



City of Tigard
Tigard Business Meeting – Agenda

TIGARD CITY COUNCIL Revised 8/20/2015: **Removed Agenda Item 7: Legislative Public Hearing to Consider Ordinance Prohibiting Early Marijuana Sales & Revised Agenda Item 4: Consider Resolution Appointing Members to the Tigard Youth Advisory Council**

MEETING DATE AND TIME: August 25, 2015 - 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

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

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.



City of Tigard

Tigard Business Meeting – Agenda

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

6:30 PM

- **STUDY SESSION**

- A. COUNCIL LIAISON REPORTS - **6:30 p.m. estimated time**

- B. BRIEFING ON AN IGA WITH CWS AND THE CITY OF BEAVERTON REGARDING "BARROWS ROAD SANITARY SEWER PHASE 3" PROJECT **6:45 p.m. estimated time**

- **EXECUTIVE SESSION:** The Tigard City Council may go into Executive Session. If an Executive Session is called to order, the appropriate ORS citation will be announced identifying the applicable statute. All discussions are confidential and those present may disclose nothing from the Session. 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.

7:30 PM

1. BUSINESS MEETING

- A. Call to Order

- B. Roll Call

- C. Pledge of Allegiance

- D. Call to Council and Staff for Non-Agenda Items

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

- A. Follow-up to Previous Citizen Communication

- B. Citizen Communication – Sign Up Sheet

3. CONSENT AGENDA: (Tigard City Council) 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: **7:35 p.m. estimated time**

A. APPROVE CITY COUNCIL MINUTES:

- June 9, 2015

B. CONSIDER A PROCLAMATION DECLARING SEPTEMBER 17-23, 2015 AS CONSTITUTION WEEK

• *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. CONSIDER A RESOLUTION APPOINTING MEMBERS TO THE TIGARD YOUTH ADVISORY COUNCIL - **7:40 p.m. estimated time**

5. CONSIDER A RESOLUTION EXPANDING THE TIGARD MUNICIPAL COURT TRAFFIC DIVERSION PROGRAM - **7:45 p.m. estimated time**

6. CONSIDER A RESOLUTION OF NECESSITY TO ACQUIRE PROPERTY FOR THE 72ND AVENUE AND DARTMOUTH STREET PROJECT - **8:05 p.m. estimated time**

7. DISCUSSION ON A POTENTIAL PUBLIC HEARING TO VACATE A PUBLIC UTILITY EASEMENT ON ASH AVENUE - **8:20 p.m. estimated time**

8. NON AGENDA ITEMS

9. EXECUTIVE SESSION: The Tigard City Council may go into Executive Session. If an Executive Session is called to order, the appropriate ORS citation will be announced identifying the applicable statute. All discussions are confidential and those present may disclose nothing from the Session. 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.

10. ADJOURNMENT **8:25 p.m. estimated time**

AIS-2070

A.

Business Meeting

Meeting Date: 08/25/2015

Length (in minutes): 15 Minutes

Agenda Title: Council Liaison Reports

Submitted By: Norma Alley, Central Services

Item Type: Update, Discussion, Direct Staff

Meeting Type: Council
Business
Mtg - Study
Sess.

Public Hearing: No

Publication Date:

Information

ISSUE

Council will present liaison reports.

STAFF RECOMMENDATION / ACTION REQUEST

KEY FACTS AND INFORMATION SUMMARY

OTHER ALTERNATIVES

COUNCIL GOALS, POLICIES, APPROVED MASTER PLANS

DATES OF PREVIOUS COUNCIL CONSIDERATION

N/A

Attachments

No file(s) attached.

AIS-2308

B.

Business Meeting

Meeting Date: 08/25/2015

Length (in minutes): 10 Minutes

Agenda Title: Briefing on an Agreement with Clean Water Services and Beaverton Regarding Barrows Road Sanitary Sewer Phase 3

Prepared For: Lori Faha

Submitted By: Greer Gaston,
Public Works

Item Type: Update, Discussion, Direct Staff
Meeting Type: Council Business Mtg - Study Sess.

Public Hearing

Newspaper Legal Ad Required?:

Public Hearing Publication

Date in Newspaper:

Information

ISSUE

Briefing on an intergovernmental agreement (IGA) with Clean Water Services (CWS) and the City of Beaverton regarding the "Barrows Road Sanitary Sewer Phase 3" project.

STAFF RECOMMENDATION / ACTION REQUEST

No action is requested; formal consideration of the agreement is scheduled on an upcoming agenda.

KEY FACTS AND INFORMATION SUMMARY

The agreement provides for joint funding and implementation of sewer system improvements to accommodate anticipated future development at River Terrace and newly-annexed land to the City of Beaverton. The project consists of constructing approximately 1,650 linear feet of 24-inch diameter sanitary sewer line from roughly the intersection of Barrows Road/Merganser Lane to the intersection of Barrows Road/154th Avenue.

The Agreement allows the three parties to participate in a joint capital improvement project focused on future growth in both Tigard and Beaverton. The Agreement provides an avenue for shared construction costs between parties, it encourages intergovernmental

cooperation, and it authorizes local governments to delegate to each other authority to perform their respective functions as necessary. Tigard, CWS and Beaverton entered into a very similar agreement to complete the second phase of this sewer project.

Agreement Responsibilities:

Clean Water Services (District):

- Review plans and specifications provided by Beaverton
- Prepare bid documents utilizing design drawings and specifications provided by Beaverton
- Advertise for bids, respond to bidder questions, prepare addenda, and select a contractor to construct the Project
- Administer construction of the Project and pay contractor all contract costs
- Pay 84.4% of sewer costs.

City of Beaverton:

- Provide all necessary planning, design, special inspections and permits for the Project
- Provide construction inspections of the Project roadway, pathway, trench backfill, and street lighting
- Pay District 7.8% of sewer construction costs
- Pay District 100% of retaining wall, fence, and street lighting costs

City of Tigard:

- Review plans and specifications
- Pay District 7.8% of sewer construction costs
- Pay Beaverton 7.8% of sewer design costs

The agreement has been reviewed by the city attorney. Their comments have been incorporated into the agreement.

OTHER ALTERNATIVES

The council could propose changes to the agreement or could decide not to approve the agreement. Should the council decide not to approve the agreement, the consequences would be a lack of capacity to serve certain portions of the River Terrace development.

COUNCIL OR CCDA GOALS, POLICIES, MASTER PLANS

This project provides needed sanitary sewer capacity to the recently annexed properties comprising the River Terrace master-planned community.

DATES OF PREVIOUS CONSIDERATION

This is the first time this IGA has come before the council.

Fiscal Impact

Cost: \$85,000
Budgeted (yes or no): yes
Where Budgeted (department/program): Sanitary Sewer Fund

Additional Fiscal Notes:

The Adopted FY 2016 Budget for this project is \$89,000. The estimated components for the project at the time of budget adoption were:

- External Construction: \$77,300
- Internal Staff: \$4,908
- Project Contingency: \$6,792.

The cost of the IGA to City of Tigard is 7.8% of the total project cost for sanitary sewer design and construction. Per the IGA, Tigard's costs for this portion of the project is not to exceed \$85,000. If the project outlined in the IGA reaches the not to exceed amount, it will use all the budgeted construction and contingency and some of our estimated budget for internal staff as outlined above. Due to the tight constraints this puts Tigard in to manage the project budget internally, it is possible that this project will need a minor budget adjustment in a future supplemental. The Sewer Fund has sufficient budgeted contingency (\$400,000) to cover this possibility.

Attachments

IGA-DRAFT

**INTERGOVERNMENTAL AGREEMENT
BETWEEN CITY OF BEAVERTON, CITY OF TIGARD, AND
CLEAN WATER SERVICES TO CONSTRUCT
THE BARROWS ROAD SEWER UPSIZING PROJECT
(PROJECT NO. 6791)**

This Agreement, dated _____, 2015, is between CLEAN WATER SERVICES (District), a county service district organized under ORS Chapter 451, the CITY OF BEAVERTON (Beaverton), an Oregon municipal corporation, and the CITY OF TIGARD (Tigard), an Oregon municipal corporation.

A. RECITALS

ORS 190.003 - 190.110 encourages intergovernmental cooperation and authorizes local governments to delegate to each other authority to perform their respective functions as necessary.

District, Tigard, and Beaverton intend to undertake the Barrows Road Sewer Upsizing Project 6791 (Project) to replace the existing 8-inch gravity sewer with a new 24-inch gravity sewer and install street lighting. This Project has been endorsed by the Capital Improvement Program Prioritization Committee.

NOW, THEREFORE, the parties agree as follows:

B. PROJECT DESCRIPTION

The sewer portion of the Project consists of constructing approximately 1,650 linear feet of 24-inch diameter sanitary sewer and manholes, as needed, from the eastern terminus of an existing 24-inch sewer pipe in SW Barrows Road at SW Merganser Lane to a manhole approximately 1,600 feet eastward on SW Barrows Road at SW 154th Ave, and connecting to the existing sewer line, believed to be 18 inches, near CWS Manhole No. 16660, all as shown on Exhibit A, attached hereto.

The street lighting portion of the Project consists of installing two new street lights, including lights, poles and bases, junction boxes, conduit and wiring, near the intersection of SW Barrows Road and SW 154th Ave.

Beaverton will design and permit the Project. District will select the construction contractor, inspect, and administer the construction contract for the Project.

C. DEFINITIONS

1. **Beaverton Planning and Design Cost** – Beaverton labor and benefit costs and consultant costs paid by Beaverton associated with the services outlined in Section E, excluding street lighting design costs.

2. **Capital Improvement Program Prioritization Committee** – The committee established by District and the member cities of Beaverton, Cornelius, Forest Grove, Hillsboro, Tigard, Tualatin, and Sherwood to identify and prioritize sanitary and storm system improvement projects throughout District’s service area.
3. **Retaining Wall and Fence Cost** – Includes the cost of all design work, all line items, bid schedules, restoration work, change orders, any associated restoration work, design, overhead, bidding, inspection and project administration that can be accurately allocated to the chainlink fence and concrete segmental retaining wall, and the prorated share of all general construction line items (mobilization, work-zone traffic control, erosion control), as described in the Project Description for retaining wall and fence work, and any other costs associated with bidding and installing or modifying the retaining wall and fence.
4. **Sewer Cost** – Includes public bidding costs, cost of all line items, bid schedules, change orders, any associated restoration work, overhead, inspection, project administration, and any other costs associated with bidding and installing or modifying the new sanitary sewer line.
5. **Street Lighting Cost** – Includes the cost of all design work, all line items, bid schedules, restoration work, change orders, any associated restoration work, design, overhead, bidding, inspection and project administration that can be accurately allocated to the street lighting, and the prorated share of all general construction line items (mobilization, work-zone traffic control, erosion control), as described in the Project Description for street lighting work, and any other costs associated with bidding and installing or modifying the street lighting.

D. DISTRICT OBLIGATIONS

District shall:

1. Appoint Bradley Crement or another employee acceptable to Beaverton as District’s project manager.
2. Provide direction to Beaverton on the anticipated capacity requirements of sewer lines larger than 12 inches in diameter.
3. Review plans and specifications provided by Beaverton and, within ten days of receipt, provide comments to Beaverton.
4. Provide written evidence to Beaverton and Tigard that funds for District’s share are available prior to bidding for the fiscal year in which payment is due.
5. Prepare bid documents utilizing design drawings and specifications supplied by Beaverton, advertise for bids, respond to bidder questions, including issuance of necessary addenda, and select a contractor to construct the Project.
6. Provide timely response to contractor’s Project information requests.

7. Require all contractors to include Beaverton and Tigard as additional insureds on insurance coverage required for construction work performed in completing the Project.
8. Administer construction of the Project and pay contractor all contract costs.
9. Construct the Project and provide construction, inspection, and management services for the Project.
10. Consult with and inform Beaverton and Tigard on proposed changes to the Project, such as design changes, field directives, change orders, or use of the contingency line items, as well as updates regarding the resolution of any disagreement, dispute, delay or claim.
11. Provide construction inspection of the Project bid items, including review and approval of shop drawings, submittals, and onsite inspection, to determine compliance with the contract documents. District's inspector shall be onsite as much as possible when the contractor is working on the Project. The inspector will be responsible for enforcing all applicable specifications during the Project work, including, but not limited to, night work and weekend work, and accommodations for public and work zone traffic.
12. Obtain Beaverton's approval for any proposed street lighting design or other changes to the street lighting work. Obtain Beaverton's consent before taking any of the following actions for the street lighting work: a) authorizing any design changes, b) approving any change orders, or c) authorizing use of contingency line items.
13. Obtain Beaverton's approval for any proposed retaining wall or fence design or other changes to the retaining wall and fence work. Obtain Beaverton's consent before taking any of the following actions for the retaining wall and fence work: a) authorizing any design changes, b) approving any change orders, or c) authorizing use of contingency line items.
14. Provide final acceptance of the Project, following Beaverton's inspection and approval of its portion of the work.
15. Provide Beaverton as-built mark-ups from contractor and inspector for all underground work within 10 days of final acceptance of the Project.
16. Assist Beaverton with any required notice, public involvement, or communication with the neighborhood and property owners within the Project limits. Respond to public calls arising from work being completed for the Project.
17. Track Sewer Cost, Retaining Wall and Fence Cost, and Street Lighting Cost separately.
18. Provide documentation of the Sewer Cost, Retaining Wall and Fence Cost, and Street Lighting Cost to Beaverton and Tigard prior to invoicing.
19. Upon final acceptance of the Project, invoice Beaverton 7.8% of the Sewer Cost, 100% of the Retaining Wall and Fence Cost, and 100% of the Street Lighting Cost, less 84.4% of the Beaverton Planning and Design Cost, upon final acceptance of the Project unless the result is negative. If the result is negative, pay Beaverton 84.4% of the Beaverton Planning and Design Cost less 7.8% of the Sewer Cost, 100% of the Retaining Wall and Fence Cost, and 100% of the Street Lighting Cost, not to exceed \$40,000.
20. Invoice Tigard 7.8% of the Sewer Cost upon final acceptance of the Project.

21. Require payment in full from Beaverton and Tigard prior to allowing Beaverton and Tigard to connect to the portion of the pipe from the manhole at SW 154th Ave west through SW Roy Rogers Road.

E. BEAVERTON OBLIGATIONS

Beaverton shall:

1. Appoint Andrew Barrett or another employee acceptable to District, as Beaverton's project manager.
2. Select, contract with, and pay consultants to perform surveying, civil investigations, utility locates, potholing, environmental consultation, and other work as necessary for use in designing and obtaining permits for the Project.
3. Provide all necessary planning, design, special specifications, and permits for the Project.
4. Provide Tigard and District at least ten business days to review plans and specifications for the Project at 50%, 90%, and 100% completion, and incorporate their review comments into the plans.
5. Prior to bidding, provide written evidence to District and Tigard that funds for Beaverton's share are available for the fiscal year in which payment is due.
6. Assist District with providing timely responses to bidders' questions about the Project. If necessary, provide District with revised design drawings or exhibits no later than five business days prior to the bid opening, for issuance of addenda.
7. Review traffic control plans provided by contractor within ten days of receiving them and provide written comment. Provide written acceptance of traffic control plan.
8. Provide construction inspection of the Project roadway, pathway, trench backfill, and street lighting items (asphalt, base rock, retaining wall, chainlink fence, fill material above the pipe zone, and street light equipment), including review of and comment on shop drawings, submittals, and onsite inspection, to determine compliance with the contract documents. Beaverton's inspector shall be onsite as much as possible and responsible for enforcing all applicable specifications relating to roadway repairs, pathway construction, installation of retaining and fence, trench backfilling, and street lighting, including but not limited to night and weekend work.
9. Provide timely response to District for any proposed changes to the Project, such as design change, field directive, change order, or use of the contingency line item.
10. Provide District written notice accepting roadway repairs, pathway construction and street light installation within ten days of receiving notice from the District that Beaverton's portion of the Project work is complete.
11. Provide District as-built construction drawings for the Project within 60 days after Project acceptance. The as-built drawings shall be based upon contractor and inspector mark-ups and survey if needed. As-builts shall be provided in camera-ready hard copy, 11 x 17 inches, with a CD in both PDF and AutoCAD digital format.

12. Provide any required notice and communicate with the neighborhood and property owners within the Project limits. Take the lead in coordinating public involvement related to the Project.
13. Coordinate and participate with District to aid in resolving any disagreement, dispute, delay or claim related to, or as a result of, the Project.
14. Waive any land use or permit fees for work related to the Project.
15. Provide documentation of the Beaverton Planning and Design Cost to District and Tigard, prior to invoicing.
16. Upon being invoiced, pay District 7.8% of the Sewer Cost, not to exceed \$73,000, less 84.4% of Beaverton's Planning and Design Cost, plus 100% of the Retaining Wall and Fence Cost and 100% of the Street Lighting Cost, unless the result is negative. Payment, if required, shall be made within 30 days of approving the invoice.
17. Upon completion of the Project, invoice Tigard for 7.8% of Beaverton's Planning and Design Cost.

F. TIGARD OBLIGATIONS

Tigard shall:

1. Appoint Jeff Peck or another employee acceptable to District and Beaverton as Tigard's project manager.
2. Review plans and specifications provided by Beaverton for the Project and provide comments to Beaverton within ten working days of receiving them.
3. Provide written evidence to District and Beaverton that funds for Tigard's share are available prior to bidding for the fiscal year in which payment is due.
4. Waive any land use or permit fees for work related to the Project.
5. Provide timely response to District on any proposed changes to the Project such as design change, field directives, change orders, or the use of the contingency line item; provide timely responses regarding the resolution of any disagreement, dispute, delay or claim related to, or as a result of the Project.
6. Pay District 7.8% of the Sewer Cost as bid and modified during construction, not to exceed \$73,000, upon completion of the Project and within 30 days of approving the invoice.
7. Pay Beaverton 7.8% of Beaverton's Planning and Design Cost, not to exceed \$12,000, upon completion of the Project and within 30 days of approving the invoice.
8. Prior to bidding, provide written evidence to District and Beaverton that funds for Tigard's share are available for the fiscal year in which payment is due.

G. GENERAL TERMS

1. Laws and Regulations. Beaverton, Tigard, and District agree to abide by all applicable laws and regulations.

2. Term of this Agreement. This Agreement is effective from the date the last party signs it and shall remain in effect until the Project is complete and the parties' obligations have been fully performed or this Agreement is terminated as provided herein.
3. Amendment of Agreement. Beaverton, Tigard, and District may amend this Agreement from time to time, by mutual written agreement.
 - A. Proposed changes of scope during the Project implementation must be reviewed and endorsed by the Capital Improvement Program Prioritization Committee. Changes necessitated by conditions discovered during design or construction, but consistent with the original scope of the Project, may be approved by District and Beaverton for the Project without further approval from the Capital Improvement Program Prioritization Committee.
 - B. The construction contract amount may be increased by up to 20% without amending this Agreement, provided the increase shall not exceed any not-to-exceed amount contained in this Agreement.
4. Termination. This Agreement may be terminated immediately by mutual written agreement of the parties, or by any of the parties notifying the others in writing prior to award of a construction contract, with the termination being effective in 30 days.
5. Integration. This document constitutes the entire agreement between the parties on the subject matter hereof and supersedes all prior or contemporaneous written or oral understandings, representations or communications of every kind on the subject. No course of dealing between the parties and no usage of trade shall be relevant to supplement any term used in this Agreement. Acceptance or acquiescence in a course of performance rendered under this Agreement shall not be relevant to determine the meaning of this Agreement, and no waiver by a party of any right under this Agreement shall prejudice the waiving party's exercise of the right in the future.
6. Indemnification. Within the limits of the Oregon Tort Claims Act, codified at ORS 30.260 through 30.300, each of the parties shall indemnify and defend the others and their officers, employees, agents, and representatives from and against all claims, demands, penalties, and causes of action of any kind or character relating to or arising from this Agreement (including the cost of defense thereof, including attorney fees) in favor of any person on account of personal injury, death, damage to property, or violation of law, which arises out of, or results from, the negligent or other legally culpable acts or omissions or errors of the indemnitor, its employees, agents, contractors or representatives.
7. Resolution of Disputes. If any dispute out of this Agreement cannot be resolved by the project managers from each party, the Beaverton Mayor, Tigard City Manager and District's General Manager will attempt to resolve the issue. If they are not able to resolve the dispute, the parties will submit the matter to mediation, each party paying its own costs and sharing equally in common costs. In the event the dispute is not resolved in mediation, the parties will submit the matter to arbitration. The decision of the

arbitrator shall be final, binding and conclusive upon the parties and subject to appeal only as otherwise provided in Oregon law.

8. Interpretation of Agreement.

A. This Agreement shall not be construed for or against any party by reason of the authorship or alleged authorship of any provision.

B. The paragraph headings contained in this Agreement are for ease of reference only and shall not be used in construing or interpreting this Agreement.

9. Severability/Survival. If any of the provisions contained in this Agreement are held illegal, invalid or unenforceable, the enforceability of the remaining provisions shall not be impaired. All provisions concerning the limitation of liability, indemnity and conflicts of interest shall survive the termination of this Agreement for any cause.

10. Approval Required. This Agreement and all amendments, modifications or waivers of any portion thereof shall not be effective until approved by 1) District's General Manager or the General Manager's designee and when required by applicable District rules, District's Board of Directors 2) Beaverton's Mayor, and 3) the Tigard City Manager or the City Manager's designee. Proposed changes of scope to the Project must also be approved by the Capital Improvement Program Prioritization Committee.

11. Choice of Law/Venue. This Agreement and all rights, obligations and disputes arising out of the Agreement shall be governed by Oregon law. All disputes and litigation arising out of this Agreement shall be decided by the state courts in Oregon. Venue for all disputes and litigation shall be in Washington County, Oregon.

CLEAN WATER SERVICES

CITY OF BEAVERTON, OREGON

By: _____
General Manager or Designee

By: _____
Mayor or Designee

Date: _____

Date: _____

APPROVED AS TO FORM

APPROVED AS TO FORM

District Counsel

City Attorney

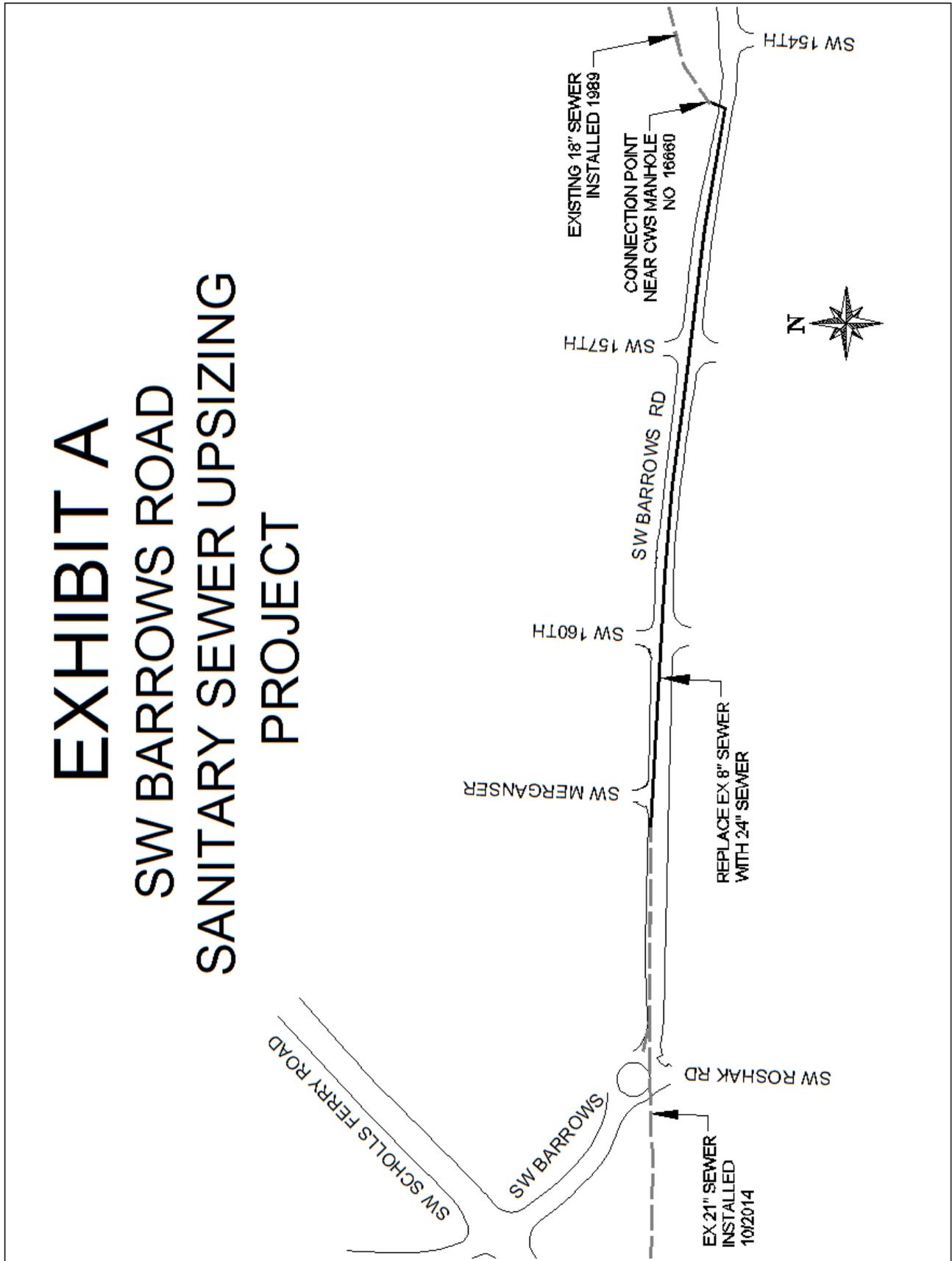
CITY OF TIGARD

By: _____
City Manager or Designee

APPROVED AS TO FORM

City Attorney

Exhibit A
Project Location Map



AIS-2341

3. A.

Business Meeting

Meeting Date: 08/25/2015

Length (in minutes): Consent Item

Agenda Title: Approve City Council Meeting Minutes

Submitted By: Carol Krager, Central Services

Item Type: Motion Requested

Meeting Type: Consent
Agenda

Public Hearing: No

Publication Date:

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:

- June 9, 2015

OTHER ALTERNATIVES

N/A

COUNCIL GOALS, POLICIES, APPROVED MASTER PLANS

N/A

DATES OF PREVIOUS COUNCIL CONSIDERATION

N/A

Attachments

Minutes from June 9, 2015 Council Meeting



City of Tigard

Tigard City Council/CCDA Meeting Minutes

June 9, 2015

STUDY SESSION

Council Present: Mayor Cook, Councilor Henderson, Councilor Woodard, Council President Snider, Councilor Goodhouse

Staff Present: City Manager Wine, Assistant to the City Manager Mills, Assistant City Manager Newton, Community Development Manager Asher, City Attorney Ramis and City Recorder Krager

At 6:33 p.m. Mayor Cook called the Study Session to order.

COUNCIL LIAISON REPORTS

Councilor Henderson discussed the Willamette River Water Providers Consortium meeting and gave everyone a handout which has been added to the packet for this meeting. He noted the low snowpack volume and said cities may have to ration water this summer. There is also a potential need to buy additional water. Mayor Cook spoke to the governor's environmental policy advisor who noted that 26 of 35 counties will be declaring a drought.

Councilor Henderson said he and Councilor Goodhouse went to Salem to advocate for an interpretive shelter/restroom at Dirksen Nature Park. He handed out a descriptive flyer. He said this is not budgeted and the city is trying to leverage sources to raise enough money for the project. City Manager Wine had an update said Tigard was ranked 18 and the funding source list stopped at 17.

Councilor Woodard attended a meeting in Hillsboro regarding Google. He also attended a Metropolitan Area Communications Commission (MACC) meeting and reports that the Comcast agreement is finalized. He attended an Intergovernmental Water Board meeting where dividing costs more equitably between owners of different sized meters was discussed. Mayor Cook said this will be taken up by council when the next water rate study is done in two years. Councilor Woodard reported on the Park and Recreation Board (PRAB) meeting and said every member was emphatically supportive of a community recreation center run by the YMCA.

Mayor Cook attended the SW Corridor meeting. Discussion is continuing and staff recommended not supporting the OHSU/Hillsdale tunnel. Council discussed options to move people up the hill. Access to Portland Community College is yet to be determined. At the Washington County Coordinating Committee meeting he heard consideration of bonding a portion of MSTIP funds to use for high-growth areas such as South Hillsboro, Bethany, South Cooper and River Terrace.

TIGARD CITY COUNCIL MINUTES – JUNE 9, 2015

Tigard would get \$16 million of the \$91 million for River Terrace to be used only for MSTIP projects. If passed, the county would pay two thirds and the city and developers would pay one third. The project would only be Roy Rogers Road. Councilor Henderson noted that historically the county, as a policy, has never borrowed against that money. Mayor Cook said another topic of discussion was TriMet's desire to raise their payroll tax one-tenth of one percent. He also attended a Commission on Transportation Area One meeting where bylaws were passed and Roy Rogers was elected chair.

SENIOR CENTER LEASE RENEWAL

Assistant to the City Manager Mills introduced Jay Gilbertson from the Senior Center. She gave some background information on the long association the city has had with Loaves and Fishes to provide services. Their name has changed to Meals on Wheels People. The lease expires June 30 and the new lease is proposed to run five years, to June 30, 2020. A few changes were made and included changing the name and updating the insurance agreement. An additional change is the section on termination of the lease. The new lease will allow termination of the lease by either party by giving 90 days written notice.

Ms. Mills recommended that council try a meal at the Senior Center. They have a chef and use fresh herbs to make delicious meals. Council President Snider asked about insurance requirements. He asked why there was only a single occurrence listed in the contract. Ms. Mills said she will add the aggregate language to the agreement. Councilor Woodard asked about the annual cost of maintaining the facility. Ms. Mills said the budget is \$300,000. Fifty percent comes from the federal government. The rest comes from local governments, other partners and fundraising. He asked how many meals they serve and asked if there were previous year numbers for comparison. Ms. Mills said she will put this information in the Thursday packet for council. She said required performance measures are identified and are part of the lease. Councilor Goodhouse asked about insurance for volunteers driving to deliver Meals on Wheels. Mr. Gilbertson said the volunteers provide proof of liability insurance. Ms. Mills will check on the Senior Center umbrella policy coverage.

Councilor Woodard asked if the Senior Center is available for community use on weekends. Ms. Mills said that is up to council. She said when the city's facilities were available for rental in the past the Senior Center received the most damage and rental use generated the most complaints from neighbors.

Mayor Cook noted that the hours need to be changed from 8:00 a.m. to 7:00 a.m. in two places in Section 2.1, and in Section 4, the word "telephone" needs to be changed to "communication" so it covers internet and cable.

Council said they were comfortable with placing the agreement on a future consent agenda. Ms. Mills will send an updated lease agreement to council for review as soon as possible.

ADMINISTRATIVE ITEMS

City Manager Wine reminded council of their July 7 "Cookout with the City Council" at Summerlake Park, from 6-8 p.m. Food will be delivered.

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Walkability expert Jeff Speck will give a presentation at the Broadway Rose Theater on June 15 at 6:30 p.m. The public is invited. There will be a walkability workshop the next day in Town Hall. Council is invited to go to dinner with him after the talk on the June 15.

Council President Snider discussed with City Attorney Ramis a potential conflict of interest related to the social services and community events section of the budget. Mr. Ramis advised there be two votes. The first could be to adopt the budget without the social services and community events section, and Council President Snider can vote on that motion. Another vote would be taken to approve the item removed and Council President Snider will need to abstain.



1. BUSINESS MEETING – June 9, 2015

A. At 7:35 p.m. Mayor Cook called to order the City Council, Local Contract Review Board and City Center Development Agency.

B. Roll Call: City Recorder Krager called the roll.

	Present	Absent
Mayor Cook	x	
Councilor Goodhouse	x	
Councilor Henderson	x	
Council President Snider	x	
Councilor Woodard	x	

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

D. Mayor Cook asked if there were any non-agenda items. City Manager Wine said she had three non-agenda items to cover at the end of the meeting. Mayor Cook announced that the State Land Board gave one of its two annual awards to a joint project between the City of Tigard and Clean Water Services. The winning project was the Derry Dell Creek Restoration which included a sewer project, stream mitigation and restoration and tree planting. Boardwalks were built for people and bikes to cross through the area. City and Clean Water Services officials went to Salem this morning and received the award from the Secretary of State. He congratulated the city's engineers and project staff.

2. CITIZEN COMMUNICATION

A. Follow-up to Previous Citizen Communication –City Manager Wine said council heard from Mr. McWright and Mr. Harmon from the Washington County Museum at the May 26 council meeting. They are focusing on cities in Washington County by dedicating exhibits to one city each month. Tigard's month is October and during that month anyone with

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identification showing they live in Tigard will get free admission. Council asked that staff publicize this and they have done so through the OPB calendar, Tigard blog, senior center, neighborhood networks, CPAH, and the elementary schools. Library staff who have developed historical programs have been connected with the Washington County Museum contacts. It is possible that there may also be a Washington County Museum program at the library during the month of October.

City Manager Wine said the other citizen communication from May 26 was from Steve Bintliff with a concern about opening the library on Thursdays. Staff contacted Mr. Bintliff to inform him that the Budget Committee held discussions on expanding library hours and their recommendation will be a part of the budget discussion at tonight's meeting.

- B. Tigard Area Chamber of Commerce – Chamber CEO Mollahan informed council of current events and activities. She announced a Tigard Farmers Market photo contest. Markets are held on Wednesday and Sunday markets and the contest runs through the end of June. The Third Friday downtown event is scheduled for June 19. Councilor Henderson asked if the chamber logo is going to change. Ms. Mollahan said the chamber is almost 60 years old it is time to do an update.
- C. Citizen Communication – Sign Up Sheet.

 Toraj Khavari, 13293 SW Woodshire Lane, Tigard, OR is the Chair of the Friends of Bull Mountain. Sarah Soper, 13754 SW Benchview Place, Tigard, OR is the FBMP Project Manager. Mr. Khavari gave council an update on activities and gave council an information handout which has been added to the packet for this meeting. He said Metro awarded a Nature in Neighborhoods (NIN) grant to be spent for six projects in Bull Mountain Park. The award ceremony is in July. The total is \$125,900 with a matching grant. They are making good progress on obtaining in-kind and cash contributions. He said the group has submitted a Nike grant application for \$20,000 and with this grant they will be at 93 percent. He asked for city continuation of the in-kind support that is important for them to meet their in-kind responsibility. He asked for support for meeting the Metro 2X grant requirement which must be met by July 1, 2016. Mr. Khavari asked for city support on the Nike application. He said there are more than 900 Nike employees living in the 97223 and 97224 zip code areas and they are a major part of the community surrounding the park.

Mayor Cook expressed appreciation for what the FBMP group does. He said Tigard citizens voted for a \$17 million park bond which the city has turned into other grants to purchase \$23 million in park property. Bull Mountain Park was purchased with this money but there are no funds to build the park land. This neighborhood has made trails and raised funds on their own, building the park from within and given that to the city. He said he'd like to clone them because there are other parks in the city where he wished neighbors would do the same.

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 Linda Shaw, 13178 SW Woodshire Lane, Tigard, OR, is a member of the Friends of Bull Mountain Park and wanted to add to what Mayor Cook spoke about. She said her role as volunteer coordinator means working behind the scenes coordinating with all the people who volunteer to build the trails, pull invasive plant species, plant trees and build permanent structures. She wanted to let council know who has been involved in building this park. National Honor Society and Key Club youth volunteers have been very helpful building trails. Eagle Scouts have built toolsheds, benches and signage. They bring 20-40 people to help with their projects. The Tigard High football team has worked spreading bark dust. Capital One employees came over for a tree planting. She expressed pride in the Tigard community and thanked the city for helping them partner to make this land usable. She records the hours volunteered and within six months they are already at 1400 hours, equating to \$35,000 in income. She invited council to an event in honor of the first year birthday of the park, June 18, from 6-8 p.m. Everyone is invited to picnic in the park. Bring your blanket and a picnic and enjoy the live music. It is a way to welcome people who who may not have visited yet and get them to use the park.

Councilor Woodard said it is great what the Friends are doing on that property. He commented on a PRAB discussion about creating a cycle cross route inventory of soft trails that could lead to making a destination for tournaments and said, “The work you do causes innovation.”

 Richard Shavey, 11371 SW Sycamore Place, Tigard, OR spoke about the North Dakota Street Bridge. He suggested leaving the bridge closed permanently to cars but kept open for pedestrians and bikes. He noted that the city has considering closing the railroad crossing at North Dakota permanently in exchange for adding a crossing at Ash Avenue. Options include 1) repairing and leaving it as it was, 2) demolishing it and building a new connecting street to North Dakota, 3) leaving it as a bike/pedestrian bridge only and building a new street connecting Tigard Street to North Dakota. 4) Build a new bridge for cars and pedestrians. He asked council to select option No. 3. Building a new street connecting North Dakota and Tigard Street (1,500 linear feet) will cost less than half of building a bridge and gives the city the necessary railroad crossing closure in order to negotiate a new crossing at Ash Avenue, which has been listed on many former transportation plans. He requested that council consider this as it is the least expensive option.

Mr. Shavey also commented that the city and chamber do a lot in the downtown. He said he did not want anyone to forget the many achievements so he made a list of what has happened in the downtown. A copy of this list was given to council and it has also been added to the record.

City Manager Wine responded council will hear about some options for the North Dakota bridge at the council meeting next week.

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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. Approve Minutes for:

- May 12, 2015 City Council Meeting Minutes

C. Authorize the City Manager to Sign a Surplus Water Contract with the Joint Water Commission (JWC)

D. Establish Mayor and Council Compensation Superseding Resolution No. 14-26 - Resolution

RESOLUTION NO. 15-26 - A RESOLUTION ESTABLISHING MAYOR AND COUNCIL COMPENSATION WHICH SUPERSEDES RESOLUTION NO 14-26.

E. Consideration of Approving Two Intergovernmental Agreements for Safe Routes to Schools Programming

RESOLUTION NO. 15-27 – A RESOLUTION APPROVING AN INTERGOVERNMENTAL AGREEMENT WITH METRO TO MANAGE A \$150,000 REGIONAL TRAVEL OPTIONS GRANT THAT WILL FUND A SAFE ROUTES TO SCHOOL COORDINATOR FOR A PERIOD OF TWO YEARS

RESOLUTION NO. 15-28 – A RESOLUTION APPROVING AN INTERGOVERNMENTAL AGREEMENT WITH WASHINGTON COUNTY TO MANAGE A \$41,000 MSTIP OPPORTUNITY GRANT THAT WILL HELP FUND A SAFE ROUTES TO SCHOOL COORDINATOR FOR A PERIOD OF TWO YEARS

Council President Snider moved for approval of the Consent Agenda and Councilor Woodard seconded the motion. The motion passed unanimously.

	Yes	No
Mayor Cook	x	
Councilor Goodhouse	x	
Councilor Henderson	x	
Council President Snider	x	
Councilor Woodard	x	

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4. PROCLAIM MARK NEFFENDORF DAY IN TIGARD

 Mayor Cook proclaimed June 9, 2015, as Mark Neffendorf Day in Tigard. He read the proclamation in its entirety. Tigard Youth Advisory Council Member and Junior class officer Adam LaFountain was present to accept a copy of the proclamation on behalf of Mr. Neffendorf and expressed gratitude for all he has done for Tigard area students.

5. AWARD “IF I WERE MAYOR, I WOULD...” CONTEST WINNERS

 Mayor Cook introduced elementary school age winner Avery Fleming and high school winner Carter Kruse. Their winning entries were displayed on the screen. He presented high school student Carter Kruse with a \$50 gift card on behalf of the city. His Prezi presentation was shown on the screen. Elementary school winner Avery Fleming was also awarded a \$50 gift card. Miss Fleming said her poster illustrated park playground equipment for children with disabilities and parents with disabilities who want to play with their kids on a park playground. Her entry will be passed along to the Park and Recreation Advisory Board (PRAB) so they can figure out how to put this equipment into the city’s park plan.

Mayor Cook announced that the next few agenda items pertain to the city budget and Finance and Information Services Director LaFrance will present a general overview of the 2016 budget process and highlights and then will introduce each agenda item.

 Finance and Information Services Director LaFrance summarized the items on the agenda relating to the 2016 budget. He said this is the conclusion of a lengthy public process that produced a balanced budget for council consideration. The Budget Committee consists of an equal number of council and appointed citizen members, each with an equal vote. The budget before council tonight is what was approved by the Budget Committee. Key issues include sidewalk gaps, adding a police officer and a recreation coordinator.

He said for many years Tigard has been faced with that was called a level budget. The level budget is being rephrased as an “eroding services budget.” Since budget cuts were made in 2012 staffing decreased by 11 percent but population grew by eight percent over the same time. This has led to a steady degradation in core service levels. Tigard’s property tax rate is lower than any other city in Washington County with a population over 5,000. The Budget Committee wanted to look at something different and the option chosen is treating parks as a utility. The Budget Committee decided to take Parks out of the General Fund and treat it like a utility, do a cost of service study to find what it could cost for homes and businesses and submit it to council for consideration. This will mean that General Fund dollars previously spent on parks can be spent on other core services.

The Budget Committee recommends an opportunity for the Library to remain open on Thursdays with minimal staffing, dependent upon the Washington County Cooperative Library Services (WCCLS) levy passing in November. The City would receive \$160,000 more a year for library operations. With

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minimum staffing it will cost \$245,000 annually so there is still a gap and the city will need to come up with a sustainable revenue source. The new park utility fund and reinvestment of the general fund could be this revenue source. However, the Budget Committee did not want to wait for both items to happen; they made the Thursday reopening of the library dependent on the passage of the WCCLS levy.

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

 Finance and Information Services Director LaFrance said this resolution approval process enables the City of Tigard to receive cigarette, liquor and most importantly, state gas taxes. To receive these funds the city must certify it provides four of seven municipal services. Tigard provides six of the seven, with only fire services not provided by the city. Staff recommends adoption of the resolution.

Councilor Woodard moved for adoption of Resolution No. 15-29. Councilor Henderson seconded the motion. City Recorder Krager read the number and title of the resolution. There was no further council discussion.

RESOLUTION NO. 15-29 – A RESOLUTION CERTIFYING THAT THE CITY OF TIGARD PROVIDES SERVICES QUALIFYING FOR STATE SHARED REVENUES

	Yes	No
Mayor Cook	x	
Councilor Goodhouse	x	
Councilor Henderson	x	
Council President Snider	x	
Councilor Woodard	x	

Mayor Cook announced that Resolution No. 15-29 passed unanimously.

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

- a. Mayor Cook opened the public hearing.
- b. Staff Report: Finance and Information Services Director LaFrance said this public hearing is to allow the City of Tigard to receive an additional portion of the state liquor tax of just under \$500,000. In order to receive this the city needs to have levied property taxes, hold public hearing as part of the May 4, 2015, Budget Committee meeting and hold this public hearing.
- c. Public Testimony. There was none.
- d. Mr. LaFrance said staff recommends approval of the resolution.
- e. Mayor Cook closed the public hearing.
- f. Council Discussion and Consideration: Resolution No. 15-30.

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Council President Snider moved for adoption of Resolution No. 15-30. Councilor Goodhouse seconded the motion. City Recorder Krager read the number and title of the resolution.

**RESOLUTION NO. 15-30 – A RESOLUTION DECLARING THE CITY’S
ELECTION TO RECEIVE STATE REVENUE SHARING**

Councilor Henderson asked if marijuana taxes would come to the city through this process. Finance and Information Services Director LaFrance said he was not sure. Mayor Cook said there will be no recreational sales until the fall of 2016 so revenue is not expected in this budget period. He noted that Measure 91 outlines that marijuana tax revenue will be divided by population and after that is based on local sales.

Mayor Cook conducted a vote and the motion passed unanimously.

	Yes	No
Mayor Cook	x	
Councilor Goodhouse	x	
Councilor Henderson	x	
Council President Snider	x	
Councilor Woodard	x	

8. **ADOPT CITYWIDE MASTER FEES AND CHARGES SCHEDULE REPLACING
RESOLUTION NO. 04-99 AND RESOLUTION NO. 14-31 AND ALL SUBSEQUENT
AMENDMENTS TO DATE**

Mayor Cook declared this item to be held in a public hearing and said the person signing up to speak on this item would be able to testify.

He opened the public hearing and asked for the staff report.



Finance and Information Services Director LaFrance directed council to a summary representing changes which were addressed by council in the Study Session of May 12. He said since then four additional items have come to staff’s attention. An error in calculating the planning fee was identified and staff is recommending adoption of the master fees and charges schedule as amended. Additionally, the Parks System Development Charges methodology was adopted on May 19, and those resulting fees are included. On May 26 new solid waste fees were adopted and these are also included. As a result of council discussion on May 12, the business license fee classification changed but it is revenue neutral.

Finance and Information Services Director LaFrance gave credit to Assistant Community Development Director McGuire for noting the math error in SDCs. Responding to questions from council he said that there had been a miscommunication between the Community Development Department and the Finance Department.

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Public Testimony -

-  Paul Grove, 15555 SW Bangy Road, Lake Oswego, OR 97035, said he represented the Home Builders Association of Metro Portland and they have concerns regarding the size and scope of the city-wide Transportation System Development Charges (SDCs). He said they do not understand the impact of the fee and what this will do to their work in the city. He requested that council consider a six-month delayed implementation time to allow members to evaluate what the SDCs will mean to them. He said council could also consider a phased-in approach.

Council President Snider asked for a specific rationale and wanted to know what HBA members would do differently over the next six months with this information. Mr. Grove said he could not give a specific rationale.

Councilor Woodard clarified that the discussion is on impacts to infill, not River Terrace. He asked how the builders would be affected. Mr. Grove said he could not answer without knowing a builder's projects and bottom line, but said members have voiced concerns regarding the size and scope and impacts to business. Councilor Woodard asked Mr. Grove if there was a sense that River Terrace SDCs were more proportionally distributed in comparison to citywide SDCs. He asked if the methodology was fair and how the city could have done a better job. Mr. Grove said he was not in a position to get into detail or elaborate about the methodology. Councilor Woodard asked if having more time might alleviate their concerns and Mr. Grove said that was the consensus they were hearing was on the size and scope but also timing.

Councilor Goodhouse clarified that their concerns were not so much the size of the fee but that they wish to delay the citywide portion so they can adapt, not the River Terrace portion. Mr. Grove said that was a fair assessment. The Home Builders are tabling River Terrace SDCs because the city heard from members involved in River Terrace. However, the citywide builders need time to adjust and are requesting a delay and a phased-in approach. Council President Snider asked if he had a proposal. Mr. Grove replied, "A six-month extension."

In response to Councilor Woodard's question about how long discussions on SDCs have been in process, City Manager Wine said staff initiated an SDC study over a year ago and started talking about infrastructure financing after the first of the year.

Councilor Henderson said he thinks the flaw is that the city was talking with River Terrace developers and the others do the same kind of work but they were not at the table. He said this was a surprise to them and he is hearing that they have the same concerns that the commercial development community identified. He asked Mr. Grove if this was their concern and the builders are looking for time to negotiate this on new projects.

Mr. Grove said that was a fair characterization. HBA members commented on wanting more effective communication and on the process. They recognize that everything started with River Terrace planning and what the impacts on those builders might be. It caught them off guard.

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Councilor Goodhouse asked Mr. Grove how many builders would be affected by SDCs in the next six months and he replied he did have a firm number to give to council.

Mayor Cook closed the public hearing.

Mayor Cook asked if both a citywide SDC and a river terrace overlay are needed. Finance and Information Services Director LaFrance said both are needed for building in River Terrace. Mayor Cook asked if it is allowed to have a citywide charge only in certain parts of the city. Mr. LaFrance said yes. If council wants to temporarily amend the citywide SDC so it is only in effect on July 1 for River Terrace development and delay implementation of the citywide fee outside of River Terrace, they may want to temporarily amend the name of the fee.

Finance and Information Services Director LaFrance said the Home Builders were very involved with River Terrace stakeholder discussions from the beginning but he cannot speak to the level of communication the HBA was holding with their constituents. The city made sure there were a number of residential builder stakeholders in River Terrace working groups. HBA representatives attended the River Terrace Community Plan meetings where infrastructure financing and potential fees which developed into the Transportation SDC fee were discussed. It was known throughout those discussions that not only was the city looking at a River Terrace SDC but also a citywide SDC. He said meetings and public hearings have been held for almost a year and there has been opportunity for the constituency within the HBA to learn about this both from the city and from their own group.

Mayor Cook asked when the SDCs are assessed and Mr. LaFrance replied it is his understanding that the SDCs are set with the final plat but not charged until the contractor pulls the building permit. City Attorney Ramis agreed but said he will confirm with the Building Department staff. In response to a question from Councilor Henderson, Mr. LaFrance said the fee was zero prior to April 28, when council adopted fees with an implementation date of July 1, 2015. Council President Snider asked if he knew the financial impact of a January 1, 2016 implementation outside of River Terrace and Mr. La France said he did not.

Councilor Woodard said he attended the stakeholder meetings but did not recall seeing the SDC numbers nor did he understand the improvement impact. He expressed discomfort with decisions made on April 28 with only three councilors present. Council President Snider said we received a lot of feedback and council present at the April 28 meeting were trying to address and manage the process to make everything logical and equitable. He said he did not recall the six-month delay being a request.

Councilor Goodhouse commented that the only question council has to consider is the matter of a six-month delay. Council President Snider noted that there were actually two requests from the HBA, a six month delay and a phase-in period. Councilor Woodard commented that there is a \$420 million project list and he has always thought that reaching that amount through SDCs was far reaching. He said he wants to find some middle-ground.

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Council President Snider asked City Attorney Ramis a question on the mechanism for changing something already adopted by council. City Attorney Ramis said, “First of all you’ve got statutory authority to do it. Because the statute says you can district and sub-district your charges.” He said the decision tonight could delay implementation and if council wants to go back and adjust another decision they can do that. But the decision tonight is what actually imposes the charge.

Mayor Cook offered a counterpoint, commenting on the 252-unit apartments being built on Scholls Ferry and 135th, and the citizen complaints received. Citizens are asking, “What about transportation? How are you going to handle the 250-plus cars of the people moving there?” He asked council, “How do we handle those impacts without collecting transportation SDCs?” Councilor Woodard said there will be priority projects that relate to capacity from River Terrace and other development. Mayor Cook clarified that there are two lists of transportation projects. One is the \$242 million for infrastructure created by River Terrace. Mr. LaFrance said River Terrace projects will be funded if the city implements the funding strategy which thus far, it has. By charging the citywide and River Terrace residential SDCs starting July 1, the city will be able to fund the needed infrastructure within River Terrace, based on projections. The \$420 million is actually the amount that even after implementation of the city SDCs is unfunded. The city has a much larger list and by implementing the SDC is able to fund a portion of that list. He said the city could legally be charging over \$15,000 per dwelling unit but Council decided to provide about a 70 percent discount that is within the market. That was the rate approved on April 28 and what is in the Master Fees and Charges Schedule tonight. In response to a question about whether the \$420 million project list is just in River Terrace, Mr. LaFrance said it was citywide. Mayor Cook said if we leave River Terrace SDCs alone and do not charge any for projects such as those on Hall Blvd. or Scholls and 135th, those transportation impacts would be added to the unfunded project list.

Councilor Woodard asked if staff would be asking for a Transportation SDC without River Terrace being built and Mr. LaFrance said yes, and there would still be the \$420 million project list. The city’s system currently has a deficiency. The SDC keeps us at the same deficiency. New development is not enhancing the system but is keeping it at the same level. New residents are paying to keep the system at the same level of deficiency that prior residents had left the system in.

Councilor Woodard asked about Tigard’s infill inventory. Mr. LaFrance said this is included in the methodology. Mr. LaFrance reminded council that it is the fee before council tonight, not the methodology as it has already been approved. Councilor Goodhouse asked if council wanted to adopt it the way it is, or add delayed implementation. Council President Snider proposed a six-month delay with no phase in. He said he was troubled by the fact that someone is advocating for something but they do not have a specific request. Councilor Goodhouse agreed. Councilor Woodard agreed with the delay but said River Terrace triggered this and he is not sure it is equitable. He said during the six-month delay it can be considered and if anything, the citywide portion may be reduced. Council President Snider said that work has been done. Councilor Goodhouse said they did not have problems with the numbers, it is the timing. Mr. LaFrance said the motion would include calling it the River Terrace district SDC at the same amount and then council can set a date for the SDC outside River Terrace.

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Councilor Goodhouse motioned to adopt resolution No. 15-31, amended for a Tigard district Transportation SDC delay until January 1, 2016. After that time it becomes part of the citywide Tigard Transportation SDC. It applies to River Terrace effective July 1, 2015. He added an amendment to approve planning fee error correction. Council President Snider seconded the motion.

Councilor Henderson said he sees both sides. He did not understand how many exemptions this would create. He said the best thing to do is grant the six month delay to the non-River Terrace SDCs. Councilor Woodard said he was in favor of the delay but not in favor of the portion of the motion not allowing a future consideration of the SDCs.

Mayor Cook commented that this arose from River Terrace planning and the citywide SDC was introduced six months ago. It was approved two months ago. He said he looks at the 252-unit apartments on Scholls Ferry Road and feels the developer should have to pay for transportation impacts. He did not want to let people skate. Council President Snider commented, "But we've been letting them skate for 30 years."

Councilor Woodard clarified for the record that he is not in disagreement of an SDC but he did not know if the number is right.

Mayor Cook conducted a vote on Resolution No 15-31, as amended

RESOLUTION NO. 15-31 - A RESOLUTION ADOPTING THE CITYWIDE MASTER FEES AND CHARGES SCHEDULE WHICH REPLACES RESOLUTION NO. 04-99 AND RESOLUTION NO. 14-31 AND ALL SUBSEQUENT AMENDMENTS TO DATE, as amended

	Yes	No
Mayor Cook	x	
Councilor Goodhouse	x	
Councilor Henderson	x	
Council President Snider	x	
Councilor Woodard		x

Mayor Cook announced that Resolution 15-31 passed by a 4-1 vote.

9. PUBLIC HEARING - ADOPTING THE BUDGET, MAKING APPROPRIATIONS, DECLARING THE AD VALOREM TAX LEVY AND CLASSIFYING THE LEVY AS PROVIDED BY- ORS 310.060(2) - RESOLUTION
 - a. Open Public Hearing – Mayor Cook.
 - b. Hearing Procedures – Any person wishing to comment on this matter shall be given the opportunity to comment.

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- c. Staff Report – Finance and Information Services Director LaFrance said he covered the key components in his preamble to the budget agenda items. He said what is before council is a legally developed, balanced budget that is about \$193 million and appropriations of about \$146 million, with the remainder being the fund balance. He said there are also four technical adjustments adding around \$128,000 to the budget to cover items related to printer maintenance and public works staff space.
- d. Public Testimony – There was none.
- e. Staff Recommendation – Staff recommends the resolution be adopted. Mr. LaFrance noted that the resolution title includes the words, “with adjustments.”
- f. Mayor Cook closed the public hearing.
- g. Council Discussion and Consideration

Councilor Goodhouse moved to make two adjustments to the budget. He recommended creation of a rainy day fund within the General Fund that requires a vote of council in order to be spent. Council President Snider said council already approves every expenditure and there was lengthy discussion on this at Budget Committee meetings that included three failed motions. Citizen members were mainly unanimous about their lack of support for this concept. He said it is a solution in search of a problem. Councilor Goodhouse said he wanted this because it is a sound financial practice and would also show transparency on the part of council. In the past there have been reserve accounts but not in a separate areas. He said putting \$1 million in a rainy day fund would be transparent to the public when the city has to use some of it. Council President Snider asked if he was correct in saying that council appropriates every dollar spent. Mr. LaFrance said in order to appropriate the current reserve fund staff already has to go to council under current Oregon budget law.

Mayor Cook asked Mr. LaFrance if it was a good financial practice for municipalities to appropriate rainy day funds. He replied that it is a good financial practice to have reserves that exceed the minimum cash flow balances. Prior to the recession, although not identified as a rainy day reserve, Tigard had a cash balance and by using that over a two year period, the city was able to mitigate service cuts to citizens. It was assumed this would be a bridge to get through a shorter period but when the economy did not rebound as expected, the city had to go through another set of reductions.

City Attorney Ramis said it could be an amendment to the budget approval motion or the budget could be approved and this proposed as an amendment through a second motion.

Councilor Woodard said Budget Committee Member Rone brought this up many times in the past. Councilor Woodard said he likes the idea of a rainy day or special projects fund because a reserve can accumulate and could be designed to secure specific grant funding opportunities. Council President Snider clarified that Budget Committee Member Rone actually did not support this during this year’s budget cycle and instead wanted new revenue from franchise fees not imposed before or

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a utility fee if adopted so that the city could make strategic investment decisions. Mr. Rone did not support a blanket rainy day fund that would move \$1 million out of the general fund and place it in a separate fund. He asked staff if making this change affects their ability to manage this money, creates more transparency or serves any other purpose. Mr. LaFrance replied that in terms of transparency, when council moves something from reserves to be spent, that process already exists. As far as a sound financial practice he said it was akin to balancing a checkbook. This is what this fund does, makes sure the city's checkbook does not go below a certain point. This allows us to soften the landing. Council President Snider said it just moves around the money we already have. Mr. LaFrance said it is "accounting" for the same money we already have. The difference between making it a reserve and not making it a reserve is that it would be shown.

Council President Snider said it was troubling to him when council has citizen advisory groups and decides to go against what they recommend.

Councilor Henderson said this was the first time since he has been a councilor that it makes sense to save anything because there is some money. He said it is a good idea to build a cushion in case of tragedy. He said the general fund was the only logical source of this money.

Councilor Goodhouse moved to transfer \$1 million from the general fund to make a rainy day fund that would take a vote of council to use. Councilor Woodard asked for clarification about whether this is a contingency fund or a special projects fund and Councilor Goodhouse replied, "Just a contingency."

Finance and Information Services Director La France made a technical comment that since it is currently in the general fund and is staying in the general fund, there is no transfer necessary

Councilor Woodard seconded the motion. He said Council President Snider was correct about Mr. Rone wanting to save franchise fees, but he has held sidebar conversations with Mr. Rone over the years and he was favorable to a rainy day fund. He referred to Councilor Snider's comment that it was troubling to go against what members of a committee recommend and said all committees, boards and commissions serve at the pleasure of council. Councilors, as elected officials, are the decision makers and have the right to challenge a body of board members. He said it takes courage to make unpopular decisions. He said he agreed with what Councilor Henderson said about needing a financial cushion in case of tragedy.

Council President Snider clarified that council needs to have really good reasons to do the opposite of what city boards and committees recommend. He added that he specifically suggested at Budget Committee hearings that staff take direction to make a strategic investment fund to use the park utility fee if the city moves forward with it. Staff would not program it because council wants to direct it. The only use would be what is needed to open the library on Thursday. He stated that Mr. Rone was supportive of using this process for franchise fees.

TIGARD CITY COUNCIL MINUTES – JUNE 9, 2015

Councilor Goodhouse said he is an elected representative of 50,000 people in Tigard and has accountability so when it comes down to spending the last dime, citizens need to be aware of it. He said he wants that extra layer of transparency. Councilor Woodard said this could be used for things like sidewalks at Dartmouth or filling a gap as what happened in the McDonald/Garde/Pacific Highway project. People will know where the money is coming from. Mayor Cook commented that he agreed with everyone and was going back to what Mr. LaFrance said about it being good public policy and good financial policy and for that reason he would vote in favor.

Mayor Cook conducted a vote on the motion to create a \$1 million rainy day reserve fund.

	Yes	No
Mayor Cook	x	
Councilor Goodhouse	x	
Councilor Henderson	x	
Council President Snider		x
Councilor Woodard	x	

Mayor Cook announced that the motion passed 4-1.

Councilor Goodhouse presented his second recommended amendment. He said if the WCCLS levy passes in November, the library will reopen on Thursdays in December. He said that model may take from the reserve account and that puts the city off on the wrong foot. He said he would also like to add the creation of the park utility fee before reopening the library. He said drawing down the reserve fund may keep the library open for one to two years but puts all other city services at risk. He would like an accelerated implementation of the park utility fee. Councilor Goodhouse moved to make the opening of the library contingent on both the passage of the WCCLS levy and the creation of the park utility fee. Mayor Cook seconded the motion.

Councilor Goodhouse said the Budget Committee decided that if the WCCLS levy passes in November, the Tigard Library will open with a skeleton crew on December 1 for \$250,000. That model loans from the reserve account and puts the city in the red. He wants the library open but he does not want to create a deficit. Implementing the park utility fee also would enable the library to open full time with full services. He said the library staff said they would rather have a secure model of being open permanently instead of something that could in a year or two, hurt the library and other services. Council President Snider said this would force council to get the park utility fee done in a timely manner. He commented that this is the second time though that council is considering overruling citizen members of the Budget Committee and this motion failed at least once at the Budget Committee. He said he could not support that change. Councilor Woodard said he did not want to accelerate the park utility fee until the study is done. He asked if the city ever talked about volunteers with skillsets that could open the library. Maybe the solution is to think in a different way. Council President Snider said it was worthy of discussion.

Councilor Henderson said he is unsure of steps needed to get to create the fee so he would vote no at this time. Finance and Information Services Director clarified that the park utility fee itself will

TIGARD CITY COUNCIL MINUTES – JUNE 9, 2015

not be paying for the library. That fact has gotten muddled in the press. It will pay for parks maintenance and development. That frees up money previously paid for parks in the general fund and it could be used for the library. He added that one reason the library is currently open six days is the level of volunteerism already ongoing at the library. More than half of the current staff are volunteers. He described the process which starts with a cost of service study, and then council consideration of options prepared by staff on what it will cost to maintain current parks and how the cost can be distributed throughout the business and residential community. If council opts not to fund the full fee, a portion of the general fund will still be needed. Once the fee is established so the city knows how much general fund money will no longer need to be applied to parks maintenance and development, we will have information for the fiscal year 2017. Proposals on how general fund savings can be reinvested into other services will be brought forward for a public dialog. Mayor Cook said there does not appear to be three votes for Councilor Goodhouse's motion and asked if he wanted to withdraw it.

Councilor Goodhouse asked where the city will find the additional \$160,000 needed annually for opening the library on Thursdays. He recommended waiting for both the levy results and the implementation of the utility fee. Councilor Woodard asked if there was an opportunity to use retired librarians as volunteers to cut costs. He said technology has changed the way libraries are operated. He said he needed time to consider the options and would like to have further discussions with Library Director Barnes. Councilor Goodhouse said if the Washington County levy passes in November, the library will open December 1 part time. He said he is still unclear on where this other money is coming from and cannot make a decision without that information. Councilor Goodhouse withdrew his prior motion. Mayor Cook withdrew his second to the motion. Councilor Goodhouse made a motion to remove the library funding from budget consideration and vote on it at a future date. The motion died for lack of a second.

Council President Snider moved for approval of the budget with removal of social services and community events division and declared he had a conflict of interest with that item. Councilor Goodhouse seconded the motion.

RESOLUTION NO. 15-32 - 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 2016, with removal of the social services and community events division

Councilor Henderson asked about a technical adjustment that had been pulled from a recent supplemental budget. Senior Management Analyst Collins said it was the \$50,000 for moving the public works building staff and it is included in the budget. The motion passed unanimously.

	Yes	No
Mayor Cook	x	
Councilor Goodhouse	x	
Councilor Henderson	x	
Council President Snider	x	
Councilor Woodard	x	

TIGARD CITY COUNCIL MINUTES – JUNE 9, 2015

Councilor Henderson moved to approve the social services and community events portion of the budget. Councilor Goodhouse seconded the motion.

	Yes	No	Abstain
Mayor Cook	x		
Councilor Goodhouse	x		
Councilor Henderson	x		
Council President Snider			x
Councilor Woodard	x		

The motion passed by a majority vote of council. Council President Snider abstained.

10. CITY CENTER DEVELOPMENT AGENCY PUBLIC HEARING - ADOPT THE CITY CENTER DEVELOPMENT AGENCY FISCAL YEAR 2016 BUDGET WITH ADJUSTMENTS, MAKE APPROPRIATIONS, AND IMPOSE AND CATEGORIZE TAXES



- a. Chair Cook opened the CCDA public hearing.
- b. Hearing Procedures – Chair Cook announced that any person wishing to comment on this matter shall be given the opportunity.
- c. Staff Report – Finance and Information Services Director LaFrance gave the staff report. This budget process was the same as that used for the city budget and it is a balanced budget. It entails roughly \$200,000 of programmatic projects including legal services, advisors, redevelopment studies and public space design. In addition there is \$435,000 for installation of the downtown artwork and gateways and \$75,000 for the Burnham Ash redevelopment. The development agency has debt service payments for the Ferguson property as well as repayment on prior loans the city made to the CCDA. There are no suggested technical adjustments from staff.
- d. Public Testimony – No one signed up to speak
- e. Chair Cook closed the public hearing.
- f. CCDA Discussion and Consideration: Resolution No. 15-04

Director Snider moved for adoption of CCDA Resolution No. 15-04. Director Goodhouse seconded the motion. City Recorder Krager read the number and title of the resolution.

CCDA RESOLUTION NO. 15-04 - A RESOLUTION ADOPTING THE FISCAL YEAR 2015-2016 BUDGET WITH ADJUSTMENTS, MAKING APPROPRIATIONS, AND IMPOSING AND CATEGORIZING TAXES

TIGARD CITY COUNCIL MINUTES – JUNE 9, 2015

Director Woodard said he was not present at the discussion on gateway art and he would have brought up a concern about seismic engineering for the artwork so he will not vote in favor of the budget because the amount for the gateway art and monuments is too large a number. He said he will abstain. Director Henderson said he will vote no for the same reason. Chair Cook conducted a vote and the motion passed by a majority of council present.

	Yes	No	Abstain
Mayor Cook	x		
Councilor Goodhouse	x		
Councilor Henderson		x	
Council President Snider	x		
Councilor Woodard			x

Mayor Cook thanked the finance staff for their work on the budget and asked the audience to give them a round of applause.

Mayor Cook said the next item is for City Council consideration.

11. **CONSIDER TIGARD-TRIMET TRANSIT POLICE INTERGOVERNMENTAL AGREEMENT**

Police Chief Orr and Assistant Chief de Sully were present to discuss an IGA between the City of Tigard and TriMet. The agreement is for four officers and one sergeant for the amount of \$681,000 per year. Chief Orr said it is a continuation of an existing IGA and either party can terminate at any time. He requested a motion to authorize City Manager Wine to sign the IGA.

Councilor Woodard moved to approve the IGA as presented. Councilor Henderson seconded the motion and it passed unanimously.

	Yes	No
Mayor Cook	x	
Councilor Goodhouse	x	
Councilor Henderson	x	
Council President Snider	x	
Councilor Woodard	x	

12. ~~COUNCIL LIAISON REPORTS~~ (These were given during the Study Session)

TIGARD CITY COUNCIL MINUTES – JUNE 9, 2015

- 13. NON AGENDA ITEMS City Manager Wine announced the City of Tigard is hosting a presentation from city planner and author of the book, “Walkable Cities.” Urbanist and walkability expert Jeff Speck will speak at the Broadway Rose Theater on June 15 at 6:30 p.m. The public is invited.
- 14. EXECUTIVE SESSION: Mayor Cook announced that there was no executive session.
- 15. ADJOURNMENT At 10:14 p.m. Council President Snider moved for adjournment. The motion was seconded by Councilor Goodhouse and passed unanimously.

	Yes	No
Mayor Cook	x	
Councilor Goodhouse	x	
Councilor Henderson	x	
Council President Snider	x	
Councilor Woodard	x	

City Recorder Carol A. Krager

Attest:

Mayor John L. Cook

Date: _____

TIGARD CITY COUNCIL MINUTES – JUNE 9, 2015

AIS-2335

3. B.

Business Meeting

Meeting Date: 08/25/2015

Length (in minutes): Consent Item

Agenda Title: Proclaim Constitution Week

Prepared For: Joanne Bengtson, City Management

Submitted By: Joanne Bengtson, City Management

Item Type: Receive and File

Meeting Type: Proclamation

Public Hearing: No

Publication Date:

Information

ISSUE

Should Mayor Cook proclaim September 17-23, 2015 as Constitution Week in Tigard?

STAFF RECOMMENDATION / ACTION REQUEST

N/A

KEY FACTS AND INFORMATION SUMMARY

City resident Dorothea White is a Daughter of the American Revolution and has requested this proclamation each year for many years.

OTHER ALTERNATIVES

N/A

COUNCIL GOALS, POLICIES, APPROVED MASTER PLANS

N/A

DATES OF PREVIOUS COUNCIL CONSIDERATION

Tigard's Mayor has issued this proclamation annually for nearly two decades.

Attachments

Constitution Week Proclamation

Proclamation

City of Tigard

Constitution Week

WHEREAS, on September 17, 1787, the Constitution of the United States of America was signed by 55 delegates to the Constitutional Convention in Philadelphia's Independence Hall; and

WHEREAS, September 17, 2015, marks the 228th anniversary of the drafting of the Constitution; and

WHEREAS, it is fitting and proper to accord official recognition to this magnificent document and its memorable anniversary; and to the patriotic celebration which will commemorate the occasion; and

WHEREAS, Public Law 915 guarantees the issuing of a proclamation each year by the President of the United State of America designating September 17 through 23 as Constitution Week.

NOW THEREFORE BE IT RESOLVED THAT I, John L. Cook, Mayor of the City of Tigard, Oregon, do hereby proclaim the week of September 17-23, 2015 as

CONSTITUTION WEEK

in Tigard, Oregon and encourage all citizens to reaffirm the ideals of the Constitution by protecting the freedoms guaranteed to us through this guardian of our liberties.

Dated this _____ day of _____, 2015.

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

AIS-2331

4.

Business Meeting

Meeting Date: 08/25/2015

Length (in minutes): 5 Minutes

Agenda Title: Appointment of TYAC Members

Prepared For: Marty Wine, City Management

Submitted By: Norma Alley,
Central Services

Item Type: Motion Requested

Meeting Type: Council Business Meeting - Main

Public Hearing: No

Publication Date:

Information

ISSUE

Should City Council appoint three new youth members to the Tigard Youth Advisory Council?

STAFF RECOMMENDATION / ACTION REQUEST

Staff recommends council approve the resolution appointing Nicole Bintliff, Sarah Oh and Adam Stack to the Tigard Youth Advisory Council.

KEY FACTS AND INFORMATION SUMMARY

Mayor Cook and Councilor Henderson interviewed candidates on August 10, 2015. Councilor Henderson and Councilor Woodard completed the interview process on August 18. They recommend appointing Nicole Bintliff, Sarah Oh and Adam Stack to the Tigard Youth Advisory Council to replace seniors who graduated in 2015.

OTHER ALTERNATIVES

COUNCIL GOALS, POLICIES, APPROVED MASTER PLANS

DATES OF PREVIOUS COUNCIL CONSIDERATION

N/A

Attachments

Resolution

Resolution

**CITY OF TIGARD, OREGON
TIGARD CITY COUNCIL
RESOLUTION NO. 15-**

A RESOLUTION APPOINTING NICOLE BINTLIFF, SARAH OH AND ADAM STACK TO THE TIGARD YOUTH ADVISORY COUNCIL.

WHEREAS, the Tigard Youth Advisory Council (TYAC) advertised for new members to replace exiting seniors who graduated in 2015; and

WHEREAS, the city received three applications from high school youth interested in joining this important team in Tigard's youth services programing; and

WHEREAS, Mayor John L. Cook, Councilor Marland Henderson and TYAC staff liaison Marty Wine conducted interviews as the Mayor's Appointment Committee on August 10 and Councilors Henderson and Woodard conducted an interview on August 19 to make the following recommendations for appointment to the Tigard Youth Advisory Council.

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

SECTION 1: Nicole Bintliff, Sarah Oh and Adam Stack are appointed to the Tigard Youth Advisory Council for a term that expires on June 30, 2016.

SECTION : This resolution is effective immediately upon passage.

PASSED: This _____ day of _____ 2015.

Mayor - City of Tigard

ATTEST:

City Recorder - City of Tigard

**CITY OF TIGARD, OREGON
TIGARD CITY COUNCIL
RESOLUTION NO. 15-**

A RESOLUTION APPOINTING NICOLE BINTLIFF, SARAH OH AND ADAM STACK TO THE TIGARD YOUTH ADVISORY COUNCIL.

WHEREAS, the Tigard Youth Advisory Council (TYAC) advertised for new members to replace exiting seniors who graduated in 2015; and

WHEREAS, the city received three applications from high school youth interested in joining this important team in Tigard's youth services programing; and

WHEREAS, Mayor John L. Cook, Councilor Marland Henderson and TYAC staff liaison Marty Wine conducted interviews as the Mayor's Appointment Committee on August 10 and Councilors Henderson and Woodard conducted an interview on August 19 to make the following recommendations for appointment to the Tigard Youth Advisory Council.

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

SECTION 1: Nicole Bintliff, Sarah Oh and Adam Stack are appointed to the Tigard Youth Advisory Council for a term that expires on June 30, 2016.

SECTION : This resolution is effective immediately upon passage.

PASSED: This _____ day of _____ 2015.

Mayor - City of Tigard

ATTEST:

City Recorder - City of Tigard

AIS-2183

5.

Business Meeting

Meeting Date: 08/25/2015

Length (in minutes): 20 Minutes

Agenda Title: Expansion of Tigard Municipal Court's minor traffic diversion programs

Submitted By: Nadine Robinson, Central Services

Item Type: Resolution

Meeting Type: Council
Business
Meeting -
Main

Public Hearing: No

Publication Date:

Information

ISSUE

Should Tigard Municipal Court expand the use of traffic diversion to resolve minor traffic moving violations?

STAFF RECOMMENDATION / ACTION REQUEST

Expand the opportunity for customers, who meet the eligibility criteria set forth in the Tigard Municipal Court rules, to participate in minor traffic diversion.

KEY FACTS AND INFORMATION SUMMARY

In many courts throughout Oregon it has become common for the courts to offer minor traffic diversion. One of the major elements of a diversion is participation in a traffic safety program or class. The classes are designed to heighten driving awareness and establish safer driving habits. Traffic safety classes are offered in a class-setting and online. Other elements of a traffic diversion typically include payment of court fees as well as class fees. When the conditions are successfully met, within a set time period, the citation is dismissed.

For a number of years, Tigard Municipal Court has offered traffic diversion in a limited number of situations. Diversions were mainly offered to juveniles and senior citizens. This last fiscal year the police department started a distracted driving program and use of the class to resolve mobile communication device citations became the number one diversion offered. More than 60% of the minor traffic diversions offered in FY 14/15 were to attend the distracted driving class. The compliance rate for those who chose to participate has been approximately 80%. This is consistent with what we have observed for other traffic safety classes.

In the court's annual report, in February 2015, staff bridged the idea of expanding diversion

opportunities. City Council was supportive of exploring the feasibility of offering more educational opportunities to those cited for moving violations within the city limits.

In researching minor traffic diversions we found that courts are determining eligibility by looking back at a person's driving record for 2 to 10 years to verify they have no convictions for moving violations or crimes. Timelines to complete a traffic safety class and pay fees vary from 60 to 120 days. Also many courts base their diversion fees on a reduced presumptive fine.

We have discussed program criteria that we believe would be successful in Tigard and are recommending the eligibility standards be:

- No previous convictions for any moving violations for the previous five years (two years for the distracted driver diversion program.)
- Certification that the defendant has not participated in a court-ordered or court-offered diversion program during the past five years.
- Driver holds a valid non-commercial license or permit.

To successfully participate in the program, a person would:

- Submit a plea of "no contest."
- Pay a court diversion.
- Attend a traffic safety class and pay the fee required by the provider.
- Complete all requirements within 90 days.

When all the conditions of the diversion are met, the citation will be dismissed and the violation will not show on the person's driving record.

If City Council supports moving forward with an expanded diversion program the new criteria will be implemented September 1, 2015.

OTHER ALTERNATIVES

Leave the diversion options as they currently exist.

COUNCIL GOALS, POLICIES, APPROVED MASTER PLANS

DATES OF PREVIOUS COUNCIL CONSIDERATION

The possibility of expanding the court's use of minor traffic diversion was discussed during the annual court report presented February 17, 2015.

Fiscal Impact

Fiscal Information:

The proposed diversion program is assumed to be revenue neutral.

Attachments

Diversion memo

Diversion proposed resolution



MEMORANDUM

TO: Honorable Mayor and City Council

FROM: Michael J. O'Brien, Presiding Judge
Nadine Robinson, Central Services Director

RE: Proposed expansion of court-ordered traffic diversions

DATE: August 10, 2015

After presenting our 2015 Annual Report in February, we have continued to evaluate the court's limited diversion program for minor traffic violations while exploring possible options for expansion. Based on our findings, we propose that Council consider broadening the court's existing programs as outlined below.

1: FY 2014-15 diversions: Of the 6,126 violations filed with the court, about 10% of defendants were offered diversion programs, including the Tigard Police Department's Distracted Driver Diversion Program (DDDP) for cellphone violations. This represents a small increase over previous years, reflecting the court's less restrictive eligibility requirements for the DDDP. The results show that a large majority of the 621 participants successfully completed all program requirements:

Completed successfully	80%
Noncompliant	14%
Pending	6%

Depending on the nature of each violation, defendants are referred to one of five traffic-safety classes, including the DDDP. Success rates are roughly comparable for all five programs.

The court dismisses the citations of those who successfully complete all conditions of diversion within the time permitted. A record of the conviction will not appear on a DMV driving record.

2. Tigard's DDDP: A large majority (62%) of all diversion participants were referred to the DDDP. The high participation rate reflects the less restrictive criteria for eligibility compared to other programs.

3. Current diversion program eligibility standards:

- Plea of "no contest"
- Ages under 18 or over 60, or cited for safety-belt or cellphone violations
- No convictions for any moving violations for the previous five years (two years for the DDDP)
- Payment of court diversion fee equal to 75% of the presumptive fine set by state law (\$120 for the DDDP)
- Class attendance and payment of the fee required by the provider (\$25 for the DDDP)
- All requirements completed within 90 days with no exceptions

4. Proposed expansion of eligibility for diversion:

- All defendants with no convictions for the previous five years (two years for the DDDP), regardless of age or the type of violation
- Most serious violations (Class A under state statute) excluded
- Certification that defendant has not participated in any other court-ordered diversion program during the past five years
- Payment of a court diversion fee based on the following matrix:

Class B	\$130 fee
Class C	\$80
Class D	\$55
- All requirements completed within 90 days with no exceptions

5. Administrative impacts: By our estimate, approximately 35-40% of all defendants would be eligible for an offer of diversion. We anticipate that a large majority of those defendants will choose to participate, requiring additional staff time to monitor compliance. At current caseload levels, the number of diversion cases could increase from 621 to approximately 2,200.

If increases in the court's overall caseload impose unsustainable workloads on staff, diversion criteria could be tightened by appropriate revisions to court rules. For example, the court could disqualify all defendants who committed work or school safety zone violations.

5. Fiscal impacts: The current diversion program is designed to be revenue-neutral in that all defendants pay the same amount to the court whether they participate in diversion or not. In addition, they must pay the costs required by the third-party provider of the classes.

The proposed fee matrix (above) reflects both the cost of administrative services and a proportionate sanction based on the level of violations.

As in the past, revenues from fines and diversion fees can vary substantially based on total caseload and the mix of violation types, which are subject to different presumptive fines by statute.

6. Effect of noncompliance with all requirements of diversion:

- A "guilty" finding and judgment (fine) will be entered
- Defendants will be required to pay the full presumptive fine for the violation class
- A record of the conviction will be forwarded to DMV for entry on defendant's driving record.

Example: A defendant who fails to complete Tigard's DDDP will be required to pay a judgment equal to the full presumptive fine (\$160) for a Class C violation, even if that defendant would have been eligible for a reduction at arraignment. The sanction will therefore be double the court's \$80 administrative fee for the DDDP program. We believe this structure will provide an additional incentive for defendants to timely complete all diversion requirements.

A draft resolution authorizing an expansion of the court's diversion programs has been prepared for Council's consideration.

CITY OF TIGARD, OREGON
TIGARD CITY COUNCIL
RESOLUTION NO. 15-

A RESOLUTION ESTABLISHING A TRAFFIC DIVERSION PROGRAM AND DELEGATING AUTHORITY TO THE MUNICIPAL COURT JUDGE TO ADOPT RULES AND ADJUST FEES TO ADMINISTER THE PROGRAM

WHEREAS, the city council finds that public safety will be enhanced if traffic violators receive training on traffic safety; and

WHEREAS, the municipal court judge supports the traffic diversion program; and

WHEREAS, the municipal court has a violations bureau under ORS 153.800 for processing certain traffic violations committed within the city limits; and

WHEREAS, the city has the authority to create a program under its violation bureau in which drivers who are issued certain types of citations are diverted from municipal court into a traffic safety program that educates drivers;

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

SECTION 1: A traffic diversion program, as described in the attached Exhibit A, is established.

SECTION 2: The municipal court judge is delegated the authority to select suitable providers and to adopt all necessary rules, including adjustments in required fees and eligibility standards, for administering the program.

SECTION 3: This resolution is effective September 1, 2015.

PASSED: This _____ day of _____ 2015.

Mayor - City of Tigard

ATTEST:

City Recorder - City of Tigard

Exhibit A

Tigard Municipal Court traffic diversion program

Tigard Municipal Court has jurisdiction to hear citations for traffic violations that occur within the Tigard city limits. The city is committed to increasing public safety on its streets by providing qualified defendants the opportunity to attend a traffic safety program. Programs are designed to heighten driving awareness and establish safer driving habits that lead to a reduction in violations, recidivism and collisions on city streets and highways.

The eligibility standards to participate in Tigard Municipal Court's traffic diversion program are as follows:

- A valid non-commercial driver's license or permit.
- No previous convictions for any moving violations for the previous five years (two years for Tigard's Distracted Driver Diversion Program.)
- Certification that defendant has not participated in any other court-ordered diversion program during the past five years.

To successfully participate in the program, a defendant must:

- Submit a plea of "no contest."
- Pay a court diversion fee as set forth in the rules of the Tigard Municipal Court.
- Attend a traffic safety class approved by the court and pay the fee required by the provider.
- Complete all requirements within 90 days.

If all conditions of the diversion program are met, the citation will be dismissed and the violation will not appear on a defendant's driving record.

If a defendant fails to meet any of the diversion program requirements, a guilty finding will be entered and a judgment equal to the statutory Presumptive Fine for the violation will be imposed. Any amount previously paid to the court will be applied to the balance owing on the judgment. An abstract of the conviction will be sent to the Motor Vehicles Division of the Oregon Department of Transportation for entry on defendant's driving record.

AIS-2297

6.

Business Meeting

Meeting Date: 08/25/2015

Length (in minutes): 15 Minutes

Agenda Title: Resolution amending 72nd and Dartmouth Easement

Submitted By: Carol Krager, Central Services

Item Type: Resolution

Meeting Type: Council Business Meeting - Main

Public Hearing No

Newspaper Legal Ad Required?:

Public Hearing Publication

Date in Newspaper:

Information

ISSUE

Shall the council adopt a resolution of necessity amending Resolution of Necessity No. 13-19 to acquire property for the 72nd Avenue and Dartmouth Street project?

STAFF RECOMMENDATION / ACTION REQUEST

Adopt the resolution of necessity amending Resolution of Necessity No. 13-19.

KEY FACTS AND INFORMATION SUMMARY

- On May 14, 2013, the city council adopted Resolution of Necessity No. 13-19 declaring the acquisition of certain easements and right of way dedications were needed for purposes of completion of the 72nd Avenue/Dartmouth Street Improvement Project (the "Project").
- In 2014, the city filed four condemnation actions involving four separate properties, three of which are owned by defendant Gordon Martin, as Trustee for the Tri-County Center Trust, with the fourth owned by defendant TCCT Campbell LLC, an Oregon limited liability company.
- All four tax lots are located either on or within a block of the intersection of 72nd Avenue and Dartmouth Street in Tigard and the subject of the city's condemnation proceedings filed in the following cases before the Circuit Court: Tax Lot 401 (Case No. C14-1041CV); Tax Lot 100 (Case No. C14-1042CV); Tax Lot 200 (Case No. C14-1043CV); and Tax Lot 101 (Case No. C14-1044CV).
- With its filing of the four complaints, the city sought to pay just compensation to the affected property owners for the appropriation of easements and right of way (ROW)

dedications across each of the four tax lots.

- Resolution No. 13-19 declared in part that the acquisition of a ROW dedication area on Tax Lot 100 was needed for purposes of completion of the Project. The total area of the ROW dedication on Tax Lot 100 was referred to as "Parcel 1" in the city's complaint filed in Case No. C14-1042CV (the "TL 100 ROW").
- Recently, the city entered into a Settlement Agreement with the defendants to resolve all claims that may arise as a result of the city's four condemnation actions.
- While the Settlement Agreement does not require the city to pay the defendants any more money than the city originally deposited with the Court in each of the four cases, it does provide in part that the city request that the city council amend Resolution of Necessity No. 13-19 to reduce the size of the TL 100 ROW by that area depicted as two triangles with cross hatching on the drawing by WH Pacific, attached as Exhibit A to the Settlement Agreement.
- The Settlement Agreement further provides that should the city council agree to such a reduction in size of the TL 100 ROW, defendant Gordon Martin, in his capacity as Trustee, shall pay to the city the monetary value of the reduction in the total square footage of the TL 100 ROW to be calculated at a value per square foot consistent with the value per square foot established as of June 12, 2013 for the entire ROW on Tax Lot 100 by the city's appraisal report dated June 30, 2013.

OTHER ALTERNATIVES

The council could choose not to adopt the amendment to the resolution. However, lack of an amendment of the underlying resolution prior to the entry of a final judgment and order in the relation condemnation case affecting Tax Lot 100 will likely make it much more time consuming to reduce such ROW in the future. This is because, upon entry of the Court's final judgment and order, the current area of the ROW will vest in the City. It is anticipated that to reduce the existing footprint of the ROW after it has vested in the City will require greater procedural efforts before the City Council than to reduce such area now via an amendment of the underlying resolution.

COUNCIL OR CCDA GOALS, POLICIES, MASTER PLANS

N/A

DATES OF PREVIOUS CONSIDERATION

The council adopted Resolution of Necessity No. 13-19 - the resolution to be amended - on May 14, 2013.

Fiscal Impact

Cost: 0
Budgeted (yes or no): yes
Where Budgeted (department/program): Transportation CIP Fund
Additional Fiscal Notes:

The proposed amendment may provide some revenue back to the city for the small areas of ROW being considered, but is effectively cost neutral.

Attachments

Settlement Agreement

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT (“**Agreement**”) is entered into this 1~~st~~ day of July, 2015 by and between plaintiff, the City of Tigard, a municipal corporation within the state of Oregon, formed and authorized pursuant to the laws of the state of Oregon (“**City**”), and defendants, Gordon R. Martin, Trustee of the Tri-County Center Trust u/t/a dated December 2005 (“**Martin**”) and TCCT Campbell LLC, an Oregon limited liability company (“**TCCT**”), all of which shall be collectively referred to as the “Parties.”

RECITALS

A. The City filed four condemnation of real property actions involving four separate properties owned by Martin and located in the City of Tigard in Washington County, Oregon, which actions are identified as Case Numbers C14-1041CV (TL 401); C14-1042CV (TL 100); C14-1043CV (TL 200); and C14-1044CV (TL 101), seeking to pay just compensation to Martin for the appropriation of easements and right-of-way dedications. Tax Lot 101 is currently owned by TCCT.

B. As set forth herein, the Parties wish to resolve any and all claims that arise as a result of the City’s acquisition of easements and right-of-way dedications from the condemnation actions, provided, however, that provisions below addressing access and curb cuts are set forth by the City in good faith for purposes of clarification only as such considerations are irrelevant to condemnation proceedings and are instead governed by the City’s development code and public safety and related considerations by the City Engineer.

AGREEMENT

NOW THEREFORE, in consideration of the terms and conditions expressed below, the foregoing Recitals which each party acknowledges to be true, and which are incorporated herein, and for other good and valuable consideration which the Parties agree is legally sufficient, the Parties mutually agree as follows:

1. Commercial Access to Adjacent City Streets. The City agrees to provide: to Martin, commercial access to and from SW Dartmouth Street to Tax Lot 100; commercial access to and from SW 72nd Avenue to Tax Lot 401; and commercial access to and from SW 72nd Avenue to Tax Lot 200; and to TCCT, commercial access to and from SW 72nd Avenue to Tax Lot 101 as follows:

a. Tax Lot 100 / Direct Commercial Access to and from SW Dartmouth Street. The City agrees to provide direct commercial access to and from SW Dartmouth Street to Tax Lot 100 consistent with the requirements of the City’s development code and as determined by the City Engineer. At a minimum, this direct commercial access to and from SW Dartmouth Street for Tax Lot 100 shall consist of one right-in and right-out turning access, with any left-in and/or left-out turning access to be further determined by the City following Martin’s submittal of a complete commercial development application which shall include, but not be limited to, a traffic engineer’s impact study addressing left-in and/or left-out turning access for review by the City Engineer.

b. Tax Lot 101 / Commercial Access to and from SW 72nd Avenue. The City agrees to provide commercial access to and from SW 72nd Avenue to Tax Lot 101 consistent with the requirements of the City's development code and as determined by the City Engineer. To the extent direct commercial access is authorized to and from SW 72nd Avenue for Tax Lot 101, such access shall consist of one right-in and right-out turning access, with any left-in and/or left-out turning access to be further determined by the City following TCCT's submittal of a complete commercial development application for Tax Lot 101 which shall include, but not be limited to, a traffic engineer's impact study addressing left-in and/or left-out turning access for review by the City Engineer.

c. Tax Lot 401 / Direct Commercial Access to and from SW 72nd Avenue. The City agrees to provide direct commercial access to and from SW 72nd Avenue to Tax Lot 401 consistent with the requirements of the City's development code and as determined by the City Engineer. At a minimum, this direct commercial access to and from SW 72nd Avenue for Tax Lot 401 shall consist of one right-in and right-out turning access, with any left-in and/or left-out turning access to be further determined by the City following Martin's submittal of a complete commercial development application which shall include, but not be limited to, a traffic engineer's impact study addressing left-in and/or left-out turning access for review by the City Engineer.

d. Tax Lot 200 / Indirect Commercial Access to and from SW 72nd Avenue. The City agrees to provide indirect commercial access to and from SW 72nd Avenue to Tax Lot 200 by means of providing direct access to and from SW Elmhurst Street consistent with the requirements of the City's development code and as determined by the City Engineer. At a minimum, this indirect commercial access to and from SW 72nd Avenue by means of direct access to and from SW Elmhurst Street for Tax Lot 200 shall consist of one right-in and right-out turning access, with any left-in and/or left-out turning access to be further determined by the City following Martin's submittal of a complete commercial development application which shall include, but not be limited to, a traffic engineer's impact study addressing left-in and/or left-out turning access for review by the City Engineer.

2. Curb Cuts. The City agrees that the curbs as currently installed along (a) the length of Tax Lot 100 along SW Dartmouth Street, (b) the length of Tax Lot 101 along SW 72nd Avenue, (c) the length of Tax Lot 200 along SW 72nd Avenue, and (d) the length of Tax Lot 401 along SW 72nd Avenue, do not act as a legal or physical bar to any future determination of commercial access to and from the adjacent street to each lot as set forth in Paragraph 1(a-d) above. The City agrees that the curbs as currently installed along each lot will be allowed to be cut consistent with the access authorized for each lot as set forth in Paragraph 1(a-d) above.

3. Slope Easements. The permanent slope easements located on Tax Lot 100, Tax Lot 101, Tax Lot 200, and Tax Lot 401 were established by the City for public improvements in order to provide stabilization for the City's adjacent streets. The City agrees that the respective property owners, Martin and TCCT, have the right to access, use, and cross on and over, the area of the related slope easement in order to obtain access to and from each lot provided that any access, use, and cross on and over the area containing the slope easement to and from the adjacent street to the affected lot will be completed subject to the City's specifications to ensure ongoing

protection of the City's adjacent street, all public facilities, and any improvements for which the slope easement was created. The City agrees the slope easement on each lot may be reduced in size as part of any development application submitted by the property owner and as determined by the City Engineer.

4. Dedication Deeds and Permanent Easement Deeds. Each of the dedication deeds (Tax Lot 100 and Tax Lot 200) and permanent easement deeds (Tax Lot 401 and Tax Lot 101) contains the same provision regarding the permanent slope easement on each lot for public improvements. This provision states in part:

“Grantee shall never be required to remove the slope materials placed by it on said property, nor shall Grantee be subject to any damages to Grantor(s) by reasons of any change of grade of the roadway abutting on said property.”

The City agrees that this provision in each of the deeds regarding the permanent slope easement does not prohibit the property owner of the affected lot (Tax Lot 100, Tax Lot 200, Tax Lot 101, and Tax Lot 401) from the right to access, use, cross on and over, and to seek to reduce in size the permanent slope easement as provided in Paragraph 3.

5. Reduction of a Portion of the Right-of-Way Area on Parcel 1 on Tax Lot 100 for the benefit of Tri-County Center Trust.

a. On or about May 14, 2013, the City, acting through its governing body, the Tigard City Council, adopted Resolution 13-19 (“**Resolution**”) declaring in part that the acquisition of a right-of-way dedication area on Tax Lot 100 was needed for purposes of completion of the 72nd Avenue/Dartmouth Street Intersection Improvement (the “**Project**”). The total area of the right-of-way dedication on Tax Lot 100 is referred to as “Parcel 1” in the City’s complaint filed in Case No. C14-1042CV (the “**ROW**”). Martin has requested that the City reduce the size of the ROW to the extent possible given the limited size of Tax Lot 100. At this time, the City is willing to pursue in good faith a small reduction of the ROW. Subject to applicable law, and as soon as reasonably possible, the City agrees to pursue before the Tigard City Council an amendment of the Resolution to reduce the area of the ROW with the understanding that the City shall request: (i) the area to potentially no longer be included within the ROW be limited at this time to that area described on the drawing of WH Pacific, dated May 12, 2015 (and depicted as two triangles with cross hatching) attached hereto and incorporated herein as Exhibit A; (ii) the legal description of the area described on Exhibit A to potentially no longer be included within the ROW be completed by the City; and (iii) the resulting reduction in monetary value of the ROW as a result of any amendment of the Resolution approved by the City Council be calculated in the manner provided in Paragraph 5(c) below.

b. Upon (i) the issuance of all applicable state and federal permits and approvals (including any Joint Applications of the Tri-County Center Trust to the Oregon Division of State Lands/U.S. Corps of Engineers and/or to other federal and state agencies) authorizing Tri-County Center Trust to culvert the creek on Tax Lot 100, (ii) the issuance of all City and other local government or special district permits and approvals

authorizing the culverting of the creek on Tax Lot 100, and (iii) the completion of all work authorized under and pursuant to such permits and approvals, the City will consider a future request of Martin to pursue for the benefit of Tri-County Center Trust, a potential reduction in additional portions of the ROW on Parcel 1 entirely different from those described for potential reduction on Exhibit A. Should the City be willing to support such a future request, such additional reduction shall be pursued in a manner as determined by the City to be permissible under applicable law.

c. On March 21, 2014, the City deposited with the Clerk of this Court \$37,300 for the use and benefit of Martin, pursuant to ORS 35.265. Of the referenced \$37,300, \$11,000 was for the use and benefit of Martin regarding the ROW to be acquired on Tax Lot 100. Within 10 business days of the City Council's passage of an amendment to the Resolution consistent with Paragraph 5(a) above, the City shall create a new legal description of the ROW consistent with Exhibit A and any such amendment to the Resolution. Within 10 business days of receiving the new legal description of the amended ROW, Martin agrees to pay to the City the monetary value of the reduction in the total square footage of the ROW to be calculated at a value per square foot consistent with the value per square foot established as of June 12, 2013 for the entire ROW on Tax Lot 100 by the City's appraisal report dated June 30, 2013 and prepared by Richard P. Herman.

6. Substitution of TCCT as Party of Interest Regarding Tax Lot 101. Martin agrees to file a motion for substitution of TCCT as the party of interest and title owner of record regarding Tax Lot 101 within seven business days of the Effective Date of this Agreement.

7. Entry of Stipulated Judgment. Within 10 business days of the Parties satisfaction of their obligations as set forth in Paragraphs 5(a) and 5(c) above, the Parties agree to enter into and submit in each case for the Court's consideration and approval, a Stipulated General Judgment and Money Award substantially identical to that version attached hereto as Exhibit B.

8. Martin's and TCCT's Release of the City of Tigard. Martin and TCCT hereby release the City from and against any and all claims and causes of action arising out of and/or resulting from the City's condemnation of portions of Tax Lot 100, Tax Lot 101, Tax Lot 200, and Tax Lot 401. This release shall include and inure to the benefit of the City and its successors, assigns, administrators, agents, City Council members, directors, officers, members, partners, employees, insurers and attorneys.

9. No Third-Party Beneficiaries. The Parties agree that there shall be no third-party beneficiaries to this Agreement.

10. Attorney Fees and other Costs and Expenses. The Parties agree each are responsible for their own costs and attorney fees incurred as a result of these proceedings including, but not limited to, all such costs and fees incurred in the preparation of this Agreement. In the event of a dispute arising out of the terms of this Agreement, or in an action to enforce the terms of this Agreement, the prevailing party shall be entitled to an award of its reasonable attorney fees and other costs and expenses incurred in that dispute and action or in any alternative dispute resolution process.

11. Understanding of Terms. The Parties agree that they have read and understood and voluntarily accept the terms of this Agreement.

12. Additional Documentation; Time is of the Essence. Each of the Parties agrees that it will execute any other documents that become reasonably necessary to effectuate this Agreement, and further agrees that time is of the essence in executing this Agreement and any other documents that become reasonably necessary to effectuate this Agreement.

13. Integration. The terms and conditions contained in this Agreement comprise the Parties' entire understanding concerning the subject matter of this Agreement. Such terms and conditions supersede all prior and/or contemporaneous oral and/or written representations, discussions, negotiations, statements, promises, understandings, and agreements concerning such subject matter.

14. Governing Law. This Agreement is written under and controlled by the laws of the State of Oregon.

15. Venue. Any action brought to enforce this Agreement shall be brought in Washington County Circuit Court and shall be controlled by Oregon substantive and procedural law.

16. Severability. If any provision of this Agreement is determined to be void, invalid, illegal or otherwise unenforceable under the laws of the State of Oregon, such provision shall be stricken and all remaining provisions shall be unaffected and shall remain valid and fully enforceable.

17. Construction of Agreement. Because the Parties have mutually participated in the preparation of this Agreement, the rule of construction that contracts shall be construed against the drafter shall not apply to the interpretation of this Agreement.

18. Warranty of Non-Assignment. The Parties acknowledge that they have not assigned any rights or claims arising out of or resulting from the circumstances of this dispute, and each Party agrees to indemnify and defend the other Parties against any claims brought against them by any person or entity claiming the status of a third-party assignee.

19. Signature Authority. Each of the Parties and the individual signatories executing this Agreement hereby represent and warrant that they have full authority to execute this Agreement on their own behalf and on behalf of the entity or entities that they claim below to represent, and that they sign as their free and voluntary act and deed.

20. Counterparts. This Agreement may be executed in multiple counterparts. Upon execution, this Agreement shall become enforceable and binding upon each of the Parties even if it is signed in counterparts. The Parties acknowledge that this Agreement may be executed *via* facsimile and e-mail (scanned signature), and that an Agreement bearing a facsimile or scanned signature shall be enforceable as if it was bearing an original signature.

21. Representation. The Parties hereby warrant and represent that at all times they have been represented by counsel or have had the opportunity to discuss this Agreement with an attorney prior to providing their signatures below. By executing this Agreement, the Parties

warrant and represent that they have had an adequate amount of time to properly analyze and consider all of the issues related to the terms and conditions contained in this Agreement, and that they are entering into this Agreement of their own free will and choice and not because of any statements, representations or warranties made by the opposing party or that party's counsel.

22. Headings for Convenience Only. The paragraph headings are for convenience only and the substantive portions hereof control without regard to the headings.

23. Effective Date. This Agreement shall be effective as of the date first set forth above.

CITY OF TIGARD, an Oregon Municipal Corporation

Gordon R. Martin, Trustee of the Tri-County Center Trust u/t/a dated December 2005

By: Martha Wine

By: _____

Name: Martha Wine

Name: _____

Its: City Manager

Its: _____

TCCT Campbell LLC, an Oregon limited liability company

By: _____

Name: _____

Its: _____

warrant and represent that they have had an adequate amount of time to properly analyze and consider all of the issues related to the terms and conditions contained in this Agreement, and that they are entering into this Agreement of their own free will and choice and not because of any statements, representations or warranties made by the opposing party or that party's counsel.

22. **Headings for Convenience Only.** The paragraph headings are for convenience only and the substantive portions hereof control without regard to the headings.

23. **Effective Date.** This Agreement shall be effective as of the date first set forth above.

CITY OF TIGARD, an Oregon Municipal Corporation

Gordon R. Martin, Trustee of the Tri-County Center Trust u/t/a dated December 2005

By: _____

By: Gordon R. Martin

Name: _____

Name: Gordon R. Martin

Its: _____

Its: Trustee

TCCT Campbell LLC, an Oregon limited liability company

By: Gordon R. Martin

Name: Gordon R. Martin

Its: Manager

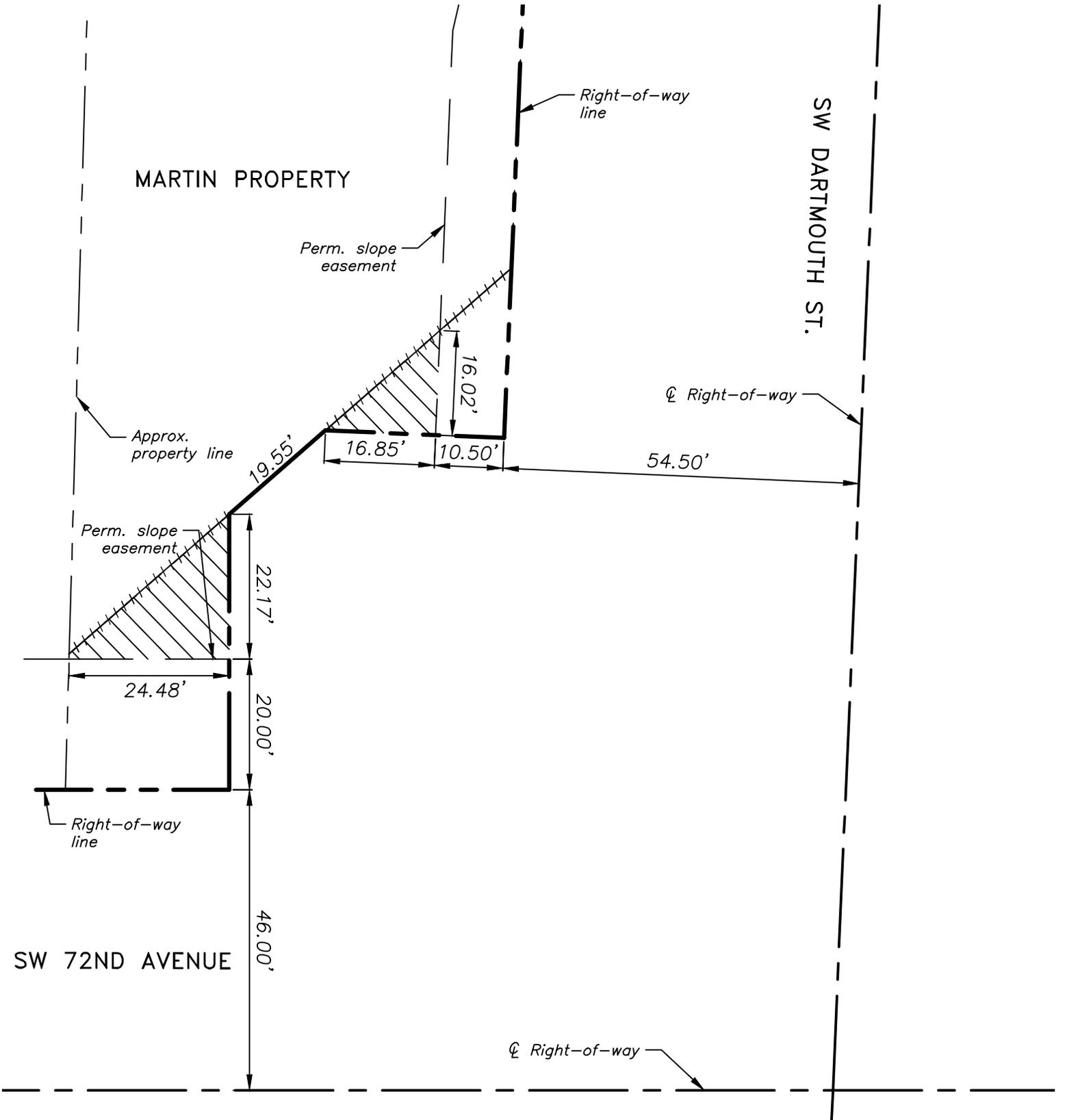
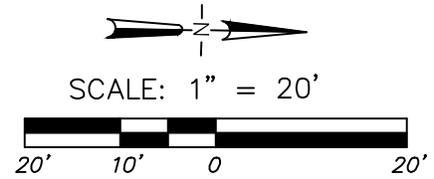
WHPacific

9755 SW Barnes Rd, Suite 300
Portland, OR 97225
503-626-0455 Fax 503-526-0775
www.whpacific.com



EXHIBIT A

MARTIN PROPERTY
MAY 12, 2015



1 **EXHIBIT B**

2
3
4 **IN THE CIRCUIT COURT OF THE STATE OF OREGON**
5 **FOR THE COUNTY OF WASHINGTON**

6 CITY OF TIGARD, a municipal corporation of
7 the State of Oregon,

8 Plaintiff,

9 v.

10 GORDON R. MARTIN, Trustee of the Tri-
County Center Trust u/t/a dated December 2005,

11 Defendant.

Case No. C14-1041CV

STIPULATED GENERAL JUDGMENT

12
13 THIS MATTER comes before the court based upon the stipulation and agreement of the
14 parties as evidenced by the signatures of the parties attorneys-of-record below.

15 **THE COURT FINDS:**

16 1. The real property that is the subject of this proceeding is located generally near
17 the intersection of 72nd Avenue and SW Dartmouth Street in Tigard, Washington County,
18 Oregon, is known as Tax Lot 401 of Section 1, Township 2 South, Range 1 West of the
19 Willamette Meridian, Washington County, Oregon, and is currently located on Washington
20 County Assessor Map No. 2S101BA (“Property”). The property is owned exclusively by
21 Defendant Gordon R. Martin, Trustee of the Tri-County Center Trust u/t/a dated December 2005
22 (“Defendant”).

23 2. The City of Tigard, Oregon (“the City”) has determined it has an immediate need
24 for the property and creation of a Permanent Slope Easement and a Temporary Construction
25 Easement (collectively “Easements”). On or about May 14, 2013, the City, acting through its

1 governing body, the Tigard City Council, adopted Resolution 13-19 (“Resolution”) declaring
2 that the acquisition of the Easements on selected portions of the Property (“Selected Property”)
3 were needed and further that immediate acquisition of the Easements were required as part of the
4 72nd Ave/Dartmouth Street Intersection Improvement Project (“Project”), said Project being
5 necessary for the public purpose of protecting the health, safety, benefit, and general welfare of
6 the public by addressing maintenance and flooding issues in the area; and that the proposed
7 improvements to the Selected Property will be planned, designed, located and constructed in a
8 manner that will be most compatible with the greatest public benefit and the least private injury
9 or damage. A true copy of the legal descriptions and the survey of the Permanent Slope
10 Easement and the Temporary Construction Easement are Exhibits A and B, and by this
11 reference, incorporated herein.

12 3. The City, prior to the commencement of this action and pursuant to its lawful
13 resolution, attempted to acquire the Easements by agreement and purchase, but was unable to do
14 so.

15 4. On March 21, 2014, the City deposited with the Clerk of this Court \$5,900 for the
16 use and benefit of Defendant, which sums have already been disbursed to Defendant by virtue of
17 the *Order for Defendant’s Withdrawal of Funds* on file herein.

18 5. The sum that the City and Defendant have agreed upon for purposes of settlement
19 of the City’s condemnation of the Right of Way and the Easement, including damages for the
20 appropriation, is \$5,900.

21 6. The Easements described in Exhibits A and B are appropriated for public
22 purposes;

23 7. The City is now entitled to judgment, appropriating the Easements to the City.

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Now therefore,

IT IS HEREBY ORDERED AND ADJUDGED:

1. The Easements described in Exhibits A and B are appropriated for public purposes and such Easements are granted to the City.

IT IS FURTHER ORDERED AND ADJUDGED that neither party shall be awarded their attorney fees or costs incurred herein.

DATED this ____ day of _____, 2015.

Circuit Court Judge

IT IS SO STIPULATED AND AGREED:

JORDAN RAMIS PC
Attorneys for Plaintiff
City of Tigard

BATEMAN SEIDEL MINER BLOMGREN
CHELLIS & GRAM, PC
Attorney for Defendant Gordon R. Martin,
Trustee of the Tri-County Center Trust u/t/a
dated December 2005

By: _____
Peter D. Mohr, OSB # 013556

By: _____
Gregory J. Miner, OSB # 862479

Date: _____

Date: _____

SUBMITTED BY:

JORDAN RAMIS PC
Peter D. Mohr, OSB # 013556
Peter.Mohr@jordanramis.com
Attorneys for Plaintiff City of Tigard

EXHIBIT "A"

S.W. 72nd Avenue &
S.W. Dartmouth Street Intersection
February 6, 2013
Parcels 1 and 2

City Road Project No.: 95035
File No.: 01
Assessors Map: 2S 1 01BA
Tax Lot No.: 00401

PARCEL 1 (SLOPE EASEMENT)

A parcel of land lying in the Northeast One-Quarter of Section 1, Township 2 South, Range 1 West of the Willamette Meridian, Washington County, Oregon, and being a portion of that tract of land conveyed to Gordon R. Martin, by Bargain and Sale Deed recorded December 28, 2005, in Document No. 2005-163368, Washington County Book of Records, said parcel also being all that portion lying Easterly of the line delineated by following the below noted stations and offsets, Westerly of the Centerline of S.W. 72nd Avenue, as said Centerline is described below.

S.W. 72nd AVENUE CENTERLINE

A road Centerline situated in the Southeast One-Quarter of Section 36, Township 1 South, Range 1 West of the Willamette Meridian in Washington County, Oregon and in the Northeast One-Quarter of Section 1, Township 2 South, Range 1 West of the Willamette Meridian in Washington County, Oregon, being more particularly described as follows:

Beginning at SW 72nd Avenue right-of-way Centerline Station 127+18.37, said point bears South 65° 48' 43" West, a distance of 2120.02 feet from the Northeast One-Quarter corner of Section 1, Township 2 South, Range 1 West, of the Willamette Meridian; said point being the point of curvature of a 285.16 foot radius curve, concave Westerly, thence along said Centerline through a central angle of 24° 06' 20" (the long chord of which bears North 11° 02' 44" East, a distance of 119.09 feet) an arc distance of 119.97 feet to a point of tangency at Centerline Station 128+38.35; thence North 01° 00' 26" West, a distance of 800.38 feet to Station 136+38.72, a Centerline angle point; thence North 01° 43' 36" East, a distance of 920.85 feet to Station 145+59.57, at the point of terminus, said point bears South 39° 14' 07" West, a distance of 1,165.26 feet from the North One-Quarter corner of Section 1, Township 2 South, Range 1 West, Willamette Meridian.

Centerline Stationing for SW 72nd Avenue is determined by holding a Station of 136+03.69 = 23+72.60 at the right-of-way Centerline of SW 72nd Avenue and the right-

Exhibit "A"
Page 1 of 3

of-way Centerline of SW Dartmouth Street, as per Survey Number 30,893, Washington County Survey Records.

Bearings are based upon Survey Number 30,893, Washington County Survey Records.

Station to Station	Offset Distances Westerly of S.W. 72nd Avenue Centerline
128+60.00 to 129+63.00	54.00 feet parallel with the centerline

Excepting therefrom, all that portion of said parcel lying within the existing right-of-way of S.W. 72nd Avenue.

The parcel of land to which this description applies contains 711 square feet, more or less.

PARCEL 2 (TEMPORARY CONSTRUCTION EASEMENT)

A parcel of land lying in the Northeast One-Quarter of Section 1, Township 2 South, Range 1 West of the Willamette Meridian, Washington County, Oregon, and being a portion of that tract of land conveyed to Gordon R. Martin, by Bargain and Sale Deed recorded December 28, 2005 in Document No. 2005-163368, Washington County Book of Records, said parcel also being all that portion lying Easterly of the lines delineated by following the below noted stations and offsets, Westerly of the Centerline of S.W. 72nd Avenue, as said Centerline is described above under Parcel 1.

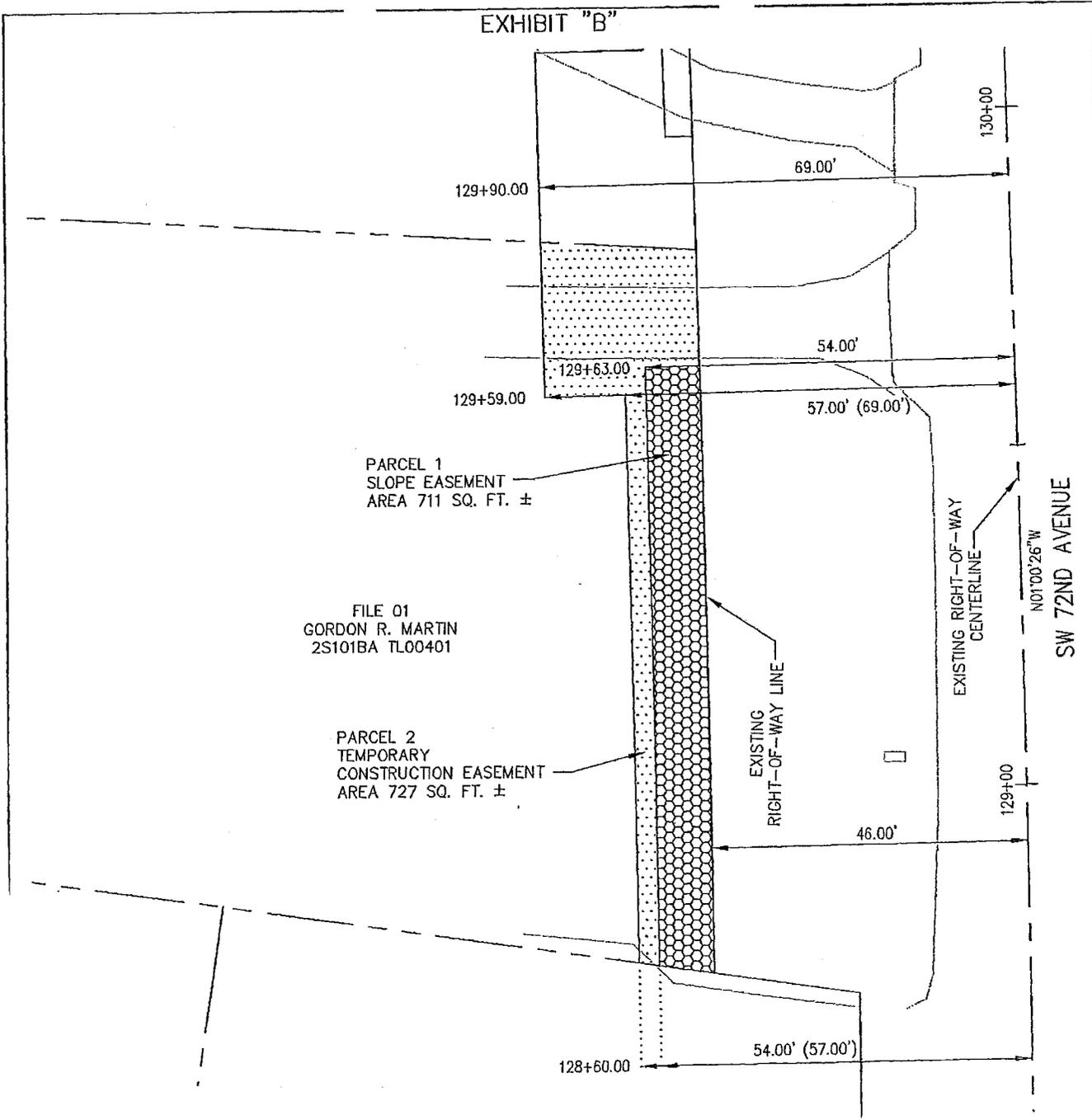
Station to Station	Offset Distances Westerly of S.W. 72nd Avenue Centerline
128+60.00 to 129+59.00	57.00 feet parallel with the centerline
129+59.00 to 129+90.00	69.00 feet parallel with the centerline

Excepting therefrom, all that portion of said parcel lying within the existing right-of-way of S.W. 72nd Avenue and all that portion within the above described Parcel 1.

The parcel of land to which this description applies contains 727 square feet, more or less.

REGISTERED
PROFESSIONAL
LAND SURVEYOR
Scott M. Grubbs
OREGON
JULY 13, 2004
SCOTT M. GRUBBS
54728
RENEWAL: 06-30-13

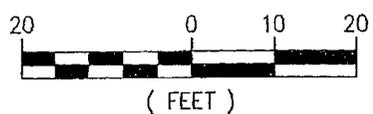
EXHIBIT "B"



FILE 01
GORDON R. MARTIN
2S101BA TL00401

PARCEL 2
TEMPORARY
CONSTRUCTION EASEMENT
AREA 727 SQ. FT. ±

PARCEL 1
SLOPE EASEMENT
AREA 711 SQ. FT. ±



LEGEND

- SLOPE EASEMENT (PARCEL 1) 711 SQ. FT. ±
- TEMPORARY CONSTRUCTION EASEMENT (PARCEL 2) 727 SQ. FT. ±

FILE NO.: 01
FAX LOT: 00401
FAX MAP: 2S 1 01BA
ADDRESS: 12265 SW 72ND AVENUE

**SW 72ND AVENUE &
SW DARTMOUTH STREET
INTERSECTION**
CITY OF TIGARD PROJECT NO. 95035

SUBMITTAL DATE: 02/06/13
REVISED DATE:
REVISED DATE:
REVISED DATE:

WHPacific
3155 SW Barrows Rd. Suite 200
 Tigard, OR 97153
 503-636-4415 Fax: 503-636-4775
 www.whpacific.com
 DWG: 037814-V-EXF01.dwg

EXHIBIT
PAGE 4 OF 4

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on the date shown below, I served a true and correct copy of the
3 foregoing STIPULATED GENERAL JUDGMENT on:

4 Gregory J. Miner
5 Bateman Seidel Miner Blomgren Chellis & Gram, PC
6 888 SW 5th Ave Ste 1250
7 Portland OR 97204
8 Facsimile: (503) 972-9952
9 E-mail: gminer@batemanseidel.com
10 Attorney for Defendant Gordon R. Martin, Trustee of the Tri-County
11 Center Trust u/t/a dated December 2005

- 12 by first class mail, postage prepaid.
- 13 by hand delivery.
- 14 by facsimile transmission.
- 15 by facsimile transmission and first class mail, postage prepaid.
- 16 by electronic transmission.
- 17 by electronic transmission and first class mail, postage prepaid.

18 DATED: July _____, 2015.

19 _____
20 Peter D. Mohr, OSB # 013556
21 Attorney for Plaintiff City of Tigard

AIS-2336

7.

Business Meeting

Meeting Date: 08/25/2015

Length (in minutes): 5 Minutes

Agenda Title: Schedule a Public Hearing for Vacation of a Public Utility Easement on Ash Avenue

Submitted By: Sean Farrelly, Community Development

Item Type: Resolution

Meeting Type: Council Business Meeting - Main

Public Hearing: No

Publication Date:

Information

ISSUE

Should the City Council initiate vacation proceedings and schedule a public hearing to consider vacating 100 square feet of a public utility easement abutting property on Ash Avenue?

STAFF RECOMMENDATION / ACTION REQUEST

Approve the attached Resolution initiating proceedings to consider vacating a public utility easement by public hearing before Council on September 15, 2015.

KEY FACTS AND INFORMATION SUMMARY

As part of the Ash Burnham redevelopment project, the City Center Development Agency is requesting the vacation of an unused 100 square foot public utility easement abutting the former dog park property. This easement was dedicated to the public for the benefit of Frontier Communications for a utility pole that was removed as part of the Ash Burnham street improvement process. The easement is no longer needed. Because the easement was dedicated to the public, a public hearing must be held to vacate it.

In the City vacation process there are two ways of initiating the vacation of streets, easements and other public dedicated areas. The City Council may initiate vacation proceedings by passing a Resolution to schedule a formal public hearing to consider such a vacation. The second option is for an applicant to file a petition with the Planning Commission requesting a vacation. This requires signatures of all abutting property owners and of the owners of two-thirds of the properties affected by the vacation. The Planning Commission then makes a recommendation to the City Council based on compliance with the Comprehensive Plan.

In this case, the City Council is being asked to initiate the vacation proceedings and schedule the required public hearing because the only adjacent property owner is the City Center Development Agency.

OTHER ALTERNATIVES

Council could not approve the resolution and not initiate the public utility easement vacation process. This would significantly delay the Burnham and Ash redevelopment project.

COUNCIL GOALS, POLICIES, APPROVED MASTER PLANS

Tigard City Council 2015-17 Goals and Milestones

Goal #2. Make Downtown Tigard a Place Where People Want to Be

DATES OF PREVIOUS COUNCIL CONSIDERATION

This issue has not previously been considered by City Council.

Attachments

Resolution

Exhibit A

Exhibit B

CITY OF TIGARD, OREGON
TIGARD CITY COUNCIL
RESOLUTION NO. 15-

A RESOLUTION SETTING A DATE OF PUBLIC HEARING REGARDING THE VACATION OF A 100 SQUARE FOOT PUBLIC UTILITY EASEMENT ADJACENT TO WASHINGTON COUNTY TAX MAP 2S102AD, LOT 2900 ADJACENT TO ASH AVENUE

WHEREAS, the City Center Development Agency has requested vacation proceedings to vacate an approximately 100 square foot utility easement which had previously been dedicated to the public; and

WHEREAS, the Tigard City Council finds it appropriate to initiate vacation proceedings for the requested public utility easement vacation.

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

SECTION 1: The Tigard City Council hereby initiates a request for the vacation of a 100 square foot public utility easement and more particularly described and shown in Exhibits A and B and by reference made a part thereof.

SECTION 2: A public hearing is hereby called to be held on September 15, 2015 at 6:30 p.m. in the Town Hall at Tigard City Hall, 13125 SW Hall Boulevard, at which time and place the Council will hear any objections thereto and any interested person may appear and be heard for or against the proposed vacation of said public utility easement.

SECTION 3: This resolution is effective immediately upon passage.

PASSED: This _____ day of _____ 2015.

Mayor - City of Tigard

ATTEST:

City Recorder - City of Tigard

Exhibit A

Parcel 3 – Public Utility Easement

Beginning at a point 20.00 feet southerly of station 11+40.08 on the southeast corner of the Warranty Deed to the City of Tigard in book 940 page 231 of the Washington County Deed records; thence S 44° 30' 33" W, along the southerly line of said deed a distance of 17.50 feet to a point 37.50 feet off the relocated Burnham Street described above; thence N 43°16'11" W, parallel with the relocated center line of Burnham Street, a distance of 9.32 feet to a point of curve of a curve to the left; thence along said curve to the left with a radius of 21.50 feet, a central angle of 74° 59' 56" (a chord which bears N 80° 46' 09" W, 26.18 feet) and a length of 28.14 feet to a point of tangency; thence S 61° 43' 53" W a distance of 138.76 feet to a point of curve of a curve to the left and the **True Point of beginning**; thence S 38° 16' 07" E a distance of 10.00 feet; thence N 61° 43' 55"E a distance of 10.00 feet; thence N 38° 16' 07" W a distance of 10.00 feet; thence S 61° 43' 55"W a distance of 10.00 feet to the true point of beginning

Containing 100 square feet ;

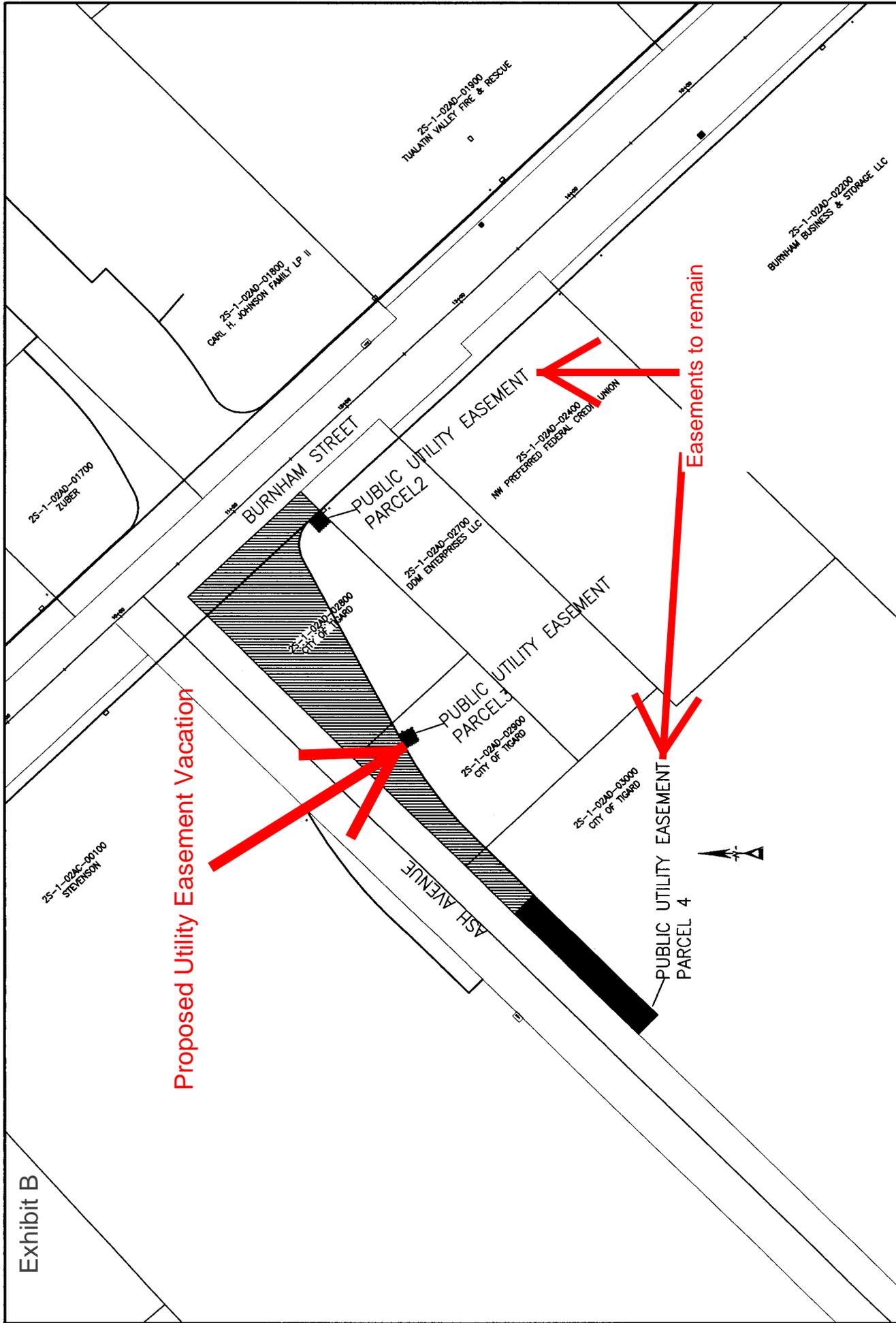


Exhibit B

Proposed Utility Easement Vacation

Easements to remain

FIGURE	FILE NO
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BURNHAM STREET EXHIBIT B

CAPITAL CONSTRUCTION AND
TRANSPORTATION DIVISION
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