



Home of the Tualatin River National Wildlife Refuge

CITY COUNCIL MEETING PACKET

FOR

Tuesday, May 1, 2012

**Sherwood City Hall
22560 SW Pine Street
Sherwood, Oregon**

6:00pm Work Session

7:00pm Regular City Council Meeting

URA Board of Directors Meeting
(following the City Council Meeting)



Home of the Tualatin River National Wildlife Refuge

6:00PM WORK SESSION

REGULAR CITY COUNCIL MEETING

1. CALL TO ORDER

2. PLEDGE OF ALLEGIANCE

3. ROLL CALL

4. CONSENT:

- A. Approval of April 3, 2012 City Council Meeting Minutes
- B. Approval of April 17, 2012 City Council Meeting Minutes
- C. Approval of April 18, 2012 City Council Meeting Minutes
- D. Approval of April 23, 2012 City Council Meeting Minutes
- E. Resolution 2012-020 Approving employment related decisions of the Pro Tem City Manager consistent with Section 33 of the Sherwood Charter
- F. Resolution 2012-021 Authorizing the City Manager Pro Tem to enter into an Intergovernmental Agreement with Washington County for development of West Nile Virus Response Plan

5. PRESENTATIONS

- A. Eagle Scout Recognition

6. CITIZEN COMMENTS

7. NEW BUSINESS

- A. Resolution 2012-022 Authorizing an Intergovernmental Agreement (IGA) with ODOT to receive Transportation Growth Management (TGM) Funds to develop a plan for the Sherwood Town Center (Julia Hajduk, Planning Manager)

8. PUBLIC HEARINGS

- A. Ordinance 2012-003 Amending multiple sections of the Zoning and Community Development Code relating to trees on private property, including Divisions, I, V and VIII (Zoe Monahan, Assistant Planner) Continued from March 20, 2012
- B. Ordinance 2012-004 Amending Sherwood Municipal Code Section 15.16.100 regarding System Development Charge Credits (Tom Pessemier, City Manager Pro Tem)

AGENDA

**SHERWOOD CITY COUNCIL
May 1, 2012**

6:00pm Work Session

7:00pm Regular City Council Meeting

**URA Board of Directors Meeting
(Following the Regular Council Mtg.)**

**Sherwood City Hall
22560 Pine Street
Sherwood, OR 97140**

9. CITY MANAGER AND DEPARTMENT REPORTS

10. COUNCIL ANNOUNCEMENTS

11. ADJOURN TO URA BOARD OF DIRECTORS MEETING

How to Find Out What's on the Council Schedule:

City Council meeting materials and agenda are posted to the City web page at www.sherwoodoregon.gov, by the Friday prior to a Council meeting. Council agendas are also posted at the Sherwood Library/City Hall, the YMCA, the Senior Center, and the City's bulletin board at Albertson's. Council meeting materials are available to the public at the Library.

To Schedule a Presentation before Council:

If you would like to appear before Council, please submit your name, phone number, the subject of your presentation and the date you wish to appear to the City Recorder Sylvia Murphy by calling 503-625-4246 or by e-mail to: murphys@sherwoodoregon.gov



SHERWOOD CITY COUNCIL MINUTES
22560 SW Pine St., Sherwood, Or
April 3, 2012

REGULAR CITY COUNCIL MEETING

1. **CALL TO ORDER:** Mayor Mays called the meeting to order at 7:10 pm.
2. **PLEDGE OF ALLEGIANCE:**
3. **ROLL CALL:**
4. **COUNCIL PRESENT:** Mayor Keith Mays, Council President Dave Grant, Councilors Bill Butterfield, Matt Langer, Linda Henderson, Robyn Folsom and Krisanna Clark.
5. **STAFF AND LEGAL COUNSEL PRESENT:** City Manager Pro Tem Tom Pessemier, Police Chief Jeff Groth, Public Works Director Craig Sheldon, Finance Director Craig Gibbons, Economic Development Manager Tom Nelson, City Engineer Bob Galati, Civil Engineer Jason Waters, Engineering Associate Craig Christensen, Administrative Assistant Kirsten Allen and City Recorder Sylvia Murphy. City Attorney Paul Elsner.

Mayor Mays addressed the Consent Agenda and asked for a motion.

6. **CONSENT AGENDA**
 - A. **Approval of March 20, 2012 City Council Meeting Minutes**
 - B. **Resolution 2012-016 Approving employment related decisions of the Pro Tem City Manager consistent with Section 33 of the Sherwood Charter**
 - C. **Resolution 2012-017 Reappointing Alyse Vordermark to the Cultural Arts Commission**
 - D. **Resolution 2012-018 Reappointing David Scheirman to the Parks and Recreation Board**

MOTION: FROM COUNCILOR LINDA HENDERSON TO APPROVE THE CONSENT AGENDA, SECONDED BY COUNCILOR ROBYN FOLSOM, ALL COUNCIL MEMBERS VOTED IN FAVOR.

Mayor Mays addressed the next agenda item.

7. **PRESENTATIONS**
 - A. **Proclamation Declaring Arbor Day**

Mayor Mays read a portion of the Proclamation proclaiming April 20, 2012 as Arbor Day and invited the public to an Arbor Day celebration event of tree planting on Friday April 20th.

B. Proclamation Declaring National Healthy Kids Day

Mayor Mays read a portion of the Proclamation declaring April 28, 2012 as National Healthy Kids Day and welcomed the public to attend Healthy Kids Day at the Sherwood YMCA on Saturday, April 28th.

C. Eagle Scout Recognition

Mayor Mays called forward Eagle Scout Josef Luedloff and asked for a brief explanation of the project that earned him the Eagle Award. Josef explained his project was through the Forest Grove Parks & Recreation Department and he built an agility course for their dog park. Josef stated he sketched the design and built the obstacles off site over a period of two days and installed the obstacles over a period of two days. Josef stated bark chips were provided by the Parks Department and his team of volunteers moved the bark and installed 5 obstacles and benches at the park. He informed the Council his project took over 200 hours and he had the assistance of over 30 volunteers, he stated a large challenge of the project was maintaining proper records and managing receipts and documents. Josef informed the Council that his fellow scouts from the City of Hillsboro are not recognized to this extent by the City Council and thanked the Council for their recognition. Josef was asked by Council to recite the Scout Oath of Honor, which was proudly recited. Mayor Mays presented Josef with a Certificate of Achievement.

Mayor Mays addressed the next agenda item.

8. CITIZEN COMMENTS

Jim Claus 22211 SW Pacific Hwy, Sherwood came forward asked City Manager Pro Tem Tom Pessemier to instruct City crews cleaning the storm water on Cedar Creek to stay off of his property and to remove the trash and cuttings and commented regarding trespassing and depressing property values. Mr. Claus requested that the footprints on Columbia be checked and stated they have changed since he sold the property and stated that property value is based on footprints. Mr. Claus commented regarding Councilor Langer's vote concerning the sign code. Mr. Claus stated that he has done everything to avoid a lawsuit and he is finished with trying to talk it through. Mr. Claus stated there was an old supreme court case trying to allege bad tendencies and stated it worked until they realized the federalist paper 51 is what needed to be looked at. Mr. Claus stated that the Council and the City attorney have attempted to provoke him and he is headed toward litigation under Title 42, as seen in 1983 and 1988, and he will ask for damages and legal fees. Mr. Claus stated that Council is pressing and giving incidents, including selling zoning, then restraining trade and then turning around and moving documents and hundreds of thousands of dollars around. Mr. Claus state he heard things like retailing is not a zero sum game and he thought Councilman Grant told him the more retailing you get the better off you are. Mr. Claus stated that retailing breeds retailing is not a true statement and that you are going to have a certain average of retailing in a community and what you are doing is taking that person's zoning. Mr. Claus stated that he realizes the game is about driving him to a point to make him appear illogical. Mr. Claus stated there was a former mayor who resigned and when you start looking at ethics you better be careful what you are doing. Mr. Claus stated that when you are enriching yourself it is called a potential or actual conflict of interest and the sign code is

more of the same and said that at this point it is a professional matter and we are going to handle it professionally.

Tom Nelson, 15991 SW Windrow Lane, Sherwood came forward and stated he comes before Council as a concerned citizen, an employee until April 13th, a taxpayer and a voter concerned with Council's direction. Mr. Nelson stated that in 2006-07 the Council adopted an ambitious economic development strategy and the first priority of the strategy was to hire an economic development professional to lead the City in the implementation of this strategy. Mr. Nelson stated he left a very good position with the State of Oregon in December 2007 because he saw the vision and wanted to be part of something that was great. Mr. Nelson stated that Sherwood has succeeded in developing a reputation as a good place to do business and a place that people want to be. Mr. Nelson stated that great strides have been made in redeveloping old town, getting Sherwood Main Street off the ground, and Sherwood is recognized as having one of the most successful urban renewal agencies in the state. Mr. Nelson stated that he has been called to sit on statewide and regionally boards because people recognize that success energizes organizations and leads towards success. Mr. Nelson stated that a limited portion of the position was to manage the Urban Renewal Agency and its associated projects. Mr. Nelson stated that a good deal of the urban renewal project work is done, but the work is not complete and that there is much to do in the realm of economic development. Mr. Nelson stated that most of the infrastructure is in place and the economy is on the rebound. Mr. Nelson stated that other communities are adding economic development staff and now is not the time to slow the momentum but to become more aggressive in taking advantage of recruitment, retention and expansion opportunities. Mr. Nelson compared the removal of the economic development position to removing a director of a play or a quarterback in a game and he believes like most economic development professionals the action to be a shortsighted, poorly vetted strategic decision with no vision. Mr. Nelson stated he will be okay personally, but that he was committed to his work in Sherwood regardless of other opportunities and hurts as a person invested in completing a job and for a community that may have lost its way forward. Mr. Nelson stated to set the record straight for some that thought this was a performance related issue it was not and has had nothing but exemplary performance reviews and said he has been assured that this is about budget. Mr. Nelson stated his motivation was to do what is best for the Sherwood community and implored Council not to be immobilized by budget fears and lose the vision of what can be achieved with the right investment. Mr. Nelson stated we are on the precipice of great success and all the tools are there and urged the Council to put people in place that know how to use them. Mr. Nelson stated he has been committed to assisting staff, our partners and the community in this transition and knew this would be the last opportunity to call upon the Council with the ramifications of their actions and call to their attention the vision of a successful and prosperous Sherwood.

Mayor Mays addressed the next agenda item.

8. NEW BUSINESS

A. Resolution 2012-019 authorizing the City Manager Pro Tem to award a construction contract for the SW Edy Road Sidewalk Improvements Project

Civil Engineer Jason Waters came forward and stated the resolution was to award the contract for a sidewalk infill project between Borchers and Copper Terrace to Subcom Excavation and Utilities. Jason stated that there was a public formal bidding process with a bid opening at City Hall and the protest period has ended. Jason stated that the bidder packet has been discussed with legal

counsel and staff has determined that Subcom is responsive and their references have been checked.

Mayor Mays asked if supported by the Council what is the expected completion date. Jason replied we hope to have it completed by the end of May.

With no further discussion the following motion was received.

MOTION: FROM COUNCIL PRESIDENT GRANT TO ADOPT RESOLUTION 2012-019, SECONDED BY COUNCILOR ROBYN FOLSOM, ALL COUNCIL MEMBERS VOTED IN FAVOR.

Mayor Mays addressed the next agenda item.

9. CITY MANAGER REPORT

City Manager Pro Tem Tom Pessemier informed the Council that the proposed budget is available online, under the finance department, and copies are in the library for the public who would like to review. Tom stated there will be budget committee meetings on April 16th and April 23rd and on the April 30th, if necessary. Tom explained the process as staff builds a proposed budget that is then reviewed by the budget committee which makes a recommendation to City Council to adopt the final budget. Tom stated there will be multiple opportunities for public testimony and to listen and become part of the budget process.

Tom stated there was an initiative submitted from a Sherwood citizen regarding revising the City Charter to prevent any City funds from being spent in regards to public rail projects that may come to the City. Tom explained that the process is that the City attorney looks at it with the City Recorder, a ballot title is prepared, and the petitioner collects signatures.

Mayor Mays addressed the next agenda item.

10. COUNCIL ANNOUNCEMENTS

Mayor Mays reported that Washington County Board has started the process to select projects for the next five year MSTIP (Major Streets Transportation Improvement Program) where roughly \$42 million will be allocated to four commission districts. Mayor Mays stated the Board, last Tuesday decided to select some projects to green light now as to not miss out on the 2013 construction season and voted to support Sherwood's request of \$10.5 million to improve Tualatin Sherwood Road. Mayor Mays stated that the engineering has already been allocated and meetings with businesses and property owners set. Mayor Mays stated the project will improve the function of the intersection at Roy Rogers and Tualatin Sherwood Rd at 99W and increase to five lanes in each direction roughly to Borchers Drive and Langer Farms Parkway. Mayor Mays stated the project is slated to be done during the construction season next year. Mayor Mays stated that the City will continue to advocate as there are roughly \$25 million worth of other projects that the City would like to do and the availability of funds for those projects will be determined around August.

Mayor Mays explained the MSTIP Program, and said about 25 years ago the first 5 year tax levy was approved by the voters of Sherwood to approve a set of projects throughout the County to tax themselves, and this was a successful program and after 5 years they did it again and then again

and after the third time with Measure 5, Measure 49 and 50, that local option tax for construction got rolled into a permanent tax rate for the County. Mayor Mays stated the County continues to pledge to isolate those dollars for transportation projects using the original guidelines for projects in five year project windows throughout the County. Mayor Mays stated that this is now MSTIP 3D which has been very successful and neighboring Counties have been envious. Mayor Mays explained that cities within the County propose projects every five years to an advisory committee, the Washington County Coordinating Committee (WCCC). Mayor Mays stated Roy Rogers, our County Commissioner is the Chair of this committee and he (Mayor Mays) has been the Vice Chair for the last three years and said the committee is composed primarily of mayors that make recommendations to the County Board. Mayor Mays stated that we may see some benefit next year and we are focusing energy on projects on SW 124th, getting utilities in this area between Tualatin, Sherwood and Wilsonville. Mayor Mays informed of other projects such as purchasing right-of-way to build a future road at the end of 124th in Wilsonville over to Boones Ferry; on Hwy99 at Elwert and Kruger, as this is a safety issue as well as an economic opportunity and a project near us, but not in the City limits, at the intersection of Roy Rogers and Scholls-Sherwood.

Councilor Folsom stated that there is very little that the City could do without that sort of money for large projects and the City is limited in what can be done without it.

Mayor Mays replied it's a great resource and staff has done a great job in helping to position us and get the support from County staff and County Commissioners.

Ms. Folsom stated that staff seems to always be ahead of the game and ready so that the City is able to get grants when they are available and gave the example of Jason Waters who worked on the Cedar Creek project.

11. ADJOURN

Mayor Mays adjourned the Council meeting at 7:40 pm and convened to a URA Board of Directors meeting.

Submitted by:

Sylvia Murphy, CMC, City Recorder

Keith S. Mays, Mayor



SHERWOOD CITY COUNCIL MINUTES
22560 SW Pine St., Sherwood, Or
April 17, 2012

CITY COUNCIL EXECUTIVE SESSION

1. **CALL TO ORDER:** Mayor Mays called the meeting to order at 11:45 am.
2. **COUNCIL PRESENT:** Mayor Keith Mays, Council President Dave Grant, Councilors Bill Butterfield, Matt Langer, Robyn Folsom, Linda Henderson and Krisanna Clark.
3. **STAFF PRESENT:** City Recorder Sylvia Murphy.
4. **OTHERS PRESENT:** Waldron representative Lara Cunningham, City Manager candidate finalists; Tom Pessemier, Ronald Foggin and Joseph Gall.
5. **TOPIC DISCUSSED:** City Manager recruitment and candidate interviews, pursuant to ORS 192.660(2)(a) Employment of Public Officers and ORS 192.660(2)(f) Exempt Public Records. City Council conducted interviews with City Manager candidate finalists, discussion followed.
6. **ADJOURN:**

Mayor Mays adjourned the Executive Session at 5:00 pm.

Submitted by:

Sylvia Murphy, CMC, City Recorder

Keith S. Mays, Mayor



SHERWOOD CITY COUNCIL MINUTES
22560 SW Pine St., Sherwood, Or
April 18, 2012

CITY COUNCIL EXECUTIVE SESSION

1. **CALL TO ORDER:** Mayor Mays called the meeting to order at 8:38 am.
2. **COUNCIL PRESENT:** Mayor Keith Mays, Council President Dave Grant, Councilors Bill Butterfield, Matt Langer, Robyn Folsom, Linda Henderson and Krisanna Clark.
3. **STAFF AND LEGAL COUNSEL PRESENT:** City Recorder Sylvia Murphy and City attorney Paul Elsner.
4. **OTHERS PRESENT:** Waldron representatives Lara Cunningham, Heather Gantz and Jeremy Parks.
5. **TOPIC DISCUSSED:** City Manager recruitment process pursuant to ORS 192.660(2)(a) Employment of Public Officers and ORS 192.660(2)(f) Exempt Public Records. City Council reviewed interview panel feedback provided by Waldron.

City Recorder note: Councilor Langer left the meeting at 10:27 am.

6. ADJOURN:

Mayor Mays adjourned the Executive Session at 10:40 am.

Submitted by:

Sylvia Murphy, CMC, City Recorder

Keith S. Mays, Mayor



SHERWOOD CITY COUNCIL MINUTES
22560 SW Pine St., Sherwood, Or
April 23, 2012

CITY COUNCIL EXECUTIVE SESSION

1. **CALL TO ORDER:** Mayor Mays called the meeting to order at 5:05 pm.
2. **COUNCIL PRESENT:** Mayor Keith Mays, Council President Dave Grant, Councilors Bill Butterfield, Matt Langer, Robyn Folsom, Linda Henderson and Krisanna Clark.
3. **STAFF AND LEGAL COUNSEL PRESENT:** City Recorder Sylvia Murphy and City attorney Paul Elsner.
4. **OTHERS PRESENT:** Waldron representatives Lara Cunningham and Heather Gantz. Sally Ho with the Oregonian.
5. **TOPIC DISCUSSED:** City Manager recruitment process pursuant to ORS 192.660(2)(a) Employment of Public Officers and ORS 192.660(2)(f) Exempt Public Records. City Council reviewed additional candidate information provided by Waldron.

City Recorder note: Councilor Butterfield left the meeting at 5:20 pm and returned at 5:23 pm.

6. ADJOURN:

Mayor Mays adjourned the Executive Session at 6:13 pm and stated Council would convene a regular session following the Budget Committee meeting this evening.

REGULAR CITY COUNCIL SESSION

1. **CALL TO ORDER:** Mayor Mays called the meeting to order at 7:35 pm.
2. **COUNCIL PRESENT:** Mayor Keith Mays, Council President Dave Grant, Councilors Bill Butterfield, Matt Langer, Robyn Folsom, Linda Henderson and Krisanna Clark.
3. **STAFF PRESENT:** City Recorder Sylvia Murphy, Finance Director Craig Gibbons, Accounting Supervisor Julie Blums, Public Works Director Craig Sheldon, Operations Supervisor Rich Sattler, Community Services Director Kristen Switzer, IT Director Brad Crawford and Police Captain Mark Daniel.

4. TOPIC DISCUSSED:

A. City Manager Recruitment Process: Mayor Mays explained the City Manager recruitment process coordinated by Waldron HR and Waldron receiving 83 total applications for the

position. Mayor Mays stated the process resulted in 3 final candidates being interviewed by the City Council, a panel of community members and a panel of senior city staff members. Mayor Mays stated the Council met in Executive Sessions to review candidate information and feedback received from the interview panels and said the candidates were very qualified and the decision was very difficult.

Mayor Mays stated the Council will be giving direction to Waldron HR and the City attorney to negotiate an employment contract with Joseph Gall from Fairview, Oregon and will schedule the consideration of approval of said contract on the May 15th Council agenda. Mayor Mays stated Council President Dave Grant and Councilor Linda Henderson will be liaisons in the negotiation process.

Mayor Mays stated candidate and City Manager Pro Tem Tom Pessemier far exceeded Council expectations within the last six months of his leadership with overseeing the budget process, managing the URA and projects. Mayor Mays stated the Council was very appreciative and proud of the work done by Tom and valued his work performed in the community and stated Tom will be successful at whatever he does.

5. ADJOURN:

Mayor Mays adjourned at 7:40 pm.

Submitted by:

Sylvia Murphy, CMC, City Recorder

Keith S. Mays, Mayor

TO: Sherwood City Council

FROM: Craig Sheldon, Public Works Director

SUBJECT: RESOLUTION 2012-021 A RESOLUTION AUTHORIZING THE CITY MANAGER PRO TEM TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT WITH WASHINGTON COUNTY FOR DEVELOPMENT OF A WEST NILE VIRUS RESPONSE (WNV) PLAN.

ISSUE: Should the City adopt the Intergovernmental Agreement and attachment A for a West Nile Virus Plan?

BACKGROUND: In 2003 the City entered into an Intergovernmental Agreement with Washington County governing a West Nile Virus Plan, which was renewed in 2005, 2007, 2009 and 2011.

Washington County coordinates efforts to meet the goals of the State Health Service's West Nile Virus response plan. Responsibility of those efforts is to hire a Mosquito Control Coordinator, develop sampling plan, train City staff, provide larvicide product to treat city-owned sumped catch basins, maintain a database for mapping of complaints, alert jurisdictions of confirmed WNV case.

The City will provide catch basin treatments, delivery of samples at county prescribed intervals, educate our patrons on source reduction efforts and ways to reduce risk.

FINDINGS: Signing the Intergovernmental Agreement with Washington County allows County and City staff to work cooperatively in developing a response plan for treatment and prevention of the West Nile Virus.

RECOMMENDATION: MOTION TO ADOPT RESOLUTION 2012-021 A RESOLUTION AUTHORIZING THE CITY MANAGER PRO TEM TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT WITH WASHINGTON COUNTY FOR DEVELOPMENT OF A WEST NILE VIRUS RESPONSE PLAN.



RESOLUTION 2012- 021

A RESOLUTION AUTHORIZING THE CITY MANAGER PRO TEM TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT WITH WASHINGTON COUNTY FOR DEVELOPMENT OF WEST NILE VIRUS RESPONSE PLAN

WHEREAS, ORS 190.003 – 190.110 encourages intergovernmental cooperation and authorizes local government entities to delegate to each other authority to perform their respective functions as necessary; and

WHEREAS, the parties agree that performing these responsibilities in a collaborative and cooperative manner promotes the cost-effective and efficient use of public resources; and

WHEREAS, the City has the responsibility to protect human health and the environment; and

WHEREAS, the arrival of this virus demands a response that is regionally coordinated, effective, ecologically sound, and proportionate to the potential risk presented by the virus.

NOW, THEREFORE, THE CITY OF SHERWOOD RESOLVES AS FOLLOWS:

Section 1. The City Manager Pro Tem is authorized to sign the Intergovernmental Agreement with Washington County for development of the West Nile Virus Response Plan, attached as Exhibit A.

Section 2. This Resolution shall be effective upon its approval and adoption.

Duly passed by the City Council this 1st day of May 2012.

Keith S. Mays, Mayor

Attest:

Sylvia Murphy, CMC, City Recorder

INTERGOVERNMENTAL AGREEMENT

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

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

Now, therefore, the parties agree as follows:

- 1) The effective date is: 05/01/2012, or upon final signature, whichever is later.
The expiration date is: 12/30/2016; unless otherwise amended.
- 2) The parties agree to the terms and conditions set forth in Attachment A, which is incorporated herein, and describes the responsibilities of the parties, including compensation, if any.
- 3) Each party shall comply with all applicable federal, state and local laws; and rules and regulations on non-discrimination in employment because of race, color, ancestry, national origin, religion, sex, marital status, age, medical condition or handicap.
- 4) To the extent applicable, the provisions of ORS 279B.220 through ORS 279B.235 and ORS 279C.500 through 279C.870 are incorporated by this reference as though fully set forth.
- 5) Each party is an independent contractor with regard to each other party(s) and agrees that the performing party has no control over the work and the manner in which it is performed. No party is an agent or employee of any other.
- 6) No party or its employees is entitled to participate in a pension plan, insurance, bonus, or similar benefits provided by any other party.
- 7) This Agreement may be terminated, with or without cause and at any time, by a party by providing 30 (30 if not otherwise marked) days written notice of intent to the other party(s).
- 8) Modifications to this Agreement are valid only if made in writing and signed by all parties.
- 9) Subject to the limitations of liability for public bodies set forth in the Oregon Tort Claims Act, ORS 30.260 to 30.300, and the Oregon Constitution, each party agrees to hold harmless, defend, and indemnify each other, including its officers, agents, and employees, against all claims, demands, actions and suits (including all attorney fees and costs) arising from the indemnitor's performance of this Agreement where the loss or claim is attributable to the negligent acts or omissions of that party.
- 10) Each party shall give the other immediate written notice of any action or suit filed or any claim made against that party that may result in litigation in any way related to this Agreement.

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

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

Jurisdiction

Signature

Date

Printed Name

Title

Address: _____

WASHINGTON COUNTY:

Signature

Date

Printed Name

Title

Address:

155 N First Ave
Mail Stop # 5
Hillsboro, OR 97124

ATTACHMENT A

Statement of Work /Schedule/Payment Terms

The County's Responsibilities:

1. The County shall coordinate efforts to meet the goals of the State Health Service's West Nile Virus (WNV) response plan.
2. The County shall coordinate public education related to matters of public health and human behavior related to vector-borne disease throughout Washington County.
3. The County shall work with state and local health, veterinarian, agricultural, and wildlife organizations to survey and track human, equine, and avian cases of WNV.
4. The County shall alert those subject to this Intergovernmental Agreement of confirmed WNV cases.
5. The County shall employ a Mosquito Control Coordinator to design and develop a sampling program and train City staff on mosquito sampling procedures, as needed.
6. The County shall establish a schedule for City staff to submit larval and adult mosquito samples, as needed. The County Mosquito Control Coordinator shall process and track larvae and adult mosquito samples collected by City staff.
7. The County shall provide larvicide product to the City to treat publicly owned sumped catch basins under city control.
8. The County shall maintain a database of known sumped catch basin and aquatic habitats.
9. The County shall maintain a database mapping complaints, surveillance findings and mosquito control activities.
10. The County shall maintain, design, develop and conduct a regional larval and adult mosquito program that will include representative catch basins, storm water facilities, and natural areas within the County throughout the mosquito season (typically March through October).
11. The County shall maintain registration and follow requirements as an operator for the 2300 A Pesticide General Permit through the Oregon Department of Environmental Quality.
12. The County shall establish mosquito management practices for catch basins (Attachment B)
13. The County shall maintain a Pesticide Discharge Management Plan as required for the 2300A Pesticide General Permit
14. The County shall conduct mosquito surveillance, visual assessments, mosquito control measures and efficacy checks throughout the County, as needed
15. The County shall maintain all correspondences relating to agreement

CITY RESPONSIBILITIES

1. The City shall utilize and distribute public education materials provided by the County and Clean Water Services (CWS), in order to maintain a consistent regional communication strategy.

ATTACHMENT A

Statement of Work /Schedule/Payment Terms

2. The City shall actively educate neighborhood associations, community participation organizations, and other citizen groups, and encourage private property source reduction efforts and other personal behaviors that will reduce risk of exposure.
3. The City shall report bird and mosquito complaints that it receives to the County
4. The City shall identify, in cooperation with CWS, locations of storm water facilities and aquatic features that may produce mosquitoes and provide that information to the County to integrate with the County's complaint and surveillance information.
5. The City shall deliver larval and/or adult mosquito samples to the County Mosquito Control Coordinator for processing and tracking on the schedule established by the County, as needed.
6. The City shall allow the County to implement mosquito surveillance and control measures as needed, for sites under the control of the City.
7. The City shall maintain catch basins and storm water facilities to limit the presence of standing water and decaying organic debris (particularly dead cattails and grass clippings).
8. The City shall follow mosquito management practices for catch basins (Attachment B) developed by the County.
9. The City shall provide the County with reports of surveillance and/or pesticide applications, no later than 14 days after actions take place.
10. In the event the City is unable to implement mosquito surveillance and/or control measures in a timely manner, the City will notify the County and request assistance.
11. The City shall maintain pesticide application records in accordance with local, state and federal laws.
12. The City shall apply pesticides for mosquito control in compliance with local, state, and federal laws.
13. The City shall follow the County's Pesticide Discharge Management Plan regarding mosquito control as found in Attachment C and by this reference incorporated herein.
14. The City shall maintain all correspondences relating to agreement.

Unless otherwise specified herein, the parties agree that there will be no monetary compensation paid to the other that each shall bear their own costs and that reasonable and beneficial consideration exists to support this agreement.

TO: Sherwood City Council
FROM: Julia Hajduk, Planning Manager
Subject: Resolution 2012-022 authorizing Intergovernmental Agreement with the State of Oregon for use of Transportation Growth Management grant funds to develop the Sherwood Town Center Plan

EXECUTIVE SUMMARY

Summary: The City received TGM grant funds to develop a plan for the Sherwood Town Center. Prior to any work on the plan being eligible for reimbursement or credit towards the required 11% match, an IGA must be executed outlining the city, state and consultant responsibilities.

The IGA is attached as Exhibit 1 to the resolution.

Previous Council Actions: Council passed Resolution 2011-015 authorizing the City to apply for the TGM grant funds. The Council held a work session on March 6, 2012 and received an update on the project.

Background: The City was awarded \$169,100 to develop a plan for the Sherwood Town Center. The total project cost is \$190,000 and there is a required local match of \$20,900. The local match will be met through local staff time and resources. In addition, it is anticipated that an additional \$21,000 will be reimbursed to the City over the life of the project to cover a portion of the City's time involved in this project.

The purpose of the project itself is to:

- Identifies a clear vision
- Help guide development so that it reflects the vision the community has for its Town Center
- Stimulate private investment by demonstrating public support and commitment
- Comply with Metro Functional Plan standards
- Coordinate with regional projects including the SW Corridor Planning

Alternatives: Council could chose not to sign the IGA which would provide no funding for the development of the Town Center Plan and the project would not proceed. In addition, this would likely impact the City's competitiveness for future grant requests.

Financial Implications: There is a \$20,900 required match which will be met "in-kind" with local staff work and resources. This was assumed in the budget and Planning Department work program. In addition, the scope provides for an additional reimbursement of \$21,000 to cover additional staff work beyond the required match. A portion of this reimbursement was assumed in this fiscal year budget and the remainder was assumed in the FY 12-13 budget.

Recommendation and Proposed Motion: Staff recommends City Council adopt the attached resolution authorizing the City Manager to sign the IGA.

Attachments: Resolution with Exhibit 1 (46 pages)



RESOLUTION 2012-022

A RESOLUTION AUTHORIZING AN INTERGOVERNMENTAL AGREEMENT (IGA) WITH ODOT TO RECEIVE TRANSPORTATION GROWTH MANAGEMENT (TGM) FUNDS TO DEVELOP A PLAN FOR THE SHERWOOD TOWN CENTER

WHEREAS, the City applied for and was awarded a TGM grant to develop a plan for the Sherwood Town Center; and

WHEREAS, a plan for the Town Center is needed to address updated Metro Functional Plan requirements and would serve as a foundation for a 99W corridor plan and TSP update by better defining the Town Center area, land use assumptions and vision for the area, therefore should be started first; and

WHEREAS, the TGM Grant award is conditional upon execution of an IGA; and

WHEREAS, the City and ODOT selected the planning firm Angelo Planning Group to work with the City to develop the Town Center Plan; and

WHEREAS, the City, ODOT and the consultant have negotiated a scope of work and budget consistent with the TGM grant award amount of \$169,100; and

WHEREAS, Whereas the City must enter into an IGA with ODOT prior to a notice to proceed being issued and work being charged to the project; and

WHEREAS, through the signing of the IGA the City is committing to completing the Town Center Plan and is committing to provide local staff and resources to meet the required match of \$20,900, which is 11% of the total project cost of \$190,000; and

WHEREAS, it is in the best interest of the City of Sherwood and its residents to develop a plan for the Town Center.

NOW, THEREFORE, THE CITY OF SHERWOOD RESOLVES AS FOLLOWS:

Section 1. The City Manager Pro-Tem is authorized to sign the IGA attached as Exhibit 1 to this Resolution.

Section 2. This Resolution shall be effective as of the date of its adoption by the City Council.

Duly passed by the City Council this 1st day of May 2012.

Keith S. Mays, Mayor

Attest:

Sylvia Murphy, CMC, City Recorder

INTERGOVERNMENTAL AGREEMENT

City of Sherwood, Sherwood Town Center Plan

THIS INTERGOVERNMENTAL AGREEMENT (“Agreement”) is made and entered into by and between the STATE OF OREGON, acting by and through its Department of Transportation (“ODOT” or “Agency”), and City of Sherwood (“City” or “Grantee”).

RECITALS

1. The Transportation and Growth Management (“TGM”) Program is a joint program of ODOT and the Oregon Department of Land Conservation and Development.
2. The TGM Program includes a program of grants for local governments for planning projects. The objective of these projects is to better integrate transportation and land use planning and develop new ways to manage growth in order to achieve compact pedestrian, bicycle, and transit friendly urban development.
3. This TGM Grant (as defined below) is financed with federal Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (“SAFETEA-LU”) funds. Local funds are used as match for SAFETEA-LU funds.
4. By authority granted in ORS 190.110, state agencies may enter into agreements with units of local government or other state agencies to perform any functions and activities that the parties to the agreement or their officers or agents have the duty or authority to perform.
5. City has been awarded a TGM Grant which is conditional upon the execution of this Agreement.
6. The parties desire to enter into this Agreement for their mutual benefit.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

SECTION 1. DEFINITIONS

Unless the context requires otherwise, the following terms, when used in this Agreement, shall have the meanings assigned to them below:

A. “City's Amount” means the portion of the Grant Amount payable by ODOT to City for performing the tasks indicated in Exhibit A as being the responsibility of City.

B. “City's Matching Amount” means the amount of matching funds which City is required to expend to fund the Project.

C. “City's Project Manager” means the individual designated by City as its project manager for the Project.

D. “Consultant” means the personal services contractor(s) (if any) hired by ODOT to do the tasks indicated in Exhibit A as being the responsibility of such contractor(s).

E. “Consultant’s Amount” means the portion of the Grant Amount payable by ODOT to the Consultant for the deliverables described in Exhibit A for which the Consultant is responsible.

F. “Direct Project Costs” means those costs which are directly associated with the Project. These may include the salaries and benefits of personnel assigned to the Project and the cost of supplies, postage, travel, and printing. General administrative costs, capital costs, and overhead are not Direct Project Costs. Any jurisdiction or metropolitan planning organization that has federally approved indirect cost plans may treat such indirect costs as Direct Project Costs.

G. “Federally Eligible Costs” means those costs which are Direct Project Costs of the type listed in Exhibit D incurred by City and Consultant during the term of this Agreement.

H. “Grant Amount” or “Grant” means the total amount of financial assistance disbursed under this Agreement, which consists of the City's Amount and the Consultant’s Amount.

I. “ODOT’s Contract Administrator” means the individual designated by ODOT to be its contract administrator for this Agreement.

J. “PSK” means the personal services contract(s) executed between ODOT and the Consultant related to the portion of the Project that is the responsibility of the Consultant.

K. “Project” means the project described in Exhibit A.

L. “Termination Date” has the meaning set forth in Section 2.A below.

M. “Total Project Costs” means the total amount of money required to complete the Project.

N. “Work Product” has the meaning set forth in Section 5.I below.

SECTION 2. TERMS OF AGREEMENT

A. Term. This Agreement becomes effective on the date on which all parties have signed this Agreement and all approvals (if any) required to be obtained by ODOT have been received. This Agreement terminates on June 30, 2013 (“Termination Date”).

B. Grant Amount. The Grant Amount shall not exceed \$169,100.

C. City's Amount. The City's Amount shall not exceed \$21,000.

D. Consultant’s Amount. The Consultant’s Amount shall not exceed \$148,100.

E. City's Matching Amount. The City's Matching Amount is \$20,900 or 11% of the Total Project Costs.

SECTION 3. DISBURSEMENTS

A. Subject to submission by City of such documentation of costs and progress on the Project (including deliverables) as are satisfactory to ODOT, the City may be reimbursed by ODOT for, or may use as part of the City’s Matching Amount, as the case may be, only Direct Project Costs that are Federally Eligible Costs that City incurs after the execution of this Agreement up to the City's Amount. Generally accepted accounting principles and definitions of ORS 294.311 shall be applied to clearly document verifiable costs that are incurred.

B. City shall present reimbursement requests, cost reports, progress reports, and deliverables to ODOT’s Contract Administrator no less than every other month. City shall submit reimbursement requests, cost reports for 100% of City’s Federally Eligible Costs, and shall be reimbursed at **50.12%** up to the City’s Amount.

C. ODOT shall make interim payments to City for deliverables identified as being City’s responsibility in the approved statement of work set out in Exhibit A within 45 days of satisfactory completion (as determined by ODOT’s Contract Administrator) of such deliverables.

D. ODOT reserves the right to withhold payment equal to ten percent (10%) of each disbursement until 45 days after ODOT's Contract Administrator's approval of the completion report described Section 5.K(2), at which time the balance due to City under this Agreement shall be payable.

E. Within 45 days after the latter of the Termination Date of this Agreement or City's compliance with Section 5.K. below, ODOT shall pay to City the balance due under this Agreement.

F. ODOT shall limit reimbursement of travel expenses in accordance with current State of Oregon Accounting Manual, General Travel Rules, effective on the date the expenses are incurred.

SECTION 4. CITY'S REPRESENTATIONS, WARRANTIES, AND CERTIFICATION

A. City represents and warrants to ODOT as follows:

1. It is a municipality duly organized and existing under the laws of the State of Oregon.

2. It has full legal right and authority to execute and deliver this Agreement and to observe and perform its duties, obligations, covenants and agreements hereunder and to undertake and complete the Project.

3. All official action required to be taken to authorize this Agreement has been taken, adopted and authorized in accordance with applicable state law and the organizational documents of City.

4. This Agreement has been executed and delivered by an authorized officer(s) of City and constitutes the legal, valid and binding obligation of City enforceable against it in accordance with its terms.

5. The authorization, execution and delivery of this Agreement by City, the observation and performance of its duties, obligations, covenants and agreements hereunder, and the undertaking and completion of the Project do not and will not contravene any existing law, rule or regulation or any existing order, injunction, judgment, or decree of any court or governmental or administrative agency, authority or person having jurisdiction over it or its property or violate or breach any provision of any agreement, instrument or indenture by which City or its property is bound.

6. The statement of work attached to this Agreement as Exhibit A has been reviewed and approved by the necessary official(s) of City.

B. As federal funds are involved in this Grant, City, by execution of this Agreement, makes the certifications set forth in Exhibits B and C.

SECTION 5. GENERAL COVENANTS OF CITY

A. City shall be responsible for the portion of the Total Project Costs in excess of the Grant Amount. City shall complete the Project; provided, however, that City shall not be liable for the quality or completion of that part of the Project which Exhibit A describes as the responsibility of the Consultant.

B. City shall, in a good and workmanlike manner, perform the work on the Project, and provide the deliverables for which City is identified in Exhibit A as being responsible.

C. City shall perform such work identified in Exhibit A as City's responsibility as an independent contractor and shall be exclusively responsible for all costs and expenses related to its employment of individuals to perform such work. City shall also be responsible for providing for employment-related benefits and deductions that are required by law, including, but not limited to, federal and state income tax withholdings, unemployment taxes, workers' compensation coverage, and contributions to any retirement system.

D. All employers, including City, that employ subject workers who work under this Agreement in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage unless such employers are exempt under ORS 656.126. Employers Liability insurance with coverage limits of not less than \$500,000 must be included. City shall ensure that each of its contractors complies with these requirements.

E. City shall not enter into any subcontracts to accomplish any of the work described in Exhibit A, unless it first obtains written approval from ODOT.

F. City agrees to cooperate with ODOT's Contract Administrator. At the request of ODOT's Contract Administrator, City agrees to:

- (1) Meet with the ODOT's Contract Administrator; and

(2) Form a project steering committee (which shall include ODOT's Contract Administrator) to oversee the Project.

G. City shall comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to the work under this Agreement, including, without limitation, applicable provisions of the Oregon Public Contracting Code. Without limiting the generality of the foregoing, City expressly agrees to comply with: (1) Title VI of Civil Rights Act of 1964; (2) Title V and Section 504 of the Rehabilitation Act of 1973; (3) the Americans with Disabilities Act of 1990 and ORS 659A.142; (4) all regulations and administrative rules established pursuant to the foregoing laws; and (5) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.

H. City shall maintain all fiscal records relating to this Agreement in accordance with generally accepted accounting principles. In addition, City shall maintain any other records pertinent to this Agreement in such a manner as to clearly document City's performance. City acknowledges and agrees that ODOT, the Oregon Secretary of State's Office and the federal government and their duly authorized representatives shall have access to such fiscal records and other books, documents, papers, plans, and writings of City that are pertinent to this Agreement to perform examinations and audits and make copies, excerpts and transcripts.

City shall retain and keep accessible all such fiscal records, books, documents, papers, plans, and writings for a minimum of six (6) years, or such longer period as may be required by applicable law, following final payment and termination of this Agreement, or until the conclusion of any audit, controversy or litigation arising out of or related to this Agreement, whichever date is later.

I. (1) All of City's work product related to the Project that results from this Agreement ("Work Product") is the exclusive property of ODOT. ODOT and City intend that such Work Product be deemed "work made for hire" of which ODOT shall be deemed the author. If, for any reason, such Work Product is not deemed "work made for hire", City hereby irrevocably assigns to ODOT all of its rights, title, and interest in and to any and all of the Work Product, whether arising from copyright, patent, trademark, trade secret, or any other state or federal intellectual property law or doctrine. City shall execute such further documents and instruments as ODOT may reasonably request in order to fully vest such rights in ODOT. City forever waives any and all rights relating to the Work Product, including without limitation, any and all rights arising under 17 USC §106A or any other rights of identification of authorship or rights of approval, restriction or limitation on use or subsequent modifications.

(2) ODOT hereby grants to City a royalty free, non-exclusive license to reproduce any Work Product for distribution upon request to members of the public.

(3) City shall ensure that any work products produced pursuant to this Agreement include the following statement:

“This project is partially funded by a grant from the Transportation and Growth Management (TGM) Program, a joint program of the Oregon Department of Transportation and the Oregon Department of Land Conservation and Development. This TGM grant is financed, in part, by federal Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), local government, and State of Oregon funds.

The contents of this document do not necessarily reflect views or policies of the State of Oregon.”

(4) The Oregon Department of Land Conservation and Development and ODOT may each display appropriate products on its “home page”.

J. Unless otherwise specified in Exhibit A, City shall submit all final products produced in accordance with this Agreement to ODOT’s Contract Administrator in the following form:

- (1) two hard copies; and
- (2) in electronic form using generally available word processing or graphics programs for personal computers via e-mail or on compact diskettes.

K. Within 30 days after the Termination Date, City shall

(1) pay to ODOT City’s Matching Amount less Federally Eligible Costs previously reported as City’s Matching Amount. ODOT may use any funds paid to it under this Section 5.K (1) to substitute for an equal amount of federal SAFETEA-LU funds used for the Project or use such funds as matching funds; and

(2) provide to ODOT’s Contract Administrator, in a format provided by ODOT, a completion report. This completion report shall contain:

- (a) The permanent location of Project records (which may be subject to audit);

- (b) A summary of the Total Project Costs, including a breakdown of those Project costs that are reimbursable hereunder and those costs which are being treated by City as City's Matching Amount;
- (c) A list of final deliverables; and
- (d) City's final disbursement request.

SECTION 6. CONSULTANT

If the Grant provided pursuant to this Agreement includes a Consultant's Amount, ODOT shall enter into a PSK with the Consultant to accomplish the work described in Exhibit A as being the responsibility of the Consultant. In such a case, even though ODOT, rather than City is the party to the PSK with the Consultant, ODOT and City agree that as between themselves:

- A. Selection of the Consultant will be conducted by ODOT in accordance with ODOT procedures with the participation and input of City;
- B. ODOT will review and approve Consultant's work, billings and progress reports after having obtained input from City;
- C. City shall be responsible for prompt communication to ODOT's Contract Administrator of its comments regarding (A) and (B) above; and
- D. City will appoint a Project Manager to:
 - (1) be City's principal contact person for ODOT's Contract Administrator and the Consultant on all matters dealing with the Project;
 - (2) monitor the work of the Consultant and coordinate the work of the Consultant with ODOT's Contract Administrator and City personnel, as necessary;
 - (3) review any deliverables produced by the Consultant and communicate any concerns it may have to ODOT's Contract Administrator; and
 - (4) review disbursement requests and advise ODOT's Contract Administrator regarding payments to Consultant.

SECTION 7. ODOT'S REPRESENTATIONS AND COVENANTS

A. ODOT certifies that, at the time this Agreement is executed, sufficient funds are authorized and available for expenditure to finance ODOT's portion of this Agreement within the appropriation or limitation of its current biennial budget.

B. The statement of work attached to this Agreement as Exhibit A has been reviewed and approved by the necessary official(s) of ODOT.

C. ODOT will assign a Contract Administrator for this Agreement who will be ODOT's principal contact person regarding administration of this Agreement and will participate in the selection of the Consultant, the monitoring of the Consultant's work, and the review and approval of the Consultant's work, billings and progress reports.

D. If the Grant provided pursuant to this Agreement includes a Consultant's Amount, ODOT shall enter into a PSK with the Consultant to perform the work described in Exhibit A designated as being the responsibility of the Consultant, and in such a case ODOT agrees to pay the Consultant in accordance with the terms of the PSK up to the Consultant's Amount.

SECTION 8. TERMINATION

This Agreement may be terminated by mutual written consent of all parties. ODOT may terminate this Agreement effective upon delivery of written notice to City, or at such later date as may be established by ODOT under, but not limited to, any of the following conditions:

A. City fails to complete work specified in Exhibit A within the time specified in this Agreement, including any extensions thereof, or fails to perform any of the provisions of this Agreement and does not correct any such failure within 10 days of receipt of written notice or the date specified by ODOT in such written notice.

B. Consultant fails to complete work specified in Exhibit A within the time specified in this Agreement, including any extensions thereof, and does not correct any such failure within 10 days of receipt of written notice or the date specified by ODOT in such written notice.

C. If federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the work under this Agreement is prohibited or ODOT is prohibited from paying for such work from the planned funding source.

D. If ODOT fails to receive funding, appropriations, limitations or other expenditure authority sufficient to allow ODOT, in the exercise of its reasonable administrative discretion, to continue to make payments for performance of this Agreement.

In the case of termination pursuant to A, B, C or D above, ODOT shall have any remedy at law or in equity, including but not limited to termination of any further disbursements hereunder. Any termination of this Agreement shall not prejudice any right or obligations accrued to the parties prior to termination.

SECTION 9. GENERAL PROVISIONS

A. Time is of the essence of this Agreement.

B. Except as otherwise expressly provided in this Agreement, any notices to be given hereunder shall be given in writing by personal delivery, facsimile, or mailing the same, postage prepaid, to ODOT or City at the address or number set forth on the signature page of this Agreement, or to such other addresses or numbers as either party may hereafter indicate pursuant to this Section. Any communication or notice so addressed and mailed is in effect five (5) days after the date postmarked. Any communication or notice delivered by facsimile shall be deemed to be given when receipt of the transmission is generated by the transmitting machine. To be effective against ODOT, such facsimile transmission must be confirmed by telephone notice to ODOT's Contract Administrator. Any communication or notice by personal delivery shall be deemed to be given when actually delivered.

C. ODOT and City are the only parties to this Agreement and are the only parties entitled to enforce the terms of this Agreement. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right not held by or made generally available to the public, whether directly, indirectly or otherwise, to third persons (including but not limited to any Consultant) unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Agreement.

D. Sections 5(H), 5(I), and 9 of this Agreement and any other provision which by its terms is intended to survive termination of this Agreement shall survive.

E. The parties agree as follows:

(a) Contribution.

If any third party makes any claim or brings any action, suit or proceeding alleging a tort as now or hereafter defined in ORS 30.260 ("Third Party Claim") against ODOT or Grantee ("Notified Party") with respect to which the other party ("Other Party") may have liability, the Notified Party must promptly notify the Other Party in writing of the Third Party Claim and deliver to the Other Party a copy of the claim, process, and all legal pleadings with respect to the Third Party Claim. Each party is entitled to participate in the defense of a Third Party Claim, and to defend a Third Party Claim with counsel of its own choosing. Receipt by the Other Party of the notice and copies required in this paragraph and meaningful opportunity for the Other Party to participate in the investigation, defense and settlement of the Third Party Claim with counsel of its own choosing are conditions precedent to the Other Party's liability with respect to the Third Party Claim.

With respect to a Third Party Claim for which ODOT is jointly liable with the Grantee (or would be if joined in the Third Party Claim), ODOT shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by the Grantee in such proportion as is appropriate to reflect the relative fault of ODOT on the one hand and of the Grantee on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of ODOT on the one hand and of the Grantee on the other hand shall be determined by reference to, among other things, the parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. The ODOT's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including but not limited to the Oregon Tort Claims Act, ORS 30.260 to 30.300, if ODOT had sole liability in the proceeding.

With respect to a Third Party Claim for which the Grantee is jointly liable with ODOT (or would be if joined in the Third Party Claim), the Grantee shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by ODOT in such proportion as is appropriate to reflect the relative fault of the Grantee on the one hand and of ODOT on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of the Grantee on the one hand and of ODOT on the other hand shall be determined by reference to, among other things, the parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. The Grantee's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including but not limited to the Oregon Tort Claims Act, ORS 30.260 to 30.300, if it had sole liability in the proceeding.

(b) Choice of Law; Designation of Forum; Federal Forum.

(1) The laws of the State of Oregon (without giving effect to its conflicts of law principles) govern all matters arising out of or relating to this Agreement, including, without limitation, its validity, interpretation, construction, performance, and enforcement.

(2) Any party bringing a legal action or proceeding against any other party arising out of or relating to this Agreement shall bring the legal action or proceeding in the Circuit Court of the State of Oregon for Marion County (unless Oregon law requires that it be brought and conducted in another county). Each party hereby consents to the exclusive jurisdiction of such court, waives any objection to venue, and waives any claim that such forum is an inconvenient forum.

(3) Notwithstanding Section 9.E (b)(2), if a claim must be brought in a federal forum, then it must be brought and adjudicated solely and exclusively within the United States District Court for the District of Oregon. This Section 9.E(b)(3) applies to a claim brought against the State of Oregon only to the extent Congress has appropriately abrogated the State of Oregon's sovereign immunity and is not consent by the State of Oregon to be sued in federal court. This Section 9.E(b)(3) is also not a waiver by the State of Oregon of any form of defense or immunity, including but not limited to sovereign immunity and immunity based on the Eleventh Amendment to the Constitution of the United States.

(c) Alternative Dispute Resolution.

The parties shall attempt in good faith to resolve any dispute arising out of this Agreement. This may be done at any management level, including at a level higher than persons directly responsible for administration of the Agreement. In addition, the parties may agree to utilize a jointly selected mediator or arbitrator (for non-binding arbitration) to resolve the dispute short of litigation.

F. This Agreement and attached Exhibits (which are by this reference incorporated herein) constitute the entire agreement between the parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No modification or change of terms of this Agreement shall bind either party unless in writing and signed by all parties and all necessary approvals have been obtained. Budget modifications and adjustments from the work described in Exhibit A must be processed as an amendment(s) to this Agreement and the PSK. No waiver or consent shall be effective unless in writing and signed by the party against whom such waiver or consent is asserted. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of ODOT to enforce any provision of this Agreement shall not constitute a waiver by ODOT of that or any other provision.

G. This Agreement may be executed in several counterparts (facsimile or otherwise) all of which when taken together shall constitute one agreement binding on all parties, notwithstanding that all parties are not signatories to the same counterpart. Each copy of this Agreement so executed shall constitute an original.

On December 1, 2010 the Director of the Oregon Department of Transportation approved DIR-06, in which authority is delegated from the Director of the Oregon Department of Transportation to the Operations Deputy Director and Transportation Development Division Administrator, to approve agreements with local governments, other state agencies, federal governments, state governments, other countries, and tribes as described in ORS 190 developed in consultation with the Chief Procurement Officer.

City

City of Sherwood

By: _____
(Official's Signature)

(Printed Name and Title of Official)

Date: _____

ODOT

STATE OF OREGON, by and through
its Department of Transportation

By: _____
Jerri Bohard, Division Administrator
Transportation Development Division

Date: _____

ATTORNEY GENERAL'S OFFICE

Approved as to legal sufficiency by the
Attorney General's office.

By: _____
(Official's Signature)

Date: _____

Contact Names:

Julia Hajduk
City of Sherwood
22560 SW Pine Street
Sherwood, OR 97140
Phone: 5036254204
Fax: 503-625-0629
E-Mail: hajdukj@ci.sherwood.or.us

Seth Brumley, Contract Administrator
Transportation and Growth Management Program
123 NW Flanders
Portland, OR 97209-4037
Phone: 503-731-8234
Fax: 503-731-3266
E-Mail: Seth.A.BRUMLEY@odot.state.or.us

Exhibit A
Statement of Work and Delivery Schedule
For WOC #5, PA #27627

TGM 1C-11
 City of Sherwood
 Sherwood Town Center Plan

Name: Address: Phone: Fax: Email:	<u>Agency’s Work Order Contract Project Manager (“WOCPM”)</u> Seth Brumley 123 NW Flanders St Portland, OR 97209 503-731-8234 503-731-3266 Seth.a.brumley@odot.state.or.us	Name: Address: Phone: Fax: Email:	<u>Consultant’s Project Manager</u> Darci Rudzinski 921 SW Washington St Portland, OR 97205 503-227-3669 503-227-3679 drudzinski@angeloplanning.com
Name: Address: Phone: Fax: Email:	<u>City Project Manager</u> Julia Hajduk 22560 SW Pine St Sherwood, OR 97140 503-625-4204 Hajdukj@SherwoodOregon.gov		

A. Definitions and Acronyms

- Agency or ODOT – Oregon Department of Transportation
- City – City of Sherwood
- City PM – City of Sherwood Project Manager
- County – Washington County
- MMA – Multimodal Mixed-use Area
- NTP – Notice to Proceed
- OAR – Oregon Administrative Rule
- PM – Project Manager
- PMT – Project Management Team
- RTP – Regional Transportation Plan
- SAC - Stakeholder Advisory Committee
- TAC – Technical Advisory Committee
- TAZ - Transportation Analysis Zone
- TPR – Transportation Planning Rule
- TSP – Transportation System Plan

UGMFP – Urban Growth Management Functional Plan
WOC – Work Order Contract
WOCPM – Work Order Contract Project Manager

This statement of work describes the responsibilities of all entities involved in this cooperative project.

The work order contract (for the purposes of the quoted language below the “WOC”) with the work order consultant (“Consultant”) shall contain the following provisions in substantially the form set forth below:

“B. Project Cooperation

This Statement of Work and Delivery Schedule (“SOW”) describes the responsibilities of the entities involved in this cooperative Project. In this Work Order Contract (“WOC”), the Consultant shall only be responsible for those deliverables assigned to the Consultant. All services or work assigned to other entities are not Consultant’s obligations under this WOC, but shall be obtained by Agency through separate intergovernmental agreements or other agreements which contain a statement of work that is the same as or similar to this SOW, with a specification of the specific tasks assigned to others. The obligations of entities in this SOW other than the Consultant are merely stated for informational purposes and are in no way binding, nor are the named entities parties to this WOC. Any tasks or deliverables which the Consultant assigns to a subcontractor shall nevertheless be the responsibility of the Consultant.

Any Consultant tasks or deliverables which are contingent upon receiving information, resources, assistance, or cooperation in any way from another entity as described in this SOW shall be subject to the following guidelines:

1. At the first sign of non-cooperation, the Consultant shall provide written notice (email acceptable) to Oregon Department of Transportation (“Agency”) Work Order Contract Project Manager (“WOCPM”) of any deliverables that may be delayed due to lack of cooperation by other entities referenced in this SOW.
2. WOCPM shall contact the non-cooperative entity or entities to discuss the matter and attempt to correct the problem and expedite items determined to be delaying the Consultant.

If Consultant has followed the notification process described in item B.1 above, and Agency finds that delinquency of any deliverable is a result of the failure of other referenced entities to provide information, resources, assistance, or cooperation, as described in this SOW, the Consultant will not be found in breach of contract; nor shall Consultant be assessed or liable for any damages arising as a result of such delinquencies. Neither shall ODOT be responsible or liable for any damages to Consultant as the result of such non-cooperation by other entities. WOCPM will negotiate with Consultant in the best interest of the State, and may amend the delivery schedule to allow for delinquencies beyond the control of the Consultant.”

C. Key Personnel. The Consultant acknowledges and agrees that Agency selected the Consultant, and is entering into this WOC, because of the special qualifications of the Consultant’s key people. In

particular, Agency through this WOC is engaging the expertise, experience, judgment, and personal attention of the following Consultant personnel: Darcie Rudzinski and Chris Maciejewski (collectively "Key Personnel" or individually a "Key Person"). The Consultant's Key Personnel shall not delegate performance of the management powers and responsibilities he/she is required to provide under this WOC to another (other) Consultant employee(s) without first obtaining the written consent (email acceptable) of Agency. Further, Consultant shall not re-assign or transfer a Key Person to other duties or positions such that a Key Person is no longer available to provide Agency with his/her expertise, experience, judgment, and personal attention, without first obtaining Agency's prior written consent to such re-assignment or transfer. In the event Consultant requests that Agency approve a re-assignment or transfer of a Key Person, Agency shall have the right to interview, review the qualifications of, and approve or disapprove the proposed replacement(s) for the Key Person. Any approved substitute or replacement for a Key Person shall be deemed a Key Person under this WOC.

D. Project Purpose and Transportation Relationship and Benefit

The purpose of the Sherwood Town Center Plan Project (the "Project") is to determine the boundaries of the City of Sherwood ("City") Town Center (the "Town Center"), identify opportunities and constraints for the successful development of the Town Center and create a strategy for the development and re-development of the area. The Sherwood Town Center Plan will likely establish modifications to land uses and a multimodal transportation network that will be supportive of Metro's 2040 Plan implementation.

The Project will result in a plan that can be adopted as part of the comprehensive plan as well as implementing amendments to the development code. This plan will outline steps to bring the Town Center into compliance with the Metro Title 6 guidance in 3.07.620 and must include evaluation and recommendations with the goal to achieve compliance with 3.07.630. The plan will include recommendations regarding a multimodal mixed-use area ("MMA") designation within or contiguous with the Town Center boundaries based on the new guidance for MMAs in the Transportation Planning Rule ("TPR") - Oregon Administrative Rule ("OAR") 660-012-0060.

E. Description of the Project Area

The Project area will be refined in Task 1. The Project area must, at minimum, include the existing Town Center boundaries and the "Old Town" district (the "Project Area"). The Old Town district is generally bounded by Sherwood Middle School to the north, SW Main St and SW Park St to the west, SW Washington St and SW Willamette St to the south, and SW Foundry Ave to the east. The existing Town Center boundary straddles Highway 99W and is bordered on the north by Tualatin-Sherwood Road.

Over the years, the area known as the Town Center has developed with traditional auto oriented retail and financial uses with limited street connectivity. The average daily traffic for the 99W/Tualatin-Sherwood Road intersection is 40,000 vehicles with a high percentage of trucks. This highway is designated as a Freight Corridor and is part of the regional freight system in the Regional Transportation Plan ("RTP"). Although this area is served by transit, the streets are wide and heavily traveled making it a challenging area to redevelop as a compact, pedestrian friendly Town Center.

In contrast, the City's traditional downtown "Old Town" area has an existing street grid pattern and pedestrian friendly environment that has experienced redevelopment and revitalization including public services (new library, city hall and city offices), small scale retail and office uses.

F. Background

Since the year 2000, Sherwood has had a Metro 2040 Town Center designation at the intersection of Highway 99W and Tualatin-Sherwood Road. Although a boundary for the Town Center has been defined, a formal plan for the area was never established. The lack of a plan for the Town Center has resulted in a development pattern that is not compact, mixed use, pedestrian friendly or transit supportive. Upon review, it appears that the determination of where the boundaries should be located did not include analysis of needs, opportunities, and constraints to developing the area consistent with the Metro definition for town centers or any significant public involvement.

Metro has recently updated the Urban Growth Management Functional Plan ("UGMFP") to better address and incentivize planning for and development of centers, corridors and main streets as part of their capacity ordinance. One of the stated purposes of the revisions to Title 6 (Centers, Corridors, Station Communities and Main Streets) of the UGMFP is to "use investments and other incentives to induce cities and counties to revise their comprehensive plans and land use regulations to eliminate barriers to the types and densities of residential development and commercial and civic services that make higher-density residential development market-feasible". The updates to Title 6 of the UGMFP require local jurisdictions to adopt boundaries and develop plans and implementation strategies for town centers in order to be eligible for certain regional investments.

The Oregon Land Conservation and Development Commission has recently updated OAR 660-012-0060 governing plan and land use regulation amendments. OAR 660-012-0060 (10) allows cities to designate a MMA. Within the MMA the city would be allowed to upzone land for urban development without needing to meet traffic congestion performance standards as would otherwise be required under OAR 660-012-0060.

G. Project Objectives

The overall Project objective is to develop a plan for the town center that will guide development and re-development in the Project Area. In order to achieve this overall objective, the following additional objectives must be met:

- Affirm or modify the location of Town Center boundary.
- Determine vision for town center
- Determine appropriate land uses and standards to implement vision and to provide an improved transportation system that includes pedestrian friendly and transit supportive facilities
- Develop a plan that balances land use and transportation choices so as to improve the safety and efficiency for all modes of transportation.
- Comply with recently adopted Metro Title 6 requirements and the updated OAR 660-012-0060 MMA definition to enable eligibility for regional investment and up-zoning.
- Identify strategic solutions to existing highway capacity issues.

- Be informed by and help inform the Southwest Corridor Plan. The outcomes of that planning effort and the vision and outcome of this planning effort will likely improve the transportation system and complement the development patterns in the town center.

All the Project objectives set forth in this Section G of the SOW are referred to as the “Project Objectives.”

H. Deliverables Overview

1. Written and Graphic Deliverables:

- Consultant and City shall jointly perform the technical work. City and WOCPM shall review Consultant Deliverables. Unless stated otherwise in tasks description, Consultant shall send draft memos and Project deliverables electronically to the City Project Manager (“City PM”) and WOCPM for review (and revision if needed) one week prior to distribution for meetings (generally two weeks prior to the actual meeting). A shorter or longer review period may be mutually agreed on for specific situations. The City PM is responsible for providing Consultant with a single set of internally consistent, City staff comments. References to “Key City Staff” means up to three staff. For any additional staff reviews the City PM must obtain and incorporate City staff comments into City’s review. City shall resolve conflicting issues and Consultant shall use professional judgment to incorporate input received through City, Technical Advisory Committee (“TAC”), Stakeholder Advisory Committee (“SAC”), and public review process.
- Document identification: Graphic deliverables must be documented with Project name, a title that best represents the WOC deliverable (not necessarily the WOC deliverable title), draft number, a legend, the task reference number and the date of preparation as appropriate to the graphic. Graphics that are maps must have a legible, graphic (bar) scale. File types and formats may vary from the above upon approval of the WOCPM. Consultant names shall not be placed on deliverables, with the exception of the acknowledgement page in the final Plan documents.
- Consultant-generated draft and final materials, including presentation materials, memorandums, and graphics, must be substantially complete, professionally written and fully proofed by Consultant prior to distribution. All Consultant-generated material is to be reviewed by City PM and WOCPM prior to release. The City PM and WOCPM’s review is not to proof material but to review for inclusion or exclusion of substantive content.
- The City shall produce materials for meetings including memoranda, reports, handouts and graphics 11x17 in size or smaller. The Consultant shall produce necessary graphics that are larger than 11x17. All materials provided for meetings or public outreach must be available electronically in a format that is easily uploaded to the City Project Web Site.
- Format of draft text and graphics for review: During the Project, for most draft products the Consultant shall provide electronic copies of draft text deliverables (for example, memoranda, reports, agendas) to City PM and WOCPM in an editable file format that is compatible with Microsoft Word 2002. However, graphically intensive presentation materials or reports (such as the Market Analysis, Land Use and Transportation Analysis and Town Center Plan) may be produced using Adobe Creative Suite and provided in .pdf format. If desired, Consultant can provide text from these reports in a Microsoft Word or compatible document. Depending on the specific type of graphic, Consultant shall provide electronic copies of draft graphics in a .pdf

format. (The objective is that deliverables are in versions that allow tracking changes and amendments to the documents.)

- Format of Project Schedule: Consultant shall provide the Project Schedule to the City PM and WOCPM in MS Project or similar program which the City or WOCPM can manipulate for internal use.
- Format of final deliverables (text and graphics): Consultant shall provide electronic copies of final text deliverables (such as final memoranda) to City PM and WOCPM in an editable file format that is compatible with Microsoft Word 2002. As noted above, graphically intensive documents may be produced using Adobe Creative Suite and provided in PDF format. If desired, Consultant can provide text from these reports in a Microsoft Word or compatible document. The final Town Center Plan, which incorporates the results of all task deliverables, will be produced in a program such as InDesign and saved as a .pdf. Consultant shall provide to City PM and WOCPM the source files for future use. Consultant shall provide to City PM and WOCPM electronic copies of final graphics in Adobe Illustrator, Adobe Photoshop, JPEG or ArcView compatible format as agreed upon. Data used for the final version of all maps must be provided in a standard ESRI file format in NAD_1983_HARN_StatePlane_Oregon_North_FIPS_3601_Feet_Intl.
- Adoption ready: Consultant shall prepare final plans and amendments to plans as final policy statements of the local government and shall not include language such as “it is recommended” or “City should.” New and amended code language must be prepared as final regulatory statements of City. Final plans and plan amendments must include all necessary amendments to existing City plans to avoid conflicts and enable full integration of proposed Plan with existing City documents.
- The following text must appear in final work products produced in this Project:

This Project is partially funded by a grant from the Transportation and Growth Management (“TGM”) Program, a joint program of the Oregon Department of Transportation and the Oregon Department of Land Conservation and Development. This TGM grant is financed, in part, by federal Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (“SAFETEA-LU”), local government, and the State of Oregon funds.

The contents of this document do not necessarily reflect views or policies of the State of Oregon.

2. Project Management Related Deliverables Overview:

City shall form the Project Management Team (“PMT”) to provide Project direction and oversight, assess progress and ensure Project success. PMT members are expected to gain consensus on issues prior to material being distributed to other committees. To achieve this, PMT Members will exchange written comments to the City PM in advance of distribution to other committees. Conflicting areas of discussion or topics needing additional consensus must be resolved by the City PM in consultation with WOCPM.

The PMT is expected to collaborate and coordinate with agencies conducting concurrent public activities. Projects concurrent to the Sherwood Town Center Plan include: Southwest Corridor Plan, Southwest Corridor Refinement Plan, and Southwest Corridor Transit Alternatives Analysis, Linking

Tualatin Plan, and Tigard High Capacity Transit Plan. PMT is expected to conduct Project public meetings in coordination with public meetings relating to the various projects listed above, when feasible.

The PMT meetings are in-person meetings unless PMT members agree to teleconference. The choice for meeting location is Consultant office, ODOT office, or City office and is anticipated to be based on efficiency for participants.

I. Joint Responsibilities

City, WOCPM and Consultant shall work together to provide sufficient oversight to ensure the Project is well managed, to ensure the outcomes are consistent with City, regional and state policies, and to effectively manage diverse community points of view in order to achieve a sound base for smart growth, urban development and public improvements.

J. City Responsibilities

1. The City, jointly with WOCPM, shall manage the Project and oversee execution of tasks and deliverables as described in this SOW. This includes review and approval of all Consultant products.
2. Focus on outcomes that are consistent with Metro Functional Plan and Title 6 requirements
3. Brief the City Planning Commission and City Council as needed to ensure productive, future Project meetings.
4. Coordinate with public agencies and affected service districts throughout the Project process to ensure that Project direction is consistent with policies and plans.
5. Coordinate and lead the public involvement program for the Project (the "Public Involvement Program") throughout the process to ensure the effort is consistent with community objectives.
6. Coordinate City staff.
7. Notify the WOCPM of potential scope, schedule, budget or Project issues.

K. Consultant Responsibilities

1. Provide technical guidance to the City, PMT, and committee members.
2. Focus on outcomes that are consistent with Metro Functional Plan and Title 6 requirements and products that are able to be implemented.
3. Communicate regularly with the City and WOCPM.
4. Respond to City and WOCPM inquiries.
5. Notify the City PM and WOCPM of potential scope, schedule, or Project issues.
6. Notify the WOCPM and City PM of any potential delays in deliverables.

L. Meeting Related Deliverables:

Unless otherwise noted, City shall arrange all meetings (except PMT meetings) including time, locations, preparation of agenda, distribution of materials, and required legal notices. City shall maintain Project information on the City-sponsored Project Web Site. City shall distribute Consultant-generated materials to committee members. Draft meeting agendas and summary notes are subject to review by Consultant and WOCPM prior to public release. The WOCPM shall be invited to all Project meetings.

M. Public Involvement Related Deliverables:

City shall provide overall coordination and management of the Public Involvement Program including meetings with the SAC, TAC, general public and Planning Commission and City Council work sessions. This includes meeting logistics, preparation of agendas and meeting minutes.

Outreach efforts must follow State and City public involvement policies. This includes making special efforts to engage minority, low-income, women, and disabled and senior populations. This could mean providing things like child-care at key meetings.

Public involvement will be key to the Project's success. Public involvement will occur through the SAC, on-going coordination with the Project Area standing citizen groups, and Planning Commission which will serve as the Steering Committee.

Public involvement must allow residents and business owners of the Project Area opportunities to provide input into the Project planning process. City shall consider environmental justice issues, which includes the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies. To reflect environmental justice considerations, an effort to involve minority populations, women, older adults, people with disabilities and people with low-income shall be made. "Fair treatment" means that no group of people, including a racial, ethnic, or a socioeconomic group, should bear a disproportionate share of the negative environmental consequences resulting from industrial, municipal, and commercial operations or the execution of federal, state, local, and tribal programs and policies. "Meaningful involvement" means that: (1) potentially affected community residents have an appropriate opportunity to participate in decisions about a proposed activity that will affect their environment or health; (2) the public's contribution can influence the regulatory agency's decision; (3) the concerns of all participants involved will be considered in the decision making process; and (4) the decision makers seek out and facilitate the involvement of those potentially affected.

In addition to public meetings, City may present Project updates to other groups interested in civic affairs in an effort to raise awareness of the planning process. Examples of these groups may include Rotary, Lions, chamber of commerce, local bodies representing low-income or disadvantaged groups, or other groups that may be interested in the Project planning process. City shall provide meeting notice and logistics including Project information materials to the local media.

N. Expectations about Traffic Analyses:

All data and calculations must be submitted to the City PM and WOCPM for review and record-keeping. Electronic file copies of analysis data are required. These written and electronic products must be in ODOT and City compatible formats.

1. All traffic analysis work must comply with the following requirements:
 - An Oregon-registered professional engineer (Civil or Traffic) must perform or oversee all traffic analysis work.

- Traffic analysis must be consistent with ODOT's Transportation Planning Analysis Unit's analysis procedures available on the Internet at:
<http://www.oregon.gov/ODOT/TD/TP/APM.shtml>
2. Traffic Sensitivity Analysis of Land Use and Transportation Alternatives
- Consultant shall use the Metro 2035 Financially Constrained with Beta Forecast (2010 and 2035 land use allocations) travel demand model for the "base case" traffic demand model. Programmed public improvements and in-process and proposed private development must be included in the model. Consultant may refine the Metro travel demand model Transportation Analysis Zone ("TAZ") system and network for traffic assignments within the Project Area. TAZ disaggregation will maintain control totals with Metro TAZ data unless otherwise approved by the PMT and Metro. Consultant may utilize a mesoscopic or Dynamic Traffic Assignment windowed-area technique to further refine traffic assignments for the Project Area.
 - Consultant must use the 2035 Financially Constrained with Beta Forecast model (including possible refinements) for testing land use zoning alternatives and determining traffic demand with each land use alternative.
 - Consultant shall compare and evaluate relative traffic impacts of each alternative to recommend a preferred land use and transportation alternative to advance to more in-depth analysis.
3. Transportation and Zoning Impact Analysis of Existing and Preferred Land Use
- Consultant shall compile current 3-year crash data for the study intersections and identify top 10% Safety Priority Index System sites in the Project Area.
 - ODOT will provide traffic count data to the Consultant. Consultant will work with ODOT and City staff to determine the time period for collecting the system PM peak 2-hour traffic volumes. Consultant shall adjust the traffic volumes to reflect 30th highest annual hour of traffic volumes as necessary.
 - Consultant shall analyze Existing (2012) and Future Year (2035).
 - Consultant shall post-process travel forecast in accordance with National Cooperative Highway Research Program Report 255 guidelines and develop future year PM balanced traffic volumes.
 - Consultant shall prepare a 1-hour peak period analysis at study intersections. The mobility standard for the peak hour will be coordinated with Agency staff to determine if the 1.1 highest hour or 0.99 second hour standard will be applied.
 - Intersection performance must be determined using the Highway Capacity Manual 2000 published by the Transportation Research Board. All traffic analysis software programs used must follow Highway Capacity Manual 2010 procedures. Synchro / SimTraffic (Version 8) must be used for signal controlled intersections in key urban corridors. The City Engineer may approve a different intersection analysis method prior to use when the different method can be justified for City intersections.
 - For all study intersections, traffic operational results including volume-to-capacity ratio, level-of-service, queue length (99W intersections only), and other parameters pertinent to overall intersection function must be presented. Coordination and collaboration with ODOT, Washington County (the "County") and City technical staff shall be required.
 - Future Year Preferred Land Use Alternative must be consistent with the City, County and ODOT design standards. Alternative improvements may be proposed subject to the approval of the facility's jurisdiction.

- Consultant shall use the existing traffic signal timing for ODOT intersections in the Existing, Future Year Base and Future Year Preferred Land Use analysis, unless otherwise approved by Agency staff.
- To derive the trip generation, a reasonable land use scenario must be used for the existing and proposed zoning impact analyses. The land use assumptions must be documented and based on existing or proposed City code (versus land uses based on the market) using factors such as floor area ratios, parking, building height, type of use, and building-to-land ratio in determining the land use scenario.

4. The data must be gathered and the analysis conducted in such a way that the transportation related work can be folded into the future update of the City's Transportation System Plan ("TSP"), which was adopted in 2005. This includes consistency with the adopted provisions of the 2035 RTP.

O. Work Tasks

TASK 1 - Project Kick-off

Objectives

- Establish Draft Goals, Objectives and Evaluation Criteria for the Project
- Encourage public participation in the Project through the Public Involvement Program
- Provide meaningful public participation opportunities to ensure development of recommendations that are endorsed by the community.

Subtasks

1.1 **Project Web Site** – The City shall develop, maintain and host a web site for the Project (the "Project Web Site") using Basecamp or similar web-based tools, which must include an overview of the Project, a schedule showing major Project tasks, tentative dates for public meetings and related deliverables, a list of Project deliverables, and information clearly identifying the Project Web Site as a web site developed, owned, operated and controlled by the City (and not by ODOT). The City and the ODOT WPM shall approve all material posted to the Project Web Site, prior to posting. If, for any reason, material is posted to the Project Web Site that has not been approved by the ODOT PM, the City shall immediately remove the material from the Project Web Site at the Agency's request.

The Project Web Site must be used by the Consultant to post Project notices, schedules, and deliverables, as deemed appropriate by the PMT.

1.2 **Committee Rosters** – The City shall establish PMT, SAC and TAC committees and prepare rosters with key City staff and committee member contact information.

- The PMT must consist of, at a minimum, the City PM, WOCPM, and Consultant.
- TAC must consist of the City and representatives from affected agencies, including but not limited to ODOT, Department of Land Conservation and Development, Tri-Met, Metro and neighboring jurisdictions. City shall consult with PMT as to the appropriate representatives. TAC's role is to provide technical review, ensure coordination among agencies and other

planning efforts in the Project Area, and ensure compliance with state and regional plans and policies.

- SAC shall be formed with representatives to be invited from the stakeholders and other community members. The City shall form the committee and prepare Roster. Total membership must not exceed 15 members and must include a cross sample of stakeholders including property owners, business owners and community organizations.

- 1.3 **Project Schedule** - Consultant shall prepare a draft and final Project schedule (the “Project Schedule”) reflecting all meeting dates (SAC, TAC, PMT) and meeting purpose. The Project Schedule must be at a level of detail to show the PMT, TAC and SAC reviews of major products, the public review process and the adoption process. The schedule must be provided in electronic format so the City and WOCPM can utilize it for scheduling in-house work. Consultant shall prepare final version after PMT Meeting #1.
- 1.4 **Draft Goals, Objectives, and Evaluation Criteria** - Consultant shall prepare draft Project goals, objectives, and evaluation criteria (the “Draft Goals, Objectives and Evaluation Criteria”), building on and clarifying the Project Objectives and establishing Evaluation Criteria for further refinement in subsequent tasks. Draft Goals, Objectives, and Evaluation Criteria shall address the Center criteria within the UGMFP as well as the MMA definition within the updated OAR 660-012-0060.
- 1.5 **Public Involvement Plan** – City shall develop the draft and final public involvement plan (the “Public Involvement Plan”) based on this SOW, the Project Objectives, and the draft Project Schedule. City shall prepare a final version of the Public Involvement Plan after PMT Meeting #1.
- 1.6 **PMT Meeting # 1** - Consultant shall arrange, attend, participate in as needed and facilitate PMT Meeting #1. Consultant shall distribute agenda and meeting materials as needed, at least one week prior to the PMT Meeting #1. Discussion topics must include:
- Establishing Project Area boundaries
 - Draft Public Involvement Plan
 - Draft Project Schedule
 - PMT roles and responsibilities
 - Stakeholder interview coordination and
 - Draft Goals, Objectives, and Evaluation Criteria.
- 1.7 **Land Use and Transportation Base Maps** - Consultant shall prepare maps of the Project Area in ArcGIS compatible format.
- a. The Consultant shall prepare a land use base map (the “Land Use Base Map”), which must depict property lines, existing zoning and land uses, and building footprints. The Land Use Base Map must be prepared using existing data sources including Metro’s Regional Land Information System and the City’s geographic information system.
 - b. The Consultant shall prepare a transportation base map (the “Transportation Base Map”) which must, at a minimum, depict roadway functional classification, transit routes and stop

locations, and bike and pedestrian facilities. The Transportation Base Map must be prepared using existing data sources and scaleable to the Land Use Base Map.

- 1.8 **Stakeholder Interviews** – City shall arrange and City and Consultant shall conduct three to five, one-hour interviews with groups of key stakeholders to discuss potential development opportunities. To the extent possible, these meetings will be held over the course of one or two days. City shall determine the list of stakeholders to be interviewed with Consultant input before finalizing list. An effort will be made to conduct interviews with groups of three to five people at a time in order to maximize input and to generate discussion. One stakeholder interview may be substituted for direct outreach to landowners. City shall undertake any necessary additional outreach to landowners outside the stakeholder interviews.

Consultant shall develop a draft and final interview outline with questions for WOCPM and City review and comment prior to interviews. City shall provide draft and final meeting summary notes for each interview session. Consultant shall review the draft meeting summary notes before becoming final.

- 1.9 **Joint TAC Meeting #1 and SAC Meeting #1** – City shall arrange and conduct a kick-off Joint TAC Meeting #1 and SAC Meeting #1; Consultant shall prepare written and electronic materials needed for the meeting. The purpose of the TAC and SAC kick off meeting is to introduce the Project and committee roles and responsibilities. City shall present the Public Involvement Plan and Consultant shall present the Project Schedule and the Draft Goals, Objectives and Evaluation Criteria. City shall submit meeting summary to PMT for review and comment before providing to the TAC and SAC.
- 1.10 **Steering Committee Meeting #1** - City shall provide update to the Planning Commission, acting as the Steering Committee, and gather comments and input for final refinement of the Draft Goals, Objectives and Evaluation Criteria. City shall prepare meeting summary.
- 1.11 **Final Goals, Objectives, and Evaluation Criteria** - Consultant shall prepare final Project goals, objectives and evaluation criteria (the “Final Goals, Objectives, and Evaluation Criteria”) incorporating TAC, SAC, and Steering Committee input.

City Deliverables

- 1A Project Web Site
- 1B Committee Rosters
- 1C Comments on Project Schedule
- 1D Comments on Draft Goals, Objectives, and Evaluation Criteria
- 1E Public Involvement Plan
- 1F PMT Meeting #1
- 1G Stakeholder Interviews
- 1H Joint TAC Meeting #1 and SAC Meeting #1
- 1I Steering Committee Meeting #1

Consultant Deliverables

- 1A Comments on Project Web Site
- 1B Project Schedule
- 1C Draft Goals, Objectives, and Evaluation Criteria
- 1D Comments on Public Involvement Plan
- 1E PMT Meeting #1
- 1F Land Use and Transportation Base Maps
- 1G Stakeholder Interviews
- 1H Joint TAC Meeting #1 and SAC Meeting #1
- 1I Final Goals, Objectives, and Evaluation Criteria

Task 2 – Existing Conditions and Market Analysis

Objectives

- Review public policies, plans, regulatory requirements, previous studies and data that pertain to the Project Area, to document relevant issues.
- Analyze local economic conditions and identify best practices that encourage redevelopment and vitality within Project Area.
- Identify needs in Project Area to address existing or forecast problems such as safety, traffic congestion, infrastructure deficiencies, and underutilized land.
- Identify opportunities to promote redevelopment that promotes the use of transit and other alternative travel modes, including pedestrian and bike connectivity to land uses and transit.
- Identify constraints to redevelopment and transportation improvements, and where possible, potential strategies to overcome constraints.

Subtasks

- 2.1 **Regulatory and Policy Framework Technical Memorandum** - Consultant shall prepare a draft and final Regulatory and Policy Framework Technical Memorandum to identify the State of Oregon, regional and local policies and regulations affecting land development and transportation within Project Area. The Regulatory and Policy Framework Technical Memorandum must list a matrix of the state, regional, and county codes, regulations and policies relevant to planning, rezoning, and redevelopment with summaries of the key provisions. The policy review must include:
- a. Related RTP and UGMFP; updated OAR 660-012-0060; OAR 734.051; and the Oregon Highway Plan policies;
 - b. Applicable City zoning provisions noting those that implement the Metro 2040 Functional Plan requirements (e.g., Transit Oriented Design) and OAR 660-012-0060 MMA definition;
 - c. Applicable sections of the City of Sherwood Comprehensive Plan including the 2005 TSP (applicable policies and adopted cross-sections must be included) and other applicable adopted City or County plans;
 - d. Applicable sections of the Washington County TSP and Intelligent Transportation System Master Plan; and
 - e. Economic Opportunities Analysis.

City shall provide the Consultant and WOCPM computer links or electronic copies of the plans listed above if available.

Consultant shall prepare a final version of Policy Framework Technical Memorandum, incorporating TAC, SAC, and PMT input after SAC Meeting #2

- 2.2 **Market Analysis** – Consultant shall prepare a draft and final memo identifying the existing market conditions and projected future market demands within the Project Area (the “Market Analysis”). The purpose of the Market Analysis is to establish parameters around the type of development or redevelopment that may be feasible in order to arrive at levels of land use densities the market could support. The Market Analysis must include a discussion of how the Town Center fits into the regional context and overall development trends. The Market Analysis must include identification of improvement to land value ratios for all properties in the Project Area, a brief demographic analysis of City area market trends including but not limited to land cost, lease rates and sales prices, population, employment and household trends, and discuss how this information impacts redevelopment potential in the Project Area. Based on Consultant’s professional opinion and considering market demand, the Market Analysis must indicate whether and where redevelopment may occur, including the type and magnitude of development and potential barriers to development based on available funding. The Market Analysis must provide a range of densities, mix of uses, and intensities that in the Consultant’s professional opinion will be economically viable, assuming no limiting factors other than economics.

Consultant shall prepare a final version of the Market Analysis, incorporating TAC, SAC, and PMT input after SAC Meeting #2.

- 2.3 **PMT Meeting #2** - Consultant shall arrange, attend, participate in as needed and conduct PMT Meeting #2. Consultant shall distribute agenda and meeting material at least one week prior to the meeting. The purpose of this meeting is to discuss Regulatory and Policy Framework Technical Memorandum, Market Analysis and prepare for Existing Conditions Traffic Analysis, Future Baseline Traffic Analysis, and Existing Conditions Report.
- 2.4 **Existing Conditions Traffic Analysis** – Consultant shall prepare a draft and final assessment of existing transportation conditions within the Project Area (the “Existing Conditions Traffic Analysis”). ODOT shall provide existing traffic counts (2 hour) for intersections along 99W (up to 5 locations) and shall obtain weekday P.M. peak period (2 hour) traffic counts at up to an additional 10 study intersections within the Project Area as determined by the City and Consultant at PMT Meeting #2. Consultant shall evaluate count data and analyze 15 study intersections, to compare the performance of the Project Area roadway system to the Regional Transportation Functional Plan table 3.08-2, ODOT, City and County operational standards for the weekday p.m. peak hour.

Consultant shall review pedestrian facilities and volumes (collected as part of the P.M. peak hour traffic counts) to determine existing system gaps, key pedestrian volume locations, and assess the quality of pedestrian facilities. Consultant shall review bicycle facilities and volumes to

determine existing system gaps and key bicycle routes. Consultant shall provide an overview of transit service within the Project Area.

Consultant shall analyze the last three years of crash data for roadways within the Preliminary Project Area. Top 10% ODOT Safety Priority Index System sites must be identified. The crash analysis at the Top 10% Safety Priority Index System locations must identify crash rates, compare with average published rates for similar facilities, identify any crash patterns, and suggest potential countermeasures based on crash patterns.

- 2.5 **Future Baseline Traffic Analysis** – Consultant shall prepare a draft and final future baseline traffic analysis (the “Future Baseline Traffic Analysis”), an analysis of year 2035 conditions in the Project Area. The Future Baseline Traffic Analysis must identify future traffic deficiencies under the existing zoning and must be developed in consultation with ODOT and the County and include the proposed methodology and documentation of relevant traffic information. Consultant shall identify future roadway volume-to-capacity operating standards deficiencies for the Project Area intersections. The Consultant shall compare the performance of the roadway system and the intersections to the Regional Transportation Functional Plan table 3.08-2, ODOT, City and County operational standards for the weekday p.m. peak hour. For each deficiency, Consultant shall clearly describe the deficiency. ODOT, City traffic engineer and Consultant shall meet (teleconference acceptable) to confirm the methodology and traffic study parameters prior to starting traffic analysis work.

Consultant shall prepare a final version of Future Baseline Traffic Analysis, incorporating TAC, SAC, and PMT input after SAC Meeting #2.

- 2.6 **Existing Conditions Report** - Consultant shall prepare a draft and final existing conditions report (the “Existing Conditions Report”) that must:
1. At a minimum include the following technical data: transportation system, storm water, sanitary sewer, water, and environmental.
 2. Evaluate existing code standards with focus on potential regulatory barriers to mixed use pedestrian friendly and transit supportive development. Include design standards, building code, and parking requirements analysis to inform the practical upper limit of built densities under current regulations.
 3. Address land use types, densities and intensities, safety, and transportation facilities, based on existing available data, including transit stops and pedestrian accessibility within the Project Area.
 4. Address the relative potential of various areas or sub-districts to develop into the desired Town Center. The analysis of existing land use from an urban design perspective must entail inventorying nodes, gateways, edges, paths, landmarks as well as assessing existing building stock, public space, and the relative capability of certain areas to redevelop or be rehabilitated based on available data and mapping and a site tour of the Project Area.
 5. Identify opportunities and constraints, including general constraints on public infrastructure financing, to determine factors that present opportunities and constraints to land use,

transportation and community goals and objectives in the Project Area. Existing Conditions Report must include an “Opportunities and Constraints Map” keyed to a corresponding table.

Consultant shall prepare a final version of Existing Conditions Report, incorporating TAC, SAC, and PMT input after SAC Meeting #2.

- 2.7 **PMT Meeting # 3** - Consultant shall arrange, attend, participate in as needed and conduct PMT Meeting #3. Consultant shall distribute agenda and meeting material at least one week prior to PMT Meeting #3. The purpose of PMT Meeting #3 is to review Existing Conditions Report, Existing Conditions Traffic Analysis, Future Baseline Traffic Analysis and prepare for TAC Meeting #2 and SAC Meeting #2.
- 2.8 **TAC Meeting #2** - City shall arrange and conduct TAC Meeting #2. Consultant shall present the Regulatory and Policy Framework Technical Memorandum, Existing Conditions Report, Market Analysis, Existing Conditions Traffic Analysis, and Future Baseline Traffic Analysis. City shall prepare meeting summary.
- 2.9 **SAC Meeting #2** - City shall arrange and conduct SAC Meeting #2. Consultant shall present the Regulatory and Policy Framework Technical Memorandum, Existing Conditions Report, Market Analysis, Existing Conditions Traffic Analysis and Future Baseline Traffic Analysis. City shall prepare meeting summary.
- 2.10 **PMT Meeting #4** – Consultant shall arrange, attend, participate in as needed and conduct PMT Meeting #4 to prepare for Open House #1. Consultant shall present draft presentation materials as needed for review by the WOCPM and the City. Consultant shall distribute agenda and meeting material at least one week prior to PMT Meeting #4.
- 2.11 **Open House #1** – City shall arrange and Consultant and City shall conduct Open House #1 to develop the concepts for consideration in Task 4 towards defining the Town Center boundary. Open House #1 must include discussion of Final Goals, Objectives, and Evaluation Criteria, the products from tasks 2.1-2.6 and must result in at least two and no more than four concepts for further development and evaluation. City shall invite PMT, TAC, SAC, and interested community members. City shall prepare meeting summary.

City Deliverables:

- 2A Comments on Regulatory and Policy Framework Technical Memorandum
- 2B Comments on Market Analysis
- 2C PMT Meeting #2
- 2D Comments on Existing Conditions Traffic Analysis
- 2E Comments on Future Baseline Traffic Analysis
- 2F Comments on Existing Conditions Report
- 2G PMT Meeting #3
- 2H TAC Meeting #2
- 2I SAC Meeting #2
- 2J PMT Meeting #4

2K Open House #1

Consultant Deliverables:

- 2A Regulatory and Policy Framework Technical Memorandum
- 2B Market Analysis
- 2C PMT Meeting #2
- 2D Existing Conditions Traffic Analysis
- 2E Future Baseline Traffic Analysis
- 2F Existing Conditions Report
- 2G PMT Meeting #3
- 2H TAC Meeting #2
- 2I SAC Meeting #2
- 2J PMT Meeting #4
- 2K Open House #1

Task 3: Develop and Evaluate Concept Plan Alternatives

Objective

- Develop a range of land use alternatives considering local objectives, Project Objectives and other Project needs, opportunities and constraints.
- Select recommended alternative and Town Center boundary

Subtasks

3.1 **Land Use and Transportation Alternatives** - Consultant shall develop at least two and no more than four draft and final land use and transportation alternatives (the “Land Use and Transportation Alternatives”) based on input from Open House #1 and addressing needs, opportunities, constraints and Final Goals, Objectives, and Evaluation Criteria. The Land Use and Transportation Alternatives must include scenarios that will achieve the City’s strategic goals, address Metro Town Center criteria, and address the OAR 660-012-0060 MMA definition. The Land Use and Transportation Alternatives must represent a range of potential land use densities and mix of uses. Conceptual alternatives must be developed in consultation with the PMT. Land Use and Transportation Alternatives must:

- Land use elements must be depicted in plan view with accompanying text and graphics (e.g. axonometric, elevation or perspective drawings) and descriptions sufficient, to inform public discussion and evaluation of alternatives. In order to be consistent with regional analyses, the Consultant shall use outputs from Metro-maintained data sets (i.e. housing, population, employment, etc.) which can be obtained from Metro’s Data Resource Center. Consultant shall work with Metro to explore using the Context Tool to analyze land use and transportation alternatives.
- Transportation elements must include bike, pedestrian and local street connections that are sufficient to comply with updated TPR and UGMFP requirements and show which existing streets will be extended and connected to planned streets and show new off-street

connections. Transportation alternatives must be developed that address overall needs for vehicle, bicycle, pedestrian, and transit modes.

- Consultant shall perform a qualitative assessment of the alternatives to evaluate their suitability to support high capacity transit and future station locations. Consultant shall assess potential station locations based on factors consistent with regional goals and objectives for station locations, such as land use mix and densities, multi-modal access, and circulation patterns.

Consultant shall prepare final version of Land Use and Transportation Alternatives incorporating TAC, SAC, and PMT input after TAC Meeting #3.

- 3.2 **Traffic Sensitivity Analysis Report** – Consultant shall prepare a draft and final traffic sensitivity analysis report (the “Traffic Sensitivity Analysis Report”) to assess the benefits and consequences of each alternative on the transportation system. This assessment must focus on comparing traffic volume, traffic patterns, and trip distribution between the alternatives. One alternative must reflect the City’s existing 99W trip cap. The Traffic Sensitivity Analysis Report must show trip distribution and compare with the Future Baseline to measure the significance of impact. The Traffic Sensitivity Analysis Report must describe methodology and document findings of the analysis for all Land Use and Transportation Alternatives. Consultant shall prepare a final version of Traffic Sensitivity Analysis Report, incorporating TAC, SAC, and PMT input after TAC Meeting #3.
- 3.3 **PMT Meeting #5** - Consultant shall arrange, attend, participate in as needed and conduct PMT Meeting #5 to review draft Land Use and Transportation Alternatives and Traffic Sensitivity Analysis Report and prepare for SAC Meeting #3, TAC Meeting #3, and Open House #2. Consultant shall distribute agenda and meeting material at least one week prior to PMT Meeting #5; City shall prepare meeting summary.
- 3.4 **SAC Meeting #3** - City shall arrange and conduct CAC Meeting #3; Consultant shall present draft Land Use and Transportation Alternatives and Traffic Sensitivity Analysis Report. City shall prepare meeting summary.
- 3.5 **TAC Meeting #3** – City shall arrange and conduct TAC Meeting #3; Consultant shall present draft Land Use and Transportation Alternatives and Traffic Sensitivity Analysis Report. City shall prepare meeting summary.
- 3.6 **Alternatives Evaluation Report** - Consultant shall prepare a draft and final alternatives evaluation report (the “Alternatives Evaluation Report”) that considers the following:
 - a. Land Use and Transportation Alternatives in terms of the Goals, Objectives, and Evaluation Criteria as defined in Task 1.
 - b. Land Use and Transportation Alternatives in terms of the needs, opportunities, constraints as defined in Task 2..

- c. Land Use and Transportation Alternatives against City and Metro objectives and updated TPR MMA criteria and definitions
- d. A range of potential land use densities and mix of uses for the Land Use and Transportation Alternatives
- e. Results and findings of Traffic Sensitivity Analysis Report.

The Alternatives Evaluation Report must identify and discuss outstanding issues or concerns, if any, with each alternative (e.g. conflicts that may need to be addressed during the subsequent refinement task). Graphic tools to help visualize the alternatives are expected. Cost estimates to implement the alternatives must be developed at the planning level. Consultant shall prepare a final Alternatives Evaluation Report incorporating Open House, TAC, SAC, and PMT input after Steering Committee Meeting #2.

- 3.7 **Open House #2** – City shall arrange and conduct Open House #2; Consultant shall present draft Land Use and Transportation Alternatives and Alternatives Evaluation Report in order to get public input on a recommended alternative. Consultant shall prepare graphic materials sufficient to convey to the general public work completed in Task 3. City shall provide advertisement and copies of materials that are 11x17 or smaller. City shall prepare meeting summary.
- 3.8 **SAC Meeting #4** - City shall arrange and facilitate SAC Meeting #4. Consultant shall prepare meeting materials and attend SAC Meeting#4. The SAC shall review draft Alternatives Evaluation Report, review Open House #2 feedback and provide comments and recommendations on final Town Center Boundary and recommended alternative. City shall prepare meeting summary.
- 3.9 **TAC Meeting #4** – City shall arrange and facilitate TAC Meeting #4. Consultant shall prepare meeting materials as needed, and attend TAC Meeting #4. The TAC shall review draft Alternatives Evaluation Report, review Open House #2 feedback and provide comments and recommendations on final Town Center Boundary and recommended alternative. City shall prepare meeting summary.
- 3.10 **Steering Committee Meeting #2** - City shall arrange and conduct Steering Committee Meeting #2 to present Traffic Sensitivity Analysis Report, Alternatives Evaluation Report, and feedback received at the Open House and get direction on the final Town Center boundary location and recommended alternative. The Steering Committee will be asked to provide direction on recommended alternative for further evaluation. City shall prepare meeting summary.

City Deliverables:

- 3A Comments on Land Use and Transportation Alternatives
- 3B Comments on Traffic Sensitivity Analysis Report
- 3C PMT Meeting #5
- 3D SAC Meeting #3
- 3E TAC Meeting #3
- 3F Comments on Alternatives Evaluation Report
- 3G Open House #2

- 3H SAC Meeting #4
- 3I TAC Meeting #4
- 3J Steering Committee Meeting #2

Consultant Deliverables:

- 3A Land Use and Transportation Alternatives
- 3B Traffic Sensitivity Analysis Report
- 3C PMT Meeting #5
- 3D SAC Meeting #3
- 3E TAC Meeting #3
- 3F Alternatives Evaluation Report
- 3G Open House #2
- 3H SAC Meeting #4
- 3I TAC Meeting #4

Task 4: Finalize Town Center Plan

Objectives

- Refine the recommended alternative
- Address Metro’s 2040 plan objectives through map and text amendments to the Comprehensive Plan and zoning code where appropriate
- Synthesize data and analyses with public and agency input into coordinated, comprehensive implementation recommendations for land use, urban design, transportation, economic development, and implementation strategies.

Subtasks

- 4.1 **Traffic Analysis (Contingent Task)** – Upon written authorization of the WOCPM, Consultant shall prepare a traffic analysis to assess traffic operations within the Project Area (the 15 study intersections from Task 2.4) (the “Traffic Analysis”) for the recommended land use and transportation alternative from Task 4 for the purposes of satisfying TPR requirements. The peak hour operational results of the Traffic Analysis at the study intersections must be compared to performance standards in the 2005 TSP, County TSP, and Metro RTP. For all intersections where the analysis shows a significant traffic impact per the TPR, Consultant shall develop and analyze mitigation measures. Consultant shall evaluate the consistency of mitigation measures with Metro’s transportation functional plan, to help demonstrate the recommended alternative’s compliance with the TPR.
- 4.2 **Implementation Report** - Consultant shall prepare a draft and final implementation report (the “Implementation Report”) consisting of:
 - Refinements to Alternatives Evaluation Report, considering public and technical input from previous task.
 - Recommendations on funding sources for recommended public infrastructure improvements. Where costs cannot be feasibly covered by private development, the Implementation Report must describe alternative revenue sources and public policy tools to meet the shortfall.
 - An implementation strategy that describes implementation actions.

- In the case of transportation projects, the implementation strategy must list general cost estimates and construction priority for inclusion in the 2005 TSP (or as updated).
- The strategy must include recommendations for policy and ordinance amendments, consistent with the Draft Goals, Objectives, and Evaluation Criteria in Task 1 and supported by subsequent analysis and PMT, TAC, and SAC input.

Consultant shall prepare a final Implementation Report, incorporating PMT, TAC, SAC, Steering Committee and City Council input after City Council Work Session in Task 5

- 4.3 **PMT Meeting #6** - Consultant shall arrange, attend, participate in as needed and conduct PMT Meeting #6 to review Traffic Analysis (Contingent Task), Implementation Report and discuss preparation of Draft Sherwood Town Center Plan. Consultant shall distribute agenda and meeting material at least one week prior to the meeting. City shall prepare meeting summary.
- 4.4 **Draft Sherwood Town Center Plan** - Consultant shall prepare a draft Sherwood Town Center Plan and Implementation Strategy (the “Draft Sherwood Town Center Plan and Implementation Strategy”) document and provide to the PMT, SAC and TAC for review. The Draft Sherwood Town Center Plan and Implementation Strategy must include:
- a. Executive Summary
 - b. Alternatives Evaluation Report
 - c. Traffic Analysis
 - d. Implementation Report
- 4.5 **SAC Meeting #5** - City shall arrange and conduct and Consultant shall prepare materials for SAC Meeting #5 to present Implementation Report and Draft Sherwood Town Center Plan and Implementation Strategy and get comments and recommendations. City shall prepare meeting summary.
- 4.6 **TAC Meeting #5** – City shall arrange and conduct and Consultant shall prepare materials for TAC Meeting #5 to present Implementation Report and Draft Sherwood Town Center Plan and Implementation Strategy and get comments and recommendations. City shall prepare meeting summary.
- 4.7 **Steering Committee Meeting #3** - City shall arrange and conduct Steering Committee Meeting #3 to present the Implementation Report and the Draft Sherwood Town Center Plan and Implementation Strategy, and obtain SAC and TAC feedback. City shall prepare meeting summary.
- 4.8 **Plan and Code Amendments** - City shall prepare amendments to the comprehensive plan, zoning map, overlay district, development standards, and other development regulations as necessary to implement the Draft Sherwood Town Center Plan and Implementation Strategy. Comprehensive plan amendments must include recommended changes to the 2005 TSP to add planned transportation projects and otherwise describe the recommended transportation network. Amendments must be appropriate to be included in the City’s comprehensive plan. Consultant shall review Plan and Code Amendments and provide written comments to City.

City Deliverables:

- 4A Comments on Traffic Analysis (Contingent Task)
- 4B Comments on Implementation Report
- 4C PMT Meeting #6
- 4D Comments on Draft Sherwood Town Center Plan and Implementation Strategy
- 4E SAC Meeting #5
- 4F TAC Meeting #5
- 4G Steering Committee Meeting #3
- 4H Plan and Code Amendments

Consultant Deliverables:

- 4A Contingent: Traffic Analysis
- 4B Implementation Report
- 4C PMT Meeting #6
- 4D Draft Sherwood Town Center Plan
- 4E SAC Meeting #5
- 4F TAC Meeting #5
- 4G Comments on Plan and Code Amendments

Task 5: Adoption

Objectives

- Adoption of necessary amendments to implement the Sherwood Town Center Plan

Subtasks

- 5.1 **City Council Work Session** - City shall arrange and conduct a City Council Work Session to present the Draft Sherwood Town Center Plan and Implementation Strategy. Consultant shall prepare and Consultant and City shall deliver a PowerPoint presentation at the work session that summarizes the planning process and plan recommendations. City shall lead a discussion to garner input from City Council. City shall invite members of the Planning Commission, SAC and TAC. City shall record comments and provide written summary.
- 5.2 **Final Sherwood Town Center Plan** - Consultant shall prepare a final Sherwood Town Center plan and implementation strategy (the “Final Sherwood Town Center Plan and Implementation Strategy”) to incorporate input from City Council Work Session and PMT. Consultant shall provide 3 hardcopies and 2 CD of Final Sherwood Town Center Plan and Implementation Strategy to both the City and WOCPM. Electronic versions must be provided in both .pdf and modifiable format.
- 5.3 **Adoption Hearings** – City shall prepare arrange and conduct Adoption Hearings including staff report and analysis. Consultant shall provide technical support.
- 5.4 **Final Revisions** – Consultant shall provide technical support, as needed, addressing City Planning Commission and City Council recommendations for final policy or code amendments necessary to implement the Sherwood Town Center Plan.

City Deliverables:

- 5A City Council Work Session
- 5B Comments on Final Sherwood Town Center Plan and Implementation Strategy
- 5C Adoption Hearings

Consultant Deliverables:

- 5A City Council Work Session
- 5B Final Sherwood Town Center Plan
- 5C Adoption Hearings
- 5D Final Revisions

CITY DELIVERABLES BUDGET

Task #	Fee
Task 1 – Project Kick-off	\$8,800
Task 2 – Existing Conditions and Market Analysis	\$5,300
Task 3 – Develop and Evaluate Concept Plan Alternatives	\$14,300
Task 4 – Finalize Town Center Plan	\$6,800
Task 5 – Adoption	\$6,700
Total	\$41,900
* Amounts include match	

Consultant Deliverable Table

Task	Description	Total Fixed Amount Per Deliverable	Schedule
1	Project Kick-off		
1A	Comments on Project Web Site	\$100	
1B	Project Schedule	\$400	
1C	Draft Goals, Objectives and Evaluation Criteria	\$2950	
1D	Comments on Public Involvement Plan	\$100	
1E	PMT Meeting #1	\$1,100	
1F	Land Use and Transportation Base Maps	\$1,800	
1G	Stakeholder Interviews	\$1,750	
1H	Joint TAC Meeting #1 and SAC Meeting #1	\$700	
1I	Final Goals, Objectives, and Evaluation Criteria	\$1,100	
	Task 1	\$10,000	July 2012

<i>Task</i>	<i>Description</i>	<i>Total Fixed Amount Per Deliverable</i>	<i>Schedule</i>
2	Existing Conditions and Market Analysis		
2A	Regulatory and Policy Framework Technical Memorandum	\$3,350	
2B	Market Analysis	\$8,550	
2C	PMT Meeting #2	\$1,750	
2D	Existing Conditions Traffic Analysis	\$10,200	
2E	Future Baseline Traffic Analysis	\$10,050	
2F	Existing Conditions Report	\$8,650	
2G	PMT Meeting #3	\$1,600	
2H	TAC Meeting #2	\$2,000	
2I	SAC Meeting #2	\$1,900	
2J	PMT Meeting #4	\$1,600	
2K	Open House #1	\$3,900	
	Task 2	\$53,550	October 2012
3	Develop and Evaluate Concept Plan Alternatives		
3A	Land Use and Transportation Alternatives	\$14,600	
3B	Traffic Sensitivity Analysis Report	\$4,600	
3C	PMT Meeting #5	\$1,300	
3D	SAC Meeting #3	\$1,750	
3E	TAC Meeting #3	\$1,750	
3F	Alternatives Evaluation Report	\$7,850	
3G	Open House #2	\$4,000	
3H	SAC Meeting #4	\$1,750	
3I	TAC Meeting #4	\$1,750	
	Task 3	\$39,350	January 2013
4	Finalize Town Center Plan		
4A	<i>(Contingent task) Traffic Analysis</i>	\$10,550	
4B	Implementation Report	\$8,000	
4C	PMT Meeting #6	\$1,150	
4D	Draft Sherwood Town Center Plan	\$9,450	
4E	SAC Meeting #5	\$1,750	
4F	TAC Meeting #5	\$1,450	
4G	Comments on Plan and Code Amendments	\$3,850	
	Task 4	\$36,200	March 2013

<i>Task</i>	<i>Description</i>	<i>Total Fixed Amount Per Deliverable</i>	<i>Schedule</i>
5	Adoption		
5A	City Council Work Session	\$1,100	
5B	Final Sherwood Town Center Plan	\$7,500	
5C	Adoption Hearings	\$200	
5D	Final Revisions	\$200	
	Task 5	\$9,000	April 2013
	Total Non-Contingency	137,550	
	Total Contingency	10,550	
	TOTAL	148,100	

P CONTINGENCY TASKS

Table 1 is a summary of contingency tasks that Agency, at its discretion, may authorize Consultant to produce. Details of the contingency tasks and associated deliverables are stated in the Task section of this SOW. Consultant shall complete only the specific contingency task(s) identified and authorized via written (email acceptable) Notice-to-Proceed (“NTP”) issued by WOCPM.

If Agency chooses to authorize some or all of these tasks, Consultant shall complete the authorized tasks and deliverables per the schedule identified for each task. The NTP will include the contingency task name and number, agreed-to due date for completion and NTE for the authorized contingency task.

Each contingency task is only billable (up to the NTE amount identified for the task) if specifically authorized per NTP. In the table below, the NTE amount for a contingency task includes all labor, overhead, profit, and expenses for the task. The funds budgeted for contingency tasks may not be applied to non-contingency tasks without an amendment to the WOC/Contract. The total amount for all contingency tasks authorized shall not exceed the maximum identified in the table below. Each authorized contingency task must be billed as a separate line item on Consultant’s invoice.

Table 1--CONTINGENCY TASK SUMMARY

Contingency Task Description	Method of Compensation	Total NTE Amount
4A Traffic Analysis	Lump Sum per Deliverable	\$10,550
Total For All Contingency Tasks:		\$10,550

Q Summary Report of Subcontractors Paid

Consultant shall submit (via fax, scanned and sent via e-mail, or hard copy delivery) a completed, signed "[Summary Report of Subcontractor's Paid](#)" 734-2722 (pdf) " form 734-2722 to WOCPM certifying that payment was made to all certified and non-certified subcontractors or suppliers (**required for all Projects that include subs, regardless of funding or whether or not a DBE goal or MWESB Aspirational Target is assigned**). The form is available from the Internet at: <http://www.odot.state.or.us/forms/odot/highway734/2722.pdf> or from the Office of Civil Rights at 503-986-4350. Submit the form when a progress or final payment has been made to each subcontractor or supplier or when any held retainage is returned to a subcontractor or supplier. Submit the form no later than the fifth day of each month following date payment was made to a subcontractor or supplier. At the completion of the Project, Consultant shall submit a final Summary Report of Subcontractors Paid form (marked as "FINAL REPORT") indicating the total amounts paid to all subcontractors and suppliers. WOCPM will review the report, reconcile any discrepancies with Consultant, and forward to Region Civil Rights staff.

EXHIBIT B (Local Agency or State Agency)

CONTRACTOR CERTIFICATION

Contractor certifies by signing this contract that Contractor has not:

- (a) Employed or retained for a commission, percentage, brokerage, contingency fee or other consideration, any firm or person (other than a bona fide employee working solely for me or the above consultant) to solicit or secure this contract,
- (b) agreed, as an express or implied condition for obtaining this contract, to employ or retain the services of any firm or person in connection with carrying out the contract, or
- (c) paid or agreed to pay, to any firm, organization or person (other than a bona fide employee working solely for me or the above consultant), any fee, contribution, donation or consideration of any kind for or in connection with, procuring or carrying out the contract, except as here expressly stated (if any):

Contractor further acknowledges that this certificate is to be furnished to the Federal Highway Administration, and is subject to applicable State and Federal laws, both criminal and civil.

AGENCY OFFICIAL CERTIFICATION (ODOT)

Department official likewise certifies by signing this contract that Contractor or his/her representative has not been required directly or indirectly as an expression of implied condition in connection with obtaining or carrying out this contract to:

- (a) Employ, retain or agree to employ or retain, any firm or person or
- (b) pay or agree to pay, to any firm, person or organization, any fee, contribution, donation or consideration of any kind except as here expressly stated (if any):

Department official further acknowledges this certificate is to be furnished to the Federal Highway Administration, and is subject to applicable State and Federal laws, both criminal and civil.

EXHIBIT C

Federal Provisions
Oregon Department of Transportation

I. CERTIFICATION OF NONINVOLVEMENT IN ANY DEBARMENT AND SUSPENSION

Contractor certifies by signing this contract that to the best of its knowledge and belief, it and its principals:

- 1. Are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by any Federal department or agency;
- 2. Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain or performing a public (federal, state or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery falsification or destruction of records, making false statements or receiving stolen property;

3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and
4. Have not within a three-year period preceding this application/proposal had one or more public transactions (federal, state or local) terminated for cause or default.

Where the Contractor is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

List exceptions. For each exception noted, indicate to whom the exception applies, initiating agency, and dates of action. If additional space is required, attach another page with the following heading: Certification Exceptions continued, Contract Insert.

EXCEPTIONS:

Exceptions will not necessarily result in denial of award, but will be considered in determining Contractor responsibility. Providing false information may result in criminal prosecution or administrative sanctions.

The Contractor is advised that by signing this contract, the Contractor is deemed to have signed this certification.

II. INSTRUCTIONS FOR CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS—PRIMARY COVERED TRANSACTIONS

1. By signing this contract, the Contractor is providing the certification set out below.
2. The inability to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The Contractor shall explain why he or she cannot provide the certification set out below. This explanation will be considered in connection with the Oregon Department of Transportation determination to enter into this transaction. Failure to furnish an explanation shall disqualify such person from participation in this transaction.
3. The certification in this clause is a material representation of fact upon which reliance was placed when the Department determined to enter into this transaction. If it is later determined that the Contractor knowingly rendered an erroneous

certification, in addition to other remedies available to the Federal Government or the Department may terminate this transaction for cause of default.

4. The Contractor shall provide immediate written notice to the Department to whom this proposal is submitted if at any time the Contractor learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
5. The terms "covered transaction", "debarred", "suspended", "ineligible", "lower tier covered transaction", "participant", "person", "primary covered transaction", "principal", and "voluntarily excluded", as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the Department's Program Section (Tel. (503) 986-3400) to which this proposal is being submitted for assistance in obtaining a copy of those regulations.
6. The Contractor agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transactions with a person who is debarred, suspended, declared ineligible or voluntarily excluded from participation in this covered transaction, unless authorized by the Department or agency entering into this transaction.
7. The Contractor further agrees by submitting this proposal that it will include the Addendum to Form FHWA-1273 titled, "Appendix B--Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered Transactions", provided by the Department entering into this covered transaction without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List published by the U. S. General Services Administration.

9. Nothing contained in the foregoing shall be construed to require establishment of a system of records to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government or the Department, the Department may terminate this transaction for cause or default.

III. ADDENDUM TO FORM FHWA-1273, REQUIRED CONTRACT PROVISIONS

This certification applies to subcontractors, material suppliers, vendors, and other lower tier participants.

- Appendix B of 49 CFR Part 29 -

Appendix B--Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion--Lower Tier Covered Transactions

Instructions for Certification

1. By signing and submitting this contract, the prospective lower tier participant is providing the certification set out below.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the person to which this contract is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction", "debarred", "suspended", "ineligible", "lower tier covered transaction", "participant", "person", "primary covered transaction", "principal", "proposal", and "voluntarily excluded", as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this contract that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
6. The prospective lower tier participant further agrees by submitting this contract that it will include this clause titled, "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered Transaction", without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the nonprocurement list.
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is

suspended, debarred, ineligible or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion--Lower Tier Covered Transactions

- a. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by any Federal department or agency.
- b. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

IV. EMPLOYMENT

1. Contractor warrants that he has not employed or retained any company or person, other than a bona fide employee working solely for Contractor, to solicit or secure this contract and that he has not paid or agreed to pay any company or person, other than a bona fide employee working solely for Contractor, any fee, commission, percentage, brokerage fee, gifts or any other consideration contingent upon or resulting from the award or making of this contract. For breach or violation of this warranting, Department shall have the right to annul this contract without liability or in its discretion to deduct from the contract price or consideration or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.
2. Contractor shall not engage, on a full or part-time basis or other basis, during the period of the contract, any professional or technical personnel who are or have been at any time during the period of this contract, in the employ of Department, except regularly retired employees, without written consent of the public employer of such person.
3. Contractor agrees to perform consulting services with that standard of care, skill and diligence normally provided by a professional in the performance of such consulting services on work similar to that hereunder. Department shall be

entitled to rely on the accuracy, competence, and completeness of Contractor's services.

V. NONDISCRIMINATION

During the performance of this contract, Contractor, for himself, his assignees and successors in interest, hereinafter referred to as Contractor, agrees as follows:

1. Compliance with Regulations. Contractor agrees to comply with Title VI of the Civil Rights Act of 1964, and Section 162(a) of the Federal-Aid Highway Act of 1973 and the Civil Rights Restoration Act of 1987. Contractor shall comply with the regulations of the Department of Transportation relative to nondiscrimination in Federally assisted programs of the Department of Transportation, Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time (hereinafter referred to as the Regulations), which are incorporated by reference and made a part of this contract. Contractor, with regard to the work performed after award and prior to completion of the contract work, shall not discriminate on grounds of race, creed, color, sex or national origin in the selection and retention of subcontractors, including procurement of materials and leases of equipment. Contractor shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices, when the contract covers a program set forth in Appendix B of the Regulations.
2. Solicitation for Subcontractors, including Procurement of Materials and Equipment. In all solicitations, either by competitive bidding or negotiations made by Contractor for work to be performed under a subcontract, including procurement of materials and equipment, each potential subcontractor or supplier shall be notified by Contractor of Contractor's obligations under this contract and regulations relative to nondiscrimination on the grounds of race, creed, color, sex or national origin.
3. Nondiscrimination in Employment (Title VII of the 1964 Civil Rights Act). During the performance of this contract, Contractor agrees as follows:
 - a. Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex or national origin. Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment,

without regard to their race, creed, color, sex or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notice setting forth the provisions of this nondiscrimination clause.

- b. Contractor will, in all solicitations or advertisements for employees placed by or on behalf of Contractor, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, sex or national origin.
4. Information and Reports. Contractor will provide all information and reports required by the Regulations or orders and instructions issued pursuant thereto, and will permit access to his books, records, accounts, other sources of information, and his facilities as may be determined by Department or FHWA as appropriate, and shall set forth what efforts he has made to obtain the information.
5. Sanctions for Noncompliance. In the event of Contractor's noncompliance with the nondiscrimination provisions of the contract, Department shall impose such agreement sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:
 - a. Withholding of payments to Contractor under the agreement until Contractor complies; and/or
 - b. Cancellation, termination or suspension of the agreement in whole or in part.
6. Incorporation of Provisions. Contractor will include the provisions of paragraphs 1 through 6 of this section in every subcontract, including procurement of materials and leases of equipment, unless exempt from Regulations, orders or instructions issued pursuant thereto. Contractor shall take such action with respect to any subcontractor or procurement as Department or FHWA may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided, however, that in the event Contractor becomes involved in or is threatened with litigation with a subcontractor or supplier as a result of such

direction, Department may, at its option, enter into such litigation to protect the interests of Department, and, in addition, Contractor may request Department to enter into such litigation to protect the interests of the State of Oregon.

VI. DISADVANTAGED BUSINESS ENTERPRISE (DBE) POLICY

In accordance with Title 49, Code of Federal Regulations, Part 26, Contractor shall agree to abide by and take all necessary and reasonable steps to comply with the following statement:

DBE POLICY STATEMENT

DBE Policy. It is the policy of the United States Department of Transportation (USDOT) to practice nondiscrimination on the basis of race, color, sex and/or national origin in the award and administration of USDOT assist contracts. Consequently, the DBE requirements of 49 CFR 26 apply to this contract.

Required Statement For USDOT Financial Assistance Agreement. If as a condition of assistance the Agency has submitted and the US Department of Transportation has approved a Disadvantaged Business Enterprise Affirmative Action Program which the Agency agrees to carry out, this affirmative action program is incorporated into the financial assistance agreement by reference.

DBE Obligations. The Oregon Department of Transportation (ODOT) and its contractor agree to ensure that Disadvantaged Business Enterprises as defined in 49 CFR 26 have the opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds. In this regard, Contractor shall take all necessary and reasonable steps in accordance with 49 CFR 26 to ensure that Disadvantaged Business Enterprises have the opportunity to compete for and perform contracts. Neither ODOT nor its contractors shall discriminate on the basis of race, color, national origin or sex in the award and performance of federally-assisted contracts. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of such contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as ODOT deems appropriate.

The DBE Policy Statement and Obligations shall be included in all subcontracts entered into under this contract.

Records and Reports. Contractor shall provide monthly documentation to Department that it is subcontracting with or purchasing materials from the DBEs identified to meet contract goals. Contractor shall notify Department and obtain its written approval before replacing a DBE or making any change in the DBE participation listed. If a DBE is unable to fulfill the original obligation to the contract, Contractor must demonstrate to Department the Affirmative Action steps taken to replace the DBE with another DBE. Failure to do so will result in withholding payment on those items. The monthly documentation will not be required after the DBE goal commitment is satisfactory to Department.

Any DBE participation attained after the DBE goal has been satisfied should be reported to the Departments.

DBE Definition. Only firms DBE certified by the State of Oregon, Department of Consumer & Business Services, Office of Minority, Women & Emerging Small Business, may be utilized to satisfy this obligation.

CONTRACTOR'S DBE CONTRACT GOAL

DBE GOAL 0 %

By signing this contract, Contractor assures that good faith efforts have been made to meet the goal for the DBE participation specified in the Request for Proposal/Qualification for this project as required by ORS 200.045, and 49 CFR 26.53 and 49 CFR, Part 26, Appendix A.

VII. LOBBYING

The Contractor certifies, by signing this agreement to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to

influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan or cooperative agreement.

2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress or an employee of a Member of Congress in connection with this agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U. S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Contractor also agrees by signing this agreement that he or she shall require that the language of this certification be included in all lower tier subagreements, which exceed \$100,000 and that all such subrecipients shall certify and disclose accordingly.

**FOR INQUIRY CONCERNING ODOT'S
DBE PROGRAM REQUIREMENT
CONTACT OFFICE OF CIVIL RIGHTS
AT (503)986-4354.**

EXHIBIT D
ELIGIBLE PARTICIPATING COST
DESCRIPTION
PERSONNEL SERVICES
<i>Salaries</i> - Straight time pay for regular working hours in a monthly period. Includes standard labor distributions like Social Security Taxes, Workers' Compensation Assessments and Medical, Dental, Life Insurance. Excludes mass transit tax, vacation leave, sick leave and compensatory time taken.
<i>Overtime</i> - Payments to employees for work performed in excess of their regular work shift.
<i>Shift Differential</i> - Payments to employees, in addition to regular pay, for shift differential work as described in labor contracts or Personnel Rules.
<i>Travel Differential</i> - Payments to employees, in addition to regular pay, for travel time to and from work on projects in excess and beyond an 8 hour day as described in labor contracts or Personnel Rules.
SERVICES AND SUPPLIES
In-State Travel - Per Rates Identified in State Travel Handbook
<i>Meals & Misc.</i> - Payment for meals incurred while traveling within the State of Oregon.
<i>Lodging & Room Tax</i> - Payment for lodging, including room taxes, incurred while traveling within the State of Oregon. Fares, Taxi, Bus, Air, Etc.
<i>Per Diem</i> - Payment for per diem, incurred while traveling within the State of Oregon.
<i>Other</i> - Payment for other miscellaneous expense, incurred while traveling within the State of Oregon.
<i>Private Car Mileage</i> - Payment for private car mileage while traveling within the State of Oregon.
Office Expense
<i>Direct Project Expenses Including:</i>
<i>Photo, Video & Microfilm Supplies</i> - Payment for photography, video and microfilm supplies such as film for cameras, blank video tapes, storage folders, etc.
<i>Printing, Reproduction & Duplication</i> - Expenditures for services to copy, print, reproduce and/or duplicate documents.
<i>Postage</i> - Payment for direct project postage.
<i>Freight & Express Mail</i> - Payment for direct project freight services on outgoing shipments.
Telecommunications
<i>Phone Toll Charges (long-distance)</i> - Payment for telephone long distance charges.
Publicity & Publication
<i>Publish & Print Photos</i> - Payment for printing and publishing photographs to development of publicity and publications.
<i>Conferences</i> (costs to put on conference or seminars)
Equipment \$250 - \$4,999
NOT ELIGIBLE
Employee Training, Excluding Travel
NOT ELIGIBLE
Training In-State Travel
NOT ELIGIBLE
CAPITOL OUTLAY
NOT ELIGIBLE

TO: Sherwood City Council
FROM: Zoe Monahan, Assistant Planner
Through: Julia Hajduk, Planning Manager
Subject: Code Clean-Up Trees on Private Property

EXECUTIVE SUMMARY

Summary: As part of a multi-phase code clean-up project with the goal of providing a more clear and usable code for citizens and developers, the proposed amendments include updates to: 1) trees on private property and 2) housekeeping changes related to the tree code and past parks and open space standards of Section 16.142.

Previous Council Action: Council held a public hearing on March 20, 2012 and continued the hearing to May 1, 2012 to allow staff time to respond to questions and concerns that were raised. Prior Council action on this topic included a work session on January 3, 2012 to preliminarily discuss the concepts.

Background/Problem Discussion: The trees on private property standards were updated in order to address the following issues:

- Make the code fair, clear and flexible.
- Preserve the urban canopy and preserve mature trees.
- Set a standard which removes the inch for inch tree mitigation standard.
- Differentiate between residential and non-residential standards.

The Planning Commission forwarded a recommendation to Council after a little over a year of outreach, review and consideration regarding the proposed changes. At the March 20th hearing, Council had a number of questions and concerns that made it clear additional clarification and refinement to the proposed language was needed. Staff has prepared a memo and revised the draft code language in an effort to address the concerns and questions raised. Attachment 1 is the memo which provides a detailed response to each of the concerns raised. Attachment 1-A is a clean version of the proposed language. Attachment 1-B reflects the proposed code changes with the additional revisions proposed by staff highlighted in Green.

For Council's reference, the Planning Commission recommendation is attached as Attachment 2; however the remaining exhibits that were included in the March 20th Council packet have not been carried forward into this packet.

Alternatives: Approve, approve with modifications or deny the modified version of the Planning Commission's recommendation.

Financial Implications: There are no foreseen financial impacts to the City by implementing this language, other than the costs to update the municipal code.

Recommendation: Staff recommends that the City Council adopt the attached Ordinance and Exhibits 1-A which reflects the modified version of the Planning Commission's recommendation.

Attachments:

Ordinance

Exhibit 1 – Staff Memo to City Council dated April 19, 2012

1-A - Proposed development code changes (clean copy)

1-B - Proposed development code changes (track changes)

Exhibit 2– PC Recommendation and Findings



ORDINANCE 2012-003

AN ORDINANCE AMENDING MULTIPLE SECTIONS OF THE ZONING AND COMMUNITY DEVELOPMENT CODE RELATING TO TREES ON PRIVATE PROPERTY, INCLUDING DIVISIONS, I, V AND VIII

WHEREAS, The Sherwood Zoning and Community Development Code has not been comprehensively updated in many years, and

WHEREAS, the City has undertaken a multi-phase, multi-year program to comprehensively update the development code to ensure that it is clear, consistent, and current; and

WHEREAS, the Planning Commission helped guide the development of proposed amendments after extensive public outreach and opportunity for public input; and

WHEREAS, this Code Clean-Up Update: Trees on Private Property includes amendments to Divisions I, V and VIII specifically related to the Tree standards (16.10.020, 16.90.020 and 16.142.070) as well as minor housekeeping changes related to Parks and Open Spaces (16.142.040 and 16. 142.060) section of the code; and

WHEREAS, the proposed amendments were reviewed for compliance and consistency with the Comprehensive Plan, regional and state regulations and found to be fully compliant; and

WHEREAS, the proposed amendments were subject to full and proper notice and review and a public hearing was held before the Planning Commission on January 24, 2012; and

WHEREAS, the Planning Commission voted unanimously to forward a recommendation of approval to the City Council for the proposed development code modifications on January 24, 2012; and

WHEREAS, the analysis and findings to support the Planning Commission recommendation are identified in the attached Exhibit 2; and

WHEREAS, the City Council held a public hearing on March 20, 2012 and raised questions and concerns resulting in modifications discussed at the May 1, 2012 public hearing; and

WHEREAS, the City Council determined that the modifications in Exhibit 1-A were generally consistent with the Planning Commission recommendation, and

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

Section 1. Findings. After full and due consideration of the application, the Planning Commission recommendation, the record, findings, and of the evidence presented at the public hearing, the Council adopts the findings of fact contained in the Planning Commission recommendation attached as Exhibit 2 finding that the text of the SZCDC shall be amended as documented in attached Exhibit 1-A.

Section 2. Approval. The proposed amendments for Plan Text Amendment (PA) 11-06 identified in Exhibit 1-A is hereby **APPROVED**.

Section 3 - Manager Authorized. The Planning Department is hereby directed to take such action as may be necessary to document this amendment, including notice of adoption to DLCDC and necessary updates to Chapter 16 of the municipal code in accordance with City ordinances and regulations.

Section 4 - Applicability. The amendments to the City of Sherwood Zoning and Community Development Code by Sections 1 to 3 of this Ordinance apply to all land use applications submitted after the effective date of this Ordinance.

Section 5 - Effective Date. This ordinance shall become effective the 30th day after its enactment by the City Council and approval by the Mayor.

Duly passed by the City Council this 1st day of May 2012.

Keith S. Mays, Mayor

Attest:

Sylvia Murphy, CMC, City Recorder

	<u>AYE</u>	<u>NAY</u>
Clark	_____	_____
Langer	_____	_____
Butterfield	_____	_____
Folsom	_____	_____
Henderson	_____	_____
Grant	_____	_____
Mays	_____	_____



MEMORANDUM

City of Sherwood
22560 SW Pine St.
Sherwood, OR 97140
Tel 503-625-5522
Fax 503-625-5524
www.sherwoodoregon.gov

DATE: April 19, 2012
TO: City Council
FROM: Zoe Monahan, Assistant Planner
SUBJECT: Trees on Private Property Code Revisions

Mayor
Keith Mays

Council President
Dave Grant

Councilors
Linda Henderson
Robyn Folsom
Bill Butterfield
Matt Langer
Krisanna Clark

City Manager Pro Tem
Tom Pessemier

The purpose of this memo is to address the concerns that the City Council raised at the March 20, 2012 public hearing regarding the trees on private property code update (Ord. 2012-003). This memo is organized as follows:

1. Background information has been provided to clarify why we have a tree code and why it is being updated.
2. Response to specific Council concerns. We have reviewed the questions from the public hearing and responded to the questions and concerns raised.



2009 Top Ten Selection



2007 18th Best Place to Live



Attachment 1 is the original track changes version where **blue** font represents added language, the **red** font represents removed language and **green** font represents existing language which has been moved from one location to another within the code. Additional changes proposed in response to Council questions and comments at the last hearing are highlighted in green.

Background

In the following discussion, the local, state and regional requirements are discussed. The code cannot be in conflict with the comprehensive plan or regional or state requirements.

Statewide Planning Goal 5 is required to be addressed in local comprehensive plans and must identify how natural resources will be protected and conserved. Sherwood's plan and implementing ordinance (the Development Code) address Goal 5 by identifying resources and having standards in place to ensure impacts to these resources are minimized. This is where we got our inventory, removal and mitigation requirements from. If we were to make wholesale changes to the tree standards (eliminate any requirement to protect or mitigate) we would need to do a thorough revision to the comprehensive plan and would likely face pushback from the State.

There are also regional standards related to the tree removal and replacement standards. Specifically, Metro's Title 13- Nature in Neighborhoods is intended to "conserve, protect and restore a continuous ecologically viable streamside corridor system that is integrated with upland wildlife habitat and the surrounding urban landscape." The title is not intended to prevent or discourage development. Tree preservation is one tool we committed to use in order to satisfy Title 13.

The City's comprehensive plan and development code are currently consistent with Oregon Goal 5 and Metro Title 13 and includes goals and policies related to the protection and preservation of natural resources including trees.

Given the state, regional and local standards in place that require we have policies in place to protect and preserve natural resources, we were also faced with the impacts created by the existing Code that was often a financial burden impacting the developability of property. The current tree code has created some issues since the existing mitigation standard currently in place can be a burden on developers if there are a lot of trees on the property.

Specifically, it can be expensive to replace trees or pay a fee in lieu on an inch for inch basis. In addition to being expensive, there are often too many replacement trees for the site which can lead to the trees being planted too close together and ultimately dying or being removed by the buyer. In order to move away from the inch for inch mitigation standards and still promote the preservation of trees, the proposed canopy requirement gives the developer the flexibility to determine how they will meet the canopy requirement and decide the most strategic locations for trees that are to be planted. It is also intended to ensure existing mature trees on a property are seen as an asset rather than a burden.

The intent of the proposed tree code language is to remove a barrier and encourage developers to retain existing trees. Staff and the Planning Commission believe that this code is fair, flexible and provides an incentive to develop in Sherwood since there is no mitigation requirement.

City Council Concerns

The City Council had a number of concerns regarding the proposed trees on private property code language. Staff made edits to the draft language to clarify and address these concerns. Specific City Council concerns are organized into several categories and are addressed below.

General clarification questions

***Concern:** The proposed language requires a certain percentage of net developable site but there is not a definition for net developable site. There is a proposed definition for net developable acre. Clarification is needed.*

Response: The draft code language definition has been changed from “net developable area” to “net developable site”, as shown below.

Net Developable Site: Remaining area of a parent parcel after excluding present and future rights-of-way, environmentally constrained areas, public parks and other public uses.

Concern: *There was some concern about the complexity of the canopy requirement. Councilors wondered why the residential tree requirement wasn't just the street tree requirement.*

Response: It is important to keep in mind that this change is intended to change how we preserve trees through development. There is no incentive to preserve any existing tree if the standard is automatically met simply by planting street trees. In addition, as a result of changes to the street tree standards, the street trees alone may not provide the necessary canopy (depending on the canopy of the street tree selected).

For example, the City is reviewing an application for a subdivision off of Edy Road. While the specifics of the development area not being discussed at this time, the site is heavily treed. The applicant will remove 1524 inches in order to build homes on the 26 lot development. In order to meet the mitigation requirement the applicant must plant 1524 inches (762 two inch trees) or pay the fee in lieu at a rate of \$75 per inch totaling a cost to the development of \$114,300.

In anticipation of the code update, the tree plan for this recently submitted subdivision shows how they can meet the 40% canopy requirement by planting street trees and preserving trees within the development. Their plan achieves a 44% canopy. This calculation was proposed before the draft code change was revised to allow existing trees to count toward twice the canopy spread. The applicant selected street trees with 30' and 40' canopy spreads. They would be unable to meet the canopy requirement solely with street trees because the street trees only achieved a 30% canopy.

It was evident during the hearing that the methods of calculation were not clear. In order to make the code language clearer staff has prepared diagrams and a table to insert into the code (page 11 of Attachment 1). This will provide the technical language required to describe the standards. In addition, tables and diagrams have been added to further break down the language for developers and property owners. Staff hopes that this additional information will serve as a quick reference for tree code users.

Concern: *In the retention requirement language there is discussion about the decision maker. It appears that the City is the deciding body for that standard is this correct?*

Response: As proposed, the City is the decision maker. The existing code language says “Commission or Council must make findings...” which made them the decision maker. In order to simplify the language it was updated to say the City which could include staff, the hearings officer, planning commission and city council as the decision maker dependent on the type of land use review. All of the decision makers were included, via the City, since the decision maker varies based on the level (type II- IV) of review.

Concern: The draft language refers to a large stature tree, how will a developer or citizen know what a large stature tree is?

Response: Large stature tree is defined on page 10 of the draft code language. It states “A large stature tree is over 20 feet tall and wide with a minimum trunk diameter of 30 inches at DBH.” The term is used in the context of trees which will be retained in order to seek a preservation incentive, such as a sidewalk incentive.

Concern: *In section 16.142.080.B. there is discussion about natural resource areas. It is not clear what a natural resource area is, is it defined within the Sherwood Zoning and Community Development Code?*

Response: A natural resource area is not defined. A definition has not been provided at this time but the language has been clarified. Instead of using the term “natural resource area” it has been changed to read “wetland, floodplain or protected through prior land use review per section 3.b. (1.) – (5.) below.”

Concern: *The existing code exempts agricultural trees from the tree regulations; will the proposed code be consistent with the previous policy??*

Response: Yes. The draft code language (16.142.070.C.3.b) reads: “A woodland is a biological community dominated by trees covering a land area of 20,000 square feet or greater at a density of at least fifty (50) trees per every 20,000 square feet with at least fifty percent (50%) of those trees of any species having a six (6) inches or greater at DBH. **Woodlands planted for commercial agricultural purposes and/or subject to farm forest deferral, such as nut and fruit orchards and Christmas tree farms, are excluded from this definition, and from regulation under this Section.**”

Concern: *The code language indicates that the trees removed from a site within one year of the application need to be included in the tree inventory. How do we track or inventory trees one year prior to application submittal (16.142.070.C.2 proposed code)?*

Response: This is existing code language, it is in track changes because of revised formatting. This language could be removed as it was previously used to determine the required mitigation to prevent developers from clear cutting a site without mitigation prior to submitting their land use application. The proposed canopy standard would remove the mitigation standard if the Council passes the new code changes as written, and this standard would no longer be necessary. Attachment 1 reflects this removal.

Clarification or concerns about how the canopy is measured

Concern: *The tree canopy requirement is not clear. It doesn't clearly identify what is needed from each developer. How do they know how many trees they have to have on site for their development to meet the code criteria?*

Response: The canopy requirement is intended to be fair and provide flexible standards to developers. It is fair because the canopy requirement is the same for every residential or non-residential development in the city. It is flexible because it allows the developer to decide which trees they want to retain and where they want to plant trees. The canopy requirement gives developers more options and it makes the existing trees more valuable as they help the developer to reach the standard instead of planting a lot of new trees.

This standard will only apply to Type II – IV land use projects. The number of new trees to be planted depends on the development site and the species of tree(s) that the developer chooses to plant. The canopy standard allows developers to use the existing trees, street trees in residential developments, and any trees that they plant on site to count toward the minimum percentage. It is ultimately the owner's decision, not the city's decision, as long as they get to the required canopy percentage.

Each development site will be different, but here is an example showing how a developer could determine how many trees are required.

- First, determine the size of the site. Let's assume for example 1 acre net buildable.
- Then, determine what the 40% canopy (residential). In our 1 acre example this would be 17, 424 square feet of canopy,

- Next, the developer can select street trees, retain trees and/or remove trees, and calculate the area of the canopy based on the provisions outlined in the code and the species they choose to achieve the standard. They may meet the 40% canopy requirement by:
 - Retaining 6 trees with a mature canopy of 40' and planting 4 trees with a mature canopy of 30'; OR
 - Planting 11 trees with a mature canopy of 30' and 8 trees with a mature canopy of 40'; OR
 - Retaining 15 trees with a mature canopy of 25' and planting 4 trees with a mature canopy spread of 30'.

Ultimately, this provision provides a property owner/developer greater flexibility. In addition, if an owner is NOT going through a Type II-IV land use review, then there is no requirement to meet the standards.

If the tree is not significant (as clearly defined in the code) or needs to be removed, the developer is not penalized with a mitigation standard since they can achieve the canopy requirement in a way that works best for them. The existing mitigation standard would make developing in the Brookman Road area or the Tonquin Employment Area very expensive.

The street tree list only has trees with up to a 40 foot canopy spread. The street tree code also provides space for driveways, utilities and street lights which were not considered in the past. Because of this, we are anticipating that fewer street trees will be planted than have been planted in the past. Additionally, some developers may need to use a columnar tree in order to accommodate street lamps, etc. which would not likely achieve the intended canopy requirement like a large canopy street tree would, such as the Woodhaven example which was discussed at the March 20, 2012 city council public hearing.

Concern: *While the City Council reviewed the tree canopy requirement, there was interest in exploring what is included determining the net size of the site prior to calculating the canopy percentage. There was interest in removing the building footprint from the overall size of the site prior to determining the needed trees to meet the canopy requirement?*

Response: As stated earlier, it is important to remember that we are proposing a shift in how we protect and preserve trees. If it is too easy to meet the standards there is no incentive to retain existing trees. The proposed language tries to provide a balance that doesn't overly burden developers with no trees or who must remove trees but that also clearly

adds value to retaining existing trees. For this reason, it is not recommended to remove the building footprint from the net area.

Additionally, depending on the size of the building there could be a significant decrease in the number of retained trees on site. This could also lead to an increase in the size of buildings without providing additional screening or vegetation.

In order to provide an example staff looked at an existing industrial development. The Olds Business Park lot 7 went through land use review in 2007. Since it is an industrial site, a 30% canopy requirement would apply if the site were to be reviewed under the proposed standards.

- In this case, the site is 62,550 square feet in size,
- A 30% canopy would be 18,765 square feet in size, and could consist of fifteen 40' spread trees,
- The three buildings on site total 24,590 square feet,
- The remaining site is 37,960 square feet (without the buildings),
- A 30% canopy for the site excluding the building area would result in the need to provide 11,388 square feet of canopy. This could be accomplished by planting ten trees with a mature canopy spread of 40' (5 fewer than when the buildings area included)
- This site did not have existing trees but if there were five existing trees with an expected mature canopy spread of 40', no additional trees would be needed to meet the canopy requirement.

Incentives

Concern: The City Council reviewed the proposed density transfer incentive. In order to better understand the proposed language they requested additional clarification.

Response: Staff looked at the language more closely in order to respond to the City Council concern. After additional review, it is clear that the incentive is not clear and provides little true incentive, and therefore staff is recommending that this incentive be deleted from the proposed language.

Concern: *The only incentive for commercial and industrial properties appears to be the height increase. More flexible and broad incentives are needed.*

Response: That is correct. As proposed there is only one incentive for commercial and industrial developments. Based on Council feedback, staff has recommended adding an additional incentive for preserving existing trees. It is recommended that the code could allow existing trees to count twice their canopy with the following language:

Tree Preservation Incentive. Retention of existing native trees on site which are in good health can be used to achieve the

required mature canopy requirement of the development. The expected mature canopy can be calculated twice for existing trees. For example, if one existing tree with an expected mature canopy spread of 10 square feet is retained it will count as double the canopy.

Concern: *The City Council expressed concerns that the proposed language does not provide incentives for preserving fir trees.*

City councilors had an interest in providing additional incentives for sites preserving fir trees. Staff looked at deciduous tree canopies and coniferous canopy spreads. There appears to be a broad range of canopy spreads for any tree. The examples of deciduous trees which have been provided to the council ranged from 25 – 40 feet. There are deciduous trees with smaller and larger canopy spreads. The same is true for coniferous trees. Here are a few examples of coniferous trees that are suitable for planting in this area:

Norway Spruce – 15'
Japanese Cedar – 30'
Chinese Juniper – 50'
Blue Spruce – 50'
Blue Atlas Cedar – 75'
Bald Cypress – 25'
Deodar Cedar – 30'
Dawn Redwood – 75'

From this research, staff has concluded that it is not necessary to provide any additional incentives for providing one type of tree over another.

Concern: *How will the commercial/ industrial height incentive impact residential properties?*

Response: There is existing code language which only allows retail commercial, general commercial, employment industrial, light industrial general industrial and institutional public structures within 100 feet of a residential zone be constructed to the height of the residential zoning district.

Concern: *Council expressed concern that people may count trees before submitting a land use application. What will encourage people to retain their trees rather than removing trees prior to development?*

Response: Removing the existing mitigation requirement is an attractive incentive to developers. The current standard requires that for every inch of

tree removed, the developer must replant the removed inches of tree or pay a fee in lieu of \$75 per inch. For example, if a developer removed a 10 inch tree then they could replant five 2 inch trees or pay \$750 as a fee in lieu.

The proposed canopy percentage requirement allows developers to decide which trees to retain, remove or plant unless the trees are required to be retained per section 16.142.070.D.4. This is the reason for moving to a canopy requirement, it makes the existing trees more valuable. If you have a few nice, healthy trees on site, the developer does not have to pay to have them removed, plant new trees, bond for new trees or pay a fee in lieu for any trees that they might cut in order to construct a building.

In other words, the canopy requirement results in there being a significant dis-incentive for a property owner to remove trees prior to development since it would only result in them having to plant more trees. The proposal increases the value of existing trees by allowing them to count twice the mature canopy for retaining existing trees.

Concern: *It is unclear whether or not the density transfer includes wetland buffers?*

Response: It is intended to protect significant tree stands on site which are not already required to be protected. This was not intended to include the wetland buffer. The density transfer section is proposed to be removed as discussed previously in this memo.

Other

Concern: *There appears to be a lot of information in the applicability portion of the trees on property subject to certain land use application section. It is unclear when this section will apply to development.*

Response: The language has been modified to be clearer that only Type II, III and IV applications would be required to comply with the standards.

B. Applicability

All type II – IV land use actions shall be required to preserve trees or woodlands, as defined by this Section to the maximum extent feasible within the context of the proposed land use plan and relative to other policies and standards of the City Comprehensive Plan.

This clarifies and ensures that a home being built on a single family lot or an addition onto an existing home, does not require planting of additional tree canopy. It should be noted that the tree removal and mitigation

requirements currently are applied to all Type II-IV land use reviews, therefore the change to the standards does not increase the applicability.

Concern: *The tree code has a lot of information. Is there a way to simplify the information for developers and citizens?*

Response: Based on the City Council feedback the staff has clarified the proposed language and added drawings and tables to make the code language more user friendly.

Concerns: *Drawings and examples would be beneficial to in order to make the code language and mathematical equations clearer. Is it possible to insert this type of information into the code language?*

Response: Staff has inserted a few drawings and a table in order to make the language easier to follow.

Concern: *Is there a resource that the city can provide or require people to use in order determine the expected mature canopy spread of their trees?*

Response: There is not a standardized list or manual being provided as a part of this chapter. The code language could reference a standard list used by the majority of tree professionals. However, staff discussed the request with the City's on-call arborist Phil Whitcomb and he indicated that he uses a variety of books. Since arborists rely on multiple resources and resources are subject to change over time, staff does not recommend citing a specific source at this time.

Conclusion

Staff believes that the additional proposed modifications answer the City Council's questions and address the City Council's concerns. Staff recommends that the City Council consider the proposed changes and adopt the Planning Commission recommendation with the modifications provided and highlighted in green in Attachment 1-A and 1-B. If there are any immediate concerns or needed clarification, we would be happy to discuss them with you.

Chapter 16.10 DEFINITION

Chapter 16.10.020 SPECIFICALLY*

Demolish: To raze, destroy, dismantle, deface or in any other manner cause partial or total ruin of a structure or resource.

Density: The intensity of residential land uses per acre, stated as the number of dwelling units per net buildable acre. Net buildable acre means an area measuring 43,560 square feet after excluding present and future rights-of-way and environmentally constrained areas.

Designated Landmark: A property officially recognized by the City of Sherwood as important in its history, culture, or architectural significance.

*Note: The entire code section is not included, this is only a reference point indicating where the inserted language should go, the rest of the definition section will not be changed.

Development Plan: Any plan adopted by the City for the guidance of growth and improvement in the City.

Diameter at Breast Height (DBH): Is a standard arboricultural method for measuring the diameter of a tree. For the purposes of this code, DBH shall be measured four and a half feet above ground level as defined by the International Society of Arboriculture.

Drive-In Restaurant: Any establishment dispensing food and/or drink, that caters primarily to customers who remain, or leave and return, to their automobile for consumption of the food and/or drink, including business designed for serving customers at a drive-up window or in automobiles.

*Note: The entire code section is not included, this is only a reference point indicating where the inserted language should go, the rest of the definition section will not be changed.

Net Buildable Acre: Means an area measuring 43, 560 square feet after excluding present and future rights-of-way, environmentally constrained areas, public parks and other public uses. When environmentally sensitive areas also exist on a property and said property is within the Metro urban growth boundary on or before January 1, 2002, these areas may also be removed from the net buildable area provided the sensitive areas are clearly delineated in accordance with this Code and the environmentally sensitive areas are protected via tract or restricted easement.

Net Developable Site: Remaining area of a parent parcel after excluding present and future rights-of-way, environmentally constrained areas, public parks and other public uses but not including preserved areas for tree stands which are not associated with wetlands, streams or vegetated corridors.

Non-Attainment Area: A geographical area of the State which exceeds any state or federal primary or secondary ambient air quality standard as designated by the Oregon Environmental Quality Commission and approved by the U.S. Environmental Protection Agency.

*Note: The entire code section is not included, this is only a reference point indicating where the inserted language should go, the rest of the definition section will not be changed.

16.90.020 – Site Plan Review

A. Site Plan Review Required

Site Plan review shall be required prior to any substantial change to a site or use, issuance of building permits for a new building or structure, or for the substantial alteration of an existing structure or use, and prior to the issuance of a sign permit for the erection or construction of a sign

For the purposes of Section 16.90.020, the term "substantial change" and "substantial alteration" shall mean any development activity as defined by this Code that generally requires a building permit and may exhibit one or more of the following characteristics:

1. The activity alters the exterior appearance of a structure, building or property and is not considered a modification.
2. The activity involves changes in the use of a structure, building, or property from residential to commercial or industrial and is not considered a modification.
3. The activity involves non-conforming uses as defined in Chapter 16.48
4. The activity constitutes a change in a City approved plan, per Section 16.90.020 and is not considered a modification.
5. The activity is subject to site plan review by other requirements of this Code.
6. The activity increases the size of the building by more than 100% (i.e. the building more than doubles in size), regardless of whether it would be considered a major or minor modification.

B. Exemption to Site Plan Requirement

1. Single and two family uses
2. Manufactured homes located on individual residential lots per Section 16.46.010, but including manufactured home parks,
3. Major modifications
4. Minor modifications

Division VIII. - ENVIRONMENTAL RESOURCES

Chapter 16.132 - GENERAL PROVISIONS*

Chapter 16.134 - FLOODPLAIN (FP) OVERLAY*

Chapter 16.136 - PROCEDURES*

Chapter 16.138 - MINERAL RESOURCES*

Chapter 16.140 - SOLID WASTE*

Chapter 16.142 – PARKS, TREES AND OPEN SPACES

Chapter 16.144 - WETLAND, HABITAT AND NATURAL AREAS*

Chapter 16.146 - NOISE*

Chapter 16.148 - VIBRATIONS*

Chapter 16.150 - AIR QUALITY*

Chapter 16.152 - ODORS*

Chapter 16.154 - HEAT AND GLARE*

Chapter 16.156 - ENERGY CONSERVATION*

Chapter 16.142 – PARKS, TREES AND OPEN SPACES

16.142.040 – Visual Corridors

A. Corridors Required

New developments located outside of the Old Town Overlay with frontage on Highway 99W, or arterial or collector streets designated on Figure 8-1 of the Transportation System Plan shall be required to establish a landscaped visual corridor according to the following standards:

	Category	Width
1.	Highway 99W	25 feet
2.	Arterial	15 feet
3.	Collector	10 feet

In residential developments where fences are typically desired adjoining the above described major street the corridor may be placed in the road right-of-way between the property line and the sidewalk. In all other developments, the visual corridor shall be on private property adjacent to the right-of-way.

B. Landscape Materials

The required visual corridor areas shall be planted as specified by the review authority to provide a continuous visual and/or acoustical buffer between major streets and developed uses. Except as provided for above, fences and walls shall not be substituted for landscaping within the visual corridor. Uniformly planted, drought resistant street trees and ground cover, as specified in Section 16.142.060, shall be planted in the corridor by the developer. The improvements shall be included in the compliance agreement. In no case shall trees be removed from the required visual corridor.

C. Establishment and Maintenance

Designated visual corridors shall be established as a portion of landscaping requirements pursuant to Chapter 16.92. To assure continuous maintenance of the visual corridors, the review authority may require that the development rights to

the corridor areas be dedicated to the City or that restrictive covenants be recorded prior to the issuance of a building permit.

D. Required Yard

Visual corridors may be established in required yards, except that where the required visual corridor width exceeds the required yard width, the visual corridor requirement shall take precedence. In no case shall buildings be sited within the required visual corridor, with the exception of front porches on townhomes, as permitted in Section 16.44.010(E)(4)(c).

E. Pacific Highway 99W Visual Corridor

1. Provide a landscape plan for the highway median paralleling the subject frontage. In order to assure continuity, appropriate plant materials and spacing, the plan shall be coordinated with the City Planning Department and ODOT.
2. Provide a visual corridor landscape plan with a variety of trees and shrubs. Fifty percent (50%) of the visual corridor plant materials shall consist of groupings of at least five (5) native evergreen trees a minimum of ten (10) feet in height each, spaced no less than fifty (50) feet apart, if feasible. Deciduous trees shall be a minimum of four (4) inches DBH and twelve (12) feet high, spaced no less than twenty-five (25) feet apart, if feasible.

16.142.050 – Park Reservation

Areas designated on the Natural Resources and Recreation Plan Map, in Chapter 5 of the Community Development Plan, which have not been dedicated pursuant to Section 16.142.030 or 16.134.020, may be required to be reserved upon the recommendation of the City Parks Board, for purchase by the City within a period of time not to exceed three (3) years.

16.142.060 – Street Trees

A. Installation of Street Trees on New or Redeveloped Property.

Trees are required to be planted to the following specifications along public streets abutting or within any new development or re-development. Planting of such trees shall be a condition of development approval. The City shall be subject to the same standards for any developments involving City-owned property, or when constructing or reconstructing City streets. After installing street trees, the property owner shall be responsible for maintaining the street trees on the owner's property or within the right-of-way adjacent to the owner's property.

1. Location: Trees shall be planted within the planter strip along a newly created or improved streets. In the event that a planter strip is not required or available, the trees shall be planted on private property within the front yard setback area or within public street right-of-way between front property lines and street curb lines or as required by the City.
2. Size: Trees shall have a minimum trunk diameter of two (2) caliper inches, which is measured six inches above the soil line, and a minimum height of six (6) feet when planted.

3. Types: Developments shall include a variety of street trees. The trees planted shall be chosen from those listed in 16.142.080 of this Code.

4. Required Street Trees and Spacing:

- a. The minimum spacing is based on the maximum canopy spread identified in the recommended street tree list in section 16.142.080 with the intent of providing a continuous canopy without openings between the trees. For example, if a tree has a canopy of forty (40) feet, the spacing between trees is forty (40) feet. If the tree is not on the list, the mature canopy width must be provided to the planning department by a certified arborist.
- b. All new developments shall provide adequate tree planting along all public streets. The number and spacing of trees shall be determined based on the type of tree and the spacing standards described in a. above and considering driveways, street light locations and utility connections. Unless exempt per c. below, trees shall not be spaced more than forty (40) feet apart in any development.
- c. A new development may exceed the forty-foot spacing requirement under section b. above, under the following circumstances:
 - (1) Installing the tree would interfere with existing utility lines and no substitute tree is appropriate for the site; or
 - (2) There is not adequate space in which to plant a street tree due to driveway or street light locations, vision clearance or utility connections, provided the driveways, street light or utilities could not be reasonably located elsewhere so as to accommodate adequate room for street trees; and
 - (3) The street trees are spaced as close as possible given the site limitations in (1) and (2) above.
 - (4) The location of street trees in an ODOT or Washington County right-of-way may require approval, respectively, by ODOT or Washington County and are subject to the relevant state or county standards.
 - (5) For arterial and collector streets, the City may require planted medians in lieu of paved twelve-foot wide center turning lanes, planted with trees to the specifications of this subsection.

B. Removal and Replacement of Street Trees.

The removal of a street tree shall be limited and in most cases, necessitated by the tree. A person may remove a street tree as provided in this section. The person removing the tree is responsible for all costs of removal and replacement. Street trees less than five (5) inches DBH can be removed by right by the property owner or his or her assigns, provided that they are replaced. A street tree that is removed must be replaced within six (6) months of the removal date.

1. Criteria for All Street Tree Removal for trees over five (5) inches DBH. No street tree shall be removed unless it can be found that the tree is:

- a. Dying, becoming severely diseased, or infested or diseased so as to threaten the health of other trees, or
 - b. Obstructing public ways or sight distance so as to cause a safety hazard, or
 - c. Interfering with or damaging public or private utilities, or
 - d. Defined as a nuisance per City nuisance abatement ordinances.
2. Street trees between five (5) and ten (10) inches DBH may be removed if any of the criteria in 1. above are met and a tree removal permit is obtained.
- a. The Tree Removal Permit Process is a Type I land use decision and shall be approved subject to the following criteria:
 - (1) The person requesting removal shall submit a Tree Removal Permit application that identifies the location of the tree, the type of tree to be removed, the proposed replacement and how it qualifies for removal per Section 1. above.
 - (2) The person shall post a sign, provided by the City, adjacent to the tree for ten (10) calendar days prior to removal that provides notice of the removal application and the process to comment on the application.
 - (3) If an objection to the removal is submitted by the City or to the City during the ten (10) calendar day period, an additional evaluation of the tree will be conducted by an arborist to determine whether the tree meets the criteria for street tree removal in Section 1. above. The person requesting the Tree Removal Permit shall be responsible for providing the arborist report and associated costs.
 - (4) Upon completion of the additional evaluation substantiating that the tree warrants removal per Section 1. above or if no objections are received within the ten-day period, the tree removal permit shall be approved.
 - (5) If additional evaluation indicates the tree does not warrant removal, the Tree Removal Permit will be denied.
3. Street trees over ten (10) inches DBH may be removed through a Type I review process subject to the following criteria.
- a. The applicant shall provide a letter from a certified arborist identifying:
 - (1) The tree's condition,
 - (2) How it warrants removal using the criteria listed in Section 1. above, and identifying any reasonable actions that could be taken to allow the retention of the tree.
 - b. The applicant shall provide a statement that describes whether and how the applicant sought assistance from the City, HOA or neighbors to address any issues or actions that would enable the tree to be retained.

- c. The person shall post a sign, provided by the City, adjacent to the tree for ten (10) calendar days prior to removal that provides notice of the removal application and the process to comment on the application.
- d. Review of the materials and comments from the public confirm that the tree meets the criteria for removal in Section 1. above.

C. Homeowner's Association Authorization.

The Planning Commission may approve a program for the adoption, administration and enforcement by a homeowners' association (HOA) of regulations for the removal and replacement of street trees within the geographic boundaries of the association.

1. An HOA that seeks to adopt and administer a street tree program must submit an application to the City. The application must contain substantially the following information:
 - a. The HOA must be current and active. The HOA should meet at least quarterly and the application should include the minutes from official HOA Board meetings for a period not less than eighteen (18) months (six (6) quarters) prior to the date of the application.
 - b. The application must include proposed spacing standards for street trees that are substantially similar to the spacing standards set forth in 16.142.060.A above.
 - c. The application must include proposed street tree removal and replacement standards that are substantially similar to the standards set forth in 16.142.060.B above.
 - d. The application should include a copy of the HOA bylaws as amended to allow the HOA to exercise authority over street tree removal and replacement, or demonstrate that such an amendment is likely within ninety (90) days of a decision to approve the application.
 - e. The application should include the signatures of not less than seventy-five (75) percent of the homeowners in the HOA in support of the application.
2. An application for approval of a tree removal and replacement program under this section shall be reviewed by the City through the Type IV land use process. In order to approve the program, the City must determine:
 - a. The HOA is current and active.
 - b. The proposed street tree removal and replacement standards are substantially similar to the standards set forth in 16.142.060.B above.
 - c. The proposed street tree spacing standards are substantially similar to the standards set forth in 16.142.060.A above.
 - d. The HOA has authority under its bylaws to adopt, administer and enforce the program.
 - e. The signatures of not less than seventy-five (75) percent of the homeowners in the HOA in support of the application.
3. A decision to approve an application under this section shall include at least the following conditions:

- a. Beginning on the first January 1 following approval and on January 1 every two (2) years thereafter, the HOA shall make a report to the city planning department that provides a summary and description of action taken by the HOA under the approved program. Failure to timely submit the report that is not cured within sixty (60) days shall result in the immediate termination of the program.
 - b. The HOA shall comply with the requirements of Section 12.20 of the Sherwood Municipal Code.
4. The City retains the right to cancel the approved program at any time for failure to substantially comply with the approved standards or otherwise comply with the conditions of approval.
- a. If an HOA tree removal program is canceled, future tree removals shall be subject to the provisions of section 16.142.060.
 - b. A decision by the City to terminate an approved street tree program shall not affect the validity of any decisions made by the HOA under the approved program that become final prior to the date the program is terminated.
 - c. If the city amends the spacing standards or the removal and replacement standards in this section (SZCDC) the City may require that the HOA amend the corresponding standards in the approved street tree program.
5. An approved HOA tree removal and replacement program shall be valid for five (5) years; however the authorization may be extended as approved by the City, through a Type II Land Use Review.

D. Exemption from Replacing Street Trees.

A street tree that was planted in compliance with the Code in effect on the date planted and no longer required by spacing standards of section A.4. above may be removed without replacement provided:

- 1. Exemption is granted at the time of street tree removal permit or authorized homeowner's association removal per Section 16.142.060.C. above.
- 2. The property owner provides a letter from a certified arborist stating that the tree must be removed due to a reason identified in the tree removal criteria listed in Section 16.142.060.B.1. above, and
- 3. The letter describes why the tree cannot be replaced without causing continued or additional damage to public or private utilities that could not be prevented through reasonable maintenance.

E. Notwithstanding any other provision in this section, the city manager or the manager's designee may authorize the removal of a street tree in an emergency situation without a tree removal permit when the tree poses an immediate threat to life, property or utilities. A decision to remove a street tree under this section is subject to review only as provided in ORS 34.100.

F. Trees on Private Property Causing Damage.

Any tree, woodland or any other vegetation located on private property, regardless of species or size, that interferes with or damages public streets or utilities, or causes an unwarranted increase in the maintenance costs of same, may be ordered removed or

cut by the City Manager or his or her designee. Any order for the removal or cutting of such trees, woodlands or other vegetation, shall be made and reviewed under the applicable City nuisance abatement ordinances.

- G. Penalties. The abuse, destruction, defacing, cutting, removal, mutilation or other misuse of any tree planted on public property or along a public street as per this Section, shall be subject to the penalties defined by Section 16.02.040, and other penalties defined by applicable ordinances and statutes, provided that each tree so abused shall be deemed a separate offense.

16.142.070 Trees on Property Subject to Certain Land Use Applications

A. Generally

The purpose of this Section is to establish processes and standards which will minimize cutting or destruction of trees and woodlands within the City. This Section is intended to help protect the scenic beauty of the City; to retain a livable environment through the beneficial effect of trees on air pollution, heat and glare, sound, water quality, and surface water and erosion control; to encourage the retention and planting of tree species native to the Willamette Valley and Western Oregon; to provide an attractive visual contrast to the urban environment, and to sustain a wide variety and distribution of viable trees and woodlands in the community over time.

B. Applicability

All type II – IV land use actions, shall be required to preserve trees or woodlands, as defined by this Section to the maximum extent feasible within the context of the proposed land use plan and relative to other codes, policies, and standards of the City Comprehensive Plan.

C. Inventory

1. To assist the City in making its determinations on the retention of trees and woodlands, land use applications for type II – IV development shall include a tree and woodland inventory and report. The report shall be prepared by a qualified professional and must contain the following information:
 - a. Tree size (in DBH and canopy area)
 - b. Tree species
 - c. The condition of the tree with notes as applicable explaining the assessment
 - d. The location of the tree on the site
 - e. The location of the tree relative to the planned improvements
 - f. Assessment of whether the tree must be removed to accommodate the development
 - g. Recommendations on measures that must be taken to preserve trees during the construction that are not proposed to be removed.
2. In addition to the general requirements of this Section, the tree and woodland inventory's mapping and report shall also include, but is not limited to, the specific information outlined in the appropriate land use application materials packet.
3. Definitions for the inventory purposes of this Section

- a. A tree is a living woody plant having a trunk diameter as specified below at Diameter at Breast Height (DBH). Trees planted for commercial agricultural purposes, and/or those subject to farm forest deferral, such as nut and fruit orchards and Christmas tree farms, are excluded from this definition and from regulation under this Section, as are any living woody plants under six (6) inches at DBH. All trees six (6) inches or greater shall be inventoried.
- b. A woodland is a biological community dominated by trees covering a land area of 20,000 square feet or greater at a density of at least fifty (50) trees per every 20,000 square feet with at least fifty percent (50%) of those trees of any species having a six (6) inches or greater at DBH. Woodlands planted for commercial agricultural purposes and/or subject to farm forest deferral, such as nut and fruit orchards and Christmas tree farms, are excluded from this definition, and from regulation under this Section.
- c. A large stature tree is over 20 feet tall and wide with a minimum trunk diameter of 30 inches at DBH.

D. Retention requirements

1. Trees may be considered for removal to accommodate the development including buildings, parking, walkways, grading etc., provided the development satisfies of D.2 or D.3, below.

2. Required Tree Canopy - Residential Developments (Single Family Attached, Single Family Detached and Two – Family)

Each net development site shall provide a minimum total tree canopy of 40 percent. The canopy percentage is based on the expected mature canopy of each tree by using the equation πr^2 to calculate the expected square footage of canopy for each tree. The expected mature canopy is counted for each tree regardless of an overlap of multiple tree canopies.

The canopy requirement can be achieved by retaining existing trees or planting new trees. Required street trees can be used toward the total on site canopy required to meet this standard. The expected mature canopy spread of the new trees will be counted toward the needed canopy cover. A certified arborist or other qualified professional shall provide the estimated tree canopy of the proposed trees to the planning department for review.

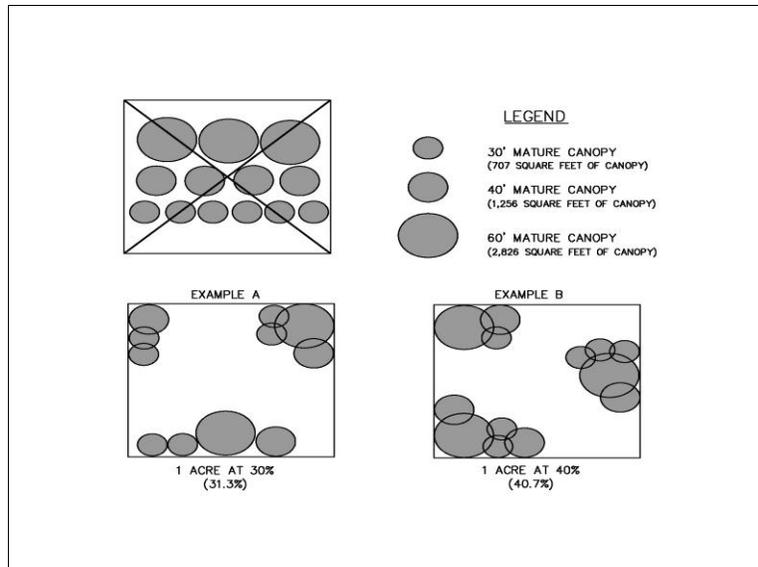
3. Required Tree Canopy – Non-Residential and Multi-family Developments

Each net development site shall provide a minimum total tree canopy of 30 percent. The canopy percentage is based on the expected mature canopy of each tree by using the equation πR^2 to calculate the expected square footage of each tree. The expected mature canopy is counted for each tree even if there is an overlap of multiple tree canopies.

The canopy requirement can be achieved by retaining existing trees or planting new trees. Required landscaping trees can be used toward the total on site canopy required to meet

this standard. The expected mature canopy spread of the new trees will be counted toward the required canopy cover. A certified arborist or other qualified professional shall provide an estimated tree canopy for all proposed trees to the planning department for review as a part of the land use review process.

	Residential (single family & two family developments)	Old Town & Infill developments	Commercial, Industrial, Institutional Public and Multi-family
Canopy Requirement	40%	N/A	30%
Counted Toward the Canopy Requirement			
Street trees included in canopy requirement	Yes	N/A	No
Landscaping requirements included in canopy requirement	N/A	N/A	Yes
Existing trees onsite	Yes x2	N/A	Yes x2
Planting new trees onsite	Yes	N/A	Yes
<p>Mature Canopy in Square Feet Equation πr^2 or $(3.14 * \text{radius}^2)$ (This is the calculation to measure the square footage of a circle. The Mature Canopy is given in diameter. In gardening and horticulture reference books, therefore to get the radius you must divide the diameter in half.</p>			
<p>Canopy Calculation Example: Pin Oak Mature canopy =35' $(3.14 * 17.5^2) = 961.63$ square feet</p>			



4. The City may determine that, regardless of D.1 through D.3, that certain trees or woodlands may be required to be retained. The basis for such a decision shall include; specific findings that retention of said trees or woodlands furthers the purposes and goals of this Section, is feasible and practical both within the context of the proposed land use plan and relative to other policies and standards of the City Comprehensive Plan, and are:

- Within a Significant Natural Area, 100-year floodplain, City greenway, jurisdictional wetland or other existing or future public park or natural area designated by the City Comprehensive Plan, or
- A landscape or natural feature as per applicable policies of the City Comprehensive Plan, or are necessary to keep other identified trees or woodlands on or near the site from being damaged or destroyed due to windfall, erosion, disease or other natural processes, or
- Necessary for soil stability and the control of erosion, for managing and preserving surface or groundwater quantities or quality, or for the maintenance of a natural drainageway, as per Clean Water Services stormwater management plans and standards of the City Comprehensive Plan, or
- Necessary as buffers between otherwise incompatible land uses, or from natural areas, wetlands and greenways, or
- Otherwise merit retention because of unusual size, size of the tree stand, historic association or species type, habitat or wildlife preservation considerations, or some combination thereof, as determined by the City.

5. Tree retention requirements for properties located within the Old Town Overlay or projects subject to the infill standards of Chapter 16.68 are only subject to retention requirements identified in D.4. above.

6. The Notice of Decision issued for the land use applications subject to this Section shall indicate which trees and woodlands will be retained as per subsection D of this Section,

which may be removed or shall be retained as per subsection D of this Section and any limitations or conditions attached thereto.

7. All trees, woodlands, and vegetation located on any private property accepted for dedication to the City for public parks and open space, greenways, Significant Natural Areas, wetlands, floodplains, or for storm water management or for other purposes, as a condition of a land use approval, shall be retained outright, irrespective of size, species, condition or other factors. Removal of any such trees, woodlands, and vegetation prior to actual dedication of the property to the City shall be cause for reconsideration of the land use plan approval.

E. Tree Preservation Incentive. Retention of existing native trees on site which are in good health can be used to achieve the required mature canopy requirement of the development. The expected mature canopy can be calculated twice for existing trees. For example, if one existing tree with an expected mature canopy of 10 feet (78.5 square feet) is retained it will count as 20 feet (314 square feet) of canopy.

F. Additional Preservation Incentives

1. General Provisions. To assist in the preservation of trees, the City may apply one or more of the following flexible standards as part of the land use review approval. To the extent that the standards in this section conflict with the standards in other sections of this Title, the standards in this section shall apply except in cases where the City determines there would be an unreasonable risk to public health, safety, or welfare. Flexibility shall be requested by the applicant with justification provided within the tree preservation and protection report as part of the land use review process and is only applicable to trees that are eligible for credit towards the effective tree canopy cover of the site. A separate adjustment application as outlined in Section 16.84.030.A is not required.

2. Flexible Development Standards. The following flexible standards are available to applicants in order to preserve trees on a development site. These standards cannot be combined with any other reductions authorized by this code.

a. Lot size averaging. To preserve existing trees in the development plan for any Land Division under Division VII, lot size may be averaged to allow lots less than the minimum lot size required in the underlying zone as long as the average lot area is not less than that allowed by the underlying zone. No lot area shall be less than 80 percent of the minimum lot size allowed in the zone;

b. Setbacks. The following setback reductions will be allowed for lots preserving existing trees using the criteria in subsection (1) below. The following reductions shall be limited to the minimum reduction necessary to protect the tree.

(1) Reductions allowed:

(a.) Front yard – up to a 25 percent reduction of the dimensional standard for a front yard setback required in the base zone. Setback of garages may not be reduced by this provision.

(b.) Interior setbacks - up to a 40 percent reduction of the dimensional standards for an interior side and/or rear yard setback required in the base zone.

(c.) Perimeter side and rear yard setbacks shall not be reduced through this provision.

c. Approval criteria:

(1.) A demonstration that the reduction requested is the least required to preserve trees; and

(2.) The reduction will result in the preservation of tree canopy on the lot with the modified setbacks; and

(3.) The reduction will not impede adequate emergency access to the site and structure.

3. Sidewalks. Location of a public sidewalk may be flexible in order to preserve existing trees or to plant new large stature street trees. This flexibility may be accomplished through a curb-tight sidewalk or a meandering public sidewalk easement recorded over private property and shall be reviewed on a case by case basis in accordance with the

provisions of the Engineering Design Manual, Street and Utility Improvement Standards. For preservation, this flexibility shall be the minimum required to achieve the desired effect. For planting, preference shall be given to retaining the planter strip and separation between the curb and sidewalk wherever practicable. If a preserved tree is to be utilized as a street tree, it must meet the criteria found in the Street Tree section, 16.142.060.

4. Adjustments to Commercial and Industrial development Standards. Adjustments to Commercial or Industrial Development standards of up to 20 feet additional building height are permitted provided;
 - a. At least 50% of a Significant Tree stand's of canopy within a development site (and not also within the sensitive lands or areas that areas dedicated to the City) is preserved;
 - b. The project arborist or qualified professional certifies the preservation is such that the connectivity and viability of the remaining significant tree stand is maximized;
 - c. Applicable buffering and screening requirements are met;
 - d. Any height adjustments comply with state building codes;
 - e. Significant tree stands are protected through an instrument or action subject to approval by the City Manager or the City manager's designee that demonstrates it will be permanently preserved and managed as such;
 - (1.) A conservation easement;
 - (2.) An open space tract;
 - (3.) A deed restriction; or
 - (4.) Through dedication and acceptance by the City.

F. Tree Protection During Development

The applicant shall prepare and submit a final Tree and Woodland Plan prior to issuance of any construction permits, illustrating how identified trees and woodlands will be retained, removed or protected as per the Notice of Decision. Such plan shall specify how trees and woodlands will be protected from damage or destruction by construction activities, including protective fencing, selective pruning and root treatments, excavation techniques, temporary drainage systems, and like methods. At a minimum, trees to be protected shall have the area within the drip line of the tree protected from grading, stockpiling, and all other construction related activity unless specifically reviewed and recommended by a certified arborist or other qualified professional. Any work within the dripline of the tree shall be supervised by the project arborist onsite during construction.

G. Penalties

Violations of this Section shall be subject to the penalties defined by Section 16.02.040, provided that each designated tree or woodland unlawfully removed or cut shall be deemed a separate offense.

(Ord. 2006-021; Ord. 91-922, § 3)

16.142.080 Trees on Private Property -- not subject to a land use action

A. Generally

In general, existing mature trees on private property shall be retained unless determined to be a hazard to life or property. For the purposes of this section only, existing mature trees shall be considered any deciduous tree greater than ten (10) inches diameter at the breast height (dbh) or any coniferous tree greater than twenty (20) inches dbh.

B. Residential (Single Family and Two-Family) Standards

In the event a property owner determines it necessary to remove existing mature trees on their property that are not a hazard, they may remove the trees as described below;

1. Removal of up to five (5) trees, or up to 10 percent of the number of trees on site, whichever is greater, within a twelve month period. No review or approval required provided that trees are not located within a wetland, floodplain or protected through prior land use review per section 3.b. (1.) – (5.) below, that the planning department is notified in writing 48 hours prior to removing the tree, including the property address, property owner name and contact information, and provided with the type and size of the tree. Failure to notify the Planning Department shall not result in a violation of this code unless it is determined that the tree removal is located within a wetland, floodplain or protected through prior land use review per section 3.b. (1.) – (5.) below, or in excess of that permitted outright.
2. Removal of six (6) or more trees, or more than 10 percent of the number of trees on site, whichever is greater, within a twelve month period except as allowed in subsection 1, above.
 - a. The applicant shall submit the following;
 - (1.) A narrative describing the need to remove the tree(s),
 - (2.) A statement describing when and how the Homeowner’s Association (HOA) was informed of the proposed tree cutting and their response. If there is not an active HOA, the applicant shall submit as statement indicating that there is not a HOA to contact.
 - (3.) A plan showing the location of the tree and
 - (4.) The applicant shall submit a replacement tree plan. Half of the number of trees removed shall be replaced on site with native trees within six months from the date of removal.
3. The City may determine that, regardless of B.1 through B.2, that certain trees or stands of trees may be required to be retained.
 - a. If removal is proposed within a wetland, floodplain or protected through prior land use review per section 3.b. (1.) – (5.) below, the applicant shall submit documentation from a licensed qualified professional in natural resources management such as a wetland scientist, a botanist, or biologist, discussing the proposed tree removal and how it would or would not compromise the integrity of the resource. It shall also discuss the feasibility and practicality of tree removal relative to policies and standards of the City Comprehensive Plan, listed in section 3.b. below.
 - b. The basis for such a City decision shall include; specific findings that retention of said trees or woodlands furthers the purposes and goals of this Section, is feasible and practical relative to other policies and standards of the City Comprehensive Plan, and are:

- (1.) Within a Significant Natural Area, 100-year floodplain, City greenway, jurisdictional wetland or other existing or future public park or natural area designated by the City Comprehensive Plan, or
- (2.) A landscape or natural feature as per applicable policies of the City Comprehensive Plan, or are necessary to keep other identified trees or woodlands on or near the site from being damaged or destroyed due to windfall, erosion, disease or other natural processes, or
- (3.) Necessary for soil stability and the control of erosion, for managing and preserving surface or groundwater quantities or quality, or for the maintenance of a natural drainageway, as per Clean Water Services stormwater management plans and standards of the City Comprehensive Plan, or
- (4.) Necessary as buffers between otherwise incompatible land uses, or from natural areas, wetlands and greenways, or
- (5.) Otherwise merit retention because of unusual size, size of the tree stand, historic association or species type, habitat or wildlife preservation considerations, or some combination thereof, as determined by the City.

C. Non-Residential and Multi-family Standards

In the event a property owner determines it necessary to remove existing mature trees on their property that are not a hazard, they may remove the trees as described below;

1. Trees required by a land use decision after the effective date of this code can be removed. Any trees removed shall be replaced within six months of removing the tree with an appropriate tree for the area.
2. Trees that were not required by land use or planted prior to the effective date of this code can be removed after receiving approval from the City of Sherwood.
 - a. Removal of up to 25 percent of the trees on site can be removed and replaced through a type I review process. The applicant shall submit the following;
 - (1.) A narrative describing the need to remove the trees,
 - (2.) A plan showing the location of the trees and
 - (3.) A replacement tree plan. Half of the number of trees removed shall be replaced on site with similar trees within six months from the date of removal.
 - b. Removal of more than 25 percent of the trees on site can be removed and replaced through a type II review process. The applicant shall submit the following;
 - (1.) An arborists report describing the need to remove the trees. The cause for removal must be necessitated by the trees,
 - (2.) A plan showing the location of the tree and
 - (3.) A replacement tree plan. Two – thirds of the number of trees removed shall be replaced on site with similar trees within six months from the date of removal.

3. The City may determine that, regardless of C.1 through C.2, that certain trees or stands of trees may be required to be retained.
 - a. The applicant shall submit documentation from a licensed qualified professional in natural resources management such as wetland scientist, botanist or biologist, discussing the proposed tree removal within the context of the proposed land use plan and relative to other policies and standards of the City Comprehensive Plan, listed in section 3.b. below.
 - b. The basis for such a City decision shall include; specific findings that retention of said trees or woodlands furthers the purposes and goals of this Section, is feasible and practical both within the context of the proposed land use plan and relative to other policies and standards of the City Comprehensive Plan, and are:
 - (1.) Within a Significant Natural Area, 100-year floodplain, City greenway, jurisdictional wetland or other existing or future public park or natural area designated by the City Comprehensive Plan, or
 - (2.) A landscape or natural feature as per applicable policies of the City Comprehensive Plan, or are necessary to keep other identified trees or woodlands on or near the site from being damaged or destroyed due to windfall, erosion, disease or other natural processes, or
 - (3.) Necessary for soil stability and the control of erosion, for managing and preserving surface or groundwater quantities or quality, or for the maintenance of a natural drainageway, as per Clean Water Services stormwater management plans and standards of the City Comprehensive Plan, or
 - (4.) Necessary as buffers between otherwise incompatible land uses, or from natural areas, wetlands and greenways, or
 - (5.) Otherwise merit retention because of unusual size, size of the tree stand, historic association or species type, habitat or wildlife preservation considerations, or some combination thereof, as determined by the City.

Chapter 16.10 DEFINITION

Chapter 16.10.020 SPECIFICALLY*

Demolish: To raze, destroy, dismantle, deface or in any other manner cause partial or total ruin of a structure or resource.

Density: The intensity of residential land uses per acre, stated as the number of dwelling units per net buildable acre. Net **buildable** acre means an area measuring 43,560 square feet after excluding present and future rights-of-way and environmentally constrained areas.

Designated Landmark: A property officially recognized by the City of Sherwood as important in its history, culture, or architectural significance.

*Note: The entire code section is not included, this is only a reference point indicating where the inserted language should go, the rest of the definition section will not be changed.

Development Plan: Any plan adopted by the City for the guidance of growth and improvement in the City.

Diameter at Breast Height (DBH): Is a standard arboricultural method for measuring the diameter of a tree. For the purposes of this code, DBH shall be measured four and a half feet above ground level as defined by the International Society of Arboriculture.

Drive-In Restaurant: Any establishment dispensing food and/or drink, that caters primarily to customers who remain, or leave and return, to their automobile for consumption of the food and/or drink, including business designed for serving customers at a drive-up window or in automobiles.

*Note: The entire code section is not included, this is only a reference point indicating where the inserted language should go, the rest of the definition section will not be changed.

Net Buildable Acre: Means an area measuring 43, 560 square feet after excluding present and future rights-of-way, environmentally constrained areas, public parks and other public uses. When environmentally sensitive areas also exist on a property and said property is within the Metro urban growth boundary on or before January 1, 2002, these areas may also be removed from the net buildable area provided the sensitive areas are clearly delineated in accordance with this Code and the environmentally sensitive areas are protected via tract or restricted easement.

Net Developable Site: Remaining area of a parent parcel after excluding present and future rights-of-way, environmentally constrained areas, public parks and other public uses but not including preserved areas for tree stands which are not associated with wetlands, streams or vegetated corridors.

Non-Attainment Area: A geographical area of the State which exceeds any state or federal primary or secondary ambient air quality standard as designated by the Oregon Environmental Quality Commission and approved by the U.S. Environmental Protection Agency.

*Note: The entire code section is not included, this is only a reference point indicating where the inserted language should go, the rest of the definition section will not be changed.

16.90.020 – Site Plan Review

A. Site Plan Review Required

Site Plan review shall be required prior to any substantial change to a site or use, issuance of building permits for a new building or structure, or for the substantial alteration of an existing structure or use, and prior to the issuance of a sign permit for the erection or construction of a sign

For the purposes of Section 16.90.020, the term "substantial change" and "substantial alteration" shall mean any development activity as defined by this Code that generally requires a building permit and may exhibit one or more of the following characteristics:

1. The activity alters the exterior appearance of a structure, building or property and is not considered a modification.
2. The activity involves changes in the use of a structure, building, or property from residential to commercial or industrial and is not considered a modification.
3. The activity involves non-conforming uses as defined in Chapter 16.48
4. The activity constitutes a change in a City approved plan, per Section 16.90.020 and is not considered a modification.
- ~~5. The activity involves the cutting of more than five (5) existing mature trees per acre, per calendar year.~~
65. The activity is subject to site plan review by other requirements of this Code.
76. The activity increases the size of the building by more than 100% (i.e. the building more than doubles in size), regardless of whether it would be considered a major or minor modification.

B. Exemption to Site Plan Requirement

1. Single and two family uses
2. Manufactured homes located on individual residential lots per Section 16.46.010, but including manufactured home parks,
3. Major modifications
4. Minor modifications

Division VIII. - ENVIRONMENTAL RESOURCES

Chapter 16.132 - GENERAL PROVISIONS*

Chapter 16.134 - FLOODPLAIN (FP) OVERLAY*

Chapter 16.136 - PROCEDURES*

Chapter 16.138 - MINERAL RESOURCES*

Chapter 16.140 - SOLID WASTE*

Chapter 16.142 -- PARKS, TREES AND OPEN SPACES

Chapter 16.144 - WETLAND, HABITAT AND NATURAL AREAS*

Chapter 16.146 - NOISE*

Chapter 16.148 - VIBRATIONS*

Chapter 16.150 - AIR QUALITY*

Chapter 16.152 - ODORS*

Chapter 16.154 - HEAT AND GLARE*

Chapter 16.156 - ENERGY CONSERVATION*

Chapter 16.142 – PARKS, [TREES](#) AND OPEN SPACES

16.142.040 – Visual Corridors

A. Corridors Required

New developments located outside of the Old Town Overlay with frontage on Highway 99W, or arterial or collector streets designated on Figure 8-1 of the Transportation System Plan shall be required to establish a landscaped visual corridor according to the following standards:

	Category	Width
1.	Highway 99W	25 feet
2.	Arterial	15 feet
3.	Collector	10 feet

In residential developments where fences are typically desired adjoining the above described major street the corridor may be placed in the road right-of-way between the property line and the sidewalk. In all other developments, the visual corridor shall be on private property adjacent to the right-of-way.

B. Landscape Materials

The required visual corridor areas shall be planted as specified by the review authority to provide a continuous visual and/or acoustical buffer between major streets and developed uses. Except as provided for above, fences and walls shall not be substituted for landscaping within the visual corridor. Uniformly planted, drought resistant street trees and ground cover, as specified in Section ~~16.142.050~~ [16.142.060](#), shall be planted in the corridor by the developer. The improvements shall be included in the compliance agreement. In no case shall trees be removed from the required visual corridor.

C. Establishment and Maintenance

Designated visual corridors shall be established as a portion of landscaping requirements pursuant to Chapter 16.92. To assure continuous maintenance of the visual corridors, the review authority may require that the development rights to the corridor areas be dedicated to the City or that restrictive covenants be recorded prior to the issuance of a building permit.

D. Required Yard

Visual corridors may be established in required yards, except that where the required visual corridor width exceeds the required yard width, the visual corridor requirement

shall take precedence. In no case shall buildings be sited within the required visual corridor, with the exception of front porches on townhomes, as permitted in Section 16.44.010(E)(4)(c).

E. Pacific Highway 99W Visual Corridor

1. Provide a landscape plan for the highway median paralleling the subject frontage. In order to assure continuity, appropriate plant materials and spacing, the plan shall be coordinated with the City Planning Department and ODOT.
2. Provide a visual corridor landscape plan with a variety of trees and shrubs. Fifty percent (50%) of the visual corridor plant materials shall consist of groupings of at least five (5) native evergreen trees a minimum of ten (10) feet in height each, spaced no less than fifty (50) feet apart, if feasible. Deciduous trees shall be a minimum of four (4) inches DBH and twelve (12) feet high, spaced no less than twenty-five (25) feet apart, if feasible.

16.142.050 – Park Reservation

Areas designated on the Natural Resources and Recreation Plan Map, in Chapter 5 of the Community Development Plan, which have not been dedicated pursuant to Section 16.142.030 or 16.134.020, may be required to be reserved upon the recommendation of the City Parks Board, for purchase by the City within a period of time not to exceed three (3) years.

16.142.060 – Street Trees

A. Installation of Street Trees on New or Redeveloped Property.

Trees are required to be planted to the following specifications along public streets abutting or within any new development or re-development. Planting of such trees shall be a condition of development approval. The City shall be subject to the same standards for any developments involving City-owned property, or when constructing or reconstructing City streets. After installing street trees, the property owner shall be responsible for maintaining the street trees on the owner's property or within the right-of-way adjacent to the owner's property.

1. Location: Trees shall be planted within the planter strip along a newly created or improved streets. In the event that a planter strip is not required or available, the trees shall be planted on private property within the front yard setback area or within public street right-of-way between front property lines and street curb lines or as required by the City.
2. Size: Trees shall have a minimum trunk diameter of two (2) caliper inches, which is measured six inches above the soil line, DBH and a minimum height of six (6) feet when planted. ~~Diameter at breast height (DBH) shall be measured as defined by the International Society of Arboriculture.~~
3. Types: Developments shall include a variety of street trees. The trees planted shall be chosen from those listed in 16.142.080 of this Code.
4. Required Street Trees and Spacing:
 - a. The minimum spacing is based on the maximum canopy spread identified in the recommended street tree list in section 16.142.080 with the intent of providing a continuous canopy without openings between the trees. For example, if a tree has a canopy of forty (40) feet, the spacing between trees is forty (40) feet. If the tree is not on the list, the mature canopy width must be provided to the planning department by a certified arborist.

- b. All new developments shall provide adequate tree planting along all public streets. The number and spacing of trees shall be determined based on the type of tree and the spacing standards described in a. above and considering driveways, street light locations and utility connections. Unless exempt per c. below, trees shall not be spaced more than forty (40) feet apart in any development.
- c. A new development may exceed the forty-foot spacing requirement under section b. above, under the following circumstances:
 - (1) Installing the tree would interfere with existing utility lines and no substitute tree is appropriate for the site; or
 - (2) There is not adequate space in which to plant a street tree due to driveway or street light locations, vision clearance or utility connections, provided the driveways, street light or utilities could not be reasonably located elsewhere so as to accommodate adequate room for street trees; and
 - (3) The street trees are spaced as close as possible given the site limitations in (1) and (2) above.
 - (4) The location of street trees in an ODOT or Washington County right-of-way may require approval, respectively, by ODOT or Washington County and are subject to the relevant state or county standards.
 - (5) For arterial and collector streets, the City may require planted medians in lieu of paved twelve-foot wide center turning lanes, planted with trees to the specifications of this subsection.

B. Removal and Replacement of Street Trees.

The removal of a street tree shall be limited and in most cases, necessitated by the tree. A person may remove a street tree as provided in this section. The person removing the tree is responsible for all costs of removal and replacement. Street trees less than five (5) inches DBH can be removed by right by the property owner or his or her assigns, provided that they are replaced. A street tree that is removed must be replaced within six (6) months of the removal date.

- 1. Criteria for All Street Tree Removal for trees over five (5) inches DBH. No street tree shall be removed unless it can be found that the tree is:
 - a. Dying, becoming severely diseased, or infested or diseased so as to threaten the health of other trees, or
 - b. Obstructing public ways or sight distance so as to cause a safety hazard, -or
 - c. Interfering with or damaging public or private utilities, or
 - d. Defined as a nuisance per City nuisance abatement ordinances.
- 2. Street trees between five (5) and ten (10) inches DBH may be removed if any of the criteria in 1. above are met and a tree removal permit is obtained.
 - a. The Tree Removal Permit Process is a Type I land use decision and shall be approved subject to the following criteria:
 - (1) The person requesting removal shall submit a Tree Removal Permit application that identifies the location of the tree, the type of tree to be

removed, the proposed replacement and how it qualifies for removal per Section 1. above.

- (2) The person shall post a sign, provided by the City, adjacent to the tree for ten (10) calendar days prior to removal that provides notice of the removal application and the process to comment on the application.
- (3) If an objection to the removal is submitted by the City or to the City during the ten (10) calendar day period, an additional evaluation of the tree will be conducted by an arborist to determine whether the tree meets the criteria for street tree removal in Section 1. above. The person requesting the Tree Removal Permit shall be responsible for providing the arborist report and associated costs.
- (4) Upon completion of the additional evaluation substantiating that the tree warrants removal per Section 1. above or if no objections are received within the ten-day period, the tree removal permit shall be approved.
- (5) If additional evaluation indicates the tree does not warrant removal, the Tree Removal Permit will be denied.

3. Street trees over ten (10) inches DBH may be removed through a Type I review process subject to the following criteria.

- a. The applicant shall provide a letter from a certified arborist identifying:
 - (1) The tree's condition,
 - (2) How it warrants removal using the criteria listed in Section 1. above, and identifying any reasonable actions that could be taken to allow the retention of the tree.
- b. The applicant shall provide a statement that describes whether and how the applicant sought assistance from the City, HOA or neighbors to address any issues or actions that would enable the tree to be retained.
- c. The person shall post a sign, provided by the City, adjacent to the tree for ten (10) calendar days prior to removal that provides notice of the removal application and the process to comment on the application.
- d. Review of the materials and comments from the public confirm that the tree meets the criteria for removal in Section 1. above.

C. Homeowner's Association Authorization.

The Planning Commission may approve a program for the adoption, administration and enforcement by a homeowners' association (HOA) of regulations for the removal and replacement of street trees within the geographic boundaries of the association.

1. An HOA that seeks to adopt and administer a street tree program must submit an application to the City. The application must contain substantially the following information:
 - a. The HOA must be current and active. The HOA should meet at least quarterly and the application should include the minutes from official HOA Board meetings for a period not less than eighteen (18) months (six (6) quarters) prior to the date of the application.

- b. The application must include proposed spacing standards for street trees that are substantially similar to the spacing standards set forth in ~~16.142.050~~ [16.142.060](#).A above.
 - c. The application must include proposed street tree removal and replacement standards that are substantially similar to the standards set forth in ~~16.142.050~~ [16.142.060](#).B above.
 - d. The application should include a copy of the HOA bylaws as amended to allow the HOA to exercise authority over street tree removal and replacement, or demonstrate that such an amendment is likely within ninety (90) days of a decision to approve the application.
 - e. The application should include the signatures of not less than seventy-five (75) percent of the homeowners in the HOA in support of the application.
2. An application for approval of a tree removal and replacement program under this section shall be reviewed by the City through the Type IV land use process. In order to approve the program, the City must determine:
 - a. The HOA is current and active.
 - b. The proposed street tree removal and replacement standards are substantially similar to the standards set forth in ~~16.142.050~~ [16.142.060](#).B above.
 - c. The proposed street tree spacing standards are substantially similar to the standards set forth in ~~16.142.050~~ [16.142.060](#).A above.
 - d. The HOA has authority under its bylaws to adopt, administer and enforce the program.
 - e. The signatures of not less than seventy-five (75) percent of the homeowners in the HOA in support of the application.
3. A decision to approve an application under this section shall include at least the following conditions:
 - a. Beginning on the first January 1 following approval and on January 1 every two (2) years thereafter, the HOA shall make a report to the city planning department that provides a summary and description of action taken by the HOA under the approved program. Failure to timely submit the report that is not cured within sixty (60) days shall result in the immediate termination of the program.
 - b. The HOA shall comply with the requirements of Section 12.20 of the Sherwood Municipal Code.
4. The City retains the right to cancel the approved program at any time for failure to substantially comply with the approved standards or otherwise comply with the conditions of approval.
 - a. If an HOA tree removal program is canceled, future tree removals shall be subject to the provisions of section ~~16.142.050~~ [16.142.060](#).
 - b. A decision by the City to terminate an approved street tree program shall not affect the validity of any decisions made by the HOA under the approved program that become final prior to the date the program is terminated.
 - c. If the city amends the spacing standards or the removal and replacement standards in this section (SZCDC ~~16.142.050~~) the City may require that the HOA amend the corresponding standards in the approved street tree program.

5. An approved HOA tree removal and replacement program shall be valid for five (5) years; however the authorization may be extended as approved by the City, through a Type II Land Use Review.

D. Exemption from Replacing Street Trees.

A street tree that was planted in compliance with the Code in effect on the date planted and no longer required by spacing standards of section A.4. above may be removed without replacement provided:

1. Exemption is granted at the time of street tree removal permit or authorized homeowner's association removal per Section ~~16.142.050~~ [16.142.060](#).C. above.
2. The property owner provides a letter from a certified arborist stating that the tree must be removed due to a reason identified in the tree removal criteria listed in Section ~~16.142.050~~ [16.142.060](#).B.1. above, and
3. The letter describes why the tree cannot be replaced without causing continued or additional damage to public or private utilities that could not be prevented through reasonable maintenance.

E. Notwithstanding any other provision in this section, the city manager or the manager's designee may authorize the removal of a street tree in an emergency situation without a tree removal permit when the tree poses an immediate threat to life, property or utilities. A decision to remove a street tree under this section is subject to review only as provided in ORS 34.100.

F. Trees on Private Property Causing Damage.

Any tree, woodland or any other vegetation located on private property, regardless of species or size, that interferes with or damages public streets or utilities, or causes an unwarranted increase in the maintenance costs of same, may be ordered removed or cut by the City Manager or his or her designee. Any order for the removal or cutting of such trees, woodlands or other vegetation, shall be made and reviewed under the applicable City nuisance abatement ordinances.

G. Penalties. The abuse, destruction, defacing, cutting, removal, mutilation or other misuse of any tree planted on public property or along a public street as per this Section, shall be subject to the penalties defined by Section 16.02.040, and other penalties defined by applicable ordinances and statutes, provided that each tree so abused shall be deemed a separate offense.

16.142.070 Trees on Property Subject to Certain Land Use Applications

A. Generally

The purpose of this Section is to establish processes and standards which will minimize cutting or destruction of trees and woodlands within the City. This Section is intended to help protect the scenic beauty of the City; to retain a livable environment through the beneficial effect of trees on air pollution, heat and glare, sound, water quality, and surface water and erosion control; to encourage the retention and planting of tree species native to the Willamette Valley and Western Oregon; to provide an attractive visual contrast to the urban environment, and to sustain a wide variety and distribution of viable trees and woodlands in the community over time.

B. Applicability

~~1. All Planned Unit Developments type II – IV land use actions subject to Chapter 16.40, site developments subject to Section 16.92.020, and subdivisions subject to Chapter 16.122, shall be required to preserve trees or woodlands, as defined by this Section to the maximum extent~~

feasible within the context of the proposed land use plan and relative to other codes, policies and standards of the City Comprehensive Plan, ~~as determined by the City. This Section shall not apply to any PUD, site development or subdivision, or any subdivision phase of any PUD, having received an approval by the Commission prior to the effective date of Ordinance No. 94-991, except for Subsection C5 of this Section, which shall apply to all building permits issued after the effective date to that Ordinance.~~

2BC. Inventory

1. To assist the City in making its determinations on the retention of trees and woodlands, land use applications for ~~type II – IV~~ development shall include a tree and woodland inventory and report. The report shall be prepared by a ~~qualified professional certified arborist~~ and must contain the following information:

- a. Tree size (in DBH and canopy area)
- b. Tree species
- c. The condition of the tree with notes as applicable explaining the assessment
- d. The location of the tree on the site
- e. The location of the tree relative to the planned improvements
- f. Assessment of whether the tree must be removed to accommodate the development
- g. Recommendations on measures that must be taken to preserve trees during the construction that are not proposed to be removed.

~~2. Trees removed on the property within one year prior to the submittal of the development application shall also be included in the inventory. In the event that adequate data is not available to address the specific inventory requirements below, an aerial photo may be utilized to determine the approximate number, canopy size and type of trees on the property.~~

23. In addition to the general requirements of this Section, the tree and woodland inventory's mapping and report shall also include, but is not limited to, the specific information outlined in the appropriate land use application materials packet.

33. Definitions For for the inventory purposes of this Section

~~1a.;~~ a tree is a living woody plant having a trunk diameter as specified below at ~~four and one-half (4-1/2) feet above mean ground level at the base of the trunk, also known as~~ Diameter at Breast Height (DBH). Trees planted for commercial agricultural purposes, and/or those subject to farm forest deferral, such as nut and fruit orchards and Christmas tree farms, are excluded from this definition and from regulation under this Section, as are any living woody plants under ~~five-six (56)~~ inches at DBH.

~~a(1). Douglas fir, ponderosa pine, western red cedar, white oak, big leaf maple, American chestnut, ten (10)~~ All trees six (6) inches or greater shall be inventoried.

~~b. All other tree species, five (5) inches or greater.~~

~~In addition, any trees of any species of five (5) inches or greater DBH that are proposed for removal as per the minimally necessary development activities defined in subsection C3 of this Section shall be inventoried.~~

2b. For the inventory purposes of this Section, a A woodland is a biological community dominated by trees covering a land area of 20,000 square feet or greater at a density of at least fifty (50) trees per every 20,000 square feet with at least fifty percent (50%) of

those trees of any species having a ~~five-six~~ (56) inches or greater at DBH. Woodlands planted for commercial agricultural purposes and/or subject to farm forest deferral, such as nut and fruit orchards and Christmas tree farms, are excluded from this definition, and from regulation under this Section.

c. A large stature tree is over 20 feet tall and wide with a minimum trunk diameter of 30 inches at DBH.

D. Retention requirements

1. Trees may be considered for removal to accommodate the development including buildings, parking, walkways, grading etc., regardless provided the development satisfies of D.2 or D.3, below.

~~C12.~~ —Required Tree Canopy - Residential Developments (Single Family Attached, Single Family Detached and Two – Family)

Each net development site shall provide a minimum total tree canopy of 40 percent. The canopy percentage is based on the expected mature canopy of each tree by using the equation πR^2 to calculate the expected square footage of canopy for each tree. The expected mature canopy is counted for each tree regardless of an overlap of multiple tree canopies.

This The canopy requirement can be achieved by retaining existing trees or planting new trees. Required street trees can be used toward the total on site canopy required to meet this standard. The expected mature canopy spread of the new trees will be counted toward the needed canopy cover. A certified arborist or other qualified professional shall provide the estimated tree canopy of the proposed trees to the planning department for review.

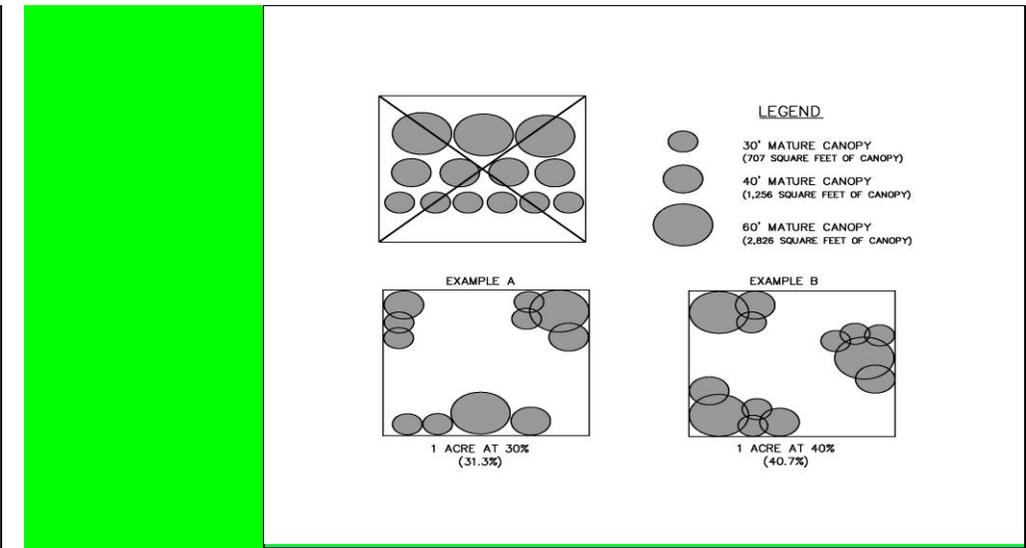
~~D23.~~ —Required Tree Canopy – Non-Residential and Multi-family Developments

Each net development site shall provide a minimum total tree canopy of 30 percent. The canopy percentage is based on the expected mature canopy of each tree by using the equation πR^2 to calculate the expected square footage of each tree. The expected mature canopy is counted for each tree even if there is an overlap of multiple tree canopies.

This The canopy requirement can be achieved by retaining existing trees or planting new trees. Required landscaping trees can be used toward the total on site canopy required to meet this standard. The expected mature canopy spread of the new trees will be counted toward the needed required canopy cover. A certified arborist or other qualified professional shall provide an estimated tree canopy for all proposed trees to the planning department for review as a part of the land use review process.

	<u>Residential (single family & two family developments)</u>	<u>Old Town & Infill developments</u>	<u>Commercial, Industrial, Institutional Public and Multi-family</u>
--	--	---	--

Canopy Requirement	40%	N/A	30%
Counted Toward the Canopy Requirement			
Street trees included in canopy requirement	Yes	N/A	No
Landscaping requirements included in canopy requirement	N/A	N/A	Yes
Existing trees onsite	Yes x2	N/A	Yes x2
Planting new trees onsite	Yes	N/A	Yes
<p>Mature Canopy in Square Feet Equation πr^2 or $(3.14 \times \text{radius}^2)$ (This is the calculation to measure the square footage of a circle. The Mature Canopy is given in diameter. In gardening and horticulture reference books, therefore to get the radius you must divide the diameter in half.</p>			
<p>Canopy Calculation Example: Pin Oak Mature canopy =35' $(3.14 \times 17.5^2) = 961.63$ square feet</p>			



4. The City may determine that, regardless of D.1 through D.3, that certain trees or woodlands (stands of trees) may be required to be retained. The basis for such a decision shall include:

specific findings that retention of said trees or woodlands furthers the purposes and goals of this Section, is feasible and practical both within the context of the proposed land use plan and relative to other policies and standards of the City Comprehensive Plan, and are:

- a. Within a Significant Natural Area, 100-year floodplain, City greenway, jurisdictional wetland or other existing or future public park or natural area designated by the City Comprehensive Plan, or
- b. A landscape or natural feature as per applicable policies of the City Comprehensive Plan, or are necessary to keep other identified trees or woodlands on or near the site from being damaged or destroyed due to windfall, erosion, disease or other natural processes, or
- c. Necessary for soil stability and the control of erosion, for managing and preserving surface or groundwater quantities or quality, or for the maintenance of a natural drainageway, as per ~~Unified Sewerage Agency Clean Water Services~~ stormwater management plans and standards of the City Comprehensive Plan, or
- d. Necessary as buffers between otherwise incompatible land uses, or from natural areas, wetlands and greenways, or
- e. Otherwise merit retention because of unusual size, size of the tree stand, historic association or species type, habitat or wildlife preservation considerations, or some combination thereof, as determined by the City.

5. Tree retention requirements for properties located within the Old Town Overlay or projects subject to the infill standards of Chapter 16.68 are only subject to retention requirements identified in D.4. above.

~~BE. Tree and Woodland Inventory~~

~~1. To assist the City in making its determinations on the retention of trees and woodlands, the land use applications referenced in subsection A of this Section shall include a tree and woodland inventory and report, in both map and narrative form, addressing the standards in subsection C C or D of this Section (above), and a written report by an arborist, forester, landscape architect, botanist, or other qualified professional, as determined by the City, that generally evaluates the nature and quality of the existing trees and woodlands on the site and also provides information as to the extent and methods by which trees and woodlands will be retained. The inventory shall include a resume detailing the qualified professional's applicable background and experience. The City may also require the submission of additional information as per Section 16.136.030.~~

~~2. Trees removed on the property within one year prior to the submittal of the development application shall also be included in the inventory. In the event that adequate data is not available to address the specific inventory requirements below, an aerial photo may be utilized to determine the approximate number, size and type of trees on the property.~~

~~23. In addition to the general requirements of this Section, the tree and woodland inventory's mapping and reports shall include, but are not limited to, the following specific information outlined in the appropriate land use application materials packet. Mapping shall include a composite map, illustrating as much required information as possible while retaining map readability.~~

~~a. The location of the property subject to the land use application and tree and woodland inventory, including street addresses, assessors' map and tax lot numbers, and a vicinity map.~~

- ~~b. Mapping indicating the location of trees and woodlands, as defined by subsections A2 through 3. Mapping shall include typical tree root zones, given tree species, size, condition and location. For any woodland, inventory data and mapping is required only for the group, rather than on a tree by tree basis.~~
- ~~c. Mapping and other inventory data shall include, but is not limited to, the boundaries and/or types of soils, wetlands, and floodplains underlying the tree or woodland; site hydrology, drainage, and slope characteristics; the condition, density, form, root zone and aspect of the tree or woodland, including in the case of a woodland, associated understory.~~
- ~~d. Mapping and other inventory data shall be of sufficient detail and specificity to allow for field location of trees and woodlands by the City, and shall include but is not limited to, existing and proposed property lines, topography at the intervals otherwise specified for the type of land use application being considered, and any significant man-made or natural features that would tend to aid in such field location.~~
- ~~e. The number, size, species, condition, and location of trees and woodlands proposed for removal, the timing and method of such removal, and the reason(s) for removal.~~
- ~~f. The number, size, species, condition, and location of trees and woodlands proposed for retention, and the methods by which such trees and woodlands shall be maintained in a healthy condition both during and subsequent to development activity.~~
- ~~g. Proposed mitigation and replacement efforts as per subsection D of this Section, including a description of how proposed replacement trees will be successfully replanted and maintained on the site.~~

~~CE. Tree and Woodland Retention~~

- ~~1. The review authority shall make findings identifying all trees and woodlands, or additional trees not inventoried, that merit retention. Alternatively, the City may require planting of new trees in lieu of retention as per subsection D1 through D3 of this Section, or acquire said trees and woodlands as per subsection D4 of this Section. Prior to making any such determinations or recommendations, the review authority may seek the recommendations of the City Parks Advisory Board. Special consideration shall be given in making these determinations to the retention or replanting of trees native to the Willamette Valley and Western Oregon, except in areas where such trees are prohibited as per Section 16.142.050B.~~
- ~~2. To require retention of trees or woodlands as per subsection B D of this Section, the Commission or Council must make specific findings that retention of said trees or woodlands furthers the purposes and goals of this Section, is feasible and practical both within the context of the proposed land use plan and relative to other policies and standards of the City Comprehensive Plan, and are:

 - ~~a. Within a Significant Natural Area, 100 year floodplain, City greenway, jurisdictional wetland or other existing or future public park or natural area designated by the City Comprehensive Plan, or~~
 - ~~b. A landscape or natural feature as per applicable policies of the City Comprehensive Plan, or are necessary to keep other identified trees or woodlands on or near the site from being damaged or destroyed due to windfall, erosion, disease or other natural processes, or~~
 - ~~c. Necessary for soil stability and the control of erosion, for managing and preserving surface or groundwater quantities or quality, or for the maintenance of a natural drainageway, as per Unified Sewerage Agency stormwater management plans and standards or the City Comprehensive Plan, or~~~~

- d. ~~Necessary as buffers between otherwise incompatible land uses, or from natural areas, wetlands and greenways, or~~
- e. ~~Otherwise merit retention because of unusual size, historic association or species type, habitat or wildlife preservation considerations, or some combination thereof, as determined by the City.~~

~~3. In general, the City shall permit only the removal of trees, woodlands, and associated vegetation, regardless of size and/or density, minimally necessary to undertake the development activities contemplated by the land use application under consideration. For the development of PUDs and subdivisions, minimally necessary activities will typically entail tree removal for the purposes of constructing City and private utilities, streets, and other infrastructure, and minimally required site grading necessary to construct the development as approved. For site developments, minimally necessary activities will typically entail tree removal for the purposes of constructing City and private utilities, streets and other infrastructure, minimally required site grading necessary to construct the development as approved, construction of permitted buildings, and City required site improvements such as driveways and parking lots.~~

~~4156. The Notice of Decision issued for the land use applications subject to this Section shall indicate which trees and woodlands will be retained as per subsection C2-D of this Section, which may be removed or shall be retained as per subsection B-D of this Section, and which shall be mitigated as per subsection D of this Section, and any limitations or conditions attached thereto. The applicant shall prepare and submit a Final Tree and Woodland Plan prior to issuance of any construction permits, illustrating how identified trees and woodlands will be retained, removed or mitigated as per the Notice of Decision. Such Plan shall specify how trees and woodlands will be protected from damage or destruction by construction activities, including protective fencing, selective pruning and root treatments, excavation techniques, temporary drainage systems, and like methods. At a minimum, trees to be protected shall have the area within the drip line of the tree protected from grading, stockpiling, and all other construction related activity unless specifically reviewed and recommended by a certified arborist.~~

~~5. At the time of building permit issuance for any development of a site containing trees or woodlands identified as per subsection C of this Section, the Building Official shall permit only the removal of trees, woodlands and associated vegetation, regardless of size and/or density, minimally necessary to undertake the development activities contemplated by the building permit application under consideration. The permit shall specify how trees and woodlands will be protected from damage or destruction by construction activities, including protective fencing, selective pruning and root treatments, excavation techniques, temporary drainage systems, and like methods. Minimally necessary activities will typically entail tree removal for the purposes of construction of City and private utilities, streets and other infrastructure, minimally required site grading necessary to construct the development as approved, construction of permitted buildings, and City required site improvements such as driveways and parking lots. A fee for this inspection shall be established as per Section 16.74.010, provided however that said inspection is not deemed to be a land use action.~~

~~6. When a tree or woodland within an approved site plan, subdivision or Planned Unit Development subsequently proves to be so located as to prohibit the otherwise lawful siting of a building or use, retention of said trees or woodlands may be deemed sufficient cause for the granting of a variance as per Chapter 16.84, subject to the satisfaction of all other applicable criteria in Chapter 16.84.~~

7. All trees, woodlands, and vegetation located on any private property accepted for dedication to the City for public parks and open space, greenways, Significant Natural Areas, wetlands, floodplains, or for storm water management or for other purposes, as a condition of a land use approval, shall be retained outright, irrespective of size, species, condition or other factors. Removal of any such trees, woodlands, and vegetation prior to actual dedication of the property to the City shall be cause for reconsideration of the land use plan approval.

E. Tree Preservation Incentive. Retention of existing native trees on site which are in good health can be used to achieve the required mature canopy requirement of the development. The expected mature canopy can be calculated twice for existing trees. For example, if one existing tree with an expected mature canopy of 10 feet (78.5 square feet) is retained it will count as twice the existing canopy (157 square feet).

F. Additional Preservation Incentives

1. General Provisions. To assist in the preservation of trees, the City may apply one or more of the following flexible standards as part of the land use review approval. To the extent that the standards in this section conflict with the standards in other sections of this Title, the standards in this section shall apply except in cases where the City determines there would be an unreasonable risk to public health, safety, or welfare. Flexibility shall be requested by the applicant with justification provided within the arborist's tree preservation and protection report as part of the land use review process and is only applicable to trees that are eligible for credit towards the effective tree canopy cover of the site. A separate adjustment application as outlined in Section 16.84.030.A is not required.

2. Flexible Development Standards. The following flexible standards are available to applicants in order to preserve trees on a development site. These standards cannot be combined with any other reductions authorized by this code.

a. Lot size averaging. To preserve existing trees in the development plan for any Land Division under Division VII, lot size may be averaged to allow lots less than the minimum lot size required in the underlying zone as long as the average lot area is not less than that allowed by the underlying zone. No lot area shall be less than 80 percent of the minimum lot size allowed in the zone;

b. Setbacks. The following setback reductions will be allowed for lots preserving existing trees using the criteria in subsection (1) below. The following reductions shall be limited to the minimum reduction necessary to protect the tree.

(1) Reductions allowed:

(a) Front yard – up to a 25 percent reduction of the dimensional standard for a front yard setback required in the base zone. Setback of garages may not be reduced by this provision.

(b) Interior setbacks - up to a 40 percent reduction of the dimensional standards for an interior side and/or rear yard setback required in the base zone.

(c) Perimeter side and rear yard setbacks shall not be reduced through this provision.

c. Approval criteria:

(1) A demonstration that the reduction requested is the least required to preserve trees; and

(2) The reduction will result in the preservation of tree canopy on the lot with the modified setbacks; and

(3) The reduction will not impede adequate emergency access to the site and structure.

3. Sidewalks. Location of a public sidewalk may be flexible in order to preserve existing trees or to plant new large stature street trees. This flexibility may be accomplished through a curb-tight sidewalk or a meandering public sidewalk easement recorded over private property and shall be reviewed on a case by case basis in accordance with the provisions of the Engineering Design Manual, Street and Utility Improvement Standards. For preservation, this flexibility shall be the minimum required to achieve the desired effect. For planting, preference shall be given to retaining the planter strip and separation between the curb and sidewalk wherever practicable. If

a preserved tree is to be utilized as a street tree, it must meet the criteria found in the Street Tree section, 16.142.060.

~~4 Residential Density Transfer. Up to 100% density transfer is permitted from the preserved portion of a significant tree stand within the development site to the buildable area of the development site.~~

~~a. Density may be transferred provided that:~~

~~(1.) At least 50% of the significant tree stand's canopy within the development site (and not within the sensitive lands or areas that areas dedicated to the City) is preserved;~~

~~(2.) The project arborist certifies the preservation is such that the connectivity and viability of the remaining significant tree stand is maximized;~~

~~(3.) Maximum density for the net site area including the Significant tree stand is not exceeded;~~

~~(4.) The lots must maintain an 80 percent minimum lot size;~~

~~(5.) The Significant tree stand is protected through an instrument or action subject to approval by the City Manager or the City manager's designee that demonstrates it will be permanently preserved and managed as such:~~

~~(1.) A conservation easement;~~

~~(2.) An open space tract;~~

~~(3.) A deed restriction; or~~

~~(4.) Through dedication and acceptance by the City.~~

~~b. The proposed development may include the following:~~

~~(1.) Zero lot line single family detached housing for the portion of the development site that receives the density transfer;~~

~~(2.) The following variations from the base zone development standards are permitted:~~

~~(1.) Up to 25% reduction of average minimum lot width;~~

~~(2.) Up to 10 foot minimum front yard setback;~~

~~(3.) Up to 33% reduction in side or rear yard, however the side yard cannot be less than three feet;~~

~~(4.) Up to four foot reduction in the garage setback;~~

~~(5.) Up to 20% increase in maximum height as long as the height requirement adjustment complies with the State Building Code.~~

~~(3.) When the portion of the development receives the density transfer abuts a developed residential district with the same or lower density zoning, the average area of abutting perimeter lots shall not be more than 150% of the adjacent zoning.~~

4. 5. Adjustments to Commercial and Industrial development Standards. Adjustments to Commercial or Industrial Development standards of up to 20 feet additional building height are permitted provided;

a. At least 50% of a Significant Tree stand's of canopy within a development site (and not also within the sensitive lands or areas that areas dedicated to the City) is preserved;

b. The project arborist **or qualified professional** certifies the preservation is such that the connectivity and viability of the remaining significant tree stand is maximized;

c. Applicable buffering and screening requirements are met;

- d. Any height adjustments comply with state building codes;
- e. Significant tree stands are protected through an instrument or action subject to approval by the City Manager or the City manager’s designee that demonstrates it will be permanently preserved and managed as such;
 - (1.) A conservation easement;
 - (2.) An open space tract;
 - (3.) A deed restriction; or
 - (4.) Through dedication and acceptance by the City.

a.—

~~D.—Mitigation~~

- ~~1.—The City may require mitigation for the removal of any trees and woodlands identified as per subsection C of this Section if, in the City's determination, retention is not feasible or practical within the context of the proposed land use plan or relative to other policies and standards of the City Comprehensive Plan. Such mitigation shall not be required of the applicant when removal is necessitated by the installation of City utilities, streets and other infrastructure in accordance with adopted City standards and plans. Provided, however, that the City may grant exceptions to established City street utility and other infrastructure standards in order to retain trees or woodlands, if, in the City's determination, such exceptions will not significantly compromise the functioning of the street, utility or other infrastructure being considered. Mitigation shall be in the form of replacement by the planting of new trees.~~
- ~~2.—Replacement trees required as part of mitigation as per this Section shall, as determined by the City, be generally of a substantially similar species, size and quantity to those trees proposed for removal, taking into account soils, slopes, hydrology, site area, and other relevant characteristics of the site on which the mitigation is proposed. In consideration of the foregoing factors the City may require replacement trees to be replanted at greater than a 1:1 caliper inch ratio. Exotic or non-native trees shall generally be replaced with species native to the Willamette Valley or Western Oregon, except where such native trees are prohibited by Section 16.142.050B2. Said replacement trees shall be in addition to trees along public streets required by Section 16.142.050A. Standards for trees along public streets may be different than those for trees required for retention or replacement under this Section.~~
- ~~3.—If replacement trees of the species, size or quantity being removed are not available, or cannot be successfully replanted due to soils, slopes, hydrology, site area, or other relevant characteristics of the site, the City may require:

 - a.—Different species of trees to be submitted, or
 - b.—Replacement trees to be planted on another, more suitable site within the City, or
 - c.—Cash payments equivalent to the fair market value of the otherwise required replacement trees, including estimated installation costs, said payments to be set aside by the City in a dedicated fund for eventual purchase and planting of trees when suitable sites become available.~~
- ~~4.—The Commission may also make recommendation to the Council, based on the recommendation of the Parks Advisory Board, that trees or woodlands identified as per this Section be purchased by the City, if such trees cannot otherwise be retained as part of the proposed land use plan, obtained as a parks and open space or other dedication to the City, or otherwise be mitigated as per subsection D of this Section.~~

F. Tree Protection During Development

The applicant shall prepare and submit a final Tree and Woodland Plan prior to issuance of any construction permits, illustrating how identified trees and woodlands will be retained, removed or mitigated protected as per the Notice of Decision. Such Plan shall specify how trees and woodlands will

be protected from damage or destruction by construction activities, including protective fencing, selective pruning and root treatments, excavation techniques, temporary drainage systems, and like methods. At a minimum, trees to be protected shall have the area within the drip line of the tree protected from grading, stockpiling, and all other construction related activity unless specifically reviewed and recommended by a certified arborist or other qualified professional. Any work within the dripline of the tree shall be supervised by the project arborist being onsite during construction.

EG. Penalties

Violations of this Section shall be subject to the penalties defined by Section 16.02.040, provided that each designated tree or woodland unlawfully removed or cut shall be deemed a separate offense. (Ord. 2006-021; Ord. 91-922, § 3)

16.142.080 Trees on Private Property -- not subject to a land use action

A. Generally

In general, existing mature trees on private property shall be retained unless determined to be a hazard to life or property. For the purposes of this section only, existing mature trees shall be considered any deciduous tree greater than ten (10) inches diameter at the breast height (dbh) or any coniferous tree greater than twenty (20) inches dbh.

B. Residential (Single Family and Two-Family) Standards

In the event a property owner determines it necessary to remove existing mature trees on their property that are not a hazard, they may remove the trees as described below;

1. Removal of up to five (5) trees, or up to 10 percent of the number of trees on site, whichever is greater, within a twelve month period. No review or approval required provided that trees are not located within a natural resource area wetland, floodplain or protected through prior land use review per section 3.b. (1.) – (5.) below, that -the planning department is notified in writing 48 hours prior to removing the tree, including the property address, property owner name and contact information, and provided with the type and size of the tree. Failure to notify the Planning Department shall not result in a violation of this code unless it is determined that the tree removal is located within a natural resource area wetland, floodplain or protected through prior land use review per section 3.b. (1.) – (5.) below, or in excess of that permitted outright.
2. Removal of six (6) or more trees, or more than 10 percent of the number of trees on site, whichever is greater, within a twelve month period except as allowed in subsection 1, above.
 - a. The applicant shall submit the following:
 - (1.) A narrative describing the need to remove the tree(s),
 - (2.) A statement describing when and how the Homeowner’s Association (HOA) was informed of the proposed tree cutting and their response. If there is not an active HOA, the applicant shall submit as statement indicating that there is not a HOA to contact.
 - (3.) A plan showing the location of the tree and
 - (4.) The applicant shall submit a replacement tree plan. Half of the number of trees removed shall be replaced on site with native trees within six months from the date of removal.
3. The City may determine that, regardless of B.1 through B.2, that certain trees or stands of trees may be required to be retained.

a. If removal is proposed within a ~~natural resource area wetland, floodplain or protected through prior land use review per section 3.b. (1.) – (5.) below~~, the applicant shall submit documentation from a licensed qualified professional in natural resources management such as a wetland scientist, a botanist, or biologist, discussing the proposed tree removal and how it would or would not compromise the integrity of the resource. It shall also discuss the feasibility and practicality of tree removal relative to policies and standards of the City Comprehensive Plan, listed in section 3.b. below.

b. The basis for such a City decision shall include; specific findings that retention of said trees or woodlands furthers the purposes and goals of this Section, is feasible and practical relative to other policies and standards of the City Comprehensive Plan, and are:

- (1.) Within a Significant Natural Area, 100-year floodplain, City greenway, jurisdictional wetland or other existing or future public park or natural area designated by the City Comprehensive Plan, or
- (2.) A landscape or natural feature as per applicable policies of the City Comprehensive Plan, or are necessary to keep other identified trees or woodlands on or near the site from being damaged or destroyed due to windfall, erosion, disease or other natural processes, or
- (3.) Necessary for soil stability and the control of erosion, for managing and preserving surface or groundwater quantities or quality, or for the maintenance of a natural drainageway, as per Clean Water Services stormwater management plans and standards of the City Comprehensive Plan, or
- (4.) Necessary as buffers between otherwise incompatible land uses, or from natural areas, wetlands and greenways, or
- (5.) Otherwise merit retention because of unusual size, size of the tree stand, historic association or species type, habitat or wildlife preservation considerations, or some combination thereof, as determined by the City.

~~up to 5 trees per acre per calendar year by right, not to exceed 100 inches total dbh. The property owner shall document the number of trees and the date removed for their records and shall notify the City Planning Department 48 hours prior to tree removal. If the property owner determines that it is necessary to remove more trees than is permitted by right, the act is considered to be an alteration of the exterior appearance of the property and site plan review is required. In that instance, the requirements of Section 16.142.060 shall apply. The review authority shall be determined by the square footage of the area to be disturbed.~~

~~(Ord. 2006-021)~~

C. Non-Residential and Multi-family Standards

In the event a property owner determines it necessary to remove existing mature trees on their property that are not a hazard, they may remove the trees as described below;

1. Trees required by a land use decision after the effective date of this code can be removed. Any trees removed shall be replaced within six months of removing the tree with an appropriate tree for the area.
2. Trees that were not required by land use or planted prior to the effective date of this code can be removed after receiving approval from the City of Sherwood.
 - a. Removal of up to 25 percent of the trees on site can be removed and replaced through a type I review process. The applicant shall submit the following;
 - (1.) A narrative describing the need to remove the trees,

- (2.) A plan showing the location of the trees and
 - (3.) A replacement tree plan. Half of the number of trees removed shall be replaced on site with similar trees within six months from the date of removal.
 - b. Removal of more than 25 percent of the trees on site can be removed and replaced through a type II review process. The applicant shall submit the following:
 - (1.) An arborists report describing the need to remove the trees. The cause for removal must be necessitated by the trees,
 - (2.) A plan showing the location of the tree and
 - (3.) A replacement tree plan. Two – thirds of the number of trees removed shall be replaced on site with similar trees within six months from the date of removal.
- 3. The City may determine that, regardless of C.1 through C.2, that certain trees or stands of trees may be required to be retained.
 - a. The applicant shall submit documentation from a licensed qualified professional in natural resources management such as wetland scientist, botanist or biologist, discussing the proposed tree removal within the context of the proposed land use plan and relative to other policies and standards of the City Comprehensive Plan, listed in section 3.b. below.
 - b. The basis for such a City decision shall include; specific findings that retention of said trees or woodlands furthers the purposes and goals of this Section, is feasible and practical both within the context of the proposed land use plan and relative to other policies and standards of the City Comprehensive Plan, and are:
 - (1.) Within a Significant Natural Area, 100-year floodplain, City greenway, jurisdictional wetland or other existing or future public park or natural area designated by the City Comprehensive Plan, or
 - (2.) A landscape or natural feature as per applicable policies of the City Comprehensive Plan, or are necessary to keep other identified trees or woodlands on or near the site from being damaged or destroyed due to windfall, erosion, disease or other natural processes, or
 - (3.) Necessary for soil stability and the control of erosion, for managing and preserving surface or groundwater quantities or quality, or for the maintenance of a natural drainageway, as per Clean Water Services stormwater management plans and standards of the City Comprehensive Plan, or
 - (4.) Necessary as buffers between otherwise incompatible land uses, or from natural areas, wetlands and greenways, or
 - (5.) Otherwise merit retention because of unusual size, size of the tree stand, historic association or species type, habitat or wildlife preservation considerations, or some combination thereof, as determined by the City.

City of Sherwood
Planning Commission Recommendation to the City Council
File No: PA 11-06 Trees on Private Property

February 10, 2012

Proposal: Amendments to the Development Code in this phase of the Code Clean-Up project will clarify the Trees on Private Property standards as well as incentivize tree preservation. There are also a few housekeeping revisions included in the proposal. The proposed changes will modify the following code sections: Definitions (16.10), Site Plan Review (16.90), and Parks and Open Space (16.142). The proposed amendments are attached to this report as Exhibit A.

I. BACKGROUND

- A. Applicant: This is a City initiated text amendment; therefore the applicant is the City of Sherwood.
- B. Location: The proposed amendment is to the text of the development code and, therefore applies citywide.
- C. Review Type: The proposed text amendment requires a Type V review, which involves public hearings before the Planning Commission and City Council. The Planning Commission has made a recommendation to the City Council who will make the final decision. Any appeal of the City Council decision relating to Chapter 16 updates would go directly to the Oregon Land Use Board of Appeals.
- D. Public Notice and Hearing: Notice of the January 24, 2012 Planning Commission hearing on the proposed amendment was published in *The Times* on 1/12/12, and published in the January edition of the Gazette. Notice was also posted in five public locations around town on 1/3/12 and on the web site on 1/5/12.

While this does apply citywide, it does not affect the permissible uses of any property; therefore "Measure 56" notice was not required or provided. DLCD notice was sent November 21, 2011.

- E. Review Criteria:
The required findings for the Plan Amendment are identified in Section 16.80.030 of the Sherwood Zoning and Community Development Code (SZCDC).
- F. Background:
The City underwent periodic review in 1989-1991 and the Zoning and Community Development Code was comprehensively reviewed and updated as part of that process. Since that time, there have been a number of updates to comply with regional and state laws, and to address local issues. Over time, the piece-meal updates resulted in the need to conduct a comprehensive audit and update of the code to ensure cross references are correct, standards are clear, and typographical errors are fixed. In addition, development trends and community values have changed such that it has become necessary to evaluate the standards to ensure they remain consistent with the goals and policies of the City's Comprehensive Plan, Metro policies and related state and local laws. To that end, the Council, Planning Commission and staff identified the need to conduct a comprehensive update of the Development Code. There have been multiple updates since October 2010.

This update focuses on the Trees on Private Property portion of section 16.142.070. In the past the City has heard concerns from developers and homeowners about a few issues with the existing code including;

- The costs and complexities associated with an inch for inch mitigation requirement,
- The standards for residential and non-residential are the same even though the purpose and probable intensity of development within each of the zones is different, and
- The need for site plan review if a property owner, not subject to land use removes more than five trees per acre or more than 100 inches at dbh in any calendar year.

II. AFFECTED AGENCY, PUBLIC NOTICE, AND PUBLIC COMMENTS

Agencies:

The City sent an e-mail request for comments to agencies December 13, 2011. DLCD notice was sent on November 21, 2011. Sherwood Broadband, Washington County and ODOT outdoor signs replied that they do not have comments regarding trees on private property.

PGE's Forester, Brandon Fleming, submitted e-mail comments dated December 27, 2011. He wanted to ensure that the defined caliper inch measurement for street trees was consistent with the industry standard as specified in the *American Standard For Nursery Stock* publication ANSI Z60.1-2004. He also commented that "It is important to include wording in Development codes that will include the necessities of utility and right-of-way construction, and allow Portland General Electric to perform safe, regular maintenance including our line work and Vegetation Management practices...Ultimately, planting the appropriate trees around power lines will create a sustainable urban canopy."

Staff response: Staff has updated the draft language to ensure that it reflects the industry standard as specified in Mr. Fleming's comments. Staff agrees that PGE should be able to perform safe, regular maintenance including line work and Vegetation Management, but additional street tree language to exempt them from the permit process has not been proposed at this time. A review is required but PGE is encouraged to seek City Council approval to waive future street tree permit fees.

Public Comments:

The following comments were received at the January 24, 2012 Public Hearing.

Kurt Kristensen- 22560 SW Fair Oaks Drive, Sherwood, OR 97140. He indicated that he understands development interests and he has watched major trees come down in the past. He thinks that this code is a good first step although some of the language is too broad. In section 16.142.070 on page 8 of the draft language there should be a maximum number of trees that can be removed from a site because a property owner or developer could remove 5 trees a year, every year. He also suggested that the neighbors should have an opportunity to comment on the trees that neighbors want to remove as trees have a benefit on neighboring properties as well.

Matt Grady, Gramor Development- 19767 SW 72nd Avenue, Suite 100, Tualatin, OR 97062. He raised a question about the definition of net developable site. This is referenced but not defined in the existing or proposed code. Does this include or not include certain things? He also asked if street trees can count for the 30 percent canopy requirement.

Patrick Huske- 23352 SW Murdock Road, Sherwood, OR 97140. He mentioned that he loves trees and sees codes as guidelines. The net developable site is an imposition to property owners. He indicated that the City had done a good job looking at everyone's point of view but balance is needed. He indicated that for retention, the City should look at gross buildable

footprint or the entire site. He also mentioned that there needs to be flexibility in the provisions. There needs to be an error factor. He likes trees but as a business owner he also needs to make money.

Staff Response: The comments raised at the planning commission public hearing were all important aspects to consider as the City moves forward with this portion of the code cleanup project. Many of the concerns were clarified at the hearing. We have heard that people want to be able to remove a reasonable number of trees without a review process and it is likely that property owners that are looking to develop will not remove existing trees on site as these will be counted toward the minimum canopy requirements. In order to address the concern about the definition of net developable site, a definition has been added to section 16.10.

III. REQUIRED FINDINGS FOR A PLAN TEXT AMENDMENT

The applicable Plan Text Amendment review criteria are 16.80.030.1 and 3

16.80.030.1 - Text Amendment Review

An amendment to the text of the Comprehensive Plan shall be based upon the need for such an amendment as identified by the Council or the Commission. Such an amendment shall be consistent with the intent of the Comprehensive Plan, and with all other provisions of the Plan and Code, and with any applicable State or City statutes and regulations.

The City has identified that the code is not always clear and embarked on this code clean-up project to address issues that have arisen as a result to make it clearer, more user-friendly, and to reflect current settlement trends and community values. The proposed changes represent an effort to clean up the Tree code and ensure that existing policy is clear and objective.

The Planning Commission has held a series of work sessions (December 14, 2010, January 11, 2011, March 8, 2011, May 10, 2011, June 14, 2011 and August 23, 2011) to discuss the proposed changes and considered public input before the changes were developed to obtain feedback on needed changes.

The City took great care to ensure that the community's values are met as a result of the proposed code update. The process for this portion of the code update was different from other code clean up topics due to the complexity. The Planning Commission developed goals to help guide the process. To ensure many opportunities for outreach and engagement, a tree panel was held to hear from the experts and multiple open house type events were held and an online questionnaire was used to gather the public's input on this portion of the code clean up.

It was only after developing goals, gaining the community's input and hearing from experts that code language was developed. The proposed draft tree code is anticipated to meet the Planning Commission's goals and the community's values. The purpose of this code update was to simplify the code language, encourage tree preservation while also allowing for tree removal standards that ensure the benefits of trees are maintained over time. The language also reviews residential and non-residential developments differently.

It became evident after talking to both the arborists and developers on the tree panel and the public through the multiple outreach events that the existing process for regulating tree removal and the mitigation requirement does not work well and a change is needed. Specifically, the requirement to mitigate inch for inch results in overplanting and does not reflect the health, size or value of the tree. The current mitigation requirement can be an economic burden for a property owner with a heavily treed site. In order to ensure that the trees are seen as an asset to be protected and retained rather than a burden, a mature canopy requirement has been proposed.

The mature canopy, as proposed, is 40% for residential (single family and two family developments) and 30% for non-residential and multi-family developments. The mitigation requirement in the current code language has been removed. In addition, there are proposed incentives for developers to retain existing trees during development. The intent of these changes is to encourage preservation and keep future developers and homeowners from cutting trees before development as they will have to plant trees to meet the mature canopy requirement if on site trees are not retained.

The removal requirements for trees on residential and non-residential property not subject to land use review have been updated to ensure that required trees are retained or replaced if they must be removed. The residential requirements are similar to the existing standards, however, the removal of more than five trees or more than 10% of the trees on site no longer require a site plan. Instead it is a staff level review. Code language has also been drafted to clarify trees within natural resources and/or open spaces are subject to review on both private residential and non-residential property. This ensures the City's continued compliance with Statewide Goal 5.

The following housekeeping updates are also proposed:

1. When the open space code updates were made there were code references within 16.142 that were not updated. They are now updated to be consistent.
2. The definition of diameter at breast height was moved to the definition section of the code and the language was specified to make it easier for readers to use.
3. The way that street trees are measured when they are planted was also updated to be consistent with industry practices. The code requires street trees to be a minimum of two inches DBH when they are planted. Plant nurseries measure trees based on caliper inch which is near the root ball rather than 4 ½ feet up the tree. The requirement for newly planted street trees has been modified to reflect this industry standard.
4. The proposed language eliminates the need for site plan review for removing trees therefore the reference in the site plan section is proposed to be removed.

Upon review of the Comprehensive Plan, there are not specific policies which directly relate to the proposed language. There are no comprehensive plan requirements that would conflict with the proposed code language.

Applicable Regional (Metro) Standards

There are no known Metro standards that would conflict with the proposed language. This code update does apply to Metro Title 13 – Nature in Neighborhoods. This code update encourages tree preservation on private property through the land use process by creating a minimum canopy requirement as well as providing incentives for tree preservation.

Consistency with Statewide Planning Goals

Because the comprehensive plan policies and strategies are not changing and the comprehensive plan has been acknowledged by the State, there are no known conflicts with this text change. Staff does not believe that there are any other state or local regulations that the proposed amendments would conflict with. The language has been drafted in a manner that strives to remove conflicts in the code, and to provide clarity.

As a whole, the amendments are consistent with and support Goal 2 (land use planning) by providing more clear and objective standards. The proposed language will continue to be used city wide.

The process used to develop and review the proposed amendment is consistent with the Goal 2 requirements (and the development code):

- The Commission held multiple work sessions (December 14, 2010, January 11, 2011, March 8, 2011, May 10, 2011, June 14, 2011 and August 23, 2011) on the project;
- The website was updated regularly to provide opportunity for people to get information and provide input on the project as a whole as well as input on specific topics;

Formal notice was also published in the newspaper two weeks prior to the hearing, published in the January issue of the Gazette, posted around town and on the website.

- Courtesy notices were also provided on the website and in the City Newsletter (the Archer).
- By providing these notices in an effort to reach the public and encourage their involvement state planning Goal 1 is also met.

The code amendments are also consistent with Goal 5 (Natural Resources, Scenic and Historic Areas, and Open Spaces) by clarifying the standards for Trees on Private Property. The tree code is moving to a canopy requirement in order to encourage tree preservation. Additionally, the code update will increase compliance with Goal 5 since standards protecting natural resources and open spaces will be specifically added to "Trees on Private Property Not Subject to Land Use Approval". The existing "Trees on Private Property Subject to Land Use Approval" code language protects natural resources and open spaces. This language will remain in the code after the code update.

FINDING: As discussed above in the analysis, there is a need for the proposed amendments and the amendments are consistent with the Comprehensive Plan and applicable City, regional and State regulations and policies.

16.80.030.3 – Transportation Planning Rule Consistency

A. Review of plan and text amendment applications for effect on transportation facilities. Proposals shall be reviewed to determine whether it significantly affects a transportation facility, in accordance with OAR 660-12-0060 (the TPR). Review is required when a development application includes a proposed amendment to the Comprehensive Plan or changes to land use regulations.

FINDING: The proposed amendments are not tied to any one development application. Rather, the proposed amendments are provided to clarify existing language within the existing development code. The code language has also been updated to incentivize tree preservation and require an overall tree canopy while eliminating the tree mitigation standard. The proposed amendments will not result in a change of uses otherwise permitted and will have no measurable impacts on the amount of traffic on the existing transportation system; therefore this policy is not applicable to the proposed amendment.

IV. RECOMMENDATION

Based on the above findings of fact, and the conclusion of law based on the applicable criteria, staff recommends Planning Commission forward a recommendation of approval of PA 11-06 to the City Council.

- V. EXHIBITS**
- 1- A. Proposed development code changes (Clean Copy)
 - 1- B. Proposed development code changes (Track Changes)
 - 1- C. Matrix comparing existing standards to proposed changes
 - 1- D. Planning Commission Goals and Objectives for tree code update



ORDINANCE 2012-004

AN ORDINANCE AMENDING SHERWOOD MUNICIPAL CODE SECTION 15.16.100 REGARDING SYSTEM DEVELOPMENT CHARGE CREDITS

WHEREAS, Sherwood Municipal Code (SMC) Chapter 15.16 establishes a program for imposing system development charges (SDCs) on new development in the city for the purpose of equitably sharing the cost of certain capital improvements that benefit the entire city; and

WHEREAS, Sherwood Municipal Code Section 15.16.100 allows credits against the applicable system development charges (SDCs) for certain capital improvements or portions thereof; and

WHEREAS, Prior to the adoption of SMC Chapter 15.16 in 2007, the SMC required the City to provide notice to a developer that a project may qualify for SDC credits; and

WHEREAS, The City deleted the notice requirement when it adopted SMC 15.16 in 2007; and

WHEREAS, Upon further review and experience, the City Council now believes the notice requirement serves an important function by ensuring that the developer is aware of the credit provisions of SMC 15.16.100 and, therefore, wishes to restore the notice requirement to the provisions of SMC 15.16.100; and

WHEREAS, During the period the City was not required to provide notice, at least one development that may have qualified for SDC credits failed to apply for such credits within 90 days as required under SMC 15.16.100.H; and

WHEREAS, based on its consideration of the circumstances and equities City Council, in its sole discretion, believes the City can and should allow the developer to apply for SDC credits notwithstanding the timing requirements of SMC 15.16.100.H;

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

Section 1. The Sherwood Municipal Code, Section 15.16.100, is amended as set forth in Exhibit A, attached hereto and incorporated by reference.

Section 2. Notwithstanding the 90-day limitation in SMC 15.16.100.H, a person who constructed or installed a qualified public improvement as defined 15.16.040 after July 1, 2007 but before January 1, 2012, and who did not receive written notice from the City that the improvement may qualify for SDC credit under SMC 15.16.100, may file a request for credit under SMC 15.16.100 with the City Manager. The City Manager shall review and either approve or deny the request, in whole or in part, in due course.

Section 3. This Ordinance 2012-004 shall become effective 30 days following its approval and adoption by the Sherwood City Council.

Duly passed by the Sherwood City Council this 1st day of May 2012.

Keith S. Mays, Mayor

Attest:

Sylvia Murphy, CMC, City Recorder

	<u>AYE</u>	<u>NAY</u>
Clark	_____	_____
Langer	_____	_____
Butterfield	_____	_____
Folsom	_____	_____
Henderson	_____	_____
Grant	_____	_____
Mays	_____	_____

EXHIBIT A

Sherwood Municipal Code Section 15.16.100 is amended to read (additions in **bold-face**):

15.16.100 - Credits.

- A. Credit may be applied to the system development charge to the extent that prior structures or uses existed, city services were established to those structures or uses, and said structures or uses had previously paid the applicable system development charge in effect at the time the structure or use was established. Except as provided in subsection F of this section, credits may not exceed the calculated system development charge. Refunds may not be made on account of such excess credit.
- B. Credit shall be given for the cost of a qualified public improvement, as defined by Section 15.16.040 of this chapter. Except for transportation improvements, if a qualified public improvement is located partially on and partially off the parcel or parcels that are the subject of the development approval, the credit shall be given only for the cost of the portion of the improvement not located on or wholly contiguous to the property. For transportation improvements, credit may also be given for the cost of the portion of the improvement located on or contiguous to the property. The terms of this subsection may be modified by the authorizing resolution described in Section 15.16.050 of this chapter to the extent that credit provisions are made less restrictive.
- C. The credit provided for by this section shall be only for the improvement charges for the type of improvement being constructed and, except as provided in subsection B of this section, shall not exceed the improvement charge even if the cost of the capital improvement exceeds the applicable improvement charge. Credits shall not be provided for reimbursement charges.
- D. The qualified public improvement must be designed and constructed to provide additional capacity to meet projected future capacity needs created by the development. Improvements that address capacity deficiencies existing at the time of development are not eligible for credit. In the case of improvements addressing both future and existing capacity needs, only that portion providing future capacity is eligible for credit. The terms of this subsection may be modified by the authorizing resolution described in Section 15.16.050 of this chapter to the extent that credit provisions may be made less restrictive.
- E. The city manager must determine that the timing, location, design, and scope of the proposed improvement is consistent with and furthers the objectives of the capital improvement programs of the city. The city manager may use priorities established by the city council in the city's capital improvement plan, the information contained in the city's comprehensive plan and various public facility master plans, the advice of the city's engineering, public works, and planning staff, and other relevant information and data in making this determination. The city manager must also determine that the improvement is required to fulfill a condition of development approval issued by the city and is included in the city's adopted public facility plans.
- F. Except as provided in this subsection, excess credit may not be transferred from one development to another.
 - 1. In the case of a multi-phased development, excess credit generated in one phase may be used to offset applicable system development charges in subsequent phases.

2. Upon written application to the city manager, excess credits may be reapportioned from one lot or parcel to another lot or parcel within the confines of the property originally eligible for the credit. The reapportionment shall be noted on the original credit form retained by the city.
 3. Upon written application to the city manager, excess credits may be transferred to another lot or parcel that is adjacent to and served by the transportation facility that generated the credits.
- G. Credit may not be transferred from one of the types of capital improvements defined by Section 15.16.040 of this chapter and authorized by a resolution, to another type of capital improvement authorized by a different resolution.
- H. All credit requests must be in writing and filed with the city manager no more than ninety (90) days after acceptance by the city of the qualified public improvement. Improvement acceptance shall be in accordance with the practices, procedures and standards of the city. **At the time the city accepts the qualified public improvement, the city shall provide written notice to the person making the improvement that the improvement may qualify for credit under this section. The notice shall state that a credit request must be filed within 90 days of the date of acceptance.**
- I. The amount of any credit shall be determined by the city manager and based upon the subject improvement's construction contract documents, or other appropriate information provided by the applicant, and verified and accepted by the city. Notwithstanding the contract amount, the credit may not exceed prevailing market rates for similar projects, as determined by the city.
- J. In the case of rights-of-way, easements, or other land associated with the improvement, value shall be established by sales documents, formal appraisal provided at the developers cost, by county assessors records, or some other method deemed acceptable to the city. Notwithstanding actual sales price, the credit may not exceed prevailing market rates for similar projects, as determined by the city.
- K. Credit shall be provided to the applicant on a form provided by the city. The original of the credit form shall be retained by the city. The credit shall state a dollar amount that may be applied against any applicable system development charge imposed against the subject property. Excess credit may not be redeemed for cash or a cash-equivalent.
- L. All requests for redemption of credits must be submitted not later than the issuance of a building permit or, if deferral was permitted pursuant to Section 15.16.090 of this chapter, issuance of an occupancy permit. The permittee is solely responsible for presentation to the city of any credit redemption request and no credit redemption request shall be accepted after issuance of a building permit or, if deferral was granted, issuance of an occupancy permit. In no event is a subject property entitled to redeem credits in excess of the system development charges imposed.
- M. Credits shall not be allowed more than seven years after the acceptance of the applicable improvement by the city. Extensions of this deadline may not be granted.
- N. Upon annexation of affected parcels of land, credits previously issued by Washington County will be honored by the city.

Field House					
Monthly Report March 2012					
March-12	Mar-12		YTD		Mar-11
Usage		People		People	People
	<u>Count</u>	<u>Served*</u>	<u>Count</u>	<u>Served*</u>	<u>Served*</u>
Leagues	8	882	22	4885	585
Rentals	69	1932	694	15736	2952
Other (Classes)			1	5	17
[1] Day Use	12	157	80	638	172
Total Usage		2971		21264	
					3726
Income	Mar-12	YTD			
Rentals	\$4,900	\$37,233			
League fees (indoor)	\$7,259	\$67,254			
Card fees (indoor)	\$600	\$3,820			
Day Use	\$331	\$1,270			
Merchandise					
Snacks	\$910	\$4,828			
Classes		\$175			
Total	\$14,000	\$114,580			
FY 10 11					
Rentals	Mar-11	YTD			
League fees (indoor)	\$5,126	\$43,954			
Card fees (indoor)	\$2,596	\$55,240			
Day Use	\$87	\$3,082			
Merchandise	\$318	\$1,537			
Snacks					
Classes	\$700	\$4,838			
Total Income		\$2,336			
	\$8,827	\$110,987			

*Estimated number of people served based on all rentals have a different # of people. Along with each team will carry a different # of people on their roster.

Active Rec happenings during the month of March 2012

Youth spring soccer played 12 games at Snyder Park during the month of March.

Youth basketball finished up with a 6th grade Tournament the first week of March.

We had two spring basketball groups using gyms in March and the youth program sponsored a spring break camp for girls at SMS.

All of the youth spring sports are underway but are being hampered by the wet weather we had in March which has resulted in way to many gym requests.

Respectfully

Lance Gilgan

April 2, 2012

Council Meeting Date: May 1, 2012
Monthly Report

TO: Sherwood City Council

FROM: Craig L. Gibons, Finance Director

SUBJECT: Monthly Budget Report as of March 31, 2012

The adopted budget establishes legal expenditure limits for the City. The attached chart shows expenditures to date through March and compares those expenditures to the budget. With 75% of the year lapsed, expenditure categories in four funds have exceeded budget.

1. The Asset Depreciation Fund, where the beginning fund balance was higher than anticipated, putting the transfer out over budget.
2. The Street Capital Fund, where Capital Outlay and Materials and Services expenditures have exceeded budget. This is occurring due to projects that were not planned for this fiscal year. March expenses of \$353,000 are some of the final payments on the Oregon Street work at the railroad crossing.
3. The Telecom Fund will need an adjustment in its budget to provide expenditure authority for the interfund loan debt service approved by the Council earlier this year.
4. The URA Operations Fund is transferring \$246,000 to the storm fund to pay for the Main street property that was purchased earlier this year. This was an unanticipated and unbudgeted expense.

Staff will include expenditure authorization increases for these funds in the upcoming supplemental budget/budget transfer resolution at the second meeting in May.

General Government Funds (\$000)				
75% of Year Elapsed				
	<u>March YTD Results</u>	<u>Budget</u>	<u>% of Budget Used</u>	
General Fund				
Administration	\$ 1,905	\$ 2,860	67%	
Community Devel.	579	922	63%	
Police	2,613	3,531	74%	
Community Svcs.	892	1,225	73%	
PW Operations	<u>956</u>	<u>1,793</u>	<u>53%</u>	
Fund Total	\$ 6,945	\$ 10,331	67%	
Asset Depreciation Fund				
Transfers Out	\$ 221	\$ 218	101%	
General Construction Fund				
Debt Service	\$ 43	\$ 48	90%	
Debt Service Fund				
Debt Service	\$ 295	\$ 888	33%	
Street Operations Fund				
Personal Services	\$ 198	\$ 295	67%	
Materials and Services	280	700	40%	
Capital Outlay	275	588	47%	
Debt Service	<u>58</u>	<u>59</u>	<u>98%</u>	
Fund Total	\$ 811	\$ 1,642	49%	
Street Capital Fund				
Personal Services	\$ 160	\$ 180	89%	
Materials and Services	461	139	332%	
Capital Outlay	3,930	3,440	114%	
Transfers Out	<u>-</u>	<u>-</u>	<u>0%</u>	
Fund Total	\$ 4,551	\$ 3,759	121%	

Enterprise Funds (\$000)				
75% of Year Elapsed				
	<u>March YTD Results</u>	<u>Budget</u>	<u>% of Budget Used</u>	
Water Fund				
Operations	\$ 2,800	\$ 3,973	70%	
Capital Outlay	898	7,279	12%	
Fund Total	\$ 3,698	\$ 11,252	33%	
Sanitary Fund				
Operations	\$ 257	\$ 498	52%	
Capital Outlay	1,165	1,962	59%	
Fund Total	\$ 1,422	\$ 2,460	58%	
Storm Fund				
Operations	\$ 612	\$ 1,162	53%	
Capital Outlay	477	693	69%	
Fund Total	\$ 1,089	\$ 1,855	59%	
Telecom Fund				
Personal Services	\$ 7	\$ 26	27%	
Materials and Services	65	117	56%	
Capital Outlay	13	40	33%	
Debt Service	255	-	0%	
Transfer to General Fund	-	200	0%	
Fund Total	\$ 340	\$ 383	89%	
Urban Renewal Agency Funds (\$000)				
75% of Year Elapsed				
	<u>March YTD Results</u>	<u>Budget</u>	<u>% of Budget Used</u>	
URA Operations Fund				
Personal Services	\$ 72	\$ 101	71%	
Materials and Services	95	155	61%	
Capital Outlay	-	42	0%	
Debt Service	2,499	2,957	85%	
Transfer to Storm Fund	246	-	0%	
Fund Total	\$ 2,912	\$ 3,255	89%	
URA Capital Fund				
Personal Services	\$ 31	\$ 65	48%	
Materials and Services	25	51	49%	
Capital Outlay	2,250	3,894	58%	
Fund Total	\$ 2,306	\$ 4,010	58%	

clg 4-20-12

Sherwood Public Library – February 2012

	<u>Current Yr</u>	<u>Past Yr</u>	<u>% Change</u>
Check out	33,283	33,025	+1% (Self-checks out of service)

Check in	24,601	24,416	+0%
-----------------	---------------	---------------	------------

- New Library cards 107
- Volunteer hours 161.3 hours (21 volunteers)

Monthly Activities

- Twenty-seven Baby, Preschool and Toddler Storytimes (449 children/331 adults/367 Symphony Storytimes = 1147 total)
- Two Read-to-the-Dogs programs
- Magazine Monday (free magazine giveaway)
- 02/1, 8, 15 & 22 Oregon Symphony Storytimes returned! Over 85 in attendance at every session
- 02/03 & 09 Pam North & Jenny Swanson took part in Recreation Coordinator interviews
- 02/10-21 Sherwood High School Food Drive
- 02/10 Crystal Garcia attended WCCLS Bookletters training
- 02/10 Pam North attended City of Sherwood website training
- 02/11 Jen Violi Writing Workshop for Teens (6 in attendance)
- 02/15 Library Advisory Board Meeting
- 02/19 Adult Writing Workshop series with Marie Buckley (17 in attendance)
- 02/27 Jenny Swanson took part in Library volunteer interviews
- 02/28-29 Pinn Crawford & Sue Decker attend WCCLS Diversity Training
- Mary Madland and Jenny Swanson went on site visits to Hillsboro Public Library to view their RFID installation
- Working with the Sherwood Bookends book group – coordinating selections to be available for future meetings
- New style library cards available
- “Squiggle” benches reupholstered in the Children’s Area
- Library staff attended various regional, City and WCCLS meetings: WUG, Circulation, Policy Group, Cataloging, Youth Services, Acquisitions and Safety Committee

Sherwood Public Library – March 2012

	<u>Current Yr</u>	<u>Past Yr</u>	<u>% Change</u>
<u>Check out</u>	<u>35,073</u>	<u>37,100</u>	<u>-5.5% (Self-checks out of service)</u>

<u>Check in</u>	<u>25,880</u>	<u>27,850</u>	<u>-7.5%</u>
-----------------	---------------	---------------	--------------

- New Library cards 108
- Volunteer hours 165.75 hours (21 volunteers)

Monthly Activities

- Thirty Baby, Preschool and Toddler Storytimes (645 children / 467 adults = 1112 total)
- Three Read-to-the-Dogs programs
- Magazine Monday (free magazine giveaway)
- Sherwood High School National Art Honor Society Photography Display – all month
- 03/01 Jenny Swanson attended “Engaging Volunteers During Difficult Economic Times”
- 03/01 & 03/05 Library Volunteer Interviews
- 03/01, 03/08, 03/12 & 03/22 “And Then...Creative Writing Experiences” Workshops with Miss Teresa
- 03/01 Friends of the Library Annual General Membership Meeting
- 03/10 Portland Art Museum “Junk Deli” Program (20 children & 10 adults)
- 03/15 Library Management Staff attended “7 Habits of Highly Effective People Training” (Part 2)
- 03/16 Library Staff Meeting
- 03/18 Adult Writing Workshop “A Special Person” with Marie Buckley (17 participants)
- 03/21 Jenny Swanson attended 3M “Command Center” Training at WCCLS
- 03/20 & 03/21 Adam Carlson and Crystal Garcia attended WCCLS Diversity Training
- 03/22 WCCLS RFID Tagging Team begins tagging SPL materials
- 03/22 City of Sherwood delayed opening due to weather
- 03/22 Sue Decker hosted a Cub Scout tour/program (7 participants)
- 03/23 Teddy Bear Sleepover (42 stuffed animals spent the night at the Library)
- 03/26 Jennifer Ortiz, newly hired Event & Volunteer Coordinator introduced
- Library staff attended various regional, City and WCCLS meetings: RFID, Circulation, Youth Services, Adult Services, WUG, OLA/Public Library Division Board and Safety Committee

CITY OF SHERWOOD POLICE DEPARTMENT

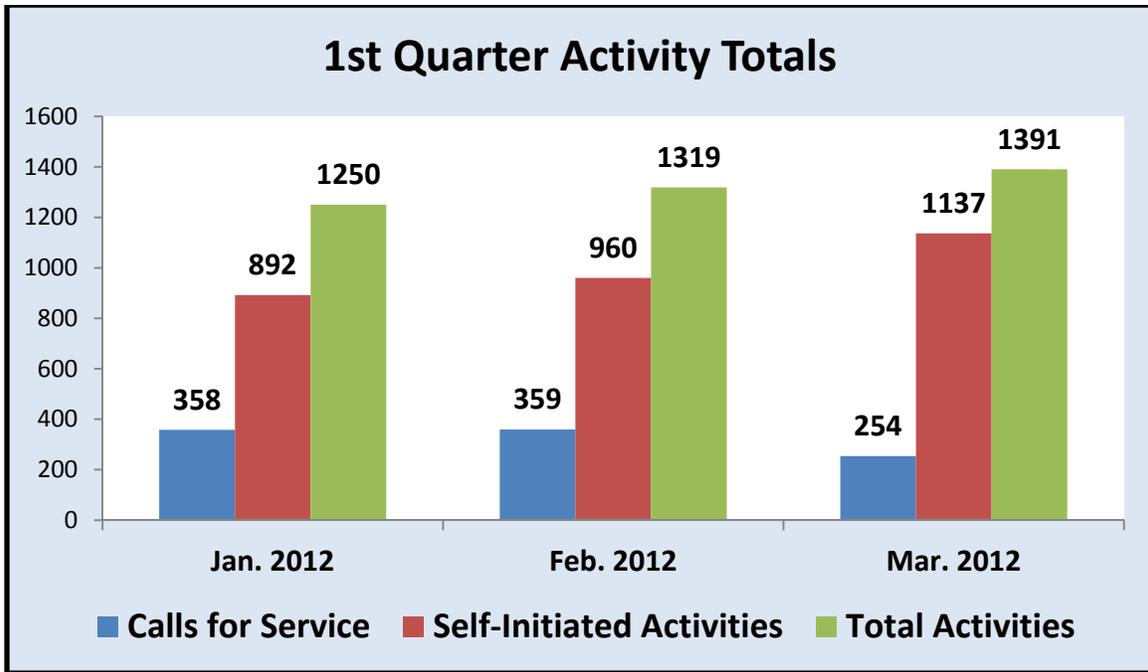
2012 UPDATE REPORT

1st Quarter: *January/February/March*



2012 Patrol Calls For Service & Activities

Activity Highlights	2011 Totals	Q1	Q2	Q3	Q4	2012 Totals
Premise checks for security	1,303	388				
Assistance provided to public	856	259				
Suspicious Vehicles	584	167				
Subject Stops/contacts	397	103				
Suspicious Circumstances	188	69				
Animal Complaints	177	26				
Audible Alarms	186	49				
Juvenile Problems	197	77				
Thefts	222	72				
Suspicious Persons	187	47				
Welfare Checks-People	181	45				
Harassment	142	41				
Noise Complaints	172	19				
Incomplete 911 calls	116	43				
Warrant Service	98	28				
Fraud	81	22				
Domestic Disturbance	148	36				
Criminal Mischief	111	30				
Drug Complaints	62	18				
Burglaries	39	12				
Suicide Threats	22	6				
Suicide Attempts	8	3				
Case Follow-Up	1029	313				
Robberies	3	1				
Assaults	31	12				
Disturbances	49	33				



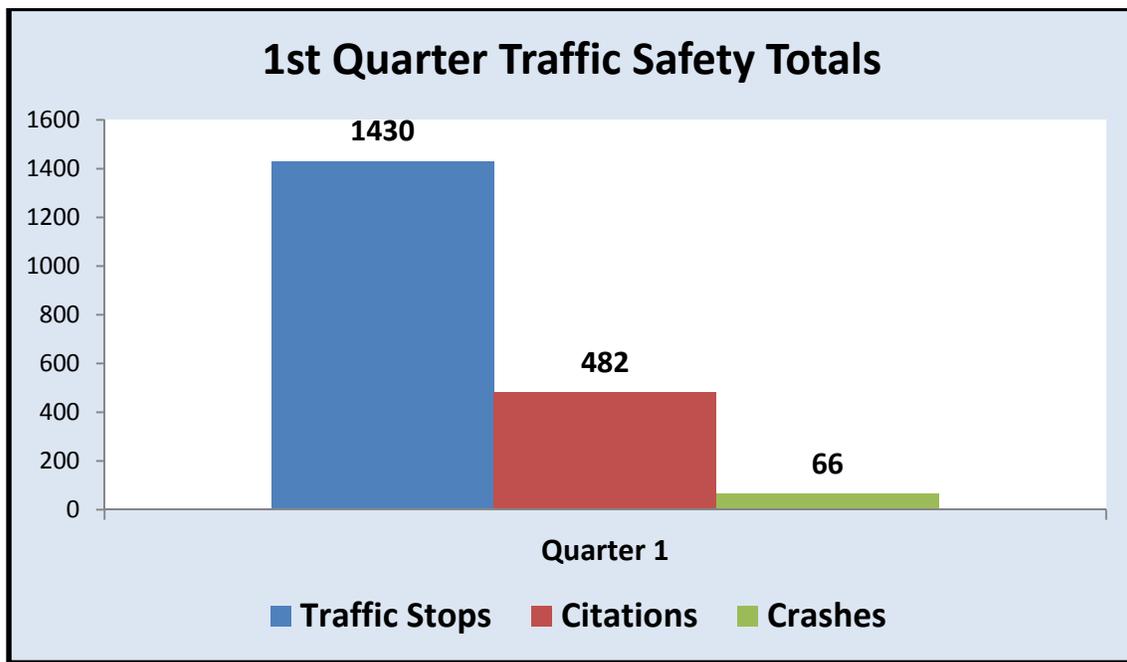
1st Quarter Highlights

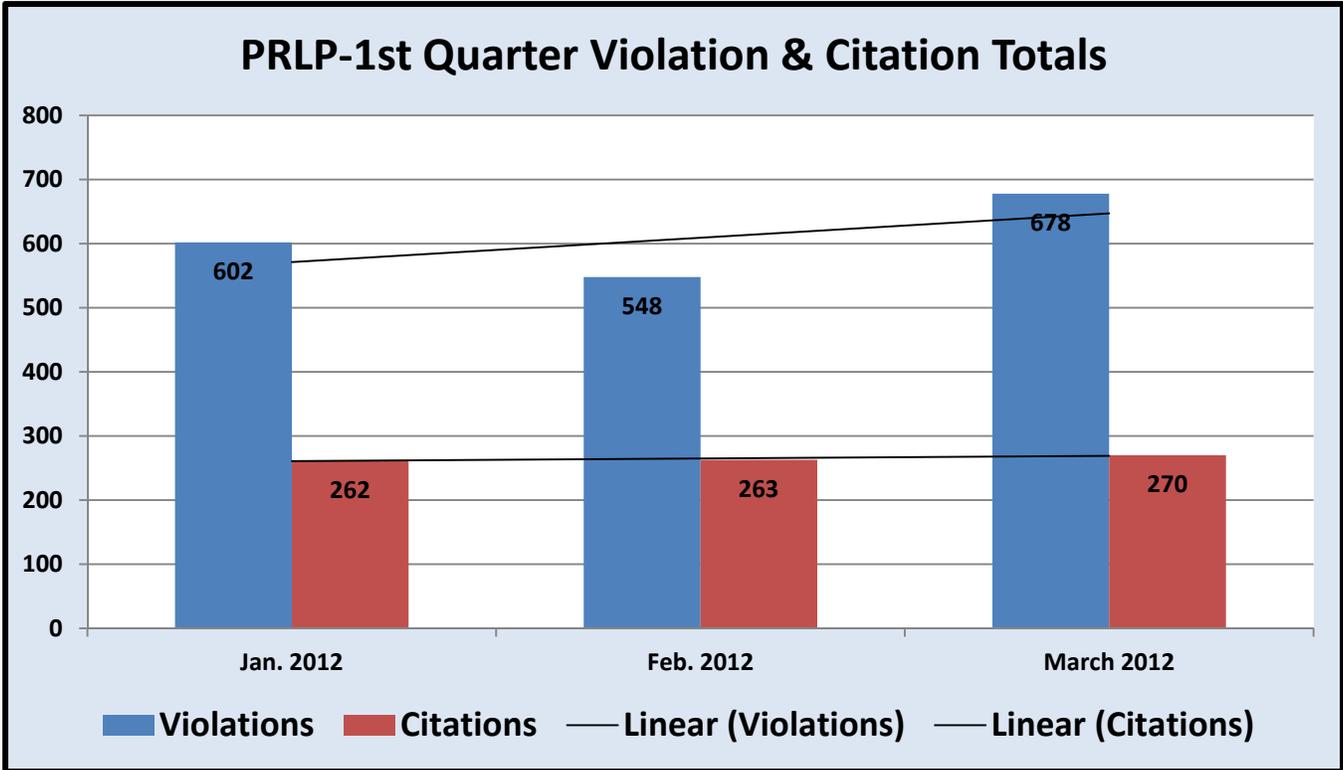
On February 29th, Officer Debbie Smith arrested Mr. Robert Hedman, a Lake Oswego resident, for Attempted Assault II, Reckless Endangering, Harassment and Theft of Services from McKenzie's. Apparently Mr. Hedman was angry after losing on the poker machines and became loud and profane. He left the bar without paying for his drinks (Theft of Services) and then took issue with another customer in the parking lot. As Mr. Hedman left in his car he attempted to run into the other customer, who fortunately stepped out of the way and was not injured. Mr. Hedman was located a couple hours later at his home in Lake Oswego and arrested. He was taken to jail with a \$32,500 bail.

Also in February, Detective Nathan Powell arrested Cesar Villanueva-Chacon on Sex Abuse charges, involving multiple children that occurred over a period of several years. In March, Mr. Villanueva was indicted on 21 Measure 11 counts of Sex Abuse in the 1st Degree. Mr. Villanueva is currently in the Washington County Jail with a bail in excess of \$5,000,000.00.

2012 Traffic Safety

Traffic Safety Call/Activity	2011 Totals	Q1	Q2	Q3	Q4	2012 Totals
Traffic Crashes	208	66				
Traffic Stops-Street	5,353	1430				
Citations-Street	3,290	482				
Citations-PRL	8,664	795				
Extra Patrols	2,876	839				
Parking/City Ordinance Complaints	210	40				
Motorist Assists	255	74				
Hazards	170	39				
Att. to Locate Driver (DUII-Reckless)	132	55				
Driving Under the Influence	97	21				
Traffic Complaints from Community	89	20				

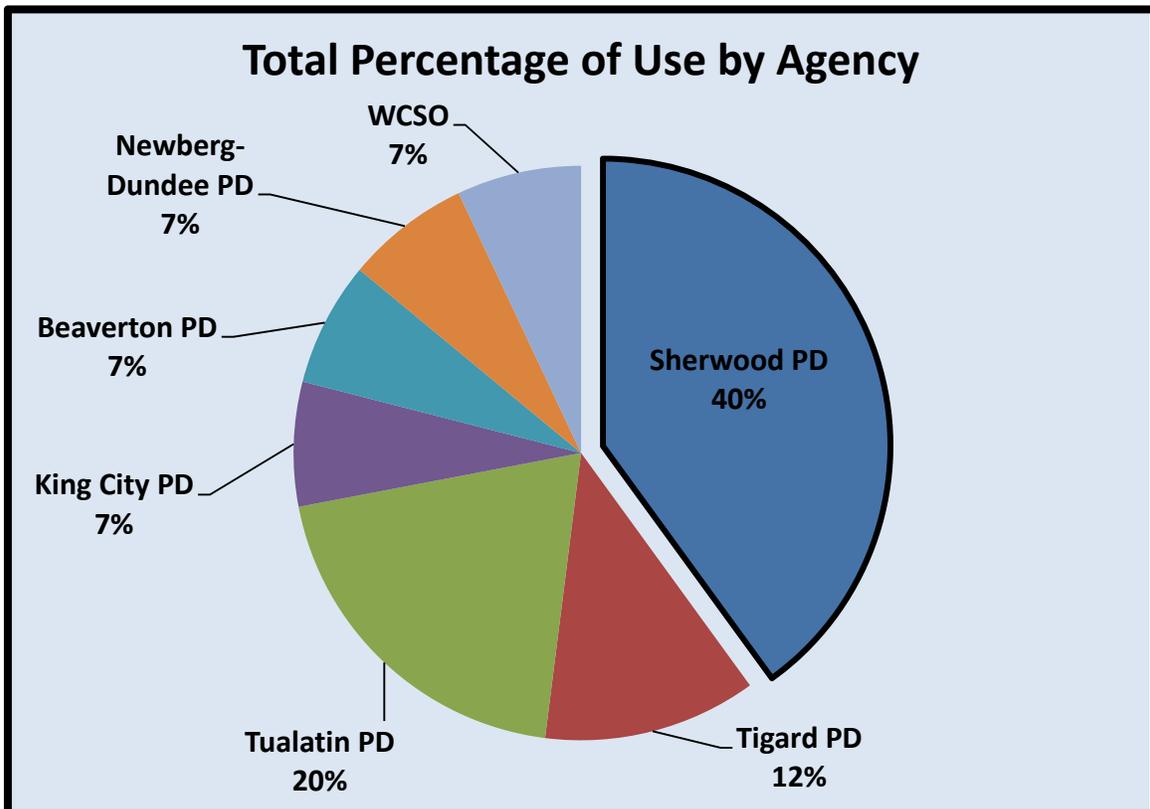
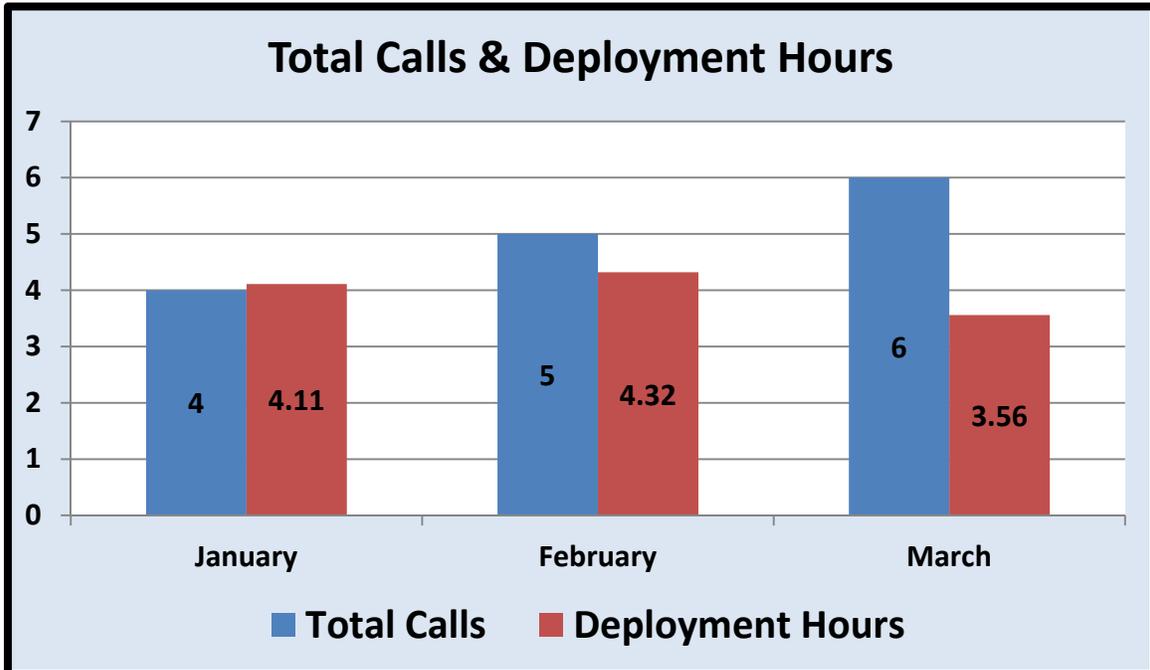




1st Quarter Traffic Safety Highlights

On Friday March 2nd, several Sherwood Officers responded to an injury crash at the intersection of Roy Rogers and Borchers. A large flatbed truck made an improper left turn and ran into a passenger car. A child passenger in the car sustained minor injuries. The driver of the truck was cited.

1st Quarter K-9 Update



1st Quarter Personnel Assignments and/or Changes

In February Officer Chad Brinkman was selected as our new Traffic Officer. Officer Brinkman has been with the City of Sherwood since 2004. He is currently working in a marked patrol car until he can complete motorcycle training.

Officer Debbie Smith has volunteered, and is currently serving as the Patrol Domestic Violence Liaison. Officer Smith has received specialized training as a part of this role. In this capacity she helps coordinate our relationship with the District Attorney's Office and the Domestic Violence Resource Center and assists with department training.