City *of* Tigard

Tigard City Council/City Center Development Agency and Local Contract Review Board Meeting Minutes - June 11, 2013

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

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

- STUDY SESSION

A. Follow Up Discussion from April 30, 2013 Town Hall - Walmart Project

Mayor Cook announced the following: *This is the study session portion of the City Council meeting tonight. One of the two topics for tonight's study session is to hold a follow-up discussion on comments and concerns expressed by citizens regarding the Walmart project received during the April 30, 2013, Town Hall Meeting.*

Council holds study sessions in a workshop-type of setting and the session is usually held in the Red Rock Creek Conference Room. To accommodate an anticipated larger audience, this open-to-the-public discussion was moved to the Town Hall.

Study session time is used by the council to give the mayor and council an opportunity to discuss and weigh-in on matters before the city. If the majority of council gives direction to staff that it would like to formally consider this matter, a public process would be scheduled including a hearing or hearings, properly noticed, so all interested persons could participate and offer written or oral testimony. For tonight, due to time constraints and the nature of this portion of the meeting, no public testimony will be received.

A staff report will be given on the issue:

- *"Council discussion on regulatory "tool box" that would affect existing "big box" retailers.*

After the staff report, council members will ask questions and discuss the agenda topic. The council might choose to give guidance on the desired next steps.

If any person attending tonight would like to speak on this issue or any other issue, a "Citizen Communications" time is available on the business agenda, which starts at 7:30 p.m. Depending on the number of people who have signed in to speak, the mayor may ask that comments be limited to two to five minutes per person. If there are several persons who sign in to speak on the same issue, this group of like-minded citizens might want to consider selecting one spokesperson to speak on everyone's behalf; the mayor will allot this person additional time to speak. To manage the agendas to allow council time to consider the remaining agenda items scheduled for the business meeting, the "Citizen Communications" agenda item is allotted a maximum of 20 minutes.

- Staff report.

City Attorney Hall referred to his May 28, 2013 memorandum to the City Council regarding "Regulatory Options to Impact Retailers within the City." The memo outlines some of the regulatory tools that the city has within its authority. The memo also provides a brief, initial analysis of potential regulatory tool options. The memo does not explore land use options; rather, the memo assumes the regulations would apply to existing, approved land uses.

Attorney Hall talked about the limitations of the city's authority. The city has a fairly broad authority; however, laws adopted by the city must have a rational basis – a legitimate legal reason for making these laws. The more laws that are implemented to apply to smaller groups of the population, the more difficult it becomes to articulate the rational, legitimate basis/intention of the law.

Attorney Hall distributed a chart prepared by the Community Development Department. The chart was derived from the city's street maintenance fee data showing the square footage of large format retailers (big box) in the City of Tigard. The businesses listed on this chart are businesses that have the potential to be impacted with laws created to impact "big box" retailers.

Attorney Hall reviewed regulatory concepts (summarized in his May 28 memo) pertaining to the following aspects of big box retailers:

- Hours of operation.

- Employee wage and hour standards.
- Employee benefits standards.
- Business license fees.
- Sales tax.

Attorney Hall said he would be glad to assist the City Council by answering questions to determine whether its policy intentions can be achieved.

Councilor Snider noted his appreciation for Attorney Hall's summary on options with regard to regulating big box businesses and advised this summary has been shared with the community. He asked Attorney Hall if there was a reason why these options could be applied on a phase-in basis for new businesses or do they have to be applied to all businesses in a similar circumstance now and in the future. Attorney Hall said there is no clear-cut yes or no answer. The regulation must have the foundation of a rational basis; i.e., if the city has a legitimate purpose for regulating new businesses forward. The more narrowly applicable, the more it leaves opportunity for challenges. He confirmed Councilor Snider's comment that the more narrowly defined the less "rational" and "defensible" the regulation becomes. Attorney Hall said all of the policies in his May 28 memo are very defensible if applied to every employer within the City of Tigard. With the exception of the sales tax, all of these policies are very defensible if applied to every big box retailer within the City of Tigard. The more brackets placed within the policy, the more difficult it becomes to explain why there are more impacts associated with new retailers versus old retailers.

In response to a question from Councilor Snider, City Attorney Hall advised that he has viewed some of the email traffic from members in the community about regulations. He noted sometimes there is a question between what is land use and what is not. We have our land use system in the State of Oregon with what is called the "goal post rule." Once an applicant receives an approval, then there is a right to operate within the realm of that approval. To the question of regulating parking, City Attorney Hall said such regulation could be established to the extent whether or not an approval was granted to allow the parking beyond the hours established by any new regulation. A thorough legal review of the approvals would be needed.

City Manager Wine advised the purpose of tonight's discussion was to respond to the council's request to explore some options and to ask if there is council guidance to explore specific options further. Staff would return with additional information upon council request.

Councilor Buehner asked City Attorney Hall whether a land use approval could be limited to a certain facility and applicant. City Attorney Hall advised that yes, if there were such provisions in the code or if there was a condition of approval. Typically, an applicant will be looking to get land use approval for a retail building and the owner is looking to find a tenant; they will not be amenable to restrictions on tenants. Once the approval is in place, it runs with the land. If there is a land use approval that doesn't prescribe a limitation on the users, that land use approval can be transferred between companies and potential occupants of a piece of property.

Councilor Buehner asked a follow up question: "Could we rewrite the code to provide that it will be within the discretion of the Planning Commission or the Hearings Officer…whether they want to include a condition of approval that would limit it to that particular applicant?" City Attorney Hall said there could probably be such a code provision that basically says approvals are not transferrable.

Councilor Woodard commented on the option to increase business fees. He noted the fee schedule stops after a certain number of employees. A big box establishment could translate into more wear and tear on facilities. A second look at the fee schedule might be deserved. He said he understands the City of Portland has a similar fee and would like information on their policy and how it is applied.

Council President Henderson said it was his understanding that Target went through a process, paid money and received credit. He asked about how this financial transaction transpired. After a brief discussion, City Manager Wine agreed with Councilor Buehner's comment that fees are not paid until a building permit is issued; City Manager Wine said she would confirm this.

Councilor Snider referred to the options on the table and comments from a segment of the community about concerns with a current situation regarding a retailer planning to move into the city. He said he was reluctant to adopt something that would impact a number of operating businesses in the city. Councilor Snider noted his concern of the city attorney's description about how it becomes difficult to explain, defend and describe the policy rationale for doing something that appears to be singling out one entity. He said he is unsure of what the entire community desires when compared to the number of Tigard residents who have signed the online petition. It concerns him to pursue the more "draconian" options without additional community input or a public vote due to the significant impact they could have. He said there are things the council could review; i.e., parking requirements and hours of operation. If there is broad community concern, the

initiative process available, but he cautioned that any regulations will need to be defensible and not focused on an individual entity.

Councilor Buehner commented on her earlier comment presented to the city attorney regarding a condition that the land use approval cannot be transferred to another applicant. She said she sees this as the only possible future limitation that the city could legally apply. With regard to the opposition to a particular business, she said she is not a fan of this company and suggests those who are concerned to not shop at this store. She said the city must treat all businesses the same way.

Councilor Snider brought up whether the council would like to consider options on regulations for hours of operation and firearm sales. He asked if the city has the authority to regulate the hours of firearm sales. City Attorney Hall said he could review this option. Mayor Cook said he has talked to number of businesses, large and small, over the last couple of months. Most of them told him this matter should be considered within the context of a free enterprise system. Business owners said that they did not want the government, whether it is the city, county or state, telling them how long they can keep their business open, what they pay employees or offer for benefits. The state and federal governments now regulate many aspects of business operations (wages, hours, benefits). The mayor reported that, essentially, the business owners he talked to said they prefer to work within the free enterprise system and have latitude to decide how to work against competitors. These owners do not want the city passing laws affecting their decisions about how to compete. At the same time, Mayor Cook noted concerns on impacts on city services, such as policing. While he would not want to limit business hours, he would like to review possible parking requirement limitations.

Councilor Buehner brought up the Black Friday annual sales with stores opening for expanded hours. She asked if it would be reasonable to limit hours of this activity because of the need for police coverage. Later during the meeting she noted there have been issues with crime incidents, traffic jams and accidents during Black Friday activities.

Councilor Snider offered that it is important to think about why government regulates certain things – one reason might be a market failure and, in this particular case, what is good for business might not be good for neighbors around the business. These are the times to consider doing something different. He asked that the other members of the City Council consider this. Councilor Snider said he thinks there might options to regulate hours that would be palatable.

Councilor Woodard said he would be willing to look at parking regulations (overnight parking). He commented that if he was a business owner, he personally would not want to be limited with regard to hours of operation. He noted the clustering of businesses, some of which might depend on late-night traffic to draw business. His preference would be to take a look at a regulation if there appears to be impact on police services. Given the size of the community and anticipated growth, at this time he does not see a need to change hours of operation. With regard to the Black Friday issue raised by Councilor Buehner, Councilor Woodard asked if there is statistical information on the impact to the Police Department. City Manager Wine said she could check on the availability of this information. Councilor Woodard said he would like to see if there was additional police staffing required during this event. City Manager Wine advised extra staffing would occur if requested by Washington Square Mall or one of the Triangle retailers. She said the Chief would likely expand staffing supporting the Commercial Crimes Unit and have additional patrol during targeted times – she said she would confirm this.

Councilor Snider asked for a check on the council's desire to explore any other regulatory options.

Councilor Buehner said she would be interested to hear if there was support from any other councilors to look at, for future reference, limiting land use decisions on large commercial projects to the applicant. Council consensus was to support this review.

Councilor Woodard said he was only interested in the business license fees although he has reservations about whether this would be good policy. He said it might be interesting to look at some comparisons. He conceded that this review is outside of the scope of what the City Council is now considering.

City Manager Wine summarized the direction from the City Council:

Options to explore (going forward):

- A code amendment providing conditions specific to an applicant.
- Review overnight parking regulations.
- Review regulations on firearm sales.*

*Information brought back to council on firearm sales would be to dispense information about regulations in place by the state and federal governments.

B. Discussion of Council Travel Policy and Travel Budget

Finance and Information Services Department Director LaFrance summarized the information presented in the written staff report. He reviewed the current allotments for travel and training budgets for the mayor and council members. Discussion among council members and staff followed regarding how the current procedures are functioning. Advantages of per diem over reimbursement with receipts were discussed. In response to a comment from Mayor Cook, Finance and Information Services Department Director LaFrance agreed that per diem checks could be cut in advance of the travel. If expenses exceed the per diem amount, then the individual would personally pay the amount in excess.

Assistant City Manager Newton summarized how staff is recommending travel/training payments would be administered. Staff would reserve hotel accommodations. Conference hotel charges are typically more expensive than the allowed "GSA" hotel rates; but with documentation, it is permissible to cover the expense in this manner. Travel (airline costs) would also be administered and paid as an administrative function by staff for the traveling mayor/council member. The advanced per diem check would be issued to cover costs for meals and incidental expenditures.

Council President Henderson asked a question about costs to pay for luggage when traveling by air. After discussion, Mayor Cook explained that this expense could be covered by using the city-issued purchasing card (p-card) and the receipt should be turned in to staff for documentation. The cost for luggage would not come out of the amount issued from the per diem check.

Finance and Information Services Department Director LaFrance said if a council member chooses to use the p-card for travel/training, itemized receipts are required to be turned into staff. A council member could also choose to use his or her own credit card; itemized receipts would be required for this method of payment as well.

The per diem check approach was recommended by staff. Council consensus was for a per diem check to be issued to cover meals and incidentals when traveling. If p-cards are used, itemized receipts are required. During discussion, council members noted the difficulty of obtaining receipts for taxi fare or subway charges. Assistant City Manager Newton said staff could look at developing a policy for covering cab and subway expenses when receipts are not obtainable.

Meals provided at the conference and paid for with the conference fee will be deducted from the per diem check.

City Manager Wine said staff would be bringing back a description of how the travel/training reimbursements and payments will be administered.

Council discussed the past practice of a councilor donating his or her unused training allotment to another council member. Assistant City Manager Newton explained that all council members are allocated a certain dollar amount and staff keeps track of amounts spent during the fiscal year. If a council member wants to attend training and has an insufficient amount of training funds remaining, a fellow council member can agree to allow the use of his or her funds that will go unused. This request can be handled through email communications. Council consensus was that the request/donation practices worked well and should continue.

When a new mayor/council member begins his or her term, the balance of the travel/training budget is inherited from the mayor/council person who left office.

City Manager Wine summarized the discussion:

- The per diem model will be used for reimbursing council for travel.
- If council members choose to share training funds, this should be documented so staff can track for budget monitoring.

C. Administrative Items – Council Calendar. City Manager Wine reviewed the calendar with the City Council. She noted she and Mayor Cook reviewed the schedule of items for the August meetings and it appears that some meetings might be cancelled.

June		
18*	Tuesday	Council Workshop Meeting – 6:30 p.m., Town Hall
25*	Tuesday	Council Business Meeting – 6:30 p.m., Town Hall
July		
2	Tuesday	*City Center Development Agency Meeting Cancelled*
4	Thursday	Independence Day Holiday – City Hall offices closed
9*		Tuesday Council Business Meeting—6:30 p.m., Town Hall
16*	Tuesday	Council Workshop Meeting – 6:30 p.m., Town Hall
23*	Tuesday	Council Business Meeting – 6:30 p.m., Town Hall

- EXECUTIVE SESSION: Not held.

1. BUSINESS MEETING – June 11, 2013

A. Mayor Cook called the meeting to order at 7:32 p.m.

B. City Recorder Wheatley called the roll:

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

C. Pledge of Allegiance – Mayor Cook asked everyone to stand and join him in the Pledge of Allegiance.

D. Council Communications & Liaison Reports – Mayor Cook asked for communications and reports from the council. Reports were given during Agenda Item No. 12.

E. Call to Council and Staff for Non-Agenda Items – Mayor Cook called for non-agenda items. There were none.

2. CITIZEN COMMUNICATION (Two Minutes or Less, Please)

A. Follow-up to Previous Citizen Communication – There was no follow-up report.

B. Tigard High School Student Envoy – EJ Albaugh, next year's THS Associated Student Body President, presented an update on Tigard High School activities:

- June 12 is the last day of school.
- Graduation was last week. The senior class received more than $3 million in scholarships this year.
- He reviewed upcoming fall sports and related activities.

C. Tigard Area Chamber of Commerce – Chamber CEO Debi Mollahan updated the council on Chamber activities:

- Farmers Market is underway in the downtown and is going well. The market is open on Sundays.
- On June 12 the "Lunch Local" event will be held at Symposium Coffee.
- On June 26 the "Lunch Local" event will be held at Bridge City Café.
- On June 13, Good Morning Tigard will be hosted by Tigard-Tualatin Relay for Life.
- Next week, the Chamber's networking event will be held at the Festival of Balloons.
- Tigard Young Professionals will be hosting their Breakfast of Champions on June 25.
- On the third Thursday of each month, 9 a.m. – noon, the Chamber has partnered with Portland Community College's Small Development Business Center to provide small business advising.
- On the third Friday of this month is Tigard's Night Out in downtown.
- The second annual Street Fair will be held in downtown on August 17, 2013.

D. Citizen Communication – Sign Up Sheet.

Kim Kelleher, 16535 SW Greenland Drive, Tigard, OR advised she is the current president of Tigard Little League. She said the council, at next week's workshop meeting, would be discussing whether Tigard Little League and Southside Soccer should be considered differently than other Tigard non-profit organizations when it comes to scheduling priority and financial considerations regarding Cook Park Fields. Last October, she realized the final payment in a 15-year agreement would be taking place during her presidency. She contacted the city to determine what would happen next, which resulted in a series of meetings with city staff. In February Assistant Public Works Director Rager announced the city's intention to terminate the agreement that has been in place since 1998 with the expectation that Tigard Little League and Southside Soccer would begin paying for fields at the $10 per hour rate and have the same priority status as other Tigard non-profit organizations. She and Southside Soccer representatives expressed grave concern and advised Mr. Rager that they felt they should be viewed differently than other groups because through their agreement they have paid more than $500,000 to jointly purchase and develop (in partnership with the city) the east side of Cook Park. Mr. Rager told them that a decision such as this needed to be made at a higher level.

Ms. Kelleher said she understands the public does not have a forum to speak at a workshop meeting such as the meeting being held by the council next Tuesday. Therefore, she is before the City Council tonight to make members aware of their interest in this subject and to provide the council with a set of materials. These materials are in the record copy of the meeting packet for tonight:

- Document Timeline – Agreement between City of Tigard and Tigard Little League/Southside Soccer.
- Agreement, dated February 2, 1998, between City of Tigard and the Atfalati Recreation District (comprised of Tigard Soccer Club and Tigard Little League) – Exhibit A to Ordinance No. 98-02.
- Amendment to Agreement Dated February 2, 1998 between the City of Tigard and Atfalati Recreation District.
- Second Amendment to Agreement between the City of Tigard and Atfalati Recreation District, Inc.
- Assignment and Third Amendment of Agreement between the City of Tigard and Atfalati Recreation District.
- Tigard Little League and Southside Soccer Coordination Meeting Notes – February 21, 2013.
- March 6, 2013, letter from Brian Rager to Southside Soccer Club and Tigard Little League regarding Notice of Termination of Agreement.
- May 2, 2013 letter from Kim Kelleher and Yvonne Sera regarding Tigard Little League and Southside Soccer/Cook Park.
- June 3, 2013, letter from Brian Rager to Southside Soccer Club and Tigard Little League regarding Termination of City Agreement with Tigard Little League and Southside Soccer Club.
- Kim Kelleher Speech to City Council, June 11, 2013.
- Discussion Points.

Kibwe Cuffie, 13569 SW Macbeth Drive, King City, Oregon advised he is a representative of the Southside Soccer Club. He said he has been involved with the soccer club for 12 years. His experience has been that the relationship between Cook Park, Tigard Little League and Southside Soccer has been excellent. On many occasions, they received calls from the city asking for assistance and they had responded.

Southside currently has more than 1,400 members and Tigard Little League has more than 800 members. He would like to see the relationship continued where these two clubs have priority for accessing the fields. Without this priority, he was concerned the programs offered by these two clubs would fail. He said the effects of failure would be felt by the business community noting their annual tournaments draw benefits to the area. This is not just a sports activity, but is a community effort. He said the relationship of the clubs with the city is important and should continue to go forward.

Dave Nicoli, 4175 South Shore Boulevard, Lake Oswego, Oregon advised he was part of the original team to put the agreement together. He gave some history noting that Bob Gray had purchased the property adjacent to Cook Park. Mr. Gray wanted the city to have the property; his vision was for four baseball fields. When Mr. Nicoli's brother became Tigard Mayor (Jim Nicoli), Mr. Gray said he would hold onto the property until the city could find a way to purchase it. Mr. Nicoli said his understanding was that the city needed and wanted more park space. The city received $100,000 for the butterfly garden area. The two clubs' motivation was that they wanted more fields and a guaranteed place to schedule teams during their seasons. The Tualatin Riverkeepers became involved and were adamant about protecting the river and preserving wetlands. Unified Sewerage Agency (now Clean Water Services) wanted a sewage treatment plan and they purchased the dairy farm in the area. Metro wanted more space along the river and the communities of Tigard, Tualatin and Durham wanted to tie nearby parks together with trails so this would be the largest park area in the tri-counties. The fireworks group wanted to secure a place to shoot the fireworks. Mr. Nicoli pointed out that there were a lot of things that came together to get everyone to partner up.

The main thing for the Soccer and Little League clubs was to determine who should own the property. It made sense for the city to own the property. While the clubs did not want to own the property, they wanted a way to secure rights for their teams to play during their seasons. The rest of the year the area would be available for the city to do what it wanted – it was there for the public. The city had some money, but not enough. The clubs also had some money so the decision was made to enter into a partnership. A few years later, the city received a grant that allowed the fields to be completed earlier than anticipated resulting in one of the amendments to the agreement. At the time the contract was written (attorney Bob Furrer) the question came up about what would happen when the contract term is up. The decision was made that the decision would be made by the City Council as far as the ownership question.

Mr. Nicoli said that the clubs have paid for improvements in lieu of being charged fees. He suggested there needs to be a memorandum outlining how this arrangement came about and that these two clubs should continue to have priority. He said he thinks the staff needs to have some direction because the contract is now up.

Mayor Cook advised the council will be discussing this matter at next week's workshop meeting with the intent of giving direction to staff to bring back information to the

council on any additional information needed and advise staff as to the direction the City Council is favoring.

Steve Bintliff, 13520 SW 122nd Avenue, Tigard, Oregon, referred to the April 30, 2013, Town Hall meeting where issues with the Walmart project were discussed with the council. He said he was disappointed in the discussion held in tonight's study session because the essence of what the city attorney identified in his letter was that the council had the authority to implement substantial regulations and rules to apply to a big box store. However, it appears the council does not want to proceed with much of what the attorney identified.

Mr. Bintliff said he heard comments from council members that not much can be done, but nationwide, cities and towns have adopted "big box ordinances" regulating working hours, what can be sold, what can be sold during certain hours, whether parking lots can be open 24 hours per day, wages, benefits, etc. Store sizes can be restricted and also said restrictions can be imposed for granting licenses.

Mr. Bintliff referred to Mayor Cook's comment about letting the free-enterprise system work, based on conversations the mayor had with business owners. His question was that if "we are going to let the market decide, is the city prepared to deal with the consequences." He wondered how many small business owners would be out of business in a year. He questioned how many big box stores were needed in the community and what is their economic impact.

Mr. Bintliff said the impacts of big box stores on a community are unknown. A lot of the more progressive city ordinances he has seen require (in the zoning and development hearing process) an economic impact analysis. He said "We should not be legislating by anecdote at this point. We should know what the economic impact of a Walmart or a Lowe's or a Fred Meyer should be at this point when it is over 100,000 square feet."

Mr. Bintliff urged the City Council to consider some changes to the process for big box stores.

Mr. Bintliff said the traffic study done for the vicinity of the Walmart location is more than seven years old. This point was raised in the last public hearing almost three years ago, but nothing was done about it. He said it could be that the city's investment for $2.7 million in street improvements would fix the traffic of 2007. This should be revisited.

Mr. Bintliff referred to an email message to the council outlining ideas for an ordinance to protect the city's investment and city services as well as leveling the playing field to make it competitive for anyone who does business in the City of Tigard regardless of size. He said a proposed ordinance will be shared with the council in the future.

Mr. Bintliff reiterated that based on the city attorney's analysis, the council has within its powers the ability to take proactive action and he urged the council to do so.

Steven Shafer, 11200 SW 83rd Avenue, Tigard, Oregon noted his appreciation for the council's study session discussion earlier this evening and noted it was great to hear the information from the city attorney. He agreed with Mr. Bintliff in the disappointing outcome of the council discussion. Mr. Shafer referred to the proposal to consider a change to the land use regulations. He was disappointed that this is being proposed now.

Mr. Shafter called attention to the online petition opposing the Tigard Walmart project. As of a few minutes ago, they are close to having 1,000 signatures on the petition. He said that he heard many comments from people that they were unaware that Walmart is coming to Tigard. He advised people are outraged.

Mr. Shaffer noted his disappointment that he has not received a response since the last council meeting from any council member to respond to his request for an argument for or against a Walmart coming to Tigard.

Based on a comment by Councilor Snider, Mr. Shaffer questioned the percentage of people who cast votes in the City of Tigard. He thinks the value of the number of people who signed the petition should be compared to the statistics on votes cast.

Mr. Shaffer asked for another public hearing. If residents did not come forward if given an opportunity to attend this hearing, then he "would gladly stop coming to council meetings…"

Mr. Shaffer requested the 2006 traffic study be updated and the impacts of the project projected to 2018.

Mr. Shaffer shared information with regard to tax subsidies "common with Walmart stores." He said approximately $420,000 per year per Walmart super store are

sucked out of the local community and economy in tax subsidies. This would come to $1400 per Walmart employee in tax subsidies from individual taxpayers in the city.

Jennifer Vasicek, 11010 SW Eschman Way, Tigard, Oregon distributed information to the council presenting several news media articles regarding Walmart. A copy of this information is filed with the record copy of the council packet. She reviewed these articles during her testimony.

Ms. Vasicek referred to her public records request and accompanying fee waiver request. The fee waiver request was denied earlier this week on the grounds that her justification did not satisfy the standard that it will primarily benefit the general public. She shared the city attorney's opinion: "The text of the submitted waiver justification recognizes that there is division in the community regarding the matter at issue and further indicates that the purpose of the records request is to support the efforts of only one side of the issue rather than benefitting all." She said she would contact the attorney general to appeal this decision.

She reviewed the news articles submitted to the council members as noted above. One of the articles was submitted because she is aware that the Tigard Walmart is adjacent to a wetland area and she maintained that Walmart does not care about wetlands nor does it have to comply with Clean Water Act regulations because of their ability to simply write a check for $81 million and "call it a day."

Ms. Vasicek referred to the article about a Walmart restraining order against protesting labor groups. She mentioned Walmart's history of disregarding employee rights and going after community leaders.

Ms. Vasicek called attention to the article regarding a California legislative effort to levy a fine on employers like Walmart for every full-time employee that ends up on the state's Medi-Cal program. She suggested the tide was turning on "this company and its practices." She urged the council to be "bold and go down in history as one of the first and few that have protected their citizens from this predatory company."

Ms. Vasicek said articles, such as the ones she referred to this evening, are not uncommon. She said that "Either this council doesn't know what kind of a company this is or it doesn't care. As a taxpayer and a voter, I would like to know which it is. I respectfully second Mr. Shafer's request that each of you go on record as for against the Tigard Walmart development."

Norma Harris, 10700 SW 72nd Avenue, Tigard, Oregon, testified against the Walmart project. She said she thinks part of the reason people are upset is because "you people went in behind us and didn't let us know what was happening until it was a done deal."

Councilor Buehner commented that she received a mailing from Walmart about three months ago. Ms. Harris said she received this mailing as well. During discussion there was dispute about whether all Tigard residents received this mailing.

Jim Long, 10730 SW 72nd Avenue, Tigard, Oregon, referred to his testimony at the last meeting when he submitted a list of questions from the CPO to the City Council. He said he has since received more questions. The topic will be discussed again at the next CPO meeting. He said for the third month in a row, he will be asking City of Tigard representatives to come to the meeting and be available to respond to questions. He noted appreciation for the open discussion today and hoped the council would follow through on some of the ideas proposed.

City Manager Wine said that it is the intention for city staff members to attend next month's CPO meeting. The previous list of 69 questions is under review by staff members and staff will be prepared to discuss the responses at the next CPO meeting. If the questions are for Walmart, then staff will ask Walmart representative to respond. In response to a question from Mr. Long, City Manager Wine said Walmart is required to have an open house; it has not yet been scheduled.

Dr. Gene Davis, 10875 SW 89th Avenue, Tigard, Oregon 97223 distributed a map to refer to during his testimony about Tigard's trail system around the Washington Square Regional Center greenbelt. He referred to the trail in this area at Ash Creek, around a golf course and then into the Fanno Creek system. He said this is a five-mile trail, which cannot be completed unless there is an overpass or tunnel over/under Hwy. 217 He said there are two, 12-feet wide, 9-feet high box culverts and said this would be adequate with some inexpensive lighting.

Dr. Davis referred to a photograph clipped to the map, which shows Ash Creek turning to the left and going up to a 52-inch culvert that the whole of Ash Creek has to go through. When the culvert gets full, water spreads out. He said he has talked to the owners of the land and he would like to lower that culvert. There is a permitted fish culvert, which he would like to see installed. He mentioned a nearby city water main. He referred to his 2008 activity on this property for which he "got into big trouble." He would like to secure permission from "state fisheries" for the fish culvert so the water will flow as it did before the road was built in 2003.

He noted when he was serving on CPO4 in 2005, Reid Iford made a video, *Ash Creek – Failure of a Drainage System* (a copy of the CD is on file with the meeting packet materials). He said at the time the video was made, they had no idea the problems were due to the road.

Dr. Davis said he was asking to have permission to lower a culvert. He said he is negotiating with the present owners to get the trail system going. He offered that this would be the best trail system Tigard could possibly have – it wouldn't have to go onto streets and would serve a developed community. He said he would like very much for some of the council members/staff to walk the trail with him and let him know the steps he needs to take to "make this happen."

Mayor Cook thanked Dr. Davis and said staff would look into this matter. He assured Dr. Davis that he could talk to staff when Dr. Davis indicated he understood that about five years ago, staff was given notice by the city attorney not to talk to him. Mayor Cook said the City Manager would determine who on staff should follow up with Dr. Davis.

Noreen Gibbons also spoke after the Consent Agenda was reviewed by the City Council (see below, following the Consent Agenda item).

3. CONSENT AGENDA: (Tigard City Council and Local Contract Review Board)

A. Receive and File:
   1. Council Calendar
   2. Council Tentative Agenda for Future Meeting Topics

B. Amend Resolution 10-36 and Set City Council and Mayor Compensation - Resolution

RESOLUTION NO. 13-23 - A RESOLUTION ESTABLISHING MAYOR AND COUNCIL COMPENSATION WHICH SUPERSEDES RESOLUTION NO 10-36.

C. Local Contract Review Board:

   1. Award Contract for Construction of the Fanno Creek House Site Improvements Project to Casserly Landscape, Inc.

Motion by Councilor Buehner, seconded by Councilor Snider, to approve the Consent Agenda.

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

Note: Citizen Noreen Gibbons, 10730 SW 72nd Avenue, Tigard, Oregon requested to speak at this time. (Citizen Communications). Ms. Gibbons spoke in opposition to the Walmart project. She wears an anti-Walmart button and says she has heard from numerous people who are outraged that a Walmart is coming. She reported that not everyone has been notified and many are unaware that this store coming to Tigard. She said people have expressed extreme dissatisfaction and anger. Ms. Gibbons commented that Walmart is "no good for any community…Walmart is no good for my community." She referred to a YouTube video entitled *The High Cost of Low Prices* and encouraged everyone to see this video. She said she feels let down by the City Council that the people of Tigard have not been involved in this process and the decision making. She was critical of the manner this project went forward with the project presented with an un-named applicant.

4. STATE OF THE TUALATIN VALLEY FIRE AND RESCUE (TVF&R) DISTRICT PRESENTATION - CHIEF MIKE DUYCK

TVF&R Fire Chief Mike Duyck presented an update on the status of the Fire District. A copy of his presentation is on file with the original packet material.

Agenda Item Nos. 5-8 – Finance and Information Services Department Director LaFrance gave an overview of the entire budget process. This overview pertained to council action requested for these agenda items.

5. CERTIFY THAT THE CITY OF TIGARD PROVIDES SERVICES QUALIFYING FOR STATE-SHARED REVENUES - RESOLUTION

After presentation of the staff report City Council considered Resolution No. 13-24.

Motion by Councilor Buehner, seconded by Councilor Snider, to adopt Resolution No. 13-24.

RESOLUTION NO. 13-24 - A RESOLUTION CERTIFYING THAT THE CITY OF TIGARD PROVIDES SERVICES QUALIFYING FOR STATE SHARED REVENUES.

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

6. PUBLIC HEARING - DECLARE THE CITY OF TIGARD'S ELECTION TO RECEIVE STATE REVENUE FUNDING - RESOLUTION

a. Mayor Cook opened the public hearing.
b. Finance and Information Services Department Director LaFrance presented the staff report.
c. There was no public testimony.
d. Mayor Cook closed the public hearing.
e. Council consideration:

Motion by Councilor Buehner, seconded by Councilor Woodard, to adopt Resolution No. 13-25.

RESOLUTION NO. 13-25 - A RESOLUTION DECLARING THE CITY'S ELECTION TO RECEIVE STATE REVENUE SHARING

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

7. ADOPT CITYWIDE MASTER FEES AND CHARGES SCHEDULE REPLACING RESOLUTION NO. 12-22 AND ALL SUBSEQUENT AMENDMENTS TO DATE AND ADOPT MISCELLANEOUS SOLID WASTE RATES TO BE INCLUDED IN THE SOLID WASTE RATE SCHEDULE ADOPTED BY RESOLUTION NO. 13-18 - TWO RESOLUTIONS

- Finance and Information Services Department Director LaFrance and Senior Analyst Collins were present to summarize the staff report and answer council questions. Ms. Collins referred to a correction on Page 26 pertaining to the street maintenance fees for FY 13/14. Two resolutions were before the City Council:
  - Master Fees and Charges Schedule (replacing Resolution No. 12-22 and subsequent amendments)
  - Miscellaneous Solid Waste Rates to be included in the Solid Waste Rate Schedule adopted by Resolution No. 13-18.

Council President Henderson referred to the street maintenance fee. Senior Analyst Collins confirmed Council President Henderson's observation that this is a two-year adjustment. He referred to the use of indices to calculate changes proposed in fees. Finance and Information Services Department Director LaFrance said that last year, when the master fees and charges were before the City Council, the charge reflected the increase that went into effect on January 1, 2013, which is the $5.56 fee (a 2 percent increase).

The street maintenance fee increase that will take effect in January 2014 uses the new index and calls for a 4.94 percent increase. Mayor Cook asked if the increase was due to the new index or have costs increased that much. Finance and Information Services Department Director LaFrance said the fees were increased due to the new index.

Council President Henderson said he was anxious to review the street maintenance fee program.

Council President Henderson referred to the special event permit fees on Page 26. He asked about a new category dealing with each additional hour of event permits. Senior Analyst Collins confirmed this is a new fee charged to recover costs for services when an event goes over the limit of three hours. Mayor Cook asked for an example of what events would be charged this fee. Ms. Collins said she would provide this information.

Councilor Snider noted a detail on the schedule that needs to be corrected. If someone said they would have exactly 2001 people attending an event, there is no charge listed for this circumstance.

Council President Henderson referred to Page 34, Community Development Service and Planning. He found it interesting dates were stricken with a new 7/1/2013 being shown. He noted a total increase for a single-family unit from $4,871 to $5,996 – a 19 percent increase. Ms. Collins said the change relates to park SDC's increase. There was no corresponding increase with the Washington County residential tract land value; a 6 percent increase (additional) was added on top of what the city's increase proposal was.

In response to a question from Council President Henderson, Senior Analyst Collins said the parks SDC schedule is based on the parks SDC update recently authorized in 2012. Councilor Buehner pointed out the update will be phased in, so another increase will be shown next year. This phase-in increase will be in addition to the increase prompted by the index used for this fee.

Council President Henderson noted concern about the total amount of new income proposed in the fee schedule. He said some of the revenue will "just go into a fund" rather than becoming working capital. In response to his observation about the assignment of revenue, Senior Analyst Collins said that as far as the non-budgeted items are concerned, these are items that are infrequent and are not a significant source of revenue. Budgeted items are significant because they are attached to an index. Councilor Snider observed that fees are collected to recover city costs that are going up and, typically, the rationale behind the use of the index.

Mayor Cook advised he reviewed the increased fees which were included in the budget numbers and projected as income to allow for the expenses discussed during the budget process. He noted the indices used can range; some fees will increase 2 percent, 4 percent, etc. Overall, the fee increases have been accounted for within the city budget (revenue matching to expenditures). Finance and Information Services Department Director LaFrance said budgeted items were reviewed by the presiding council to set the policy determining the index to be used.

Discussion followed about whether the council wants to review the indices used for the master fees and charges prior to the budget process. Councilor Buehner said it has been her experience that Tigard's fees have, in general, increased less than surrounding cities. She is pleased with the way Tigard has kept its fee structure down.

Finance and Information Services Department Director LaFrance addressed Council President Henderson's comment on new revenues. Indexed fees are existing fees that have been collected for a long time for specific purposes. The index being used has at some point received approval

from a presiding council. The index allows the city to increase the revenue stream along with the increases in its expenditures. At the time that an index is considered, the program is reviewed to determine the index that will best allow the city to keep up with the costs for that program. The index allows the council to provide attention to specific programs. For example, with the implementation of a program such as a street maintenance fee to be reviewed every five years, use of an index allows the city to cover any increases in costs in the five-year gap.

Council President Henderson observed that without exception all fees increased. During discussion Finance and Information Services Department Director LaFrance noted that for a couple of years the parks SDC amount decreased because the price of land (an index) was going down.

Councilor Snider supported the practice of using a variety of indices to assure alignment of revenues with costs.

Council President Henderson responded to Councilor Snider using the street maintenance fee as an example. From 2004 to 2008, "we created ourselves a huge problem," that was corrected in 2010 by use of an index. He questioned the validity of the street maintenance fee numbers. Discussion followed among council members. City Manager Wine reminded the council that several weeks ago a code amendment was approved for minimum parking requirements. At that time, questions were raised about the street maintenance fee and whether and in-depth review was needed for the capacity of the revenue, the adequacy of the index, the funds needed from this fee, and how the program was going. The council requested this review be scheduled.

Councilor Buehner recalled one of the compromises made by council. There was a policy in place for streets to be at a qualified level of "70." The compromise was to reduce the quality level because funding was not available to even get to "67."

Mayor Cook advised he and City Manager Wine have discussed this matter and it is scheduled for the September workshop meeting.

Councilor Woodard referred to Page 4 regarding the business license and cited Ordinance No. 88-13. He requested a copy of this ordinance.

Councilor Woodard said he was in support of the proposed resolution. He commented that the council needs to identify areas of interest and concern for review in the future. He noted his personal interest is with provisions on the business licenses – he said he doesn't understand why the fee schedule stops at 51 employees. He commented on the use of indices as a mechanism to achieve some parity with increasing costs associated with providing city services at a certain

level. To improve on service-level aspirations, creative solutions might be required so efforts are made to assure everyone is paying a fair share.

- Council consideration:

Motion by Councilor Woodard, seconded by Councilor Buehner, to adopt Resolution No. 13-26.

RESOLUTION NO. 13-26 - A RESOLUTION ADOPTING THE CITYWIDE MASTER FEES AND CHARGES SCHEDULE WHICH REPLACES RESOLUTION NO. 12-22 AND ALL SUBSEQUENT AMENDMENTS TO DATE.

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

Motion by Councilor Buehner, seconded by Councilor Woodard, to adopt Resolution No. 13-27.

There was brief discussion between Councilor Snider and City Attorney Hall regarding Councilor Snider's vote on the original solid waste rate resolution. City Attorney Hall said Councilor Snider is not bound by his original vote; he is free to vote independently on the proposed scope of the resolution before the City Council.

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

RESOLUTION NO. 13-27 – A RESOLUTION AMENDING RESOLUTION NO. 13-18 TO INCLUDE SOLID WASTE MISCELLANEOUS SERVICE RATES.

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

8. PUBLIC HEARING - ADOPT THE CITY OF TIGARD FISCAL YEAR 2014 BUDGET, MAKE APPROPRIATIONS, DECLARE THE AD VALOREM TAX LEVY AND CLASSIFY THE LEVY AS PROVIDED BY- ORS 310.060(2) - RESOLUTION

a. Mayor Cook opened the public hearing.
b. Finance and Information Services Department Director LaFrance presented a summary of the staff report. The proposed resolution would adopt the FY 2014 budget with the adjustments, identified in an attachment to the resolution.
c. There was no public testimony.
d. Mayor Cook closed the public hearing.
e. Council consideration:

Motion by Councilor Buehner, seconded by Councilor Snider, to adopt Resolution No. 13-28.

RESOLUTION NO. 13-28 - A RESOLUTION OF THE CITY OF TIGARD ADOPTING THE APPROVED BUDGET, WITH ADJUSTMENTS, MAKING APPROPRIATIONS, DECLARING THE AD VALOREM TAX LEVY, AND CLASSIFYING THE LEVY AS PROVIDED BY ORS 310.060(2) FOR FISCAL YEAR 2014.

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

Tigard City Council meeting recessed and the City Center Development Agency meeting convened.

9. PUBLIC HEARING - ADOPT THE CITY CENTER DEVELOPMENT AGENCY FISCAL YEAR 2014 BUDGET WITH ADJUSTMENTS, MAKE APPROPRIATIONS, AND IMPOSE AND CATEGORIZE TAXES - RESOLUTION

a. Chair Cook opened the public hearing.
b. Finance and Information Services Department Director LaFrance summarized the staff report and called attention to one technical adjustment identified in an attachment to the proposed resolution.

c. There was no public testimony.
d. Chair Cook closed the public hearing.
e. City Center Development Agency consideration:

Motion by Director Buehner, seconded by Director Snider, to approve CCDA Resolution No. 13-02.

CCDA RESOLUTION NO. 13-02- A RESOLUTION ADOPTING THE FISCAL YEAR 2013-2014 BUDGET, WITH ADJUSTMENTS, MAKING APPROPRIATIONS, AND IMPOSING AND CATEGORIZING TAXES

The motion was approved by a unanimous vote of City Center Development Agency board members present.

Chair Cook	Yes
Director Henderson	Yes
Director Buehner	Yes
Director Snider	Yes
Director Woodard	Yes

The City Center Development Agency meeting adjourned and the Tigard City Council meeting reconvened.

10. PARKS ZONE PROJECT BRIEFING

Associate Planner Floyd summarized the staff report and updated the City Council on the creation of a new Parks Zone. The purpose of the project is to remove administrative barriers to the efficient development of existing and future parks while providing enhanced protections for neighboring residents and other parties who may be negatively impacted.

The main goal is to create a new zone, which will be a new chapter in the zoning code and shown on the zoning map. The new regulations would create more appropriate levels of review depending on the size of a project. Presently only one process is available for reviewing park projects regardless of the project scope. Staff will propose regulations to streamline the review process and to provide better protections for Tigard citizens living near parks; that is, mitigate issues with noise, light and traffic.

Current development standards for parks are scattered throughout the code. For example, parking regulations for parks are not in the "parking chapter," but are addressed in the "conditional use

chapter." Associate Planner Floyd spoke of the issues that have developed because of incremental changes in the code over the years.

Generally speaking, parks are regulated through the conditional use provisions. Any new park or major updates must be administered and processed as a conditional use, which takes six months and is costly (staff time and materials). The conditional use process is appropriate for large projects such as ballparks and swimming pools – circumstances where it is best to go through a robust public process. This same process is overkill for a pocket park and small projects.

Associate Planner Floyd reviewed how the staff proposes to present the new regulations. The new zone would only apply to city-owned property. Approximately 85 properties consisting of about 500 acres (300 acres of parkland, 200 acres of green space) would be included in the new zone. No changes will be proposed for sensitive lands regulations (wetlands, floodplains, streams, habitats, etc.)

Associate Planner Floyd said he would be reviewing this project with the Planning Commission next week. Public outreach will be pursued this summer.

Staff plans to have the proposed changes ready for the Planning Commission's review during the summer and then before the City Council this fall.

In response to a question by Councilor Snider, City Attorney Hall advised the city has broad power for zoning designations and also has the benefit of being the property owner for the proposed zoning changes. The proposal as outlined by staff poses no legal concerns.

Councilor Buehner noted her concern with the current Community Development Department workload. Associate Planner Floyd commented that this work would support and assist the Parks Division to efficiently manage resources.

11. UPCOMING DEVELOPMENT CODE UPDATE PROJECTS BRIEFING

Assistant Community Development Director McGuire summarized the staff report and briefed the council on upcoming Tigard Development Code update projects.

Staff has kept a running database of issues with the code that come up as staff works with code provisions. There are 98 items listed in the database. The majority of the items are to clarify code language, i.e., outdated references, consistency updates with current land use law and procedures, including current administrative practices not specified in the code, and correct conflicting regulations among chapters.

The goals are to improve the efficiency and consistency of the code; eliminate unnecessary and unintended barriers to development; and create a clear, concise code.

Assistant Community Development Director McGuire referred to and reviewed the work program timeline attached to the staff report in the council packet.

Assistant Community Development Director McGuire asked council members to send responses to him on two questions:

1. Do the mayor/council members have specific code issues to add?
2. What and how much does the council want to read? He explained when staff comes to the council with code packages, the process and procedures will consist of a "large chunk" of information. Staff has been presenting information in "~~strike through~~" and <u>underline</u> format with the code on one page and the commentary describing the change on the opposite page.

Councilor Snider said he would prefer to see summary information describing what the problem was, what the language said and identifying the recommended change.

Councilor Buehner said her preference is to have detailed information showing changes proposed.

In response to a question from Council President Henderson, Assistant Community Development Director McGuire said the parks-based zone was started in response to a request from the Public Works Department for a more efficient, less expensive process. Council President Henderson mentioned the River Terrace area would benefit from this section of new code language and Assistant Community Development Director McGuire agreed that this would likely be helpful. He concurred with Council President Henderson that it would be beneficial to get this started right away.

Councilor Buehner noted disappointment about the late timing of the sign code review, which has been a long-standing area of concern for her. The proposed schedule has this area of the code done after her term is up on the City Council. She hoped the timing could be moved for an earlier review. If this a priority for the majority of City Council, Assistant Community Development Director McGuire said the priorities could be rearranged/doubled up. Council members discussed moving the sign code review to the time slot now shown for sensitive lands review; sensitive lands would be reprioritized to a later time. City Manager Wine said staff would take the potential reprioritization under advisement on the draft schedule.

12. COUNCIL LIAISON REPORTS

Due to the lateness of the hour, reports will be presented at a future meeting.

13. NON AGENDA ITEMS: None.

14. EXECUTIVE SESSION: Not held.

15. ADJOURNMENT: 10:04 p.m.

Motion by Councilor Buehner, seconded by Councilor Woodard, 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

Catherine Wheatley

Catherine Wheatley, City Recorder

Attest:

Mayor, City of Tigard

Date: Sept. 3, 2013