**

**5.22.070 Appeal Process for License Denial**

**5.22.080 Appeal Process for Assessment of Fine**

**5.22.010 Definitions**

As used in this chapter,

- A. **CHIEF OF POLICE** or **CHIEF** means the chief of the Tigard police department or designee.
  
- B. **SOCIAL GAME** means a game, other than a lottery, between players in a private business, private club or place of public accommodation where no house player, house bank or house odds exist and there is no house income from the operation of the social game.

**5.22.020 Social Games – Authorization and Conditions**

Social games as defined in Section 5.22.010 of this chapter are allowed only when each of the following conditions is met:

- A. The owner of the business where social games are being played holds a current, valid license to play social games issued by the City;
- B. No house player, house bank, or house odds exist;
- C. There is no house income from the operation of a social game;
- D. The social game cannot be observed from a public right of way;
- E. Persons under 21 years of age are not permitted in the room or enclosure where the social game takes place;
- F. The room or enclosure where the social game takes place is open to free and immediate access by any police officer. Doors leading into the social game room must remain unlocked during all hours of operation;
- G. No owner or “principal managing employee”, as described in more detail below, shall participate in any social game on the premises;
- H. A charge for consumer goods sold on the premises to an individual playing a social game must not be higher or lower than the price charged to a non-participant in the social game;

## Revisions highlighted in yellow

- I. No owner or principal managing employee may accept any payment, fee, service or gratuity from a social game participant as consideration for participation in the social game on the premises;
- J. No owner or principal managing employee may charge a rental or lease fee for the use of the social game;
- K. At no point in time may a social game be conducted without an owner or principal managing employee present;
- L. No membership fee or cover fee may be charged for participation in the social game; and
- M. All social gaming activities and the business where social gaming is permitted must comply with applicable federal, state and local laws and regulations.

### 5.22.030 Responsibilities of Owner and Person in Charge

An owner or person in charge of a business where social gaming is permitted shall:

- A. Clearly designate the areas set aside for social gaming.
- B. Designate an agent or employee to act as person in charge of a social gaming premise whenever social games are being played. An owner shall be strictly liable for any violation of this chapter which occurs when no person in charge is present at the social gaming premises.
- C. Be strictly liable for any violation of the provisions of this chapter by a person in charge, agent, employee or designate.
- D. Limit hours of operation of social gaming activities on the premises to those hours during which the primary business is open.
- E. Limit social gaming activities ~~exceeding 25% (Twenty-five percent)~~ to no more than 50% (Fifty percent) of the floor area of the premises ~~to no more than one day per week~~. Social gaming may occur 7 days per week. For purposes of this provision, "floor area" means gross floor area excluding areas such as restrooms, hallways, mechanical spaces, elevators, stairwells and loading docks.
- F. ~~Not allow social gaming activities on the premises unless the private business, private club or place of public accommodation meets all applicable requirements of the Tigard Municipal Code and has been legally established and in existence for at least six months.~~

### 5.22.040 Inspection of Social Games Premises

All persons who authorize social games on premises owned or managed pursuant to this Chapter shall permit entry to premises to any member of the Police Department, upon presentation of official identification, for the limited purpose of inspecting the premises and any activities, records, or devices involved in such games to ensure compliance with Tigard Municipal Code.

### 5.22.050 Notice of Social Games Required

Where social games are conducted, each owner or person in charge of the premises shall continuously and conspicuously post notice that is clearly readable and in letters at least one inch high that such games must be conducted in accordance with the conditions set forth in Section 5.22.020 which shall be listed in their entirety. The form and content of the notice required pursuant to this section shall be as approved by the chief to assure uniformity of notices in establishments allowing social gaming.

### 5.22.060 License; License Fee; Civil Penalties

## Revisions highlighted in yellow

Application for an annual social gaming license shall be made to the Police Chief. The Chief may assess a license fee of One Hundred (\$100) dollars per year. The social gaming license fee is due in full every January 1st. If a business applies for a social gaming license at any time on or after July 1st, the fee for such license shall be equal to one-half the license fee.

The Chief may assess a fine for operating without a license of Five Hundred (\$500) dollars for the first violation for each year, and a subsequent violation will result in a fine of One Thousand (\$1,000) dollars.

Violations for all other offenses of this subchapter are One Hundred (\$100) for the first offense each calendar year; Two Hundred Fifty (\$250) for the second offense; Five Hundred (\$500) for the third offense and One Thousand (\$1,000) for all additional violations during the same calendar year.

### **5.22.070 Appeal Process for License Denial**

In the event the Chief of Police denies an applicant a social gaming license, the Chief of Police shall first notify the applicant in writing of his intent to deny the license within three (3) working days of receipt of the application. The notification shall include the reason(s) for the denial and a date and time within the next five (5) working days to hear the applicant's appeal, if any. The applicant shall have the right to be heard and to present witnesses and evidence purporting to refute the reasons given by the Chief of Police for a denial. The hearing shall be administrative in nature and held before the Chief of Police. Rules of evidence shall not apply. Upon completion of the hearing, the Chief of Police shall make finding and shall mail the final decision to the applicant within three (3) working days of the hearing date.

### **5.22.080 Appeal Process for Assessment of Fine**

In the event the Chief of Police assesses a business owner with a fine, the Chief of Police shall notify the business owner in writing of the fine assessment. The notification shall include the reason(s) for the fine assessment and a date and time within the next five (5) working days to hear the business owner's appeal, if any. The business owner shall have the right to be heard and to present witnesses and evidence purporting to refute the reasons given by the Chief of Police for a denial. The hearing shall be administrative in nature and held before the Chief of Police. Rules of evidence shall not apply. Upon completion of the hearing, the Chief of Police shall make finding and shall mail the final decision to the business owner within three (3) working days of the hearing date.



**DEPARTMENT OF JUSTICE**  
GENERAL COUNSEL DIVISION

January 22, 2010

Lieutenant Glenn Chastain  
Oregon State Lottery/Security Division  
500 Airport Road SE  
Salem, OR 97301

Re: Opinion Request OP-2010-1

Dear Lieutenant Chastain:

Gambling is unlawful in Oregon unless the legislature specifically authorizes it. *See* ORS 167.122 (participating in unlawful gambling as a player is a Class A misdemeanor); ORS 167.127 (promoting or profiting from unlawful gambling is a Class C felony); ORS 167.117(24) (“unlawful” means “not specifically authorized by law”). For these purposes, gambling does not include “social games.” ORS 167.117(7)(c).

To qualify as a “social game,” a game must be “between players” and must not have any “house player,” “house bank,” “house odds,” or “house income.” ORS 167.117(21). But the legislature did not define any of those terms except “player.” This raises questions as to whether certain games qualify as social games. You ask us to interpret several key terms in the definition to clarify the circumstances in which a game will meet the criteria for the social-game exception. Below, we set out your specific questions and our short answers, followed by a discussion.

**QUESTIONS AND SHORT ANSWERS**

As used in ORS 167.117(21)’s definition of “social games,” what do the following mean:

Question 1: The requirement that the “game” be “between players?”

The requirement that a social game be “between players” means that any person betting in a social game must qualify as a “player” under ORS 167.117(16).

Question 2: “House?”

As used in the definition of “social games,” “house” means: (1) all private businesses, private clubs, and places of public accommodation where social games occur, including their owners, managers and employees; and, (2) any person who operates what would otherwise be a social game for profit rather than for social purposes. “Operates” for those purposes includes any action described in ORS 167.117(18) that materially aids the game.

Question 3: The prohibition on a “house player?”

The prohibition on a “house player” means that the house may not in any circumstance bet in a social game.

Question 4: The prohibition on a “house bank?”

We interpret the prohibition on a “house bank” to mean that the house may not act as a banker in a social game by having any involvement in the financial aspects of the game, including selling, keeping, and redeeming chips even if the house makes no profit from doing so.

Question 5: The prohibition of “house odds?”

We interpret this prohibition to mean that the house may not have any advantage in a social game or establish the ratio between the amount of a bet and the payoff amount.

Question 6: The prohibition of “house income?”

This prohibition means that the house may not make any money directly from operation of the game or from its participants. Businesses where social games occur may not charge for participation in the game, a rental fee for the room, table, or equipment or otherwise extract money from social game participants. Those businesses *may* make money from selling food and drink to social game players on the same terms that they sell those goods to all other patrons. Even if an establishment sells food and drink on the same terms to all patrons, if it charges inflated prices in relation to other similar establishments and its only patrons are social game players that may be evidence that the establishment is in fact making income from operation of social games.

### **SOCIAL GAME DEFINITION**

ORS 167.117(7) defines the term “gambling” for purposes of the gambling offense statutes, ORS 167.108 to 167.164, and excludes “social games from that definition:

“Gambling” means that a person stakes or risks something of value upon the outcome of a contest of chance or a future contingent event not under the control or influence of the person, upon an agreement or understanding that the person or someone else will receive something of value in the event of a certain outcome.

*Gambling does not include:*

\* \* \*

*(c) Social games.*

(Emphasis added.)

“Social game” is defined by ORS 167.117(21) to mean:

(a) A game, other than a lottery, between players in a private home where no house player, house bank or house odds exist and there is no house income from the operation of the social game; and,

(b) If authorized pursuant to ORS 167.121, a game, other than a lottery, between players in a private business, private club or place of public accommodation where no house player, house bank or house odds exist and there is no house income from the operation of the social game.

ORS 167.121 permits cities and counties to authorize social games in private businesses, private clubs or places of public accommodation.<sup>17</sup> The requirements for social games are the same in those places and private homes. You ask us to clarify the requirement that the game be “between players” and the prohibitions on “house” activity.

## “BETWEEN PLAYERS” REQUIREMENT

### 1. Statutory interpretation

In interpreting the phrase “between players” (as well as the other terms about which you inquire), we follow the statutory interpretation method set out by the Oregon Supreme Court in *PGE v. Bureau of Labor and Industries*, 317 Or 606, 610, 859 P2d 1143 (1993), and subsequently refined in *State v. Gaines*, 346 Or 160, 171-172, 206 P3d 1042 (2009). The first step is an examination of the statute’s text and context. *PGE*, 317 Or at 610-11. In doing so, we apply statutory and judicial rules for reading the text and context, including giving terms of common usage their plain meanings. *Id.* The second step is to consider legislative history where it appears useful to the analysis of the statute. *Gaines*, 346 Or at 171-172. The third and final step is resort to general maxims of statutory construction to aid in resolving any uncertainty as to the legislature’s intent that remains “after examining text, context, and legislative history.” *Id.*

### 2. Defined

#### a. “Between”

While the statutory definition of “social games” was initially enacted in 1973 and amended in 1974 (as discussed at length later in this opinion), the “between players” statutory language predates that definition and was enacted in 1971. When we consider the plain meaning of a statute’s text under the interpretational method described in *PGE* and *Gaines*, we are directed to consult dictionaries in existence around the time of the enactment of the statute. *See, e.g., State v. Perry*, 336 Or 49, 53, 77 P3d 313 (2003). Accordingly, we consult the 1961 edition of WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY (UNABRIDGED), but note that the pertinent definitions in the 1961 edition are identical to those in the most current edition published in 2002. Beginning with “between,” the most apt plain meaning is “involving the

reciprocal action of: involving as participants: jointly engaging <the job was completed *between* the two of them> <two years of quiet talks *between* the three>.” WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY at 209 (unabridged 1961). As the examples illustrate, “between” implies exclusivity; accordingly “between players” means between players *only*.

**b. “Player”**

ORS 167.117(16) defines “player” to mean:

[A] person who engages in any form of gambling solely as a contestant or bettor, without receiving or becoming entitled to receive any profit therefrom other than personal gambling winnings, and without otherwise rendering any material assistance to the establishment, conduct or operation of the particular gambling activity. A person who gambles at a social game of chance on equal terms with the other participants therein is a person who does not otherwise render material assistance to the establishment, conduct or operation thereof by performing, without fee or remuneration, acts directed toward the arrangement or facilitation of the game, such as inviting persons to play, permitting the use of premises therefor and supplying cards or other equipment used therein. A person who engages in bookmaking is not a player.

**(1) Conundrum posed by “gambling” requirement**

The first requirement for a “player” is that the person must engage in gambling – that is stake or risk something of value upon the outcome of the game in return for the chance to receive something of value if they win. The requirement that a “player” must “gamble” creates a recurring conundrum in interpreting the term “social game.” Namely, ORS 167.117(7)(c) excludes “social games” from the definition of “gambling,” so a person who plays in a social game does not engage in “gambling.” But ORS 167.117(21) defines “social game” as a game “between players,” and ORS 167.117(16) defines “player” to require that a player engage in “gambling.” In short, no game could *ever* qualify as a “social game” under those definitions, because no one who plays in a social game is a “player,” but social games must be “between players.”<sup>2/</sup>

The obvious solution is to interpret “gambling,” as used in ORS 167.117(16)’s definition of “player” to mean “gambling,” as defined in ORS 167.117(7), *omitting the exclusion for social games contained in subsection (7)(c)*. It might be argued that such an interpretation requires us to omit words that have been inserted in the definition of “gambling” in violation of the rule that we refrain from doing just that. *See* ORS 174.010 (in construing statute, judges should not “omit what has been inserted”). But ORS 167.117 provides that its definitions apply “[a]s used in ORS 167.108 to 167.164” “*unless the context requires otherwise.*” (Emphasis added.) The context here requires us to adopt a modified definition of “gambling” for the purposes of the social game definition. Also, we must adopt a construction that gives effect to all provisions of a statute, if possible. ORS 174.010 (“where there are several provisions or particulars such construction is, if possible, to be adopted as will give effect to all”).

We conclude that, for purposes of ORS 167.117(21)'s definition of "social game," the legislature likely intended "gambling," as used in ORS 167.117(16)'s definition of "player" to mean gambling as defined by ORS 167.117(7), excluding the social game exception in subsection (7)(c). Applying that definition, a "player" in a social game must stake or risk something of value upon the outcome of the contest, *i.e.*, bet, in the game.

A "player" must engage in gambling "solely as a contestant or bettor." That means, first, that the person may not receive or become entitled to receive "any profit therefrom other than personal gambling winnings." That requirement distinguishes a "player" from one who "profits from unlawful gambling," which is defined as when:

\* \* \* a person, *acting other than solely as a player*, accepts or receives money or other property pursuant to an agreement or understanding with another person whereby the person participates or is to participate in the proceeds of unlawful gambling.

ORS 167.117(17) (emphasis added).

**(2) No material assistance**

The second requirement for a person to engage in gambling "solely as a contestant or bettor" is that the person not "render[] any material assistance to the establishment, conduct or operation of the particular gambling activity." That requirement distinguishes a player from a person who "promotes unlawful gambling," which is defined as:

\* \* \* a person, *acting other than solely as a player*, engages in conduct that materially aids any form of unlawful gambling. Conduct of this nature includes, but is not limited to, conduct directed toward the creation or establishment of the particular game, contest, scheme, device or activity involved, toward the acquisition or maintenance of premises, paraphernalia, equipment or apparatus therefor, toward the solicitation or inducement of persons to participate therein, toward the conduct of the playing phases thereof, toward the arrangement of any of its financial or recording phases or toward any other phase of its operation. A person promotes unlawful gambling if, having control or right of control over premises being used with the knowledge of the person for purposes of unlawful gambling, the person permits the unlawful gambling to occur or continue or makes no effort to prevent its occurrence or continuation.

ORS 167.117(18) (emphasis added).

A "person who gambles at a social game of chance on equal terms with the other participants" does not "render material assistance" by arranging or facilitating the game, such as by "inviting persons to play, permitting the use of [their] premises," or "supplying cards or other equipment" to be used in the game as long as they do so for free. The requirement that such

persons gamble in the game on equal terms means that they must gamble on the same or like terms as other players and have no advantage. WEBSTER'S at 766 (defining "equal" to mean "of the same measure, quantity, amount, or number as another or others : LIKE \* \* \* like, as great as, or the same as another or others in degree, worth, quality, nature, ability, or status \* \* \* like, as great, or the same for each member of a group or class[.]"). If the gambler who arranges or facilitates the game does not gamble on equal terms as the other players, the person is not a "player," but instead a promoter, and the game does not qualify as a social game. The same result occurs if the person receives any fee or remuneration for arranging or facilitating the game.

### 3. "Between players" applied

#### a. Dealers who do not gamble in the game

We next apply the "between players" requirement to various scenarios that we are informed may arise, beginning with the situation where a person deals cards but does not gamble in the game. Such a dealer is not a "player" because he does not gamble in the game as players must. The question is whether the requirement that the "game" be "between players" precludes a non-player dealer in a social game, or stated alternatively, may only players deal in a social game?

As discussed above, "between" means "involving the reciprocal action of: *involving* as participants[.]" WEBSTER'S at 209 (emphasis added). Thus, the question becomes whether being "involved" in the "game" means playing in the game as a contestant or bettor, or whether it also includes performing acts that materially assist the game. We conclude that the legislature likely intended the former. The legislature did not define "game." The pertinent ordinary definition is "a physical or mental competition conducted according to rules in which the participants play in direct opposition to each other, each side striving to win and to keep the other side from doing so -- see GAME OF CHANCE." WEBSTER'S at 933. A "game of chance" is one where "chance rather than skill determines the outcome." *Id.* We glean from that definition that participating or being involved in a social "game" means "play[ing] in direct opposition," *i.e.*, taking part in the competition as a contestant or bettor.

By contrast, in ORS 167.117(18) the legislature described acts that materially aid the game, including "conducting the playing phases of the game," which would include dealing the cards. The legislature expressly allows private businesses, private clubs, and places of public accommodation to materially aid social games by providing their premises (and presumably the tables and equipment as well) if cities or counties authorize it. But, at the same time, as we will discuss below, the legislature prohibited the persons connected with those places from being players. Thus, the legislature distinguished between playing in the game and materially aiding the game, and intended to allow non-players to facilitate the game at least in some ways.<sup>31</sup> For that reason, it appears from the text and context that the legislature intended the "between players" requirement to ensure that only the contestants and bettors in social games meet the requirements of ORS 167.117(16). We consulted legislative history for guidance and found none to alter our conclusion based on the text and context.

Consequently, if a group of friends gathers to play and one does not want to bet in the game, but offers to deal the cards, the game would qualify as a social game if all other requirements are met. But as discussed further below, such a dealer may not receive a tip or any fee, due to language in the definitions of “player” and “social games” (*i.e.*, the “house” prohibitions) that forbid anyone from dealing cards for a fee or remuneration.

**b. Bankrolled players**

A second issue arising from the “between players” requirement is whether a social game may have a player who is not betting their own money but is “bankrolled” (who plays with capital supplied in whole or part by someone else who shares any winnings). We addressed that issue in a previous opinion and concluded that a social game may not have any bankrolled players; we adhere to that conclusion. 38 Op Atty Gen 1455, 1457-1460 (1977). Although not expressly stated in the prior opinion, the conclusion rests implicitly – at least in part – on the rationale that only the people who play in the social game may stand to win or lose any money from the game. To qualify as a “player” a person must engage in gambling (risk something of value) solely as a contestant or bettor without receiving or becoming entitled to receive any profit other than “personal” gambling winnings. “Personal” means “of or relating to a particular person.” WEBSTER’S at 1686 (emphasis added). There is no question that the “particular person” referred to in the definition of player is the contestant or bettor, not a third party. A bankrolled player does not risk his or her own funds (at least to the extent of the “bankroll”). Moreover, the presence of a bankrolled player makes the game take on a professional, rather than social, flavor. 38 Op Atty Gen at 1457-60.

**c. Fee or advantage by person arranging or facilitating game**

Finally, the “between players” requirements makes clear that if a person who gambles in a social game receives any fee or remuneration for arranging or facilitating a game, the game is not a social game because the person would no longer qualify “solely as a player,” and the game would not be “between players.” Similarly, if one who arranges or facilitates the game has some advantage in the game, he or she is not playing on equal terms with other players, and the game is not social.

We interpret “facilitating” the game to include dealing the cards. The “player” definition exempts from prosecution for materially assisting unlawful gambling (*i.e.*, promoting) persons who perform “acts directed toward the arrangement or facilitation of the game” if they gamble in social games on equal terms with other players and receive no fee or remuneration for facilitating or arranging the game. Although dealing the cards is not one of the listed examples of arranging or facilitating the game, as discussed above, “conduct[ing] the playing phases” is listed as an act that “materially aids unlawful gambling” under ORS 167.117(18), and dealing the cards is part of conducting the playing phase of the game. Consequently, a person who gambles in a social game and also deals the cards must not have any advantage in the game or receive any fee or remuneration for dealing. This means that for games like blackjack where the dealer has an inherent advantage, no player may hold the deal; rather the deal *must* rotate. It is not enough for

the dealer to offer the deal to other players, who then may decline to accept it. If the deal in a game like blackjack does not in fact rotate, the game is not a social game.

## HOUSE PROHIBITIONS

### 1. House

#### a. Text and context

We turn now to the prohibitions on “house” involvement in a social game. Specifically, a social game must have no “house player,” “house bank,” “house odds,” or “house income from operation of the social game.” Because all of those prohibitions are on “house” activity, we begin our analysis with the meaning of “house.” Two rules for construing statutory text and context are particularly pertinent here. First, we assume that when the legislature uses the same word in related statutory provisions enacted as part of the same law, it intends the word to have the same meaning in all provisions. *Tharp v. PSRB*, 338 Or 413, 422-23, 110 P3d 103 (2005). Where, as here, the legislature used the same word repeatedly in the same provision, that assumption is particularly strong. Second, we assume that the legislature did not intend any portion of its enactments to be meaningless surplusage and should adopt a construction, if possible, that gives effect to all provisions. ORS 174.010 (“where there are several provisions or particulars such construction is, if possible, to be adopted as will give effect to all”). *See, e.g., State v. Connally*, 339 Or 583, 593, 125 P3d 1254 (2005) (stating rule against surplusage). Several of the “house” prohibitions established in ORS 167.117(21) potentially overlap and the latter rule guides us to adopt a construction that gives each some independent meaning if possible.

“House” has three plain meanings in the gambling context: (1) “the operators of a gambling game”; (2) “the management of a gambling establishment”; and, (3) “a gambling establishment: CASINO.” WEBSTER’S at 1096. Beginning with “operators of a gambling game,” the most relevant definition of “operator” is “a person that actively *operates* a business \* \* \* whether as owner, lessor, or employee.” WEBSTER’S at 1581 (emphasis added). The relevant definition of “operate” is “to manage and to put or keep in operation whether with personal effort or not[.]” *Id.* “Business” means “a [usually] commercial or mercantile activity customarily engaged in as a means of livelihood and typically involving some independence of judgment and power of decision” as well as “a place where such an enterprise is carried on [.]” *Id.* at 302. The relevant definition of “commercial” is “from the point of view of profit : having profit as the primary aim.” *Id.* at 456. In sum, “house” in the sense of an “operator of a gambling game,” means a person who manages, puts, or keeps in operation a gambling game as a means of livelihood with profit as the primary aim.

The second and third potential meanings of “house” are a “gambling establishment” and “the management of a gambling establishment.” The former encompasses the latter as “establishment” means “a more or less fixed and usually sizable place of business or residence *together with all the things that are an essential part of it (grounds, furniture, fixtures, retinue, employees).*” WEBSTER’S at 778 (emphasis added). Another potential meaning of “house” in

this context is a “gambling house,” which is “a place where gambling is carried on or allowed as a business[.]” WEBSTER’S at 932. Obviously all of those definitions are closely related, differing only in whether they refer to the personnel of a gambling establishment, the place itself, or both. “House” in the sense of “operator of a gambling game,” differs from those definitions in that the “house” is not tied to any particular place, but includes any person who operates a game for profit.

It is not readily apparent whether the legislature intended “house” to encompass all of those plain meaning senses or not. The context suggests that *none* of those definitions are completely satisfactory. Specifically, ORS 167.117(21) expressly prohibits the “house” from receiving *any* income from operating a social game, but in *all* relevant definitions, a “house” operates the game for profit. In other words, ORS 167.117(21)’s requirement that the “house” not receive any income from operating a social game effectively prevents there from being a “house” – as Webster’s would define it – in a social game.

The legislature may have intended “house” to mean any private business, private club or place of public accommodation where a social game occurs even if the place makes no income from the game. That interpretation would stretch the plain meaning of “house” to include any business where social games occur, rather than only places that operate gambling games as a business. It is true that those places operate for a profit and, if they allow social games, do so from a profit motive (*e.g.*, the sale of food and drink) even if they derive no income directly from the game. Although that interpretation solves the problem of reconciling the definition of “house” with the prohibition on “house” income, it gives no effect to the “house” prohibitions that apply to games in private homes pursuant to ORS 167.117(21)(a).

Alternatively, the legislature may have intended “house” very broadly to include any place where a social game occurs, including a private home. Although that interpretation gives effect to the house prohibitions in ORS 167.117(21)(a), it creates other problems. First, that definition does not fall within any of the plain meanings. Second, subsection (a) prohibits a “house player” in games in private homes and interpreting “house” to include any place where a social game occurs to mean that the person who invited friends into his or her home to play a “social game” could not play. That interpretation would conflict with the definition of “player” which, understandably, recognizes that a person who hosts a social game in his or her home may play.

Finally, the legislature may have intended “house” to include any business establishment where a social game occurs (including the owners, managers and employees of the place) *and* any person who operates a game for profit rather than for social purposes. That interpretation gives effect to the house prohibitions, both in business establishments and private homes, and reconciles the prohibition on a house player in a private home and the definition of “player” because only a person who sought to make a profit in a private home would be prohibited from playing. But that definition continues to have a rather nonsensical application to the house income prohibition, because that prohibition would literally mean that anyone who operates a game for profit cannot make any income from operating the game. No potential definition of “house” that gives effect to all prohibitions remedies that problem. Because the legislature’s

intended meaning of “house” is ambiguous after examining the text and context, and the legislative history may help us understand the intended meaning of “house,” we consult that history.

**b. Legislative history**

The “social game” exception (but not the statutory definition of the term) first appeared in Oregon law in 1971. In 1970, the Criminal Law Revision Commission drafted a proposed criminal code for Oregon, accompanied by an explanatory commentary, both of which it submitted to the 1971 legislature. Article 30 of the proposed code concerned gambling offenses and was adopted by the legislature. Or Laws 1971, ch 743, §§ 263-265. Sections 264 and 265 criminalized *promoting or profiting* from unlawful gambling; *participating as a player* was not unlawful under those provisions. *Id.* at §§ 264 and 265. Article 30 did not exempt social games from the definition of “gambling”; rather the definition of “player” – which was important at the time to describe behavior that would not be subject to criminal sanction – contained a social games exception that provided then, as now, that a person who gambles on equal terms in social games does not promote gambling by arranging or facilitating the game for free. Or Laws 1971, ch 743, § 263(7). The commission explained the social game exception in its commentary on Article 30:

The underlying purposes of the sections [264 and 265] are to get at the professional who exploits the popular urge to gamble. *The individual citizen who places a bet is not criminal \* \* \*. Neither are friendly social games criminal under the draft* and a person does not promote gambling if he merely invites friends in for a game and provides cards or other paraphernalia. This results from the definition of “player” in § 263(7) \* \* \*. The Michigan revisers neatly state the case for excluding the friendly social game: “*Private consensual games are generally accepted as socially if not legally proper, and there is no point in preserving the fiction that they are undesirable.*” *Id.* at 257 (quoting Michigan Revised Criminal Code at 465 (emphasis in original)).

Criminal Law Revision Commission, Proposed Oregon Criminal Code, Final Draft and Report, Article 30, § 263(7) (1970) (emphasis added).

Therefore, in 1971, the social game exception appeared to be confined to games in “private” homes, and only players could “invite friends in” for a game without subjecting themselves to criminal sanction. The social game exception did not expressly allow social games in public places like card rooms.

At the next legislative session in 1973, representatives of hotel, restaurant, and bar workers’ unions, as well as representatives of private clubs, asked the legislature to amend the gambling laws to allow social games in business establishments. They informed the legislature that card rooms had been shut down due to the 1971 legislation and those closures had caused unemployment among waitresses, bartenders, card room attendants, and workers who made the

food and beverages sold in card rooms. *See, e.g., Minutes, Senate and Federal Affairs Committee (SB 803), May 10, 1973, at 5-6.*

Some opposed the amendment, arguing that allowing social games in public places would encourage professional gambling. *Id.* at 6. But John Runstein, the president of a private social club, testified that “[c]ard room owners thin[k] that if these social games are permitted on their premises and a reasonable service charge is required for the use of the premises and for the labor involved of not more than 25% of the total income of the overall operation of the complete premises, that anything like professional gambling would be eliminated.” *Id.* at 5.

The legislature agreed. It retained the “social game” language in the definition of player, amended the gambling laws to exclude social games from the definition of “gambling,” and provided the following definition of “social games,” which allowed social games in public places:

[a social game is] a game, other than a lottery, between players in a private home or private business, private club or in a place of public accommodation where no house player, house bank, or house odds exist and the gross income from the operation of the social game does not exceed 25 percent of the gross income of *the private business, private club or public accommodation.*

Or Laws 1973, ch 788, § 1 (emphasis added).<sup>41</sup>

That definition was somewhat ambiguous about whether the “house” prohibitions applied to games in private homes or only to business establishments. The income limitation, at least, expressly applied only to private businesses, private clubs, and places of public accommodation. The legislature did not discuss whether the prohibitions applied to games in private homes. Nor did it discuss the meaning of “house.” But when the legislature first used the term “house,” public places expressly *could* make income from operating a social game as long as that income was a small percentage of their overall business. Thus, in 1973, “house” could have referred to a place that operates a social game for profit.

The reason given for limiting the income that those places derived from social games was to prevent professional gambling in Oregon. Unfortunately, that purpose was not achieved. In the 1974 special legislative session, House Speaker Eymann told the House Rules Committee that the 1973 legislation had allowed large stakes professional gambling to take place in Oregon and that the Attorney General had received numerous requests for corrective legislation. Minutes, House Rules Committee (LC 283), February 7, 1974 at 7; Minutes, House Rules Committee (LC 283), February 11, 1974 at 5; and Minutes, House Committee on Judiciary Special Session (LC 283), February 11, 1974 at 2. Phil Roberts, representing the District Attorneys Association, stated that enforcement of the 1973 legislation’s income limitations had been difficult “because of the various ways a house may collect money, such as charging to enter an establishment or charging an amount per hour for use of a table. Accounting of funds collected in such ways would be almost impossible.” *Id.* at 3.

Legislative Counsel Rich Gatti testified that to remedy professional gambling and enforcement problems that “the broad definition” of social games had caused, he and the Attorney General’s office had drafted a bill that deleted the provision allowing social games in public places and the corresponding income limitations on those places. *Id.*

In subsequent hearings, legislators voiced their support for allowing social games in businesses as well as private homes for the limited purpose of allowing people to play a social game of cards in a warm place where food was served. *See, e.g.*, House Judiciary Committee Minutes HB 3327 Hearing (HB 3327), February 18, 1974 at 3 (statements of Senator Keith Burns and Representative Grace Peck to that effect). Pat Randall, Representing the Oregon AFL-CIO, favored allowing only playing rummy and pinochle in taverns, as those games had been happening in bars in Oregon for many years. Minutes, House Judiciary Committee Special Session (HB 3327), February 20, 1974 at 1. The minutes from that meeting reflect the following remarks by Representative Paulus:

[T]he last session of the legislature had amended the gambling law specifically to take care of the problem in the Portland area where the district attorney had raided and closed down all card games. The law as enacted by the 1973 regular session, she said, was doing exactly what the opponents of the measure had predicted – bringing big time, professional gambling into Oregon. The thrust of that amendment, as advanced by its proponents, was to allow exactly the type of gambling Mr. Randall was advocating, and the result was that in order to allow a few individuals to play a game of cards in the warmth of a tavern, the law had permitted organized, professional gambling to come into Oregon, which was not the intent of the legislature. The current problem had been forced upon the local governments by the action of the legislature, and she believed it was the responsibility of the legislature to undo the harm that had been done.

*Id.* at 2. Although various amendments were proposed, at the end of the day the legislature “undid the harm” caused by the 1973 legislation by continuing to allow social games in business establishments, but by amending the social game exception to prohibit the “house” from receiving *any* income from operation of a social game. Or Laws 1974 (spec sess), ch 7, § 1 (now codified as ORS 167.117(21)). The amendment also expressly applies the “house” prohibitions to games in private homes.

In sum, the legislature never discussed what it intended “house” or any of the house prohibitions to mean, except the prohibition on house income. But its discussion of that prohibition reflects a clear intention to apply the prohibition to private businesses, private clubs, and places of public accommodation. Thus, the Assembly considered those places to be the “house.” And even though the legislature’s discussions focused solely on games in those places, it expressly applied the same prohibitions to games in private homes. It appears, then, that the legislature intended a broader definition of “house” than merely the business establishments where social games may occur. Finally, the history demonstrates that the legislature intended the prohibition on “house income” to prevent professional gambling and to make the gambling laws

easier to enforce. It is evident that these were primary considerations in defining social games. Accordingly, we keep those purposes in mind when interpreting the house prohibitions.

Based on the text, context, and legislative history, we interpret "house" to include: (1) all private businesses, private clubs, and places of public accommodation where social games occur, including their owners and personnel; and (2) any one who operates a social game for profit rather than for social purposes. "Operates" for those purposes would include any action that materially aids the game as described in ORS 167.117(18).

## 2. "House income from operation of the social game"

Having interpreted "house," we now examine the prohibitions on "house" activity in a social game, beginning with the prohibition on "house income from operation of the social game." The plain meaning of "income" is "a gain or recurrent benefit." WEBSTER'S at 1143. Hence, the house may not receive any gain or benefit from the operation of a game. In a 1974 opinion, this office opined that:

no "house income" \* \* \* mean[s] precisely that: counties and cities cannot, by ordinance, authorize an establishment to charge for the privilege of holding or participating in a social game. Whatever benefit the business derives must be a consequence of the mere existence of the game, not revenue specifically exacted from the game or its participants. So construed, the Act prohibits not only a [\$1.00 per hour per player fee to defray expenses of the operation of the social game] but also, *inter alia*, the raising of prices charged for some or all of the establishment's regular services in a manner to coincide with the hours during which social games are permitted on the premises.

Attorney General opinion letter dated April 17, 1974 to Honorable Robert Elliott. That interpretation accords with the plain language, context, and legislative history of the provision. In addition, since *anyone* who attempts to operate a social game for profit is the "house," the prohibition on house income effectively prevents *anyone at any place* from making any income from operation of a social game.

## 3. "House player"

The prohibition on a "house player" prevents the house from gambling in a social game. Again, "player" means:

A person who engages in any form of gambling solely as a contestant or bettor, without receiving or becoming entitled to receive any profit therefrom other than personal gambling winnings, and without otherwise rendering any material assistance to the establishment, conduct or operation of the particular gambling activity. A person who gambles at a social game of chance on equal terms with the other participants therein is a person who does not otherwise render material assistance to the establishment, conduct or operation thereof by performing,

without fee or remuneration, acts directed toward the arrangement or facilitation of the game, such as inviting persons to play, permitting the use of premises therefore and supplying cards or other equipment.

ORS 167.117(16). Assuming, however unlikely, that the house could ever qualify *solely* as a player, it is expressly prohibited from doing so. Thus, in addition to being prevented from making any income from *operation* of a social game, the house is prohibited from betting and becoming entitled to receive gambling winnings from competing in the game.

That prohibition prevents games where players bet against the house from qualifying as social games. For example, a bar, restaurant, hotel, private club, or any person who attempts to operate a game for profit could not supply a dealer in a blackjack game, because the house would be competing to receive gambling winnings. More broadly, the prohibition on a house player prevents the house from betting in any social game, even games where players bet against each other, rather than the house, because the house may never compete for gambling winnings.

#### 4. “House bank”

Next, a social game may have no “house bank.” Webster’s contains several definitions of “bank” that specifically apply in the gambling context: (1) “GAMBLING HOUSE” [which, as discussed above, is a place where gambling is carried on or allowed as a business]; (2) “a person or persons conducting a gambling house or game; *specif*: DEALER”; (3) “the sum of money in certain gambling games (as chemin de fer) that is deposited or stated by the dealer as a fund from which to pay his losses”; and, (4) “the whole supply of chips available for purchase and use by players in a game played with chips (as poker).” WEBSTER’S at 172.

In addition, the verb “bank” in the gambling context means “to act as banker for (as a gambling game).” *Id.* And, “banker” in the gambling context has three meanings: (1) “the player who keeps, sells, and redeems the supply of chips used in a game – compare BANK (referring to the meaning of the whole supply of chips available for purchase and use by players in a game played with chips (as poker)); (2) “the person who agrees to cover the bets of all players up to a certain limit established as the bank”; and, (3) “a dealer (as in blackjack) or a gambling house or its representative against whom all bets must be placed.” *Id.*

The most natural meaning of “house bank” in this context is the house acting as the banker for a game. Some prohibitions on activities that the house might do as the banker are duplicative of other prohibitions. For example, the house player prohibition prevents the house from competing in a social game, thus, bets may not be placed against a house dealer. And covering bets or selling chips to the extent that the house would make a profit from doing so is precluded by the prohibition on house income. But we construe the house bank prohibition to go further and *to preclude the house from having any involvement in the financial aspects of a social game*, even if the house makes no profit from its involvement. This construction gives the house bank prohibition some independent meaning. For example, *the house could not keep, sell or redeem chips in a social game, even if the house makes no profit from doing so*. On the other hand, *the house does not appear to be prohibited from simply supplying chips that the players*

themselves sell, keep and redeem. That interpretation gives effect to the legislative purpose for the prohibitions – ease of enforcement and preventing professional gambling – while still recognizing that the house may provide equipment for a game if it handles no money and does so free of charge.

## 5. “House odds”

Finally, no “house odds” may exist in a social game. Potentially pertinent definitions of “odds” are: (1) the “amount of difference by which one thing exceeds or falls short of another: amount in excess or defect”; (2) the “difference favoring one of two opposed things : balance of advantage or weight of opposition”; (3) “the probability that one thing is so rather than another or that one thing will happen rather than another : balance of probability : greater likelihood CHANCES”; (4) “the ratio existing between the amount to be paid off for a winning bet and the amount of the bet placed <the horse was running at *odds* of 6 to 1.” WEBSTER’S at 1563. No context or legislative history clarifies which meaning the legislature intended. Nor could we find any definition of “house odds” in the texts that we consulted on gambling law.<sup>5/</sup>

Again, our guiding rule is to give this provision some independent meaning, if possible, that is not subsumed by the other prohibitions.<sup>6/</sup> To give “house odds” independent effect, we interpret it to preclude the house from having any involvement in establishing the ratio between the pay off for a winning bet and the amount of the bet placed even when it has no money at stake in the game. For example, this prohibition would preclude the house from setting odds governing pay-out for a bet between players or awarding a prize or gift certificate to the winner of a game.

## CONCLUSION

We summarize our conclusions as follows:

Private businesses, private clubs or places of public accommodation that allow social games and their personnel may not: (a) derive any income from the game (including charging cover, usage or rental charges for the place or equipment), or extract any money directly from the participants other than for the sale of food and drink on the same terms as all other patrons (even if an establishment sells food and drink on the same terms to all patrons, if it charges inflated prices in relation to other similar establishments and its only patrons are social game players that may be evidence that the establishment is in fact making income from operation of social games); (b) compete or bet in the game; (c) act as “banker,” by being involved in the financial aspects of a social game, including selling, keeping and redeeming chips even if it makes no profit from doing so; or (d) have any advantage or set the ratio between the payout and bet amount;

- Anyone who attempts to operate a social game for profit – no matter where – will be deemed to be the “house” and subject to the same prohibitions;

- A person who invites friends in for a social game in the person's home may bet in the game as long as the person is not operating the game for profit and may arrange the game and provide the necessary equipment as long as the person receives no fee or remuneration for doing so and plays on equal terms with the other players;
- Any social game players who deal in a game where the dealer has an inherent advantage, such as blackjack, must pass the deal and receive no fee or remuneration for dealing; and,
- All persons who bet in a social game must stand to gain only their own personal gambling winnings and no other profit from the game.

Sincerely,

David Leith  
Chief Counsel  
General Counsel Division

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<sup>1/</sup> ORS 167.121 provides that “[c]ounties and cities may, by ordinance, authorize the playing or conducting of a social game in a private business, private club or in a place of public accommodation. Such ordinances may provide for regulation or licensing of the social games authorized.”

<sup>2/</sup> Obviously, if no participants in a game are betting, the game does not meet the general definition of “gambling” and requires no legislative exemption or authorization to be lawful.

<sup>3/</sup> We also recognize that we have answered this question differently before. *See* Letter of Advice dated September 17, 1982, to Polk County District Attorney Doug Dawson (OP-5409) at 3-4 (rejecting that notion that a “dealer does not participate because he handles the cards, supervises and \* \* \* inevitably works for tips”); Letter of Advice dated April 14, 1983, to Senator Fred Heard (OP-5460) at 5 (concluding that providing a role for anyone other than “players” – in that case dealers – “takes the activity out of the social gaming exception”). Those opinions were issued prior to *PGE* and *Gaines* and did not examine the issue using their methodology. To the extent that the opinions are inconsistent with this opinion, we overrule them.

<sup>4/</sup> Changes in statutory text over time are considered part of the context of the statute. *Krieger v. Just*, 319 Or 328, 336, 876 P2d 754 (1994). We discuss the change in statutory text in our discussion of legislative history, because the statutory change alone does not eliminate ambiguity and it makes more sense to do so.

<sup>5/</sup> Several gambling websites do discuss “house odds.” A typical website explains “house odds” this way:

A casino earns money by paying winners at “house odds.” This is an amount that is slightly less than the true odds of winning the contest. Let’s say we’re flipping a coin and the bet is one dollar. The true odds of winning are 1 to 1, but the house odds might be 0.95 to 1. In other words, a loss to the casino costs \$1, but the casino will only pay 95 cents when a player wins. That’s the house edge. Sometimes professional gamblers can use strategy to shift the edge away from the casino, but in most situations the casino has an advantage.

<http://casinogambling.about.com/od/oddsandends/a/houseedge.htm>. Whatever clarity that definition provides, the courts are unlikely to rely on gambling website definitions. And, since the house may not bet at all in the game under the prohibition on “house player” that definition gives no independent meaning to the prohibition on “house odds.”

<sup>6/</sup> The house cannot gamble in a social game, nor may it pay off winning bets. Consequently, the prohibitions on a house player and house bank effectively preclude the house from having any advantage in a social game. House odds must mean something more than simply having an advantage in a game or it adds nothing to those prohibitions.

AIS-1277

3. A.

**Business Meeting**

**Meeting Date:** 04/23/2013

**Length (in minutes):** Consent Item

**Agenda Title:** Approve City Council Meeting Minutes

**Submitted By:** Cathy Wheatley, Administrative Services

**Item Type:** Motion Requested

**Meeting Type:** Consent Agenda

**Public Hearing:**

**Publication Date:**

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**Information**

**ISSUE**

Approve City Council meeting minutes.

**STAFF RECOMMENDATION / ACTION REQUEST**

Approve minutes as submitted.

**KEY FACTS AND INFORMATION SUMMARY**

Attached council minutes are submitted for City Council approval.

**OTHER ALTERNATIVES**

N/A

**COUNCIL GOALS, POLICIES, APPROVED MASTER PLANS**

N/A

**DATES OF PREVIOUS COUNCIL CONSIDERATION**

N/A

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# City of Tigard

## Tigard City Council Meeting Minutes

### January 29, 2013

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#### 1. SPECIAL BUSINESS MEETING

Track 1

A. Mayor Cook called the meeting to order at 6:31 p.m.

B. City Recorder Wheatley called the roll:

| <u>Name</u>                 | <u>Present</u> | <u>Absent</u> |
|-----------------------------|----------------|---------------|
| Mayor Cook                  | ✓              |               |
| Council President Henderson | ✓              |               |
| Councilor Buehner           | ✓              |               |
| Councilor Snider            | ✓              |               |
| Councilor Woodard           | ✓              |               |

#### 2. CONSIDER RESOLUTION TO AMEND THE CITY COUNCIL GROUNDRULES, SUPERSEDING RESOLUTION NO. 12-35

Assistant City Manager Newton reviewed the packet material and summarized the status of this agenda item. She pointed out the changes made to the groundrules as a result of the council discussion during the January 10, 2013 meeting.

There was lengthy discussion on citizen communications on agendas whereby the council groundrules state that items available for comment are items that are not on the agenda.

Track 2

During the discussion on the groundrules, City Council consensus was for the following changes to the proposed resolution (red font):

#### “Citizen Communication”

- The “Citizen Communication” portion of the agenda is a regular feature on the council business meetings. **To manage the agendas to allow council time to consider the remaining agenda items scheduled for the business meeting, this agenda item will be allotted a maximum of 20 minutes.** This item will be placed near the beginning of the council agenda to give citizens a chance to introduce a topic to the City Council. ~~Citizen Communications must be directed to topics that are not on the council agenda for that meeting.~~ The mayor or the council president (if the mayor is absent) may ask speakers to keep their remarks to about two to five minutes. If a large number of speakers have signed up, the mayor might ask speakers to keep their comments closer to two minutes.

Council Liaisons

- ~~Alternate council liaisons will attend a board or committee meeting only if the primary council liaison is unable to attend.~~

Use of Electronic Communications Devices During Council Meetings

- Councilors shall not access the internet but may access council packet information and personal review annotations\* concerning any matter pending before the council during a council meeting. Councilors are to keep their focus on the proceedings. ~~(\*City Recorder Note: Handwritten or electronic notes may be subject to public records law. See the reference in the “Mandates” section above.)~~

Motion by Council President Henderson, seconded by Councilor Buehner, to approve Resolution No. 13-04 with council amendments.

The motion was approved by a unanimous vote of City Council present.

|                             |     |
|-----------------------------|-----|
| Mayor Cook                  | Yes |
| Council President Henderson | Yes |
| Councilor Buehner           | Yes |
| Councilor Snider            | Yes |
| Councilor Woodard           | Yes |

3. REVIEW AND REACH CONSENSUS ON THE UPDATE TO THE COUNCIL LIAISON APPOINTMENT MATRIX

Council reviewed the draft matrix prepared after its discussion on January 10, 2013. During discussion the following changes and notes were made to the matrix:

- Councilor Woodard is the alternate representative to the Westside Economic Alliance. Kenny Asher is the staff liaison.
- Council President Henderson is the primary representative to the Willamette River Water Coalition; Councilor Buehner is the alternate.
- Council President Henderson and Councilor Woodard will serve as the primary representatives to the Façade Improvement Subcommittee; Mayor Cook is the alternate.
- Tom McGuire is the staff liaison to the Planning Commission.
- Verification needed for the meeting date and time of the Youth Advisory Commission. Councilor Snider will serve as the primary representative and Mayor Cook will serve as the alternate.

Track 5

4. RECAP OF 2012 GOAL STATUS AND REVIEW SIX-MONTH PRIORITIES FOR 2013

City Manager Wine facilitated the City Council discussion on this agenda item.

- City Manager Wine said she heard from the City Council’s discussion on January 10, 2013, that while there was consensus that moving forward with a citywide strategic plan and effort that would take about six months to formulate. The purpose tonight is to bring more clarity to the steps that will follow.
- City Manager Wine reviewed the quarterly progress report process followed in the past to keep the council updated on goal achievement. She distributed the 2012 4<sup>th</sup> Quarter Goal Update.
- City Manager Wine referred to an attachment to the staff report on this agenda, *Priorities for 6-Month Focus in 2013*. The information contained in this document amplified what the council could expect for key decisions coming forward on the 2012 goals or goal areas as discussed by the council on January 10, 2013.
- During the discussion on the list of priorities, Councilor Buehner requested consideration of a topic of discussion at an upcoming joint meeting with the City of Beaverton, which is to look at adjustment of school district boundaries. City Manager Wine acknowledged the issue and agreed it would likely be discussed at the upcoming meeting; but, this matter will not be resolved within the context of community planning.
- City Manager Wine discussed that Executive Staff is still developing what the next months will look like for detailing the Strategic Plan. Staff realizes there is some level of community input that the City Council would prefer. The Strategic Plan details identified by the Executive Staff should align with the City Council input regarding future goals articulated on January 10, 2013. The administration work plan will follow the direction of the Strategic Plan.
- City Manager Wine advised that on the topic, *Communicate with Tigard Residents*, both the City Council and the Mayor’s Blue Ribbon Task Force indicated there is a need to enhance the city’s communication strategies. From the standpoint of budget and current practices, staff is looking at ways to work on this. Some items will be new and are not currently articulated in the 2012 City Council goals. Council can expect staff to bring back ideas about how to reach out to the community and expand the types of input received.
- City Manager Wine advised that on the topic, *Financial Sustainability*, there are key areas, especially this upcoming spring, where major council involvement is envisioned for decision making.
- City Manager Wine advised that on the topic, *Economic Development*, there is a current goal to foster economic development. She said this could move forward with greater definition. She is preparing a draft strategy for council review. In response to a comment from Councilor Buehner, City Manager Wine agreed consideration of the expansion of the current urban renewal district might also fall under this area. This would be something to place before the voters and would be considered within the context of other matters that the council might decide to ask voters.
- City Manager Wine reviewed the outline to *Take the Next Step on Major Projects*. She delineated the near-future work on the water source and supply, including the Lake Oswego-Tigard Water Partnership. Information will be forthcoming on the River Terrace Community Plan at the upcoming joint meeting with the City of Beaverton council. Community Development Director Asher acknowledged the importance of moving as quickly as possible with the Community Plan noting great interest in development and also making sure all the stakeholders are getting their needs met. City Manager Wine said a member of council will be invited to join the stakeholder group in a liaison role. She outlined some of the major decision points in the near future associated with moving forward with the River Terrace area.

**TIGARD CITY COUNCIL MEETING MINUTES – JANUARY 29, 2013**

- Council President Henderson brought up the timing of budget preparation for a fiscal year while council goals are set for calendar years. This means the council sets a vision that cannot take effect for at least one quarter out in the future. After discussion by council members, City Manager Wine said it was not staff's intention for there to be any progress lost on any work underway while the strategic plan is being developed. A strategic plan can drive everything; i.e., council goals, budget priorities and the long-term vision for the city. There is a lot of work now underway that will continue. She added that she would value input by council members regarding what would make the quarterly goal updates more useful. Councilor Snider commented that the timing might be best for the council goal discussion to occur now noting that the budget process will start in March/April and concluding by the end of June. Councilor Buehner noted her preference would be to have the goal-setting meeting in December.
- Councilor Snider commented on the staff suggestion for an aggressive timeline on the River Terrace Community Plan. He said he was supportive of moving as quickly as possible but cautioned that he would not want the quality of work to be sacrificed nor would he want the city to promise things that cannot be delivered.
- Councilor Woodard commented that while he supported planning he has been frustrated with slow progress in implementing goals. He said he is aware that a lot gets done; however, sometimes it is not "real obvious." He said the two critical priorities for him on the priorities list are the Lake Oswego-Tigard Water Partnership and the River Terrace Community Plan. He asked City Manager Wine about resource capability for additional project work.
- City Manager Wine, in response to Councilor Woodard's comments above, advised that the priority list items represent the timing and character of the support needed from the council for decision making. If there is something not on the priorities list that council members are wishing the staff would be working on, then she would like to hear about it at this time. The six-month priorities list will not take the full resource capability of city staff.
- Councilor Woodard commented on his concern, at times, about balancing resources and working efficiently. He said he is unaware of the success the city has at measuring its efficiency. He spoke to his opinion that if we do not have some kind of economic development organization, everything we visualize to be in 20-30 years is unlikely to happen. "We are missing skill sets that I don't think we have." Councilor Snider commented the priorities list is essentially a six-month work plan. Councilor Buehner weighed in with the observation that local government is the most regulated entity in the country. She agreed with Councilor Woodard that it is frustrating because of the amount of time that public process must take. Councilor Woodard acknowledged Councilor Buehner's comments and said he would like to see the city utilize corporate world "best practices" when possible.
- City Manager Wine said that for there to be an economic development organization, there needs to be a position created to carry out a strategy. This strategy is only just now being developed and will likely be the synthesis of the top priorities we have talked about regarding what we should be doing. Someone needs to do that work. City Manager Wine said once the work is done she can include in her budget message a request for new resources to fund economic development resources or to find existing resources in the current budget. The six-month priorities list was prepared to respond to a request to detail the plans for incremental steps to move major priority areas forward.
- Track 10 Discussion followed on timing to develop the strategies and how to fund the implementation (budget process) of those strategies. Time was spent brainstorming how to go about moving forward with the economic development strategy given the fiscal constraints and

## **TIGARD CITY COUNCIL MEETING MINUTES – JANUARY 29, 2013**

to attain the ability to take advantage of opportunities when they arise. City Manager Wine said that to bring in a skilled economic development professional to the organization a focused plan for Tigard must be in place for success in this area. An economic development strategy will come to the City Council in April.

- Work for the day-to-day operations of the city will not be included in the strategic plan.
- Council President Henderson requested the six-month priorities list be realistic with regard to the timelines offered for achieving milestones towards goal completion. He noted his preference for a work plan outlining what staff thinks can be accomplished on the goals set by the City Council. He commented on the January 10 workshop meeting format and the visioning exercise that took place, which was not what he had expected. He was expecting to set goals for short-, medium- and long-term implementation.
- There was discussion on strategic planning efforts in past years. City Manager Wine said the strategic plan, as she is bringing forward, means that the vision forms the basis for a focused set of strategies that the city will carry out. The subsequent goals and objectives will be what makes up the strategic plan. The work council did on January 10 was Step 1 for building the strategic plan. As she was preparing for the January 10 meeting, she advised council members that it was her hope to use a longer term horizon to address council goals in a strategic planning process. Previously, City Council goals had been very project focused. Broadening the scope is important.
- Councilor Buehner referred to the late 1990's effort by the City of Tigard's visioning process, *Tigard Beyond Tomorrow*. From this effort several large tasks were identified and one of those was to identify the long-term water supply. No one expected for this identification to take as long as it has.
- Councilor Buehner referred to the Leland Report for downtown and noted this report came out just as the economy crashed. She said her sense is that the downtown plan got setback at least three years because of the state of the economy. Council President Henderson said he does not think the economy was the only factor for the slow down with the downtown plan. He said there were opinions that better management could have made some progress. Councilor Buehner commented that there was a period of time when there was a lot of miscommunication with downtown business owners causing strife; however, she still maintains the primary problem was the down economy.
- City Manager Wine said one of the best things about developing a strategic plan is for the opportunity for scheduled reviews to examine whether circumstances have changed and develop response strategies to stay the course.
- Councilor Snider said he would like to see the list developed from the *Tigard Beyond Tomorrow* visioning project to ascertain how much was accomplished. After discussion about this earlier effort and council support to inventory what might still be relevant, Assistant City Manager Newton said she would forward a copy of a report for *Tigard Beyond Tomorrow*.
- The six-month work plan is not the foundation for the Strategic Plan.
- Council President Henderson noted his participation in similar activities for planning and he emphasized his desire to focus more on implementation.
- After brief discussion, City Manager Wine advised the goal updates provided to the council are considered to be a report on the implementation steps. She offered that the report can be adapted to show accountability.
- Additional discussion was held on the list of priorities for the first six months of 2013. This list offers a more detailed plan about the continuing to move forward on priorities even while the strategic plan is being developed.

## **TIGARD CITY COUNCIL MEETING MINUTES – JANUARY 29, 2013**

- City Manager Wine said many of the issues on the priorities list will come before the City Council as an agenda item.
- Council President Henderson said he thinks the City Council needs to be better about stating its priorities. Councilor Snider noted agreement with Council President Henderson as long as the stated priorities are limited to only a few critical items – three or four.
- Potential sources as funding such as the PGE revenue generated over and above what was estimated was reviewed. Council President Henderson said he would not want to see these funds being spent without evaluation.
- City Manager Wine gave the example of River Terrace as one of the identified critical priorities for the city. She would want to have the City Council to have an assurance and understanding on what the work plan for River Terrace is, how the work will be done, what the scope and schedule and budget for it are, how it will be carried out and what to expect (timelines). The plan is to present the council with enough information so it has an understanding for how implementation will be achieved. This would include identification of the resources to be applied whether it be internal staff resources or the employment of a consulting team to help with some of the aspects for implementation. City Manager Wine will solicit input from the council should there be a need to make decisions regarding how to maintain the balance among the priorities and operational needs for the city. In response to a comment from Councilor Snider, City Manager Wine said she would assess what resources are required and if there are needs, then she will advise the council so they can advise staff about resource allocation prioritization.
- Councilor Buehner recalled a presentation from Finance and Information Services Department Director LaFrance about the ramifications of using the PGE franchise revenue and the problems that could develop with ending fund balance if the plans for this revenue are not followed. She said she thought it would be a good idea if the presentation was given again as a reminder in the upcoming budget process. Mayor Cook commented on his recent conversation with Finance and Information Services Department Director LaFrance and the need to maintain the five-year financial plan. City Manager Wine said this information can be distributed to the council in an upcoming newsletter packet.
- Councilor Woodard commented on his objective for a recreation program in Tigard and he is sure that the city will eventually “get there.” He recognizes how moving forward is dependent on the state of the city budget and that recreation programming can be realized with the successful implementation of economic development. Councilor Snider said he thinks that progress can be made on other lesser priorities even with the primary focus being trained on the top three or four main priorities. Councilor Buehner referred to the citizen survey, which gave some indication of how much people would be willing to pay with regard to recreation programming. She suggested it might be time to revisit this question in an upcoming survey and for the Parks and Recreation Board (PRAB) to consider framing the matter so the city hears what residents are willing to support. Councilor Woodard said he thought this was a good idea and will pursue it if there is council agreement that this would be a good exercise for the PRAB.
- Community Development Director Asher suggested the SW Corridor Plan be included in the top priorities. It is true that this is a long-range project but Tigard actually does own this project. While Tigard is not running the process on the SW Corridor Plan, it will have a huge impact on what can happen in Tigard. The SW Corridor Plan work does not necessarily mean a large resource allocation according to Community Development Director Asher. Others in the region

## **TIGARD CITY COUNCIL MEETING MINUTES – JANUARY 29, 2013**

are interested in knowing how important City of Tigard views the SW Corridor Project – is it a high priority.

- Discussion then turned to setting the top priorities of the City Council for the next six months to a year. The following priorities were identified to give as guidance to staff:
  - Lake Oswego-Tigard Water Partnership
  - River Terrace Community Plan
  - Economic Development
  - SW Corridor Plan
- City Manager Wine advised that when staff returns to the council regarding focus for strategic priorities, she suspects the above four will remain at the top of the list.
- Council President Henderson referred to the input received from boards and committees on council goals. He wants to make sure this input is folded into the process. City Manager Wine said the development of the strategic plan is a synthesis and will pull in the input received from boards and commissions.
- Councilor Woodard expressed concerns about coordinating all the efforts required for a successful economic development program. He explained his concerns about allocation of resources and having the focus remain on the first three priorities listed above. He did not object to keeping the SW Corridor Plan on the list, but he would rank it as No. 4.

5. ADJOURNMENT – 8:48 p.m.

Motion by Councilor Buehner, seconded by Councilor Snider, to adjourn the meeting.

The motion was approved by a unanimous vote of City Council present:

|                             |     |
|-----------------------------|-----|
| Mayor Cook                  | Yes |
| Council President Henderson | Yes |
| Councilor Buehner           | Yes |
| Councilor Snider            | Yes |
| Councilor Woodard           | Yes |

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Catherine Wheatley, City Recorder

Attest:

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Mayor, City of Tigard

Date: \_\_\_\_\_



# City of Tigard

## Tigard City Council Meeting Minutes

### February 26, 2013

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**EXECUTIVE SESSION:** The Tigard City Council went into Executive Session at 6:30 p.m. to discuss labor negotiations under ORS 192.660(2)(d).

#### STUDY SESSION

A. Discuss Possible Modifications to the City's Cross Connection Control Program

Staff Report: Public Works Utility Division Manager John Goodrich

Staff is seeking direction on whether the city should consider modifying its cross connection control program.

Utility Division Manager Goodrich reviewed the proposed change in administrative rules to ensure backflow assemblies for commercial and residential cross connections are regularly tested to assure the assemblies are functioning properly.

As a water provider, the City of Tigard is tasked with providing safe, high-quality drinking water to nearly 58,000 customers in Durham, King City, two-thirds of Tigard and unincorporated areas of Bull Mountain. A cross connection is an actual or potential link between the drinking water system and contaminants; most commonly these links occur with irrigation systems. Backflow prevention assemblies prevent contaminated water from being siphoned or pushed into the drinking water system.

Compliance under the current program to test backflow assemblies has fallen from 85 percent to 57 percent. This creates potential health and safety issues and also conflicts with the state's testing mandate. (Note: Nearly 100 percent of the city's non-residential customers comply with backflow testing requirements.)

Currently the Administrative Rules give the city authority to terminate a customer's water service should they fail to comply with testing requirements. Beginning with the 2013 backflow testing year, staff plans to terminate water service to those who fail to comply with testing requirements.

Utility Division Manager Goodrich reviewed the possible program modifications including offering a city service (voluntary) to coordinate testing for water customers. The cost of testing would be passed along to the customer in the utility bill.

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#### **TIGARD CITY COUNCIL MEETING MINUTES – FEBRUARY 26, 2013**

Council members supported the proposed changes to the cross connection control program. Staff will prepare amendments to the existing administrative rules. Through the amendment process, the council and public will have an opportunity to provide feedback on any proposed changes.

B. Administrative Items:

1. Updated Agenda Item Summary was distributed to the City Council for Consent Agenda Item No. 3.G., Authorize the mayor to Execute an Agreement with ODOT Regarding the Pacific Highway/Gaarde Street/McDonald Street Intersection Improvements.
2. March Council/CCDA Calendar
  - March 5, 2013 - CCDA Meeting, 6:30 p.m., Town Hall
  - March 12, 2013 - Council Business Meeting – Canceled
  - March 19, 2013 - Council Business/Workshop Meeting 6:30 p.m., Town Hall
  - March 21, 2013 - Land Use Planning – League of Oregon Cities Workshop, 9 a.m. - 4 p.m., Tigard Public Works Auditorium (lunch provided)
  - March 26, 2013 - Joint Meeting with Lake Oswego, 6:30-7 light dinner; 7-8:30 meeting with Lake Oswego followed by a Tigard City Council Business Meeting.

1. BUSINESS MEETING - FEBRUARY 26, 2013

- A.  Council President Henderson called the meeting to order at 7:30 p.m.
- B. City Recorder Wheatley called the roll:

| <u>Name</u>                 | <u>Present</u> | <u>Absent</u> |
|-----------------------------|----------------|---------------|
| Mayor Cook                  |                | ✓             |
| Council President Henderson | ✓              |               |
| Councilor Buehner           | ✓              |               |
| Councilor Snider            | ✓              |               |
| Councilor Woodard           | ✓              |               |

- C.  Council President Henderson asked everyone to stand and join him in the Pledge of Allegiance.
- D.  Council President Henderson asks if there are any Council Communications or Liaison Reports

Councilor Woodard announced he would be attending upcoming Westside Economic Alliance meetings.

Councilor Buehner announced she will attend her first meeting as the Metropolitan Policy Advisory Committee Alternate Member on Wednesday.

**TIGARD CITY COUNCIL MEETING MINUTES – FEBRUARY 26, 2013**

 Councilor Snider announced the Social Services Subcommittee of the Budget Committee met last night. Additional review will occur Wednesday. Recommendations will be forwarded to the City Council on allocation of funds to social service provider grant applicants.

- E.  Council President Henderson asked Council and Staff if there were any Non-Agenda Items. There were none.

## 2. CITIZEN COMMUNICATION

- A.  Follow-up to Previous Citizen Communication: There was none.

- B.  Tigard High School Student Envoy - Associated Student Body President Megan Risinger presented an update to the City Council on student activities.

- C.  Tigard Area Chamber of Commerce Debi Mollahan, Tigard Area Chamber of Commerce Chief Executive officer presented an update to the City Council on recent and upcoming chamber activities.

- D. Citizen Communication

 Ellie Hajduk, 16423 SW 109<sup>th</sup> Avenue, Tigard, OR said she and her sister have wanted to raise chickens. Recently she explored pursuing the idea and has learned that the Tigard Municipal Code (Section 6.02.070) states that no poultry or livestock, other than normal household pets, may be kept unless housed or retained within a fenced run at least 100 feet from any nearby residence except a dwelling on the same lot.

Ms. Hajduk summarized her research on keeping chickens and learned they are not loud nor is there any offensive odor if properly cared for. She suggested if the number of chickens were kept to a few – three or four – and if there was no rooster, the neighbors would not be aware that their neighbor had chickens. She expressed her disappointment that kids, such as her, are unable to own chickens to work on science projects or earn scout badges. She asked if there was exception to the rule for children and, if not, could the rule be changed to decrease the 100 foot limit in the code to 25 or 50 feet. She also suggested the possibility of the city issuing chicken licenses. She commented other cities in the area allow chickens within 50 feet or less from neighbors.

Ms. Hajduk concluded by saying she hoped the city would consider changing the rules to allow chickens in more backyards.

Assistant City Manager Newton said Community Development Department staff would contact Ms. Hajduk to discuss her proposal for a code change.

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### **TIGARD CITY COUNCIL MEETING MINUTES – FEBRUARY 26, 2013**

 Jill Byars, SEIU Local 199 President, referred to a letter submitted to the City Council on behalf of SEIU Local 503/OPEU, Local 199. She advised that on February 27, 2013, represented staff will attend the “City Day at the Capitol Event” in Salem to show support for legislative actions that would restore greater local authority over local decisions and give cities additional revenue resources to “pull us out of our current downward spiral.” A copy of this February 21 letter is on file in the record copy of the council packet.

 Glenna Thompson, 13676 SW Hall Blvd., Unit 2, Tigard OR 97223. She advised last night the Tualatin City Council unanimously voted to not go forward with the bridge across Tualatin River and the road to extend Hall Boulevard. She said she hoped the Tigard City Council will also cast their votes against the bridge and road extension. Ms. Thompson said she found it hard to believe that after spending \$6 million to reestablish wetlands that “we would go through and just desecrate it again.”

She said she lives at Fanno Creek Condos and submitted to City Recorder Wheatley a page of the Declaration of Covenants and Restrictions and sketch map. She said part of the property was sold to the City of Tigard on June 5, 2006. By agreement, the city placed walkway through this property and the city was to take care of everything on one side of the fence. However, this has not happened. She said the condo owners planted tree, which are now being affected by overgrown blackberry bushes. People who are walking by get scratched by the bushes and she has a concern that someone could get injured because of the overgrowth; she questioned who would carry the liability – the city or the condo owners. She would like to see the blackberry bushes removed. Assistant City Manager Newton said staff would contact Ms. Thompson about this matter.

 Council President Henderson reviewed the Consent Agenda:

3. CONSENT AGENDA:

- A. Approve City Council Meeting Minutes for:
  - 1. November 27, 2012
  - 2. December 18, 2012
  - 3. January 8, 2013
  - 4. January 15, 2013
- B. Receive and File: Corrected 2013 Council Liaison Appointment Matrix
- C. Establish the River Terrace Stakeholder Working Group – Resolution

Resolution No. 13-05 – A RESOLUTION ESTABLISHING A STAKEHOLDER WORKING GROUP TO ADVISE STAFF DURING THE COMPLETION OF THE RIVER TERRACE COMMUNITY PLAN

-  D. Appoint Members to the River Terrace Stakeholder Working Group – Resolution

Resolution No. 13-06 – A RESOLUTION APPOINTING MEMBERS TO THE RIVER TERRACE COMMUNITY PLAN STAKEHOLDER WORKING GROUP

**TIGARD CITY COUNCIL MEETING MINUTES – FEBRUARY 26, 2013**

**Representatives from government agencies**

- Nora Curtis, Clean Water Services
- Marc Woodard, City Council
- Richard Shavey, Planning Commission
- Ernie Brown, Tigard Tualatin School District

**Representatives from community organizations**

- Yolanda McVicker, CPO 4B
- Kathy Stallkamp, CPO 4K
- Lisa Hamilton, Friends of Bull Mountain
- Dick Winn, Friends of Tualatin River Wildlife Refuge

**Representatives from the River Terrace Area**

- Jim Beardsley, Property Owner- Area 64
- Joanne Criscione, Property Owner- Area 64
- Michael Freudenthal, Neighborhood Representative
- Fred Gast, Developer
- Dan Grimberg, Developer/Property Owner- Area 64
- Jerry Hanford, Neighborhood Representative
- Steve Jacobson, Property Owner- Area 63
- Marsha Lancaster, Property Owner- Urban Reserve
- Dina Weathers, Neighborhood Representative
- Matt Wellner, Developer/Property Owner- Area 63

- E. Authorize the Mayor to Execute an Intergovernmental Agreement with Metro Regarding the Management of the Fields Property
- F. Authorize the City Manager and Chief of Police to Execute an Intergovernmental Agreement with Washington County Juvenile Department
- G. Authorize the Mayor to Execute an Agreement with the Oregon Department of Transportation Regarding the Pacific Highway/Garde Street/McDonald Street Intersection Improvements
- H. Joint Resolution with the City of Beaverton: Agree to Coordinate the Beaverton South Cooper Mountain and the Tigard River Terrace Planning Efforts – Resolution

Resolution No. 13-07 – A JOINT RESOLUTION OF THE CITY OF BEAVERTON AND THE CITY OF TIGARD REGARDING COORDINATION OF THE SOUTH COOPER MOUNTAIN AND RIVER TERRACE PLANNING EFFORTS

 Motion by Councilor Buehner, seconded by Councilor Snider, to approve the Consent Agenda minus Consent Agenda Item 3.D.

The motion was approved by a unanimous vote of City Council present.

**TIGARD CITY COUNCIL MEETING MINUTES – FEBRUARY 26, 2013**

|                             |        |
|-----------------------------|--------|
| Mayor Cook                  | Absent |
| Council President Henderson | Yes    |
| Councilor Buehner           | Yes    |
| Councilor Snider            | Yes    |

Item No. 3.D. was voted on separately as Councilor Buehner said she would not vote on this item due to a conflict of interest.

Motion by Councilor Snider, seconded by Councilor Woodard, to approve Item No. 3.D.

The motion was approved by a majority vote of City Council present.

|                             |   |
|-----------------------------|---|
| Mayor Cook                  | Absent  |
| Council President Henderson | Yes   |
| Councilor Buehner           | Abstained (citing conflict of interest since this action relates to a client of hers) |
| Councilor Snider            | Yes   |
| Councilor Woodard           | Yes   |



4. QUASI-JUDICIAL PUBLIC HEARING - ZONE CHANGE ANNEXATION (ZCA) 2012-00002 - HUMMEL ANNEXATION

**REQUEST:** A request to annex one parcel (1.01 acres) on SW 133rd Avenue to the City of Tigard to obtain sanitary sewer service. **LOCATION:** 14695 SW 133rd Avenue; Washington County Tax Assessor’s Map 2S109AC, Tax Lot 0500.

**COUNTY ZONE:** R6: Residential, 5 units/acre minimum density, 6 units/acre maximum density. The purpose of the R-6 District is to implement the policies of the Comprehensive Plan for areas designated for residential development at no more than six (6) units per acre and no less than five (5) units per acre, except as specified by Section 300-2, Section 300-5, or Section 303-6. The intent of the R-6 District is to provide the opportunity for more flexibility in development than is allowed in the R-5 District.

**EQUIVALENT CITY ZONE:** R-7: Medium-Density Residential District. The R-7 zoning district is designed to accommodate attached single-family homes, detached single-family homes with or without accessory residential units, at a minimum lot size of 5,000 square feet, and duplexes, at a minimum lot size of 10,000 square feet. Mobile home parks and subdivisions are also permitted outright. Some civic and institutional uses are also permitted conditionally.  
**APPLICABLE**

**REVIEW CRITERIA:** The approval standards for annexations are described in Community Development Code Chapters 18.320 and 18.390, Comprehensive Plan Goal 1, Goal 11, Goal 12, and Goal 14; ORS Chapter 222; Metro Code Chapter 3.09.

Council President Henderson opened the public hearing.

**TIGARD CITY COUNCIL MEETING MINUTES – FEBRUARY 26, 2013**

Hearing procedures were reviewed.

Associate Planner Caines presented the staff report, which is on file with the council packet material.

There was no public testimony.

During discussion on the annexation proposal, Councilor Woodard and Councilor Buehner referred to the city’s annexation policy with regard to island annexations.  Councilor Buehner gave the history of a policy decision by the council in 2006 to not create islands to work with people on Bull Mountain. With this annexation, an island is being created. Councilor Buehner said she understands it is necessary for the applicant to annex to receive sewer service. The policy on annexations and creating islands is something the council might want to discuss in the near future. There is potential for additional islands being created through similar annexation requests prompted by failing septic systems and the need for sewer service.

Council President Henderson closed the public hearing.

 Motion by Councilor Woodard, seconded by Councilor Buehner, to approve Ordinance No. 13-03.

**ORDINANCE NO. 13-03 - AN ORDINANCE ANNEXING ONE (1) PARCEL OF LAND TOTALLING 1.01 ACRES, APPROVING THE HUMMEL ANNEXATION (ZCA2012-00002) AND WITHDRAWING PROPERTY FROM THE TIGARD WATER DISTRICT, WASHINGTON COUNTY ENHANCED SHERIFF'S PATROL DISTRICT AND WASHINGTON COUNTY URBAN ROADS MAINTENANCE DISTRICT.**

The motion was approved by a unanimous vote of City Council present.

|                             |        |
|-----------------------------|--------|
| Mayor Cook                  | Absent |
| Council President Henderson | Yes    |
| Councilor Buehner           | Yes    |
| Councilor Snider            | Yes    |
| Councilor Woodard           | Yes    |

Councilor Buehner left the meeting.

 5. LEGISLATIVE PUBLIC HEARING - DURHAM ADVANCED WASTEWATER TREATMENT FACILITY PLAN DISTRICT & GENERAL PLAN DISTRICT STANDARDS DEVELOPMENT CODE AMENDMENT (DCA) DCA2012-00004

**PROPOSAL:** The City of Tigard proposes legislative amendments to the Tigard Development Code (IDC) and Zoning Map in a combined amendment package to adopt two new chapters and clarify the applicable boundaries of four existing chapters. The City proposes the adoption of Chapter 18.605 (Plan Districts) to provide approval standards for the adoption of future plan

**TIGARD CITY COUNCIL MEETING MINUTES – FEBRUARY 26, 2013**

districts or the modification of existing and future plan districts. The City and Clean Water Services jointly propose the adoption of Chapter 18.650 to create a new plan district to govern future development within the 106 acre Durham Advanced Wastewater Treatment Facility (Durham Facility). The City also proposes text amendments to TDC Chapters 18.600, 610, 620, 630, and 640 to create a uniform naming convention and add boundary maps to provide clarity as to where the regulations apply; boundary maps to be identical to those adopted with the applicable chapters for illustrative and clarifying purposes only. The City also proposes corresponding changes to the official Zoning Map to add the boundaries of the Durham Facility Plan District and four other existing plan districts which are not presently shown. The proposed amendments for the Planning Commission’s review are included in Attachment 1 and summarized below in Section IV of this report:

**APPLICANTS:**

|   |  |
|---|--|
| City of Tigard<br>13125 SW Hall Blvd.<br>Tigard, OR 97223 | Clean Water Services<br>2550 SW Hillsboro Highway<br>Hillsboro, OR 97123 |
|---|--|

**ZONES:**

- Chapters 18.600 & 18.605: Citywide
- Chapter 18.610: MU-CBD Zoning District
- Chapter 18.620: C-G & MUE
- Chapter 18.630: MUC, MUE-1, MUE-2, MUR-1, MUR-2, R-4.5, R-7, & R-12
- Chapter 18.640: MUC-1
- Chapter 18.650: I-P & R-4.5

LOCATION: Citywide and properties identified in the Attached Maps.

APPLICABLE  
REVIEW

CRITERIA: Statewide Planning Goals 1, 2, 6, 9, 10, 11 and 13; Metro Urban Growth Management Function Plan Title 4; Comprehensive Plan Goals 1, 2, 6, 9, 10, and 11; and Community Development Code Chapters 18.380 and 18.390.

Council President Henderson opened the public hearing.

Associate Planner Floyd presented the staff report, which is on file with the council packet material.

There was no public testimony.

 Motion by Councilor Snider, seconded by Councilor Woodard, to approve Ordinance No. 13-04.

ORDINANCE NO. 13-04 – AN ORDINANCE AMENDING THE TIGARD ZONING MAP TO INCLUDE EXISTING BOUNDARIES OF THE CITY'S ADOPTED PLAN DISTRICTS; AMENDING EXISTING TIGARD COMMUNITY DEVELOPMENT CODE CHAPTERS 18.600, 18.610, 18.620, 18.630, 18.640 TO ESTABLISH A UNIFORM NAMING CONVENTION FOR PLAN DISTRICTS AND CLARIFY WHERE THE REGULATIONS CONTAINED WITHIN EACH CHAPTER APPLY; AND CREATING TWO NEW CHAPTERS WITHIN THE TIGARD COMMUNITY DEVELOPMENT CODE TO BE KNOWN AS 18.605 AND 18.650 FOR THE PURPOSES OF ESTABLISHING APPROVAL PROCEDURES AND STANDARDS FOR PLAN DISTRICTS AND ESTABLISHING THE DURHAM ADVANCED WASTEWATER TREATMENT FACILITY PLAN DISTRICT.

The motion was approved by a unanimous vote of City Council present.

|                             |        |
|-----------------------------|--------|
| Mayor Cook                  | Absent |
| Council President Henderson | Yes    |
| Councilor Buehner           | Absent |
| Councilor Snider            | Yes    |
| Councilor Woodard           | Yes    |



6. RENEW ANNEXATION INCENTIVES AND DISCUSS ANNEXATION POLICY DIRECTION - RESOLUTION

Associate Planner Pagenstecher presented the staff report. As stipulated in Resolution No. 12-09, council's annual review of its annexation policy, including annexation incentives is to occur in February 2013. Adopting the proposed resolution would preserve the incentives for another year, pending council reconsideration of incentives at a future date.

Motion by Councilor Woodard, seconded by Councilor Snider, to approve Resolution No. 13-08.

*RESOLUTION NO. 13-08* – A RESOLUTION AMENDING RESOLUTION 07-13 TO EXTEND THE INCENTIVES FOR VOLUNTARY ANNEXATION OF UNINCORPORATED LANDS TO THE MUNICIPAL CITY LIMITS TO FEBRUARY 2014

The motion was approved by a unanimous vote of City Council present.

|                             |        |
|-----------------------------|--------|
| Mayor Cook                  | Absent |
| Council President Henderson | Yes    |
| Councilor Buehner           | Absent |
| Councilor Snider            | Yes    |
| Councilor Woodard           | Yes    |



7. ADOPT A RESOLUTION OF NECESSITY TO ACQUIRE PROPERTY FOR THE 92ND AVENUE SIDEWALK PROJECT - RESOLUTION

City Engineer Stone presented the staff report. The city plans to construct a sidewalk along one side of 92<sup>nd</sup> Avenue from Waverly Drive (at the south end of the Tigard High School property) to Cook Park. This section of 92<sup>nd</sup> Avenue currently has no sidewalks and is a highly-traveled pedestrian route. The project will provide a place for pedestrians to walk that is off a paved roadway.

To construct the sidewalk, the city needs to acquire easements and private property for right of way; property must be acquired from one property owner.

The staff report explains the reason for requesting council consideration of the proposed resolution of necessity. If there is a possibility that property condemnation be required, the federal property acquisition process dictates that a resolution of necessity be adopted before negotiations begin. The city follows the federal process to ensure it will qualify for federal funding opportunities now and in the future.

Council members commented on the desire to have a sidewalk at this location for safety, especially when there are large crowds attending events at the high school and Cook Park.



Motion by Councilor Snider, seconded by Councilor Woodard, to approve Resolution No. 13-09.

The motion was approved by a unanimous vote of City Council present.

RESOLUTION NO. 13-09 – A RESOLUTION DECLARING THE NEED TO ACQUIRE A RIGHT OF WAY AND EASEMENTS ON PROPERTY FOR THE PURPOSE OF CONSTRUCTING STREET IMPROVEMENTS ALONG 92<sup>ND</sup> AVENUE AND AUTHORIZING IMMEDIATE POSSESSION OF THE PROPERTY

The motion was approved by a unanimous vote of City Council present.

|                             |        |
|-----------------------------|--------|
| Mayor Cook                  | Absent |
| Council President Henderson | Yes    |
| Councilor Buehner           | Absent |
| Councilor Snider            | Yes    |
| Councilor Woodard           | Yes    |

8. COUNCIL LIAISON REPORTS – There were none.

9. NON AGENDA ITEMS – There were none.

10. EXECUTIVE SESSION – Not held.

**TIGARD CITY COUNCIL MEETING MINUTES – FEBRUARY 26, 2013**

11. ADJOURNMENT – 9:08 p.m.



Motion by Councilor Woodard, seconded by Councilor Snider, to adjourn the meeting.

The motion was approved by a unanimous vote of City Council present.

|                             |        |
|-----------------------------|--------|
| Mayor Cook                  | Absent |
| Council President Henderson | Yes    |
| Councilor Buehner           | Absent |
| Councilor Snider            | Yes    |
| Councilor Woodard           | Yes    |

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Catherine Wheatley, City Recorder

Attest:

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Mayor, City of Tigard

Date: \_\_\_\_\_

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**TIGARD CITY COUNCIL MEETING MINUTES – FEBRUARY 26, 2013**



**City of Tigard**

**Tigard City Council Meeting Minutes**

**March 19, 2013**

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1. BUSINESS/WORKSHOP MEETING –

 A. At 6:36 p.m. Mayor Cook called the meeting of the Tigard City Council to order.

B. Deputy City Recorder Krager called the roll.

|                             | Present | Absent |
|-----------------------------|---------|--------|
| Councilor Buehner           | ✓       |        |
| Council President Henderson | ✓       |        |
| Councilor Snider            | ✓       |        |
| Councilor Woodard           | ✓       |        |
| Mayor Cook                  | ✓       |        |

C. Pledge of Allegiance:

D. Council Communications & Liaison Reports: Councilor Buehner said she would give a report. Councilor Woodard will report on his Washington DC trip at the next meeting.

E. Call to Council and Staff for Non-Agenda Items – Mayor Cook said he would discuss a non-agenda item at the end of the meeting.

2.  PROCLAMATION – APRIL 1-6, 2013, COMMUNITY DEVELOPMENT WEEK

Mayor Cook proclaimed April 1-6, 2013 as Community Development Week.

3. PROCLAMATION – MARCH 21, 2013, BRAVE (Breast Restoration Advocacy Victory Education) Day

Mayor Cook proclaimed March 21, 2013 as BRAVE Day.

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**TIGARD CITY COUNCIL MINUTES – MARCH 19, 2013**

4. CONSENT AGENDA:

A. CONSIDER WAIVING SIGN PERMIT FEES FOR TIGARD YOUTH FOOTBALL:

Councilor Buehner made a motion to approve the consent agenda and Councilor Snider seconded the motion. The motion passed unanimously.

|                             | Yes | No |
|-----------------------------|-----|----|
| Councilor Buehner           | ✓   |    |
| Council President Henderson | ✓   |    |
| Councilor Snider            | ✓   |    |
| Councilor Woodard           | ✓   |    |
| Mayor Cook                  | ✓   |    |

5. CONSIDER A RESOLUTION GRANTING EXEMPTION FROM PROPERTY TAXES UNDER TMC 3.50 FOR FIVE NON-PROFIT LOW-INCOME HOUSING PROJECTS

Confidential Executive Assistant Lutz introduced this item. Councilor Buehner said this exemption is a routine item that is considered by council annually. She suggested what is most critical is to ask staff if there are any differences with the proposals this year and then moving ahead with consideration and approval. Councilor Buehner moved for approval of the resolution and Councilor Snider seconded the motion. Mayor Cook asked if there was any discussion.

Councilor Woodard commented that this is a great program but noted that Greenburg Oaks has more resources going towards youth programming, computer systems and recreation. He asked about a difference in the Village at Washington Square applications. He said the applications indicate an average median income of less than 60 percent but there is no follow up. He said it negates the Tigard Municipal Code on that aspect. He asked how many residents are above the 60 percent.

City Manager Wine said staff will look into his questions and respond.

In response to a question from Councilor Woodard about certification of income levels, Councilor Buehner said they are required to provide an audit. Assistant City Manager Newton said all applications are reviewed by Community Development staff.

 Councilor Woodard said he sees differences in the standards and would like the housing projects that are receiving this tax abatement place more emphasis and dollars on schooling and youth programs at these properties next year. He asked if this could be better defined and City Manager Wine said she will pursue that. Councilor Woodard requested a discussion next year on percentages dedicated to these activities. He asked if Council had the flexibility to award less than 100 percent of the tax abatement amount and City Manager Wine replied that they did.

**TIGARD CITY COUNCIL MINUTES – MARCH 19, 2013**

A vote was taken and the motion to approve Resolution No. 13-11 passed unanimously.

*RESOLUTION NO. 13-11 - A RESOLUTION GRANTING AN EXEMPTION FROM PROPERTY TAXES UNDER TIGARD MUNICIPAL CODE SECTION 3.50 FOR FIVE NON-PROFIT LOW-INCOME HOUSING PROJECTS OWNED AND OPERATED BY COMMUNITY PARTNERS FOR AFFORDABLE HOUSING (CPAH) AND HAWTHORNE URBAN DEVELOPMENT LLC*

|                             | Yes | No |
|-----------------------------|-----|----|
| Councilor Buehner           | ✓   |    |
| Council President Henderson | ✓   |    |
| Councilor Snider            | ✓   |    |
| Councilor Woodard           | ✓   |    |
| Mayor Cook                  | ✓   |    |

At 6:51 p.m. Mayor Cook announced that the City Council would enter the Workshop portion of the meeting.

6. REVIEW THE ANNUAL SOLID WASTE AGGREGATE FINANCIAL REPORT AND DISCUSS SOLID WASTE RATE AND FRANCHISE FEE INCREASE

 Public Works Director Koellermeier introduced this item and the team: Public Works Business Manager Michelle Wright, Consultant Chris Bell from Bell & Associates, and Pam Beery from Beery Elsner, the city's franchise attorney firm.

Public Works Director Koellermeier said Tigard has two franchised solid waste haulers to cover the entire city, Pride Disposal and Waste Management. He said representatives were present from both companies. He said the city's municipal code requires haulers to provide a financial statement to the city each March. These are consolidated and staff reviews them for a targeted profit of 10 percent annually. If the numbers don't fall between 8 and 12 percent, a decision is made to raise or lower rates. An additional complicating factor this year is that the Budget Committee made a decision last year to increase the solid waste franchise fees. This increase is embedded in the rates. These two issues triggered the numerical system leading to the rate change. He noted that Tigard has not had a rate change since 2006, a testament that the two franchisees manage their businesses very well. He said the previous councils guided staff to do a cost-of-service-based-rate approach wherein each line of service (residential, commercial, drop boxes) is evaluated on its own and they do not subsidize each other.

 Public Works Business Manager Wright said staff followed the Tigard Municipal Code direction in preparing the financial report. She thanked the haulers for assembling their financial information this year. She distributed to council a document entitled, *City of Tigard Solid Waste and Recycling Rate Comparison*. A copy has been added to the packet for this meeting.

**TIGARD CITY COUNCIL MINUTES – MARCH 19, 2013**

 Consultant Bell said every year the haulers submit a detailed cost report showing line item costs, as well as a report on customer accounts and activities associated with collecting garbage in Tigard. He takes the two reports and consolidates them into a composite report. He said Tigard is one of the few jurisdictions in the Metro area that has not changed rates on a regular basis, owing to the efficiency of the two haulers and their operations. He discussed factors affecting the cost of collecting garbage including trucks moving from the use of diesel to compressed natural gas (CNG), wages, health insurance, and solid waste disposal costs, which Metro increased from \$74 to over \$90. Capital costs are front loaded into the rates. While costly now, the benefit of switching trucks and infrastructure to CNG will be future decreased fuel costs.

Consultant Bell said he runs a comparison with nearby jurisdictions so Council can see what neighboring cities are paying. He said Tigard residents receive a greater level of service than those in Hillsboro or Washington County, where recycling pickup is every other week. He said there is an 8 percent increase in commercial rates and drop boxes have a substantial increase of 28 percent. Consultant Bell said there is a substantial increase in drop box rates, which are based on the time the pickup drivers spend in traffic. Night-time drop box pickups for regular customers help lower this cost.

Attorney Beery said it is a straightforward process unless there is interest from the city or the haulers to alter the franchise agreements themselves. She said the TMC provides that Council adjusts rates by resolution. In addition, because the Budget Committee recommended a franchise fee increase last year, another resolution would approve amending the master fees and charges fee schedule. She said holding a public hearing is optional although allowing an opportunity for public comment on a new fee is required. Attorney Beery said it is Council's call whether or not to hold a hearing.

Mayor Cook asked if the costs for different sized drop boxes are the same. Consultant Bell said the disposal cost would be higher for the larger drop box but it would amount to the same time in traffic for pickup.

Councilor Buehner said she understands the cost of service modality, but asked about the possibility of making an adjustment for small users, especially senior citizens. Public Works Director Koellermeier replied that most often the solution is to move the household to a monthly or on-call system.

Council President Henderson asked for an explanation of the rate charges and why Tigard's commercial rates are higher than other jurisdictions. Consultant Bell said some jurisdictions subsidize smaller generators by adding a higher margin to their larger container users. He said when Tigard set the rates in 2002, each rate was calculated separately and the smaller container rates are more comparable to the other cities.

Council President Henderson asked if these rates are sustainable for a few years. Consultant Bell said they were because he projected future disposal costs, wages and equipment purchases. In response to a question from Council President Henderson on whether more garbage is being created, Consultant Bell said there is less waste generated and that is why the Metro tip fee

## **TIGARD CITY COUNCIL MINUTES – MARCH 19, 2013**

increases every year. There is more diversion into recycling. Businesses generate a lot more recycling and some receive pickup of recyclables five times a week. Consultant Bell said another consideration is the cyclical nature of the recyclable materials collector commodities. The ebb and flow in the materials markets is beyond the control of the haulers. Consultant Bell said recycling pickup is built into the garbage rates. Council President Henderson asked if recycling pays for itself. Consultant Bell said residential recycling pickup cost \$800,000 last year but revenue generated from those materials was only \$92,000.



Councilor Snider commented that the drop box services in the last year had a negative operating margin and said Councilor Wilson raised the question last year about whether we should still be regulating this. He said he was concerned about the rate increases and the fact that the percent in rate increases falls disproportionately on residential customers. He said if this is based on cost of service, Council should at least be discussing this, especially if other cities are doing this differently. He asked how water is charged to residential and commercial customers. Public Works Director Koellermeier responded that the unit cost is the same but it is charged differently depending upon the meter size. Councilor Snider also expressed interest in evaluating having less frequent recycling in exchange for a rate decrease.

Consultant Bell said an issue with reduction in collection frequency is that Metro's plan requires jurisdictions to collect weekly. Hillsboro, Washington County and Sherwood do this but had to go through Metro to get approval to implement what is called a "less than compliant program." Councilor Snider asked what the rate increase would be for going to every-other-week recycling pickup. Consultant Bell said he examined this a year ago for Beaverton and found it would probably result in a \$1.20 savings per month.

Consultant Bell said if rates were set at true cost, the 60- and 90- gallon customers would see a rate decrease and there would be an 80-cent increase for the delivery of service to smaller container users.

Councilor Buehner asked for an estimate of the number of bi-weekly or even monthly pickup customers. Consultant Bell said he recalled that 320 customers in Tigard have on-call or monthly service, a small number.



Councilor Woodard asked about fixed and variable costs and asked what had changed. Consultant Bell said fixed costs include the facility, trucks and containers, and though containers depreciate over a seven-year lifespan, there is routine maintenance and replacement associated with them. He said most costs are variable and include disposal costs (40 percent), labor, fuel, administration and customer service. He noted that the value of commodities substantially decreased.



City Manager Wine said the policy question Councilor Snider raised about the operating margin policy in the ordinance speaks to the question of where Council wishes the burden of potential rate increases to fall. She said if a different approach is wanted council would be looking at changing the philosophy in the ordinance.

In response to a question from Councilor Snider about the rationale for regulating drop boxes, Public Works Director Koellermeier said the rationale is the same for the other two parts of the

## **TIGARD CITY COUNCIL MINUTES – MARCH 19, 2013**

franchises and that is, “How many haulers do we want driving around our community as compared to knowing we have two here and we can set rates?” He asked, “How do we manage complaints?” He said the bulk of drop box complaints are related to unregulated haulers. Attorney Beery suggested that input be sought from the haulers if this is under consideration because it has a significant impact on their businesses. Public Works Director Koellermeier said the bulk of complaints are related to unregulated drop box haulers. Someone finds a company out of the phone book and they have an out of state corporate management, yet the first number that is called when something is wrong is the city’s. He said he was unsure what effect an unregulated market would have on costs. Councilor Snider said he was interested in

Mayor Cook said it may be too late this year to have these discussions. City Attorney Beery said the city is currently on a cycle that is laid out in the TMC and said it would have to be done as soon as this year’s adjustments are concluded. Mayor Cook said the downside is that the city would have two changes in two years. Councilor Snider said he didn’t like that and wished council could have held this discussion a few months ago. He asked if there was a path to change the ordinance for equity distribution or the method before action is taken this year.

City Attorney Beery responded that staff would need time to prepare options for council, explain in more detail the current protocol, look at best practices, and hold a policy discussion in a workshop meeting. The change in policy would then need to be implemented for the next year. She said she did not see how it could be done this year, in fairness to the customers and the franchised haulers, who have already turned in their financial reports. City Manager Wine read the wording from the resolution. Public Works Director Koellermeier said the cost of service approach has been used by previous councils but it is not in the ordinance. He said if this council wants a model where one customer class subsidizes another it could be done without changing the ordinance, if the 10 percent aggregate is reached. He said council could change this but procedurally the timeline is extremely tight to get this done by July. The hauler needs time to advertise and communicate about rate adjustments with their customers.

Councilor Buehner asked if Hillsboro, Beaverton and Washington County are looking at increases. Consultant Bell said Beaverton is looking at a \$2 and up increase and Hillsboro is considering a rate increase this year also. Councilor Buehner referred to the list of comparable rates which do not show potential increases. She asked for accurate specifics prior to the next discussion.

Councilor Snider asked for a copy of a proposal that mirrors Beaverton’s cost of service model for discussion. He suggested that staff return with the current proposal and the Beaverton model for council to discuss and make a decision. Mayor Cook said an issue is the different rates and asked if he could see the increase flattened out across the board. Councilor Buehner said, “Then the bigger residential customers will be subsidizing the smaller residential customers.”

Councilor Buehner raised a concern about commercial customers subsidizing residential customers because of an uproar among businesses a few years ago when it was suggested that commercial properties subsidize residential street maintenance fees. Councilor Snider said what he and Mayor Cook are talking about are inequitable percentage increases and what that tells him is that the cost of service has disproportionately changed. He asked about general customer counts. Consultant Bell said 85percent of the customer base has the 32- and 20- gallon cans. He said he

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## **TIGARD CITY COUNCIL MINUTES – MARCH 19, 2013**

can provide the costs of providing the service for yard debris and recycling. The former practice was to penalize the heavier waste generators and drive them to smaller cans and it was successful.

Public Works Director Koellermeier summarized that council wants to see more information and smoothing of some rates. Staff will generate that material in time for council review before the next discussion on April 23. He asked if council wanted to hold a public hearing and they did not feel it was necessary. Councilor Buehner asked Consultant Bell to estimate how many of the 32-gallon users would go to 20-gallon cans and how many 20-gallon users might go to on-call or monthly pickup, because this may be a result of increased rates.

## 7. DISCUSSION ON SOCIAL GAMING



Senior Management Analyst Wyatt introduced this item. He referred to an email received from Oregon's Attorney General about social gaming which said it is strictly defined as disallowed until the city allows it. He said Portland, Gresham, Fairview and Hillsboro allow social gaming. This issue is before Council because the city received a request from a restaurant owner to consider it. Reasons given were increased revenue and a potential increase in jobs for restaurants and bars. He said social gaming is defined as a game other than the lottery, and includes games like Black Jack or Texas Hold 'em. There is no house bank or odds and no house income such as cover charges or inflated food charges. A memo from Tigard's Police Commercial Crimes Unit is included in the packet for this meeting and it describes outreach to local businesses that are currently conducting social gaming activities or may be interested in doing so in the future.

Two draft ordinances were presented for discussion. One allows social gaming in Tigard, requiring a license or permit and placing conditions such as the percentage of space allowed for the activity and that participants must 21 years of age or older. The other ordinance would disallow social gaming in Tigard.

Tigard Police Chief Orr said Assistant Chief de Sully solicited reports through an email to the Oregon Chief of Police Association website from any jurisdiction with social gaming experience. None reported major impacts on crime rates, although that is not to say there are no regular calls for service to bars and taverns. He said the ORS specifies what owners must do to run a social game. He noted that the police are aware that there are establishments currently running social gaming in Tigard. There was a request from the Portland Poker Players Association to allow tournaments in Tigard. He said the Police Department does not expect problems if social gaming is allowed by ordinance.

Councilor Buehner said she conducted some informal research in Beaverton and several business owners said business was subsidizing the social gaming and questioned the long-term interest. She said the most telling thing was that the majority of those she surveyed said they do not have social gaming or had eliminated it because they lost money. She said, "It doesn't seem like a good idea in the long run."

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## TIGARD CITY COUNCIL MINUTES – MARCH 19, 2013

 Councilor Snider said he is an avid poker player and has played in social gaming establishments in Portland. He said reading the Attorney General's opinion created conflict in that he is unsure some Portland establishments are following their city code or even state law. He said there are many establishments in Portland where this is their main business and they all charge a cover, or a "door" fee, which according to the Attorney General's opinion is illegal.

 Mayor Cook said his opinion is that it should be the business' choice on how they try to get customers. I don't think we oppose this. We have the Police Department opinion that it will not increase crime. He questioned whether the city should regulate business and keep them from trying something that might be successful and desired by the citizens.

Councilor Buehner said allowing 25 percent of floor space is too much and recommended ten percent, or 15 percent at the most. Councilor Snider said 25 percent should be the minimum and only allowing social gaming one day a week is too restrictive. Mayor Cook said smaller bars would have trouble fitting players into 15 percent of their space.

Councilor Snider noted that a representative from the Portland Poker Players Association was present and asked Mayor Cook if he could be allowed to provide input. Myron Robinson, President of the Portland Poker Players Association said the door fees go towards monitors, software, computers, tables and playing cards, restaurant equipment and tournament director's salaries. Councilor Snider asked if the ordinance allowing social gaming in Tigard meets his requirements. Mr. Robinson said he was representing Mr. Louie, a restaurant owner in Tigard who would like to use his banquet room, which is not generating enough money, for social gaming. He has parking, highway access and a restaurant on the other side of the building. Councilor Snider said there was no one else present to testify and he would like to know before he considers the ordinance whether or not it meets the needs of the business owners.

Police Chief Orr said the city can establish fines and they want to encourage people to do this legally with a business license. The proposed annual fee is \$100. Assistant Chief de Sully said police response would be on a complaint basis. A business would be given a timeframe in which to achieve compliance and the police would perform spot checks to ensure compliance. Council President Henderson asked how costly that would be and Assistant Captain de Sully said he didn't expect increased costs. He said the Commercial Crimes Unit has already developed relationships with these businesses. Other cities report no special costs when social gaming is allowed. He said, "We are waiting to hear Council's decision. If we do nothing we are left with a vague state law but if you disallow it we have some teeth. If it is allowed, we will also have some guidelines and limitations spelled out." Senior Management Analyst Wyatt said an ordinance can always be reviewed and changed in the future if the situation changes.

Mayor Cook said he was inclined to think that allowing social gaming one night a week was not enough. He said he would like to hear from businesses on this aspect.

Councilor Buehner said, "I will be a no vote and will not participate further in the discussion."

Councilor Snider said he wanted to study the issue in more detail and then provide his input. He asked Councilor Buehner if there are things that would make her more comfortable with this.

## **TIGARD CITY COUNCIL MINUTES – MARCH 19, 2013**

 Councilor Buehner replied that she is very concerned about the amount of gambling in Oregon and while social gaming is technically not defined as gambling, it can contribute to people participating in that behavior at casinos. She said she works with groups that deal with gambling addictions and felt this is the wrong way to go.

Councilor Woodard said to this is a lot like bingo which he played a lot of when he was younger. He said it helped his church and was a great way to socialize. He said he would vote in favor but wanted regulation. He said adults can make their own decision whether to participate or not. He said he did not want to stifle businesses.

Mayor Cook said the ordinances look good and he did not foresee a lot of changes to them.

Council President Henderson said, “We are a society of laws not necessarily morals. I would say go ahead.”

City Manager Wine said staff will bring a draft ordinance to council that allows social gaming with regulations.

## 8. RECEIVE TIGARD TRIANGLE PLAN UPDATE

 Associate Planner Caines introduced this item. She said the city received a Transportation Growth Management (TGM) grant of \$180,000 from ODOT in October of 2012. The statement of work has been finalized for the Strategic Redevelopment Plan in the Tigard Triangle which builds upon the concept plan developed through the High Capacity Transit Land Use Plan. The next step is to hire a consultant to analyze existing conditions, needs, opportunities and constraints and then develop land use and transportation redevelopment options. The High Capacity Land Use Plan will be refined to create an implementation strategy. She said things are starting to happen with the grant this year, with an expected completion date of August 2014. This is a year

Associate Planner Caines said staff initially kept the focus open, looking at a Town Center on Main Street but will begin to hone in on areas where high capacity transit and station communities make more sense. She said staff avoided drawing a hard line at first so opportunities wouldn't be missed.

Councilor Buehner said a large number of people living in unincorporated areas across 99W from the Triangle are seniors with mobility issues. She asked if improvements would be made for car drivers because this population needs to drive through the Fred Meyer property and also on Pfaffle Street. She said the streets are not improved to Washington County standards, let alone city standards. She suggested a policy decision needs to be made on what to do with these unincorporated neighborhoods surrounded on three sides by Tigard. Associate Planner Caines said the actual Tigard Triangle land use plans generally stop at Highway 99W in order to keep the scope manageable. She said 99W, Highway 217 and I-5 are seen as barriers to connectivity and the city wants to provide better physical access to the station community living across 99W from the Triangle. A major focus will be improving bicycle and pedestrian access crossing Highway 99W. Associate Planner Caines said there are residents living to the north who would be major

### **TIGARD CITY COUNCIL MINUTES – MARCH 19, 2013**

users of HCT. She said Fred Meyer’s manager has been very involved in the SW Corridor and HCT planning efforts. She said, “We want to break down the barrier.”

Associate Planner Caines said ODOT issued RFP’s for a consultant. The city should be seeing interest this week and will know how many teams are interested. The deadline for RFP’s is April 4 and a consultant should be selected by April 18. She said kick-off meetings for the Citizen Advisory and Technical Advisory Committees will start in July. In August they will examine topography, infrastructure, existing development and potential redevelopment sites for the existing conditions report.

Mayor Cook asked about building height restrictions due to ODOT rules and expressed concern about accommodating density within the height limits. Associate Planner Caines said staff will be looking into that. Councilor Buehner requested that Associate Planner Caines report in her next Council update how changes in the Transportation Planning Rule affect the Triangle. Ms. Caines said she will include Senior Transportation Planner Gray in that discussion.

## 9. COUNCIL LIAISON REPORTS

 Councilor Buehner reported that the Lake Oswego Tigard Water Project is moving along well. She noted that the West Linn City Council overturned their Planning Commission’s recommendation and approved the application for the new plant and pipeline structure. On March 12, 2013, the neighborhood association filed a Land Use Board of Appeals (LUBA) notice. She said there is an expedited process with LUBA, depending on the length of time it takes for West Linn to assemble the record. She said the Oversight Committee met on some primary issues and is getting new members up to speed on the process. On March 5, 2013, Lake Oswego’s council approved letting the contracts so that water intake work can begin.

Councilor Buehner said she would give an MPAC report at a future council meeting and will copy council on some diesel/air quality information. She would also like to discuss an earthquake presentation at the next meeting that is televised.

Councilor Woodard noted that the first River Terrace Steering Committee Meeting will be tomorrow (March 20) at 6:30 p.m. at Deer Creek Elementary.

Mayor Cook attended the WCCC and JPACT meetings. He said MSTIP grant funding was discussed at the WCCC meeting. Tigard had three projects and after ODOT came out with their final list there are two. The projects remaining are the Fanno Creek Trail from Woodard Park to Grant Street and improved TriMet safety and access points on 99W. He said he and Council President Henderson met today with 20 downtown Tigard business owners. He said it was very positive and productive and dialog will continue. He said they are organizing and want to work together to get something done in the downtown. Councilor President Henderson agreed that it was a positive meeting and it appeared to him that they desire to partner with the city.

## **TIGARD CITY COUNCIL MINUTES – MARCH 19, 2013**

Councilor Buehner urged support of the 50 percent Gain Share fee which gets returned to Washington County. Mayor Cook said this affects Tigard residents because getting this money back to the county and TVF&R may reduce rates Tigard residents pay.

## 10. NON AGENDA ITEMS

Mayor Cook said he would to schedule a community town hall meeting on April 30. When he ran for mayor he talked about the desire to hold two to three town halls a year. His Fireside Chats on selected Thursdays from 3-5 p.m. draw around ten people each time. The town halls would include more citizens and Council would be in attendance. He asked what format Council would prefer (workshop setting or five tables with a council member at each table). He said he would like to receive citizen input on the SW Corridor and hold discussion on the transit “bundles.” He said while communicating about the SW Corridor is the main topic he would not stifle any talk about water or River Terrace.

Councilor Buehner expressed concerns about meeting without an agenda. She said the Fifth Tuesday meetings had no agendas; citizens could bring up anything they wanted to talk about. She said the same six-eight people would come and rehash the same issues and she did not want to provide a platform for a vocal minority. She suggested that if a River Terrace Town Hall is held that it be located in that neighborhood.

Council President Henderson said he did not have any objections to Fifth Tuesdays and he enjoyed the communication between council and citizens. He said he would also like to take another look at holding the Fanno Creek Conference.

Mayor Cook suggested having an open mic and taking turns speaking so everyone can hear. Councilor Snider suggested that questions be taken and council agree on letting the staff or council member with the most knowledge on the topic answer the question. He suggested structuring the meeting so that council, rather than dominating or providing too much technical information, can staff the meeting from the “back bench.”

Mayor Cook said the Town Hall location is to be determined. Councilor Buehner advised not putting it in an environment that would discourage anyone from attending, such as a religious private school. Councilor Snider suggested any public elementary school, the Broadway Rose Theater, or the Library Community Room.

- At 9:03 p.m. Mayor Cook announced that the Tigard City Council was in entering into an Executive Session to discuss real property transaction negotiations under ORS 192.660(2)(e). The Executive Session ended at 9:34 p.m.

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## TIGARD CITY COUNCIL MINUTES – MARCH 19, 2013

11. ADJOURNMENT At 9:35 p.m. Councilor Buehner moved for adjournment. Councilor Snider seconded the motion and all voted in favor.

|                             | Yes | No |
|-----------------------------|-----|----|
| Councilor Buehner           | ✓   |    |
| Council President Henderson | ✓   |    |
| Councilor Snider            | ✓   |    |
| Councilor Woodard           | ✓   |    |
| Mayor Cook                  | ✓   |    |

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Carol A. Krager, Deputy City Recorder

Attest:

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John L. Cook, Mayor

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Date

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**TIGARD CITY COUNCIL MINUTES – MARCH 19, 2013**

AIS-1245

. B.

**Business Meeting**

**Meeting Date:** 04/23/2013  
**Length (in minutes):** Consent Item  
**Agenda Title:** Award Contract for FY 2013-2014 Pavement Management Program Slurry Seal to Blackline, Inc.  
**Prepared For:** Joseph Barrett  
**Submitted By:** Joseph Barrett, Financial and Information Services

**Item Type:** Motion Requested

Consent  
**Meeting Type:** Agenda - LCRB

**Public Hearing**

**Newspaper Legal Ad Required?:** No

**Public Hearing Publication**

**Date in Newspaper:**

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**Information**

**ISSUE**

Shall the Local Contract Review Board award a contract for the city's FY 2013-2014 Pavement Management Program - Slurry Seal project to Blackline, Inc.?

**STAFF RECOMMENDATION / ACTION REQUEST**

Staff recommends the Local Contract Review Board award the contract for the city's FY 2013-2014 Pavement Management Program - Slurry Seal project to Blackline, Inc in the amount of \$345,609 and authorize the city manager to take all necessary steps to execute the contract.

**KEY FACTS AND INFORMATION SUMMARY**

The yearly Pavement Management Program (PMP) protects the city's investment in the street infrastructure. The program typically includes a combination of minor maintenance projects (slurry seal applications) and major maintenance projects (pavement overlays). Slurry seal applications are used throughout the country to restore deteriorating streets. Deterioration occurs as rain, sun, and freezing and thawing cycles eat away at the sticky asphalt binder that holds the pavement together. In a slurry seal application, the street is cleaned, cracks are sealed, and a hot, liquid mixture of asphalt emulsion and sand is applied to the roadway. The mixture hardens as it cools. The process restores the asphalt binder near the pavement's surface and extends the useful life of the roadway.

The city issued an Invitation to Bid on February 27, 2013 and advertised the project in both the Daily Journal of Commerce and The Tigard Times. Bids were publicly opened at 2 pm on March 12th with the following results:

Bidder's Name - Bid Total  
Blackline, Inc. - \$345,609  
Intermountain Slurry Seal - \$359,359  
Valley Slurry Seal - \$369,300  
City's Engineer's Estimate - \$354,000

Staff has reviewed the bids and has found Blackline, Inc. to be a reputable company fully capable of performing the work required on this project. Therefore, staff recommends that the Local Contract Review Board award the Fiscal Year 2013-2014 Pavement Management Program - Slurry Seal contract to Blackline, Inc. The City will contract for the pavement overlay and crack seal portions of the program under a separate contract solicited and issued at a later date.

**OTHER ALTERNATIVES**

The Local Contract Review Board could choose not to award the contract.

**COUNCIL GOALS, POLICIES, APPROVED MASTER PLANS**

**DATES OF PREVIOUS COUNCIL CONSIDERATION**

This is the first time the Local Contract Review Board has seen this award item for the FY 2013-2014 Pavement Management Program - Slurry Seal project. The Board saw last year's request at their April 24, 2012 meeting.

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**Business Meeting**

**Meeting Date:** 04/23/2013

**Length (in minutes):** 0 Minutes

**Agenda Title:** Proclaim May 5-11 Be Kind to Animals Week

**Prepared For:** Joanne Bengtson

**Submitted By:** Joanne Bengtson, City Management

**Item Type:** Update, Discussion, Direct Staff

**Meeting Type:** Proclamation

**Public Hearing:** No

**Publication Date:**

**Information**

**ISSUE**

Should Mayor Cook proclaim May 5-11, 2013 as Be Kind to Animals Week?

**STAFF RECOMMENDATION / ACTION REQUEST**

n/a

**KEY FACTS AND INFORMATION SUMMARY**

Tigard resident Judith Kent asked the Mayor to make this proclamation in an effort to draw attention to the American Humane Society's Be Kind to Animals Week®.

Celebrated nationally every year since 1915, it commemorates the role animals play in our lives, advocates responsible pet ownership and promotes the need for adults and especially children, to treat all animals humanely.

**OTHER ALTERNATIVES**

**COUNCIL GOALS, POLICIES, APPROVED MASTER PLANS**

**DATES OF PREVIOUS COUNCIL CONSIDERATION**

This proclamation has been issued in Tigard since 2000.

**Attachments**

Be Kind to Animals Proclamation

# Proclamation

City of Tigard

## BE KIND TO ANIMALS WEEK May 5-11, 2013

**WHEREAS**, Oregonians benefit tremendously from our animal friends, who give us companionship and great pleasure in our daily lives; and

**WHEREAS**, we have a firm responsibility to protect these fellow creatures from need, pain, fear and suffering; and

**WHEREAS**, we recognize that teaching attitudes of kindness, consideration and respect for all living things through humane education in the schools and the community helps to provide the basic values on which a humane and civilized society is built; and

**WHEREAS**, we are deeply indebted to the Oregon Humane Societies for more than 100 years of invaluable service in caring for homeless animals, instilling humane values in our children through education programs, and promoting a true working spirit of kindness and consideration for animals in the hearts and minds of all people; and

**WHEREAS**, we depend greatly upon our animal control agencies, veterinarians and other organizations that provide humane care for animals; and

**WHEREAS**, May 5-11, 2013 is set aside nationwide to observe the philosophy of kindness to animals.

**NOW THEREFORE BE IT RESOLVED THAT** I, Mayor John Cook of the City of Tigard, Oregon, do hereby proclaim the week of May 5-11, 2013 as

## BE KIND TO ANIMALS WEEK

in Tigard, Oregon and urge our citizens, businesses and organizations to join in this observance.

Dated this \_\_\_\_ day of \_\_\_\_\_, 2013.

**IN WITNESS WHEREOF**, I have hereunto set my hand and caused the Seal of the City of Tigard to be affixed.

\_\_\_\_\_  
John L. Cook, Mayor  
City of Tigard

**Attest:**

\_\_\_\_\_  
City Recorder

**Business Meeting**

**Meeting Date:** 04/23/2013

**Length (in minutes):** 5 Minutes

**Agenda Title:** Proclaim May as Bike Month

**Prepared For:** Joanne Bengtson

**Submitted By:** Joanne Bengtson, City Management

**Item Type:** Update, Discussion, Direct Staff

**Meeting Type:** Proclamation

**Public Hearing:** No

**Publication Date:**

**Information**

**ISSUE**

Should Mayor Cook proclaim Bike Month in Tigard during the month of May?

**STAFF RECOMMENDATION / ACTION REQUEST**

Issue the proclamation.

**KEY FACTS AND INFORMATION SUMMARY**

The city's Pedestrian and Bike Advisory Committee made a request for Mayor Cook to issue a Bike Month proclamation at a City Council meeting.

The League of American Bicyclists report, "if you avoided driving just 10 miles every week you would eliminate about 500 pounds of carbon dioxide emissions in a year." Bike Month celebrates bicycle awareness and cycling's benefits for reducing environmental pollution and improving personal health.

**OTHER ALTERNATIVES**

**COUNCIL GOALS, POLICIES, APPROVED MASTER PLANS**

**DATES OF PREVIOUS COUNCIL CONSIDERATION**

This proclamation has been issued annually at the request of the Pedestrian & Bicyclist Advisory Committee, a subcommittee of the Tigard Transportation Advisory Committee.

**Attachments**

Bike Month Proclamation

# Proclamation

City of Tigard

## National Bike Month May 2013

**WHEREAS**, the bicycle is a viable and environmentally sound form of transportation, as well as an excellent form of recreation and physical activity; and

**WHEREAS**, many Tigard residents will experience the joys of bicycling this summer through educational programs, commuting events, trail work days, helmet promotions, recreational bike rides, and other bicycling events; and

**WHEREAS**, the bicycle offers a clean, quiet, affordable and healthy alternative to automobile commuting; and

**WHEREAS**, the national nonprofit League of American Bicyclists has declared the month of May as National Bike Month for each of the last 57 years; and

**WHEREAS**, during the month of May, several bicycle organizations, hospitals, businesses, local governments and civic groups throughout Oregon will promote bicycling as a wholesome transportation and leisure activity, as well as an environmentally friendly alternative to the automobile; and

**WHEREAS**, the City of Tigard has formed a citizen-led Pedestrian and Bicycle Advisory Subcommittee to provide expertise and input to the Tigard Transportation Advisory Committee.

**NOW THEREFORE BE IT RESOLVED THAT I**, John L. Cook, Mayor of the City of Tigard, Oregon, do hereby proclaim May 2013 as

### NATIONAL BIKE MONTH

and May 17, 2013 as *Bike to Work and School Day* in Tigard, and encourage all residents to ride their bicycle for transportation during the month of May, to recognize the importance of bicycle safety, and to be more aware of cyclists on our streets and highways throughout the year.

Dated this \_\_\_\_ day of \_\_\_\_\_, 2013.

**IN WITNESS WHEREOF**, I have hereunto set my hand and caused the Seal of the City of Tigard to be affixed.

\_\_\_\_\_  
John L. Cook, Mayor  
City of Tigard

**Attest:**

\_\_\_\_\_  
City Recorder

**Business Meeting****Meeting Date:** 04/23/2013**Length (in minutes):** 30 Minutes**Agenda Title:** Discussion with Metro Councilor Craig Dirksen**Submitted By:** Cathy Wheatley, Administrative Services**Item Type:** Update, Discussion, Direct Staff**Meeting Type:** Council Business Meeting - Main**Public Hearing:** No**Publication Date:**

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**Information****ISSUE**

Update about Metro activities; discussion about Tigard issues with Metro Councilor Craig Dirksen.

**STAFF RECOMMENDATION / ACTION REQUEST**

N/A

**KEY FACTS AND INFORMATION SUMMARY**

First update from Metro Councilor Craig Dirksen to the Tigard City Council. Councilor Dirksen will forward discussion topics to the City Council prior to the meeting.

**OTHER ALTERNATIVES**

N/A

**COUNCIL GOALS, POLICIES, APPROVED MASTER PLANS**

N/A

**DATES OF PREVIOUS COUNCIL CONSIDERATION**

Periodic updates from Tigard's Metro representative. Former representative for Tigard, Carl Hosticka, visited the Tigard City Council on February 14, 2012, to talk about "Climate Smart Communities."

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MAKING A  
GREAT  
PLACE



# District 3 Metro update

Tigard City Council

Councilor Craig Dirksen

April 23<sup>rd</sup>, 2013

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# Overview

- Southwest Corridor Plan
- Climate Smart Communities
- Urban Growth Management process
- Natural areas program
- Convention Center hotel
- Oregon Zoo

# Southwest Corridor update

- Online open house from April 15 through mid May
- Evaluation of project bundles available in May
- Community forum: May 23, 6 p.m., Tualatin Library
- Engagement through Opt In in June





# Climate Smart Communities

- Legislature requires region to reduce greenhouse gas emissions 20% from cars, light trucks by 2035
- Plan to test three scenarios this summer based on local land use, transportation plans
- Evaluation criteria based on input from local officials, community, business leaders
- Findings to be shared with cities this fall
- Preferred scenario to be adopted in 2014

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# Urban Growth Management process



- Technical work underway to prepare for Urban Growth Report
- Council must accept final Urban Growth Report by end of 2014
- Council intends to complete its growth management decision, based on needs identified in the UGR, by the end of 2015

# Natural areas update



- Expanding wildlife corridor in Tualatin Valley
- Ice Age Tonquin Trail master plan approved
- Missing link in Canemah Bluff purchased
- Westside Trail Master Plan nearing completion—May 8<sup>th</sup> open house

# Convention Center hotel update

- Goal: attract new national convention business
- Ongoing negotiations for 600-room Hyatt Regency
- Independent study confirms positive outlook for convention, hospitality markets
- Metro, Portland, Multnomah Co. negotiating lodging taxes
- Metro, PDC negotiating financing



# Oregon Zoo

- 10-year land use plan approved
- Elephant Lands construction begins in June
- Animal welfare work underway in Asia



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# Your questions...

Craig Dirksen

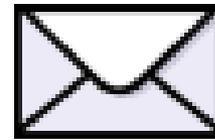
Metro Councilor, District 3

503-797-1549

[craig.dirksen@oregonmetro.gov](mailto:craig.dirksen@oregonmetro.gov)

**optin**

PORTLAND-VANCOUVER AREA ONLINE PANEL



[www.oregonmetro.gov/connect](http://www.oregonmetro.gov/connect)

**Business Meeting**

**Meeting Date:** 04/23/2013  
**Length (in minutes):** 5 Minutes  
**Agenda Title:** Contract Award - System Integrator Services  
**Prepared For:** Joseph Barrett  
**Submitted By:** Joseph Barrett, Financial and Information Services

**Item Type:** Motion Requested

Local Contract  
**Meeting Type:** Review Board

**Public Hearing**

**Newspaper Legal Ad Required?:** No

**Public Hearing Publication**

**Date in Newspaper:**

**Information****ISSUE**

Shall the Local Contract Review Board award a contract for system integrator services to Portland Engineering, Inc.?

**STAFF RECOMMENDATION / ACTION REQUEST**

Staff recommends the Local Contract Review Board award the contract for system integrator services to Portland Engineering, Inc. for an estimated \$150,000 over the five year life of the contract and authorize the City Manager to take the necessary steps to execute the contract.

**KEY FACTS AND INFORMATION SUMMARY**

The city's Water Division utilizes a Water Distribution "System Control and Data Acquisition" (SCADA) radio frequency modem system consisting of one master station and 17 remote control sites in order to operate the water distribution system storage levels, flow rates and maintains system pressure on a continuously operating basis. Each remote telemetry site consists of a PLC for controlling the local equipment and a radio modem for communication with the master controller. The master controller initiates all communication between remote sites and provides information to the operator interface (OI) computer.

The city utilizes the services of expert consultants for the preventative and corrective maintenance of the SCADA equipment including: master and remote radio telemetry system; variable frequency drives; and process equipment and other electrical and electronic instrumentation. The consultant assists city maintenance staff in troubleshooting and repairing instrumentation, software application changes or upgrades; and any deletions or additions to the system as required. The city also utilizes the services of the consultant with the inclusion of new SCADA remote radio telemetry sites associated with new construction of water distribution facilities as required.

The city issued a Request for Proposals (RFP) for the services on February 27, 2013 and published the public notice in the Daily Journal of Commerce. Proposals were due on March 19th and the city received responses from three companies. These firms were scored by a review team on the criteria identified in the RFP: project approach; project experience; project team experience; proposed rates; and references. Each criterion was assigned twenty points for a total of 100 points possible for each proposal.

After completion of the independent review by the review team members the points were total with the following result:

- Company Score Portland Engineering, Inc. 289/300
- Industrial Systems, Inc. 270/300

- Taurus Power & Control 258/300

With these results, staff had determined Portland Engineering, Inc. to be the most responsible proposer and best meets the needs of the city. As a result, staff recommends Portland Engineering, Inc. receive the contract for the needed services. Projects assigned to PEI will be on an as-needed basis. Once a project is assigned, PEI will prepare and submit a cost proposal to the city for review and approval. Corrective and preventative SCADA and electronic instrumentation maintenance will be assigned to PEI on an as-needed basis. The contract will be for an initial term of one year after Local Contract Review Board approval and may be renewed for four additional one-year terms. The estimated spend over the possible five-year life of the contract is \$150,000 and will be budgeted in the Water and Water CIP funds.

**OTHER ALTERNATIVES**

The Local Contract Review Board could elect to not to award the contract and direct staff to resolicit for the services.

**COUNCIL GOALS, POLICIES, APPROVED MASTER PLANS**

Water System Master Plan

**DATES OF PREVIOUS COUNCIL CONSIDERATION**

This is the first time the Local Contract Review Board has been presented this award for consideration. The Board's last award for these services was in late 2007.

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**Fiscal Impact**

**Cost:** \$8,000

**Budgeted (yes or no):** Yes

**Where budgeted?:** Water

**Additional Fiscal Notes:**

Funding for annual operational support for SCADA exists in the Water Fund; there is \$8,000 budgeted in FY 12/13 for this task. Staff anticipates an estimated \$150,000 spend over the possible life of this contract. Funding for future support of SCADA and expansion and design work will be in the Water and Water CIP Funds and will be contingent upon budget approval by the Budget Committee and City Council. No services in future years shall begin until the appropriations are granted.

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AIS-1259

## 6. B.

### Business Meeting

**Meeting Date:** 04/23/2013

**Length (in minutes):** 5 Minutes

**Agenda Title:** Contract Award - FY 2013-2014 Pavement Management Program - Pavement Overlay

**Prepared For:** Joseph Barrett

**Submitted By:** Joseph Barrett, Financial and Information Services

**Item Type:** Motion Requested

Local Contract  
**Meeting Type:** Review Board

### Public Hearing

**Newspaper Legal Ad Required?:** No

### Public Hearing Publication

**Date in Newspaper:**

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## Information

### ISSUE

Shall the Local Contract Review Board award a contract for the FY 2013-2014 Pavement Management Program - Pavement Overlay project to Eagle-Elsner, Inc.?

### STAFF RECOMMENDATION / ACTION REQUEST

Staff recommends the Local Contract Review Board award the FY 2013-2014 Pavement Management Program – Pavement Overlay contract to Eagle-Elsner, Inc. in the amount of \$945,048 and authorize the City Manager to take the necessary steps to execute the contract.

### KEY FACTS AND INFORMATION SUMMARY

The yearly Pavement Management Program (PMP) protects the city's investment in street infrastructure. The program typically includes a combination of minor maintenance projects (slurry seal applications) and major maintenance projects (pavement overlays). In a pavement overlay project, the pavement on a street has deteriorated due to traffic usage and weather, and is at the point where pavement repairs and overlays are necessary to avoid further deterioration and return the street to a good condition.

Work under the project will include:

- Construction of asphaltic concrete overlay
- Asphalt concrete removal (grinding) and repair
- Adjustment of facilities to match new payment level
- Installation of vehicle detection loops for traffic signals
- Application of sealant along pavement edges and joints
- Temporary signage, protection, and traffic control
- Striping and pavement marking

For fiscal year 2013-2014, the city has identified the following streets, or sections of these streets, in need of this level of repair:

- Sattler Street
- Oak Street & 95th Avenue
- 103rd Avenue & View Terrace

- 68th Avenue
- 98th Avenue
- O'Mara Street
- Alderbrook Drive
- Center Street & 87th Avenue
- Oak Street, 71st Avenue, Pine Street & 69th Avenue

The city issued an Invitation to Bid for the project on March 13, 2013 and published notice in the Daily Journal of Commerce (March 13th and 18th) and in the Tigard Times (March 14th.) Bids were due on March 26th and the city received responses from six companies (Engineer's Estimate \$946,000).

- Eagle-Elsner, Inc. \$945,048
- S-2 Contractors, Inc. \$993,875
- Brix Paving Northwest \$1,007,304
- Baker Rock Resources \$1,013,719
- Knife River Corp. \$1,020,298
- Roy Houck Construction \$1,081,793

Staff has reviewed the bids and determined that Eagle-Elsner, Inc. has submitted the lowest responsible bid. Eagle-Elsner, Inc. has no State of Oregon Contractor Construction Board violations and is not on the Bureau of Labor and Industries ineligible list.

Staff recommends the contract for the FY 2013-2014 Pavement Management Program – Pavement Overlay project be awarded to Eagle-Elsner, Inc. for \$945,048.

**OTHER ALTERNATIVES**

The Local Contract Review Board could choose not to award the contract and direct staff to resolicit or stop the project.

**COUNCIL GOALS, POLICIES, APPROVED MASTER PLANS**

**DATES OF PREVIOUS COUNCIL CONSIDERATION**

This is a yearly project and the contract is presented to the Local Contract Review Board for award consideration. The Board awarded the FY 2012-2013 contract to Baker Rock Resources at their May 15, 2012 meeting.

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**Fiscal Impact**

**Cost:** \$945,048

**Budgeted (yes or no):** Pending

**Where budgeted?:** Street Maintenance

**Additional Fiscal Notes:**

The overall construction portion of the FY 2013-2014 Pavement Management Program project is estimated at \$1,520,000 according to Tigard's 2013-2017 Capital Improvement Plan. This includes all three components of the overall project:

- pavement overlay,
- slurry seal, and
- crack sealing.

This contract is for the first of the three listed components at \$945,048. The other two components of the program have the following estimates and will come forward as separate contracts. The slurry seal component is estimated at \$345,609 and while the crack seal component has an estimate of \$90,000. The city may elect to move the crack seal component to FY 2014-2015 if funds run short to fully complete the slurry seal and overlay portions of the program.

This project is for Fiscal Year 2013-2014. All amounts are contingent upon budget approval by the Budget Committee

and City Council. No construction shall begin until the appropriations are granted.

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**Business Meeting**

**Meeting Date:** 04/23/2013  
**Length (in minutes):** 5 Minutes  
**Agenda Title:** Contract Award - Grounds Maintenance for Water, Water Quality, and City Facilities  
**Prepared For:** Joseph Barrett  
**Submitted By:** Joseph Barrett, Financial and Information Services

**Item Type:** Motion Requested **Meeting Type:** Review Board

**Public Hearing**

**Newspaper Legal Ad Required?:** No

**Public Hearing Publication**

**Date in Newspaper:**

**Information****ISSUE**

Shall the Local Contract Review Board award a contract for grounds maintenance at various city facilities and water and water quality sites to Portland Habilitation Center Northwest, Inc., an Oregon Qualified Rehabilitation Facility.

**STAFF RECOMMENDATION / ACTION REQUEST**

Staff recommends that the Local Contract Review Board award the contract for grounds maintenance at various city facilities and water and water quality sites to Portland Habilitation Center Northwest, Inc. for an estimated \$600,000 over the next five years (\$120,000 annually) and authorize the City Manager to take the necessary steps to execute the contract.

**KEY FACTS AND INFORMATION SUMMARY**

In 1977, the Oregon legislature passed the "Products of Disabled Individuals" Act (ORS 279.835 to ORS 279.855.) This law obligates all state and local governments, school districts and other tax-supported political bodies in Oregon, to purchase goods and services from Qualified Rehabilitation Facilities (QRFs) when the products or a service meets their requirements. A Qualified Rehabilitation Facility is a non-profit organization that puts Oregonians with disabilities to work. It is a place of business and a training facility; with workshops, equipment, class and meeting rooms, offices and other business necessities. Many QRFs have other business locations as well, such as a downtown office, bakery or mail room.

The mission of a QRF is to help disabled people achieve self-confidence and self-sufficiency by working in the community in which they live and becoming productive citizens. A QRF often has a variety of programs to help disabled people achieve maximum economic and personal independence through vocational development. It is "qualified" because its programs are registered and reviewed on a regular basis by various state and federal agencies such as the Oregon Department of Human Services (DHS), Oregon Department of Administrative Services (DAS) and the National Industries for the Severely Handicapped (NISH). Disabled people are referred to a QRF from the Vocational Rehabilitation or Mental Health Divisions of the Oregon Department of Human Services. Every QRF puts a lot of energy into finding and creating opportunities that provide jobs for disabled people, as well as quality products or services to their customers. One of the services that a number of QRF vendors provide is grounds maintenance. The city has a need for grounds maintenance services at various city facilities and water and water quality sites.

Due to this need, staff reached out to Portland Habilitation Center, a QRF that operates out of Portland and is authorized by the state to cover Washington County, regarding their interest in the work. Portland Habilitation

expressed interest in the work and staff from both the city and the vendor reviewed the scope of services and, in accordance with state process and statute, agreed to pricing for the work. The pricing must be detailed in "costing workbooks" approved by the state and limits the amount of overhead and reserve the QRF can charge a city. Once completed, the price determination was forwarded to the state for approval, again in accordance with state guidelines. Approval of the pricing was received from the state (attached to this Summary) thus allowing the contract to move forward to the Local Contract Review Board for award.

As such, and in accordance with the "Products of Disabled Individuals" Act (ORS 279.835 to ORS 279.855), staff recommends the Local Contract Review Board award the contract for grounds maintenance at various city facilities and water and water quality quantity sites to Portland Habilitation Center Northwest, Inc. Staff estimates an annual spend against the contract of \$120,000 which brings the total amount of the contract to a possible \$600,000 over the five year life of the contract.

**OTHER ALTERNATIVES**

**COUNCIL GOALS, POLICIES, APPROVED MASTER PLANS**

**DATES OF PREVIOUS COUNCIL CONSIDERATION**

This is the first time this award recommendation has been presented to the Local Contract Review Board.

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**Fiscal Impact**

**Cost:** 600,000

**Budgeted (yes or no):** Yes

**Where budgeted?:** Storm, Water, General/Facilities

**Additional Fiscal Notes:**

The contract is estimated at \$120,000 annually for a lifetime total of \$600,000. Stormwater will appropriate approximately \$67,518/annually, Water approximately \$18,300/annually, and General/Facilities approximately \$34,182/annually.

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**Attachments**

State Approval - Grounds Maintenance

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DEPARTMENT OF ADMINISTRATIVE SERVICES  
Request for Price Approval

For Landscape Services, Contract # \_\_\_\_\_  
(Product or Service)

Total Price: \$120,006.84, per Year (3/1/2013 - 2/28/2014) (month,  
year, each, doz.)

Requesting Agency: City of Tigard, Public Works - Open Spaces-Storm Management -  
Water Reservoir Sites

Requesting QRF: Portland Habilitation Center Northwest, Inc.

Agency and QRF agree the proposed price and supporting  
documentation meets the requirements of OAR 125-055-0030.

B. D. [Signature], date: 1/28/13  
Authorized Agency Signature

brian@tigard-or.gov, phone # 503-718-2471  
Email Address

[Signature], date: January 17, 2013  
Authorized QRF Signature

c/o Therese M. Grayson; TGrayson@phcnw.com, phone # 503-261-1266, x 196  
Email Address

DAS/SPO has reviewed the submitted documentation supporting the  
price offered by the QRF and approves the price for procurement of the  
above stated product or service in accordance with OAR 125-055-0030.

[Signature], date: 2/12/2013  
DAS QRF Coordinator

Revised  
1/26/2009



State Procurement Office  
Achieving Results Together

**Business Meeting****Meeting Date:** 04/23/2013**Length (in minutes):** 30 Minutes**Agenda Title:** Consider a Resolution Adjusting Solid Waste Rates and the Solid Waste Franchise Fee**Prepared For:** Michelle Wright**Submitted By:** Greer  
Gaston,  
Public Works  
Council  
Business  
Meeting -  
**Meeting Type:** Main**Item Type:** Resolution**Public Hearing****Newspaper Legal Ad Required?:** No**Public Hearing Publication****Date in Newspaper:**


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**Information**
**ISSUE**

Shall council:

- Select a solid waste rate model from the following three options: cost of service, fixed rate or commercial subsidy?
- Adopt a resolution adjusting solid waste rates based on the selected rate model and including a 1-percent increase in the solid waste franchise fee?

**STAFF RECOMMENDATION / ACTION REQUEST**

Select a rate model and adopt the resolution.

**KEY FACTS AND INFORMATION SUMMARY**

The council discussed solid waste rate and franchise fee adjustments at its March 19, 2013, workshop meeting. During that meeting, the council requested the following additional information:

- The number of customers in each service type.
- Cost of service, fixed rate and commercial subsidy rate models.
- Rate comparison with neighboring jurisdictions.

The requested information is provided in the attached memo.

The City of Tigard has two franchised solid waste haulers, Pride Disposal Company and Waste Management Incorporated.

Every March these haulers provide the city with financial reports for the preceding calendar year as required by Tigard Municipal Code 11.04.090. Staff then reviews the reports in accordance with the Annual Haulers' Financial Report Review Procedure found in Resolution No. 01-54-A (attached). This resolution:

- Sets an aggregate target profit rate of 10 percent annually for the solid waste haulers.
- Automatically triggers a solid waste rate adjustment when the aggregate profit rate falls below 8 percent or exceeds 12 percent.

The aggregate profit rate for 2012 was 4.22 percent. Since the aggregate profit rate falls below 8 percent, rates will need to be increased.

The Tigard Municipal Code and Resolution No. 01-54-A dictate that rates are based on a cost of service model. The city retained Bell & Associates, an accounting firm with expertise in the solid waste industry, to review the cost of service by customer class. The review is attached as the *2012 Reported Results & General Recommendations for Solid Waste Rate Increases*; it identified some interclass subsidies. Namely, commercial customers are subsidizing drop boxes and residential customers.

Additionally, last spring the Tigard Budget Committee held several hearings regarding the current fiscal year 2012-2013 budget. In the course of those hearings, the committee reviewed franchise fees. Staff was instructed to prepare a 1-percent solid waste franchise fee increase for council consideration and to bring the increase before the council the next time solid waste rates are adjusted.

The 1-percent franchise fee increase would bring the fee up to 5 percent, which is consistent with other city franchise fees. Staff estimates the increase will generate an additional \$90,000 annually.

At the request of council, the city's solid waste consulting firm, Bell & Associates, developed three rate models: cost of service, fixed rate and commercial subsidy. These rate models are attached as options 1, 2 and 3 respectively. The 1-percent increase in the franchise fee has been factored into all the rate model options.

The council is asked to select one of the rate model options and consider—via resolution—adopting the corresponding adjusted rates which includes a 1-percent increase in the solid waste franchise fee. The adjusted rates will become Exhibit A to the resolution.

## **OTHER ALTERNATIVES**

The council could:

- Choose not to select a rate model and not to adopt adjusted solid waste rates and the solid waste franchise fee increase. Such a decision is contrary to the procedure outlined in Resolution No. 01-54A.
- Propose a different rate model than the three models provided in this agenda item.
- Give staff direction on some other course of action.

## **COUNCIL OR CCDA GOALS, POLICIES, MASTER PLANS**

Tigard City Council Priorities for 6-Month Focus in 2013

Financial Sustainability

- Maximize franchise revenue
  - Implement solid waste franchise fee increases

## **DATES OF PREVIOUS CONSIDERATION**

The council discussed rate models, solid waste rate adjustments and the franchise fee increase at its March 19, 2013, workshop meeting.

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### **Fiscal Impact**

**Cost:** n/a

**Budgeted (yes or no):** n/a

**Where Budgeted (department/program):** n/a

### **Additional Fiscal Notes:**

Last spring the Tigard Budget Committee held several hearings regarding the current fiscal year 2012-2013 budget. In the course of those hearings, the committee reviewed franchise fees. Staff was instructed to prepare a 1-percent solid waste franchise fee increase for council consideration and to bring the increase before the council the next time solid waste rates are adjusted.

The 1-percent franchise fee increase would bring the fee up to 5 percent, which is consistent with other city franchise

fees. The increase has been factored into all the rate model options.

Staff estimates the increase will generate an additional \$90,000 annually.

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### **Attachments**

Resolution

Rate Model Options

Memo Addressing Questions/Issues from the March 19 Workshop Meeting

2012 Results Review & General Recommendations for Solid Waste Rate Increases

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**CITY OF TIGARD, OREGON  
TIGARD CITY COUNCIL  
RESOLUTION NO. 13-**

A RESOLUTION ADOPTING A NEW SOLID WASTE RATE SCHEDULE AND DIRECTING CITY STAFF TO ADJUST THE SOLID WASTE FRANCHISE FEE

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WHEREAS, the current solid waste rates in the City have been in effect since 2005; and

WHEREAS, Resolution No. 01-54A formalized council policies on service-type rate subsidies and solid waste franchisee operating margins and rates of return; and

WHEREAS, Resolution No. 01-54A:

- Sets an aggregate target profit rate of 10 percent annually for the City's franchised solid waste haulers.
- Automatically triggers a solid waste rate adjustment when the aggregate profit rate of the franchised haulers falls below 8 percent or exceeds 12 percent; and

WHEREAS, the franchised haulers' aggregate profit rate for 2012 was 4.22 percent, and, in accordance with Resolution No. 01-54A, a solid waste rate adjustment is warranted; and

WHEREAS, Tigard Municipal Code (TMC) Section 11.04.040.A grants exclusive solid waste hauling franchises within the City, and TMC Section 11.04.090 outlines the related factors and process to be followed by the City Council to adjust solid waste rates; and

WHEREAS, TMC Section 11.04.060 provides for compensation to be paid by the City's franchised haulers for the use of City streets in the form of solid waste franchise fees; and

WHEREAS, last spring the Tigard Budget Committee held several hearings regarding the fiscal year 2012-2013 budget; and

WHEREAS, in the course of those hearings, the Budget Committee instructed staff to prepare a 1-percent solid waste franchise fee increase for Council consideration to make the solid waste franchise fee consistent with other City franchise fees for use of city streets; and

WHEREAS, the Budget Committee directed staff to bring the solid waste franchise fee increase before Council the next time solid waste rates are adjusted; and

WHEREAS, the most efficient time to implement the franchise fee is at the beginning of a fiscal year; and

WHEREAS, the Council desires to implement the new rate schedule and franchise fee increase simultaneously, so solid waste customers will experience one—as opposed to two—rate adjustments; and

WHEREAS, the City Council finds that both the new solid waste rates and the franchise fee increase should take effect on July 1, 2013, in order to implement the new rate schedule and the franchise fee increase simultaneously, at the start of the City's fiscal year; and

WHEREAS, there is good cause to delay the implementation of the solid waste rates from the June 1 date (otherwise specified in TMC 11.04.090.E.4) based on the efficiency of making one adjustment to customer bills to reflect both the new rates and the increased franchise fee.

NOW, THEREFORE, BE IT RESOLVED by the Tigard City Council that:

SECTION 1: The Tigard City Council hereby approves a 1-percent increase in the solid waste franchise fee; increasing the overall fee from 4 percent to 5 percent of annual gross revenues, and directs staff to incorporate the franchise fee increase in the city's *Master Fees & Charges Schedule* for fiscal year 2013-2014.

SECTION 2: The Tigard City Council hereby approves the new schedule of solid waste rates as contained in the attached Exhibit A. The new rates reflect the increased franchise fee identified in Section 1 herein.

SECTION 3: The adjusted solid waste rates and the solid waste franchise fee increase will take effect on July 1, 2013.

SECTION 4: This resolution is effective immediately upon passage.

PASSED: This \_\_\_\_\_ day of \_\_\_\_\_ 2013.

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Mayor - City of Tigard

ATTEST:

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City Recorder - City of Tigard

# **Rate Model Options**

## **Requested by Council**

(All rates include 1-percent franchise fee increase.)

Option 1 — Cost of Service

Option 2 — Fixed Rate

Option 3 — Commercial Subsidy

**Selected Option Will Be  
Exhibit A to Resolution**

## City of Tigard (OPTION 1-Cost of Service)

Solid Waste & Recycling Collection Rates - July 1, 2013

**Residential Cart Recycling and Franchise Fee Increased to 5%**

### Residential Cart Collection Rates

|   |          |
|---|----------|
| Recycling only (recycling carts & yard debris cart)           | \$ 12.50 |
| (recycling cart only)   | \$ 6.70  |
| (yard debris only)  | \$ 5.80  |
| Mini cart (20 gal) with yard debris                           | \$ 20.10 |
| without yard debris   | \$ 17.85 |
| Cart (32 gal) with yard debris                                | \$ 22.90 |
| without yard debris   | \$ 20.55 |
| Cart (60 gal) with yard debris                                | \$ 34.05 |
| Cart (90 gal) with yard debris                                | \$ 40.65 |
| On-call service (mixed waste, recycling cart and yard debris) | \$ 11.45 |

### Commercial Cart Collection Rates

|                  |          |
|------------------|----------|
| <b>Cart Size</b> |          |
| 20 gallon        | \$ 20.10 |
| 32 gallon        | \$ 22.90 |
| 60 gallon        | \$ 34.05 |
| 90 gallon        | \$ 40.65 |

### Commercial Container Collection Rates

|                   | Every-other-week | Weekly Collection Frequency |           |           |           |           |
|-------------------|------------------|-----------------------------|-----------|-----------|-----------|-----------|
|                   |                  | One                         | Two       | Three     | Four      | Five      |
| One yard          | \$ 61.18         | \$ 99.94                    | \$ 186.87 | \$ 270.42 | \$ 353.98 | \$ 437.75 |
| Each additional   |                  | 65.55                       | 126.44    | 187.20    | 247.96    | 308.86    |
| One and 1/2 yards | 71.98            | 128.35                      | 236.88    | 345.32    | 453.77    | 562.31    |
| Each additional   |                  | 90.78                       | 176.45    | 262.10    | 347.74    | 433.42    |
| Two yards         | 84.38            | 153.62                      | 286.94    | 420.26    | 553.57    | 686.88    |
| Each additional   |                  | 116.07                      | 226.52    | 337.04    | 447.55    | 557.99    |
| Three yards       | 109.25           | 204.01                      | 387.07    | 570.03    | 753.02    | 936.09    |
| Each additional   |                  | 166.44                      | 326.64    | 486.81    | 647.00    | 807.20    |
| Four yards        | 134.14           | 254.41                      | 487.24    | 719.86    | 952.48    | 1,188.53  |
| Each additional   |                  | 217.39                      | 426.81    | 636.63    | 846.47    | 1,056.42  |
| Five yards        | 158.9            | 304.86                      | 587.23    | 869.62    | 1,152.00  | 1,434.39  |
| Each additional   |                  | 267.30                      | 526.83    | 786.39    | 1,045.97  | 1,305.50  |
| Six yards         | 183.79           | 355.00                      | 687.15    | 1,019.18  | 1,351.21  | 1,683.34  |
| Each additional   |                  | 317.45                      | 626.72    | 935.93    | 1,245.18  | 1,554.47  |
| Eight yards       | 233.44           | 456.72                      | 888.16    | 1,319.62  | 1,751.05  | 2,182.50  |
| Each additional   |                  | 419.17                      | 827.74    | 1,236.39  | 1,645.03  | 2,053.61  |
| 1 yard compacted  |                  | \$ 224.87                   | \$ 420.47 | \$ 608.46 | \$ 796.47 | \$ 984.96 |
| 2 yard compacted  |                  | 345.65                      | 645.62    | 945.60    | 1,245.55  | 1,545.50  |
| 3 yard compacted  |                  | 459.01                      | 870.88    | 1,282.53  | 1,694.25  | 2,106.15  |
| 4 yard compacted  |                  | 572.42                      | 1,096.29  | 1,619.68  | 2,143.07  | 2,674.18  |

### Drop Box Collection Service

|                         |           |   |
|-------------------------|-----------|---|
| 10 Cubic Yard Container | \$ 134.00 | Demurrage                               |
| 20 Cubic Yard Container | \$ 134.00 | \$ 5.00 10 / 20 Yard Box after 48 hours |
| 30 Cubic Yard Container | \$ 134.00 | \$ 6.60 30 Yard Box after 48 hours      |
| 40 Cubic Yard Container | \$ 134.00 | \$ 6.60 40 Yard Box after 48 hours      |
| All Compactors          | \$ 140.00 | \$ 8.00 Drop Box with Lid               |
| Delivery                | \$ 68.00  |   |

**Service Fee plus actual disposal cost and franchise fee**

### Medical Waste Collection Service

|  |          |
|--|----------|
| On-Site Pick-up Charge                 | \$ 28.50 |
| Disposal Cost per 17 to 31 gallon unit | \$ 13.90 |
| Disposal Cost per 43 gallon unit       | \$ 14.80 |

Rate is the on-site collection charge plus the disposal cost per medical container unit

**City of Tigard (OPTION 2-Fixed Rate Increase)  
Solid Waste & Recycling Collection Rates - July 1, 2013**

**Residential Cart Recycling and Franchise Fee Increased to 5%**

**Residential Cart Collection Rates**

|   |          |
|---|----------|
| Recycling only (recycling carts & yard debris cart)           | \$ 11.85 |
| (recycling cart only)   | \$ 6.35  |
| (yard debris only)  | \$ 5.50  |
| Mini cart (20 gal) with yard debris                           | \$ 19.65 |
| without yard debris   | \$ 17.40 |
| Cart (32 gal) with yard debris                                | \$ 22.75 |
| without yard debris   | \$ 20.40 |
| Cart (60 gal) with yard debris                                | \$ 35.00 |
| Cart (90 gal) with yard debris                                | \$ 42.30 |
| On-call service (mixed waste, recycling cart and yard debris) | \$ 12.00 |

**Commercial Cart Collection Rates**

|                  |          |
|------------------|----------|
| <b>Cart Size</b> |          |
| 20 gallon        | \$ 19.65 |
| 32 gallon        | \$ 22.75 |
| 60 gallon        | \$ 35.00 |
| 90 gallon        | \$ 42.30 |

**Commercial Container Collection Rates**

|                   | Every-other-week | Weekly Collection Frequency |           |           |           |           |
|-------------------|------------------|-----------------------------|-----------|-----------|-----------|-----------|
|                   |                  | One                         | Two       | Three     | Four      | Five      |
| One yard          | \$ 61.18         | \$ 99.94                    | \$ 186.87 | \$ 270.42 | \$ 353.98 | \$ 437.75 |
| Each additional   |                  | 65.55                       | 126.44    | 187.20    | 247.96    | 308.86    |
| One and 1/2 yards | 71.98            | 128.35                      | 236.88    | 345.32    | 453.77    | 562.31    |
| Each additional   |                  | 90.78                       | 176.45    | 262.10    | 347.74    | 433.42    |
| Two yards         | 84.38            | 153.62                      | 286.94    | 420.26    | 553.57    | 686.88    |
| Each additional   |                  | 116.07                      | 226.52    | 337.04    | 447.55    | 557.99    |
| Three yards       | 109.25           | 204.01                      | 387.07    | 570.03    | 753.02    | 936.09    |
| Each additional   |                  | 166.44                      | 326.64    | 486.81    | 647.00    | 807.20    |
| Four yards        | 134.14           | 254.41                      | 487.24    | 719.86    | 952.48    | 1,188.53  |
| Each additional   |                  | 217.39                      | 426.81    | 636.63    | 846.47    | 1,056.42  |
| Five yards        | 158.9            | 304.86                      | 587.23    | 869.62    | 1,152.00  | 1,434.39  |
| Each additional   |                  | 267.30                      | 526.83    | 786.39    | 1,045.97  | 1,305.50  |
| Six yards         | 183.79           | 355.00                      | 687.15    | 1,019.18  | 1,351.21  | 1,683.34  |
| Each additional   |                  | 317.45                      | 626.72    | 935.93    | 1,245.18  | 1,554.47  |
| Eight yards       | 233.44           | 456.72                      | 888.16    | 1,319.62  | 1,751.05  | 2,182.50  |
| Each additional   |                  | 419.17                      | 827.74    | 1,236.39  | 1,645.03  | 2,053.61  |
| 1 yard compacted  |                  | \$ 224.87                   | \$ 420.47 | \$ 608.46 | \$ 796.47 | \$ 984.96 |
| 2 yard compacted  |                  | 345.65                      | 645.62    | 945.60    | 1,245.55  | 1,545.50  |
| 3 yard compacted  |                  | 459.01                      | 870.88    | 1,282.53  | 1,694.25  | 2,106.15  |
| 4 yard compacted  |                  | 572.42                      | 1,096.29  | 1,619.68  | 2,143.07  | 2,674.18  |

**Drop Box Collection Service**

|                         |           |   |
|-------------------------|-----------|---|
| 10 Cubic Yard Container | \$ 134.00 | Demurrage                               |
| 20 Cubic Yard Container | \$ 134.00 | \$ 5.00 10 / 20 Yard Box after 48 hours |
| 30 Cubic Yard Container | \$ 134.00 | \$ 6.60 30 Yard Box after 48 hours      |
| 40 Cubic Yard Container | \$ 134.00 | \$ 6.60 40 Yard Box after 48 hours      |
| All Compactors          | \$ 140.00 | \$ 8.00 Drop Box with Lid               |
| Delivery                | \$ 68.00  |   |

**Service Fee plus actual disposal cost and franchise fee**

**Medical Waste Collection Service**

|  |          |
|--|----------|
| On-Site Pick-up Charge                 | \$ 28.50 |
| Disposal Cost per 17 to 31 gallon unit | \$ 13.90 |
| Disposal Cost per 43 gallon unit       | \$ 14.80 |

|   |
|---|
| Rate is the on-site collection charge plus the disposal cost per medical container unit |
|---|

**City of Tigard (OPTION 3-Commercial Subsidy)**  
**Solid Waste & Recycling Collection Rates - July 1, 2013**

**Residential Cart Recycling and Franchise Fee Increased to 5%**

**Residential Cart Collection Rates**

|   |          |
|---|----------|
| Recycling only (recycling carts & yard debris cart)           | \$ 12.50 |
| (recycling cart only)   | \$ 6.70  |
| (yard debris only)  | \$ 5.80  |
| Mini cart (20 gal) with yard debris                           | \$ 19.50 |
| without yard debris   | \$ 17.25 |
| Cart (32 gal) with yard debris                                | \$ 22.30 |
| without yard debris   | \$ 19.95 |
| Cart (60 gal) with yard debris                                | \$ 33.45 |
| Cart (90 gal) with yard debris                                | \$ 40.05 |
| On-call service (mixed waste, recycling cart and yard debris) | \$ 11.30 |

**Commercial Cart Collection Rates**

|                  |          |
|------------------|----------|
| <b>Cart Size</b> |          |
| 20 gallon        | \$ 19.50 |
| 32 gallon        | \$ 22.30 |
| 60 gallon        | \$ 33.45 |
| 90 gallon        | \$ 40.05 |

**Commercial Container Collection Rates**

|                   | Every-other-week | Weekly Collection Frequency |           |           |           |             |
|-------------------|------------------|-----------------------------|-----------|-----------|-----------|-------------|
|                   |                  | One                         | Two       | Three     | Four      | Five        |
| One yard          | \$ 62.66         | \$ 102.36                   | \$ 191.40 | \$ 276.97 | \$ 362.56 | \$ 448.36   |
| Each additional   |                  | 67.14                       | 129.51    | 191.73    | 253.97    | 316.35      |
| One and 1/2 yards | 73.72            | 131.46                      | 242.62    | 353.69    | 464.77    | 575.93      |
| Each additional   |                  | 92.98                       | 180.73    | 268.45    | 356.16    | 443.92      |
| Two yards         | 86.43            | 157.34                      | 293.89    | 430.45    | 566.99    | 703.52      |
| Each additional   |                  | 118.88                      | 232.01    | 345.21    | 458.39    | 571.51      |
| Three yards       | 111.9            | 208.95                      | 396.45    | 583.84    | 771.27    | 958.77      |
| Each additional   |                  | 170.48                      | 334.56    | 498.61    | 662.68    | 826.76      |
| Four yards        | 137.39           | 260.57                      | 499.04    | 737.31    | 975.56    | 1,217.33    |
| Each additional   |                  | 222.66                      | 437.15    | 652.06    | 866.98    | 1,082.02    |
| Five yards        | 162.75           | 312.25                      | 601.46    | 890.70    | 1,179.92  | 1,469.14    |
| Each additional   |                  | 273.77                      | 539.60    | 805.45    | 1,071.32  | 1,337.13    |
| Six yards         | 188.25           | 363.60                      | 703.80    | 1,043.87  | 1,383.95  | 1,724.13    |
| Each additional   |                  | 325.14                      | 641.90    | 958.61    | 1,275.36  | 1,592.13    |
| Eight yards       | 239.1            | 467.78                      | 909.68    | 1,351.59  | 1,793.48  | 2,235.38    |
| Each additional   |                  | 429.32                      | 847.80    | 1,266.35  | 1,684.89  | 2,103.37    |
| 1 yard compacted  |                  | \$ 230.32                   | \$ 430.67 | \$ 623.21 | \$ 815.80 | \$ 1,008.85 |
| 2 yard compacted  |                  | 354.02                      | 661.26    | 968.53    | 1,275.75  | 1,582.94    |
| 3 yard compacted  |                  | 470.13                      | 892.00    | 1,313.62  | 1,735.33  | 2,157.20    |
| 4 yard compacted  |                  | 586.29                      | 1,122.85  | 1,658.97  | 2,195.04  | 2,739.03    |

**Drop Box Collection Service**

|                         |           |           |                                 |
|-------------------------|-----------|-----------|---------------------------------|
| 10 Cubic Yard Container | \$ 134.00 | Demurrage |                                 |
| 20 Cubic Yard Container | \$ 134.00 | \$ 5.00   | 10 / 20 Yard Box after 48 hours |
| 30 Cubic Yard Container | \$ 134.00 | \$ 6.60   | 30 Yard Box after 48 hours      |
| 40 Cubic Yard Container | \$ 134.00 | \$ 6.60   | 40 Yard Box after 48 hours      |
| All Compactors          | \$ 140.00 | \$ 8.00   | Drop Box with Lid               |
| Delivery                | \$ 68.00  |           |                                 |

**Service Fee plus actual disposal cost and franchise fee**

**Medical Waste Collection Service**

|  |          |
|--|----------|
| On-Site Pick-up Charge                 | \$ 28.50 |
| Disposal Cost per 17 to 31 gallon unit | \$ 13.90 |
| Disposal Cost per 43 gallon unit       | \$ 14.80 |

|   |
|---|
| Rate is the on-site collection charge plus the disposal cost per medical container unit |
|---|



## City of Tigard Memorandum

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**To:** The Honorable Mayor and City Councilors

**From:** Business Manager Michelle Wright

**Re:** Responses to Solid Waste Questions/Issues Raised  
During the March 19, 2013, Workshop Meeting

**Date:** April 9, 2013

The council discussed solid waste rate and franchise fee adjustments at its March 19, 2013, workshop meeting. During that meeting, the council requested the following additional information:

- The number of customers in each service type.
- Cost of service, fixed rate and commercial subsidy rate models.
- Rate comparison with neighboring jurisdictions.

This information is included in the following tables.

The council also briefly discussed de-regulating drop box service. In 2012, the city received \$84,955 in franchise fees from drop box services. If this service was de-regulated, the city would lose this revenue and would likely see an increase in the number of trips made by area solid waste haulers. Increased trips would have a negative impact on traffic, the condition of city streets, fuel consumption, etc.

**Tigard Customer Cart Count and Solid Waste Rate Including Franchise Fee (Option 1, Option 2 and Option 3)**

| Residential Collection                 |                |                |                     | OPTION 1        |          | OPTION 2   |          | OPTION 3           |          |
|--|----------------|----------------|---------------------|-----------------|----------|------------|----------|--------------------|----------|
| Residential                            | Customer Count | % of Customers | TIGARD current Rate | Cost of Service |          | Fixed Rate |          | Commercial Subsidy |          |
|  |                |                |                     | % INCREASE      | RATE     | % INCREASE | RATE     | % INCREASE         | RATE     |
| 20 gal                                 | 1,655          | 13%            | \$17.80             | 13%             | \$20.10  | 10.39%     | \$19.65  | 9.6%               | \$19.50  |
| 32 gal                                 | 8,577          | 67%            | \$20.60             | 11%             | \$22.90  | 10.44%     | \$22.75  | 8.3%               | \$22.30  |
| 60 gal                                 | 1,903          | 15%            | \$31.75             | 7%              | \$34.05  | 10.24%     | \$35.00  | 5.4%               | \$33.45  |
| 90 gal                                 | 515            | 4%             | \$38.35             | 6%              | \$40.65  | 10.30%     | \$42.30  | 4.4%               | \$40.05  |
| On call                                | 189            | 1%             | \$10.85             | 6%              | \$11.45  | 10.60%     | \$12.00  | 4.1%               | \$11.30  |
| Commercial Collection                  |                |                |                     |                 |          |            |          |                    |          |
| 1 yard                                 | 78             | 9%             | \$93.14             | 7.30%           | \$99.94  | 7.30%      | \$99.94  | 9.9%               | \$102.36 |
| 1.5 yard                               | 78             | 9%             | \$119.62            | 7.30%           | \$128.35 | 7.30%      | \$128.35 | 9.9%               | \$131.46 |
| 2 yard                                 | 198            | 22%            | \$143.17            | 7.30%           | \$153.62 | 7.30%      | \$153.62 | 9.9%               | \$157.34 |
| 3 yard                                 | 169            | 19%            | \$190.13            | 7.30%           | \$204.01 | 7.30%      | \$204.01 | 9.9%               | \$208.95 |
| 4 yard                                 | 187            | 21%            | \$237.10            | 7.30%           | \$254.41 | 7.30%      | \$254.41 | 9.9%               | \$260.57 |
| 5 yard                                 | 46             | 5%             | \$284.12            | 7.30%           | \$304.86 | 7.30%      | \$304.86 | 9.9%               | \$312.25 |
| 6 yard                                 | 109            | 12%            | \$330.85            | 7.30%           | \$355.00 | 7.30%      | \$355.00 | 9.9%               | \$363.60 |
| 8 yard                                 | 44             | 5%             | \$425.65            | 7.30%           | \$456.72 | 7.30%      | \$456.72 | 9.9%               | \$467.78 |
| 1 yard compacted                       |                |                | \$209.57            | 7.30%           | \$224.87 | 7.30%      | \$224.87 | 9.9%               | \$230.32 |
| 2 yard compacted                       |                |                | \$322.13            | 7.30%           | \$345.65 | 7.30%      | \$345.65 | 9.9%               | \$354.02 |
| 3 yard compacted                       |                |                | \$427.78            | 7.30%           | \$459.01 | 7.30%      | \$459.01 | 9.9%               | \$470.13 |
| 4 yard compacted                       |                |                | \$533.48            | 7.30%           | \$572.42 | 7.30%      | \$572.42 | 9.9%               | \$586.29 |
| Drop Box Service                       |                |                |                     |                 |          |            |          |                    |          |
| 10 Cubic Yards                         |                |                | \$109.00            | 23%             | \$134.00 | 23.00%     | \$134.00 | 23.0%              | \$134.00 |
| 20 Cubic Yards                         |                |                | \$109.00            | 23%             | \$134.00 | 23.00%     | \$134.00 | 23.0%              | \$134.00 |
| 30 Cubic Yards                         |                |                | \$109.00            | 23%             | \$134.00 | 23.00%     | \$134.00 | 23.0%              | \$134.00 |
| 40 Cubic Yards                         |                |                | \$109.00            | 23%             | \$134.00 | 23.00%     | \$134.00 | 23.0%              | \$134.00 |
| All Compactors                         |                |                | \$109.00            | 28%             | \$140.00 | 28.00%     | \$140.00 | 28.0%              | \$140.00 |
| Delivery                               |                |                | \$63.00             | 8%              | \$68.00  | 8.00%      | \$68.00  | 8.0%               | \$68.00  |
| Medical Waste Collection Service       |                |                |                     |                 |          |            |          |                    |          |
| On-Site Pick-up Charge                 |                |                |                     |                 | \$28.50  |            | \$28.50  |                    | \$28.50  |
| Disposal Cost per 17 to 31 gallon unit |                |                |                     |                 | \$13.90  |            | \$13.90  |                    | \$13.90  |
| Disposal Cost per 43 gallon unit       |                |                |                     |                 | \$14.80  |            | \$14.80  |                    | \$14.80  |

## Rate Comparison

| Residential Collection |                 |           |             |             |
|------------------------|-----------------|-----------|-------------|-------------|
| Residential            | Proposed Tigard | Hillsboro | Beaverton * | Wash County |
| 20 gal                 | \$20.10         | \$18.65   | \$18.00     | \$20.10     |
| 32 gal                 | \$22.90         | \$22.35   | \$21.00     | \$21.88     |
| 60 gal                 | \$34.05         | \$32.20   | \$34.00     | \$31.75     |
| 90 gal                 | \$40.65         | \$41.90   | \$40.00     | \$37.54     |
| On call                | \$11.45         | \$11.65   | \$10.75     | \$9.24      |
| Commercial Collection  |                 |           |             |             |
| Container Size         | Proposed Tigard | Hillsboro | Beaverton   | Wash County |
| 1 yard                 | \$99.94         | \$79.40   | \$85.53     | \$84.56     |
| 1.5 yard               | \$128.35        | 103.71    | \$113.10    | \$106.14    |
| 2 yard                 | \$153.62        | 128.08    | \$136.20    | \$127.78    |
| 3 yard                 | \$204.01        | 176.63    | \$182.22    | \$170.82    |
| 4 yard                 | \$254.41        | 225.29    | \$228.27    | \$214.00    |
| 6 yard                 | \$355.00        | 321.94    | \$320.21    | \$299.62    |
| 8 yard                 | \$456.72        | 420.67    | \$413.06    | \$387.55    |
| Drop Box Service       |                 |           |             |             |
| Drop Box Size          | Proposed Tigard | Hillsboro | Beaverton   | Wash County |
| 10 Cubic Yards         | \$134.00        | \$127.00  | \$117.00    | \$147.00    |
| 20 Cubic Yards         | \$134.00        | \$127.00  | \$117.00    | \$147.00    |
| 30 Cubic Yards         | \$134.00        | \$137.00  | \$132.00    | \$175.00    |
| 40 Cubic Yards         | \$134.00        | \$157.00  | \$132.00    | \$175.00    |
| All Compactors         | \$140.00        | \$160.00  | \$157.00    | \$224.00    |
| Delivery               | \$68.00         | \$ 40.00  | \$58.00     | \$60.00     |

\* The City of Beaverton is considering increasing the residential rates by approximately \$2.19 to fund the compressed natural gas fleet upgrade.

## Bell & Associates 2012 Reported Results & General Recommendations for Solid Waste Rate Increases

The reported results from collection operations during the calendar year 2012 show a composite return of 4.22% for all services. The following table is a summary of the results by service:

| Line of Business | Residential  | Commercial   | Drop Box      | Composite    |
|------------------|--------------|--------------|---------------|--------------|
| Revenue          | 3,626,880    | 3,373,056    | 2,256,750     | 9,256,686    |
| Expense          | 3,484,198    | 3,076,002    | 2,305,427     | 8,865,627    |
| Income           | 142,682      | 297,054      | -48,677       | 391,059      |
| Operating Margin | <b>3.93%</b> | <b>8.81%</b> | <b>-2.16%</b> | <b>4.22%</b> |

While there is further analysis to be completed on these figures, the above amounts will not change significantly. Additional costs such as increases in disposal fees, labor, and capital purchases that will be incurred in 2013 and beyond will be incorporated into the rates and presented to the Council in the future. It is assumed the City will continue the policy of setting the rates for each line of business at the cost of service.

The two areas of concern are residential service where the reported result is 3.93% and drop box service is -2.16%. Residential rates were last adjusted in January 2006 when the City implemented the commingled roll cart recycling program. Assuming no changes to the current collection system, the estimated increased for residential service will range from **\$3.00 to \$3.50** (15% to 17%) per customer per month. This increase includes the additional 1% increase in franchise fees. While this is a significant amount, consider the following increases incurred by the hauler since 2006:

| Expense                    | 2006 Cost | 2012 Cost | \$ Increase | % Increase |
|----------------------------|-----------|-----------|-------------|------------|
| Driver Wage per Hour       | \$20.22   | \$24.52   | \$4.30      | 21.3%      |
| Health Ins. per Month      | \$739     | \$1,223   | \$484       | 65.5%      |
| Diesel Fuel per Gallon     | \$2.16    | \$3.20    | \$1.04      | 48.1%      |
| SW Disposal per Ton        | \$74.20   | \$97.52   | \$23.32     | 31.4%      |
| Automated Collection Truck | \$202,000 | \$300,000 | \$98,000    | 48.5%      |

The US Bureau of Labor has calculated the CPI increase at 14.4% from 2006 to 2012 for the Portland-Salem area.

One approach that may be of interest to the City Council is to consider setting residential collection rates on a service delivery approach. This is the current method used to assess the

collection services in King City. The rate is calculated on the base level of services currently being delivered rather than on the size of the garbage cart.

The charge for garbage would be comprised of two components: the fixed cost and the disposal. The fixed costs would be included in the monthly service fee and the disposal cost would be charged on a per gallon basis when the cart is set out for collection. This method encourages residents to divert more materials to the recycling cart. In addition, it doesn't penalize customers that have large families who generate more than 32 gallons of waste a week.

Drop box service will require an increase. The modified approach will be set on the average time required to provide these services. The significant change will be the consideration of the additional time required to service roll-off compactors.

Commercial rates will increase slightly when recalibrated to the allowable margin. The topic for Council discussion will be commercial food waste collection and the impact on collection rates and operations.

The reported costs for each line of business are detailed on the following spreadsheet for Council review.

**Reported**  
**2012 Return on Revenues**

|  | Residential Service |                     |                     | Commercial Service  |                     |  | Drop Box            | Grand Totals     |
|--|---------------------|---------------------|---------------------|---------------------|---------------------|--|---------------------|------------------|
|  | Solid Waste         | Recycling           | Yard Debris         | Solid Waste         | Recycling           |  |                     |                  |
| <b>Collection &amp; Service Revenues</b> | <b>3,498,642</b>    | <b>92,827</b>       | <b>35,411</b>       | <b>3,276,147</b>    | <b>96,909</b>       |  | <b>2,256,750</b>    | <b>9,256,686</b> |
|  | <b>% of direct</b>  |  | <b>% of direct</b>  |                  |
| <b>Direct Costs of Operations</b>        | <b>1,691,970</b>    | <b>796,691</b>      | <b>395,636</b>      | <b>2,121,006</b>    | <b>474,308</b>      |  | <b>2,058,293</b>    | <b>7,537,904</b> |
| Disposal Expense                         | 748,850 44%         | 10,277 1%           | 73,916 19%          | 1,194,370 56%       | 1,532 0%            |  | 1,238,714 60%       | 3,267,659        |
| Labor Expense                            | 396,876 23%         | 369,809 46%         | 163,808 41%         | 427,493 20%         | 251,537 53%         |  | 396,706 19%         | 2,006,229        |
| Truck Expense                            | 283,784 17%         | 243,025 31%         | 102,827 26%         | 227,727 11%         | 154,504 33%         |  | 240,061 12%         | 1,251,928        |
| Equipment Expense                        | 61,817 4%           | 45,049 6%           | 34,346 9%           | 93,089 4%           | 29,805 6%           |  | 44,420 2%           | 308,526          |
| Franchise Fees                           | 141,678 8%          | 2,269 0%            | 0 0%                | 130,641 6%          | 2,714 1%            |  | 84,955 4%           | 362,257          |
| Other Direct Expense                     | 58,965 3%           | 126,262 16%         | 20,739 5%           | 47,686 2%           | 34,216 7%           |  | 53,437 3%           | 341,305          |
|  | <b>% of G&amp;A</b> |  | <b>% of G&amp;A</b> |                  |
| <b>Indirect Costs of Operations</b>      | <b>254,241</b>      | <b>261,992</b>      | <b>83,459</b>       | <b>321,997</b>      | <b>158,493</b>      |  | <b>247,015</b>      | <b>1,327,197</b> |
| Management Expense                       | 51,924 20%          | 55,253 21%          | 18,174 22%          | 65,626 20%          | 33,740 21%          |  | 50,447 20%          | 275,164          |
| Administrative Expense                   | 73,692 29%          | 78,595 30%          | 26,067 31%          | 92,941 29%          | 48,110 30%          |  | 71,470 29%          | 390,875          |
| Other Overhead Expenses                  | 128,625 51%         | 128,144 49%         | 39,218 47%          | 163,430 51%         | 76,643 48%          |  | 125,098 51%         | 661,158          |
| <b>Total Cost</b>                        | <b>1,946,211</b>    | <b>1,058,683</b>    | <b>479,095</b>      | <b>2,443,003</b>    | <b>632,801</b>      |  | <b>2,305,308</b>    | <b>8,865,101</b> |
| <b>Less Unallowable Costs</b>            | <b>-111</b>         | <b>-88</b>          | <b>-10</b>          | <b>-155</b>         | <b>-43</b>          |  | <b>-119</b>         | <b>-526</b>      |
| <b>Allowable Costs</b>                   | <b>1,946,322</b>    | <b>1,058,771</b>    | <b>479,105</b>      | <b>2,443,158</b>    | <b>632,844</b>      |  | <b>2,305,427</b>    | <b>8,865,627</b> |
| <b>Franchise Income</b>                  | <b>1,552,320</b>    | <b>-965,944</b>     | <b>-443,694</b>     | <b>832,989</b>      | <b>-535,935</b>     |  | <b>-48,677</b>      | <b>391,059</b>   |
| <b>Return on revenues</b>                | <b>44.37%</b>       | <b>-1040.59%</b>    | <b>-1252.98%</b>    | <b>25.43%</b>       | <b>-553.03%</b>     |  | <b>-2.16%</b>       | <b>4.22%</b>     |
| <b>Revenues</b>                          | <b>3,626,880</b>    |                     |                     | <b>3,373,056</b>    |                     |  | <b>2,256,750</b>    | <b>9,256,686</b> |
|  | <b>% of revenue</b> |                     |                     | <b>% of revenue</b> |                     |  |                     |                  |
| <b>Direct Costs of Operations</b>        | <b>2,884,297</b>    |                     |                     | <b>2,595,314</b>    |                     |  | <b>2,058,293</b>    | <b>7,537,904</b> |
| <b>Indirect Costs of Operations</b>      | <b>599,692</b>      |                     |                     | <b>480,490</b>      |                     |  | <b>247,015</b>      | <b>1,327,197</b> |
| <b>Total Cost</b>                        | <b>3,483,989</b>    |                     |                     | <b>3,075,804</b>    |                     |  | <b>2,305,308</b>    | <b>8,865,101</b> |
| <b>Less Unallowable Costs</b>            | <b>-209</b>         |                     |                     | <b>-198</b>         |                     |  | <b>-119</b>         | <b>-526</b>      |
| <b>Allowable Costs</b>                   | <b>3,484,198</b>    |                     |                     | <b>3,076,002</b>    |                     |  | <b>2,305,427</b>    | <b>8,865,627</b> |
| <b>Franchise Income</b>                  | <b>142,682</b>      |                     |                     | <b>297,054</b>      |                     |  | <b>-48,677</b>      | <b>391,059</b>   |
| <b>Return on revenues 2012</b>           | <b>3.93%</b>        |                     |                     | <b>8.81%</b>        |                     |  | <b>-2.16%</b>       | <b>4.22%</b>     |