



CITY COUNCIL MEETING PACKET

FOR

Tuesday, March 21, 2023

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

6:30 pm City Council Work Session

7:00 pm City Council Regular Meeting

**City Council Executive Session
(ORS 192.660(2)(i), Performance Evaluation)
(Following the Regular City Council Meeting)**

This meeting will be live streamed at
<https://www.youtube.com/user/CityofSherwood>



Home of the Tualatin River National Wildlife Refuge

6:30 PM WORK SESSION

1. Discussion on HB 3115, Time, Place & Manner
(Ryan Adams, City Attorney)

7:00 PM REGULAR SESSION

1. CALL TO ORDER
2. PLEDGE OF ALLEGIANCE
3. ROLL CALL
4. APPROVAL OF AGENDA
5. CONSENT AGENDA
 - A. Approval of February 21, 2023 City Council Meeting Minutes (Sylvia Murphy, City Recorder)
 - B. Approval of March 7, 2023 City Council Meeting Minutes (Sylvia Murphy, City Recorder)
 - C. Resolution 2023-018, Adopting City Council Pillars, Goals, and Deliverables for Fiscal Year 2023-2024 (Keith Campbell, City Manager)
6. CITIZEN COMMENTS
7. PRESENTATIONS
 - A. Recognition of Retiring TVF&R Volunteer Fire Captain Paul Spath (Mayor Rosener)
 - B. Sherwood School District Levy Presentation (Keith Campbell, City Manager)
8. NEW BUSINESS
 - A. Resolution 2023-019, Purchase and Sale Agreement between the City of Sherwood and the Young Men's Christian Association of Columbia-Willamette, an Oregon nonprofit Corporation, doing business as YMCA of Columbia-Willamette (Keith Campbell, City Manager)
(Materials Forthcoming)
9. PUBLIC HEARINGS
 - A. Ordinance 2023-003 Amending Title 12 of the Sherwood Municipal Code and Adopting Standards and Procedures for a Permanent Outdoor Seating Program
(Eric Rutledge, Community Development Director) (First Reading)

AGENDA

SHERWOOD CITY COUNCIL March 21, 2023

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(Following the Regular Council Meeting)**

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22560 SW Pine Street
Sherwood, OR 97140**

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10. CITY MANAGER REPORT

11. COUNCIL ANNOUNCEMENTS

12. ADJOURN TO EXECUTIVE SESSION

A. ORS 192.660(2)(i), Performance Evaluation

(Lydia McEvoy, HR Manager and Ryan Adams, City Attorney)

13. ADJOURN

How to Provide Citizen Comments and Public Hearing Testimony: Citizen comments and public hearing testimony may be provided in person, in writing, or by telephone. Written comments must be submitted at least 24 hours in advance of the scheduled meeting start time by e-mail to Cityrecorder@Sherwoodoregon.gov and must clearly state either (1) that it is intended as a general Citizen Comment for this meeting or (2) if it is intended as testimony for a public hearing, the specific public hearing topic for which it is intended. To provide comment by phone during the live meeting, please e-mail or call the City Recorder at Cityrecorder@Sherwoodoregon.gov or 503-625-4246 at least 24 hours in advance of the meeting start time in order to receive the phone dial-in instructions. Per Council Rules Ch. 2 Section (V)(D)(5), Citizen Comments, "Speakers shall identify themselves by their names and by their city of residence." Anonymous comments will not be accepted into the meeting record.

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, generally by the Thursday prior to a Council meeting. When possible, Council agendas are also posted at the Sherwood Library/City Hall and the Sherwood Post Office.

To Schedule a Presentation to the Council: If you would like to schedule a presentation to the City Council, please submit your name, phone number, the subject of your presentation and the date you wish to appear to the City Recorder, 503-625-4246 or Cityrecorder@Sherwoodoregon.gov

ADA Accommodations: If you require an ADA accommodation for this public meeting, please contact the City Recorder's Office at (503) 625-4246 or Cityrecorder@Sherwoodoregon.gov at least 48 hours in advance of the scheduled meeting time.



SHERWOOD CITY COUNCIL MEETING MINUTES

22560 SW Pine St., Sherwood, Or

February 21, 2023

WORK SESSION

1. **CALL TO ORDER:** Mayor Rosener called the meeting to order at 5:30 pm.
2. **COUNCIL PRESENT:** Mayor Tim Rosener, Council President Keith Mays, Councilors Kim Young, Doug Scott, and Dan Standke. Councilor Taylor Giles participated remotely. Councilor Renee Brouse was absent.
3. **STAFF PRESENT:** City Manager Keith D. Campbell, Community Services Director Kristen Switzer, HR Manager Lydia McEvoy, Police Chief Ty Hanlon, Finance Director David Bodway, City Attorney Ryan Adams, Community Development Director Eric Rutledge, IT Director Brad Crawford, City Engineer Jason Waters, Planning Manager Erika Palmer, Records Technician Katie Corgan, and Planning Technician Colleen Resch.

OTHERS PRESENT: Kittleson & Associates and Principal Engineers Tony Roos and Cedomir Jesic.

4. TOPICS:

A. Cedar Creek Trail Highway Undercrossing & Floodplain Study

City Engineer Jason Waters introduced Kittleson & Associates and Principal Engineers Tony Roos and Cedomir Jesic and explained that they were hired to review the floodplain in the Cedar Creek Trail area and determine what options were available for an undercrossing. Mr. Waters presented the "Cedar Creek Trail – 99W Undercrossing Location Feasibility" PowerPoint presentation (see record, Exhibit A) and recapped that a feasibility study was conducted in 2009, but significant discrepancies in the floodplain maps were discovered when the Cedar Creek Trail was under construction. He said that the floodplain area on the map was roughly seven feet off of where it was actually located and noted that the discrepancy could affect the undercrossing. He continued that it was discovered that ODOT would be completing outfall improvements in the area previously identified in the 2009 feasibility study as a possible location for the cut-and-cover tunnel. Council President Mays asked if ODOT was willing to relocate the outfall? Mr. Waters replied that ODOT did not have the option to change locations due to the topography of the area. He outlined that the consultants had produced three options for the undercrossing. One option would be the undercrossing identified in the 2009 feasibility study, the second would be more of a stream restoration option, and the third option would be located more uphill. Consultant Tony Roos explained that there were two issues with the project. The first issue was that the existing FEMA floodplain model that was developed in the early 2000s put the 100-year storm event floodplain to the top of Highway 99W. Mr. Roos commented that he had never seen the water level rise

to the top of the highway in his 47 years of living in the area. Council President Mays commented that the water level almost reached the nearby pool at the apartment complex during the Willamette Valley Flood of 1996. Mr. Roos voiced that that flood did not impact Sherwood to the extent that it impacted neighboring communities. Mr. Jesic recapped that in the early 2000s, Clean Water Services went through a mapping process and established a base flood elevation. FEMA then came in at a later date and ran their own model, which disagreed with the findings from Clean Water Services and resulted in significantly higher floodplain elevations. Mr. Jesic explained that they converted the FEMA model into an unsteady-state model which resulted in significantly smaller floodplain elevations, which informed them that the floodplain maps were incorrect. He addressed the culvert and explained that it was built at the start of the century and if ODOT were to upsize the culvert, it would drop the floodplain an additional five feet. Mr. Jesic reported that they also ran models for two-year, 10-year, and 25-year water surface elevations to ensure that the undercrossing was located above an area that experienced frequent flood events. He outlined that the city had several options to address the issue and explained that the first option was to update the floodplain map through a FEMA process. He outlined that this option would take 8-12 months, it would require a Letter of Map Revision, and would cost \$60,000-80,000 to update the model and coordinate with FEMA. Mr. Roos clarified that this option did not make any physical changes to the stream or culvert, it only remodeled the stream and updated the floodplain map. Mr. Jesic outlined that the second option was to replace the culvert and explained that this process required a Conditional Letter of Map Revision, an Army Corps Permit was required before submittal, it would take 16-24 months to complete after the culvert design was completed, and it would cost \$250,000 or more for the permit and modelling. Mr. Jesic voiced that this option was lengthier and should only be used with a project. City Engineer Waters clarified that the second option was remodeling the system for the open channel with a trail next to it. Council President Mays asked regarding the integrity of the culvert given its age. Mr. Jesic replied that ODOT completed a review of the culvert every few years and had determined that the culvert was in good shape. Mr. Waters clarified that the second option should only be chosen if Council proceeded with a full culvert replacement and the first option should be chosen if Council only wanted the maps fixed. Councilor Scott asked why Council would pick the first option? Mr. Waters replied that the ability for the city to construct feeder trails could be impacted by the incorrect floodplain maps and discussion occurred. Mr. Waters clarified that the first option was feasible for one of the tunnel options they were presenting. Mr. Roos outlined the three options for the undercrossing as: north, middle, and south. The north option veered off before the boardwalk started on the existing Cedar Creek Trail and went past the apartment complex pool and crossed Highway 99W. He noted that no studies had been conducted to determine trail connections on the north side of the highway and commented that that would be a necessary follow up project. He addressed the middle option and explained that they had viewed this option as a cut-and-cover culvert project to determine if it was even feasible. Discussion regarding the definition of "cut-and-cover" occurred and Mr. Jesic clarified that all of the options were strictly below-ground solutions. He explained that both the north and south option were 14-foot-wide culverts that were for pedestrian and bike traffic only. Mr. Roos explained that because of the creek and the span they would need to uncover and refill, the middle option would be located between the existing FEMA base flood level and the modeled base flood level. He outlined that the middle option was actually two side-by-side structures because they could not do a large enough culvert to encapsulate both the stream and pedestrian crossing. Council President Mays clarified that the north and south options did not touch the existing culvert and the middle option would replace the existing culvert and a parallel pedestrian culvert would also be installed. Mayor Rosener clarified that the middle option was two culverts, one for pedestrians and one for the stream. Mr. Jesic explained that this was due to the constraints from using precast structures and outlined that the project could be completed in stages. Council President Mays asked what the argument was behind the middle option? Mr. Roos replied that it

came down to where the city would get their funding from as well as the benefit of wildlife protection and habitat restoration. Council President Mays commented that it was possible that Metro would contribute money towards the middle option if it demonstrated a critical opportunity to provide habitat restoration. City Engineer Waters clarified that Metro's feedback and potential involvement in the project would start when the preliminary design phase had begun. Mayor Rosener voiced that identifying the benefits of the middle option, such as stream restoration, wildlife passage, and pedestrian/student safety would open up potential funding sources. Mr. Waters replied that the middle option "checked everything" except ODOT did not endorse the structure yet and he did not know if there were wildlife passage issues, but those things would be identified through the preliminary design process. He added that he recommended budgeting for the fish passage option. Council President Mays asked how big the wildlife passage culvert would be for the middle option? Mr. Jesic replied that the culvert would be a minimum of 35-feet wide in order to accommodate the stream and a 14-foot-wide structure would be needed to accommodate pedestrians. Mayor Rosener asked if the stream could be incorporated into the pedestrian culvert so that people could see the stream? Mr. Jesic replied that that could be done by having a bridge within the culvert. Council President Mays asked if the costs for the traffic control portion of the project were similar between one culvert versus two culverts? Mr. Roos replied that was correct. Mayor Rosener asked if having a culvert with beams to manage the load was an option? Mr. Roos replied that there was an option to do a bridge and explained that it was more effective to use a "straight bridge than to try and rebury it." City Engineer Waters added that he would send out a rendering of what two side-by-side culverts would look like to Council. Mr. Jesic referred to lighting and stated that a culvert would be continuous all the way through, but the median would be open, and daylight could penetrate if a bridge was chosen. Mayor Rosener commented that he was concerned about the safety aspect of a covered culvert. Mr. Roos commented that women did not prefer tunnels due to safety concerns about not knowing what was on the other side. Council President Mays clarified that all culvert options were continuous from one side to the other and there was no break in the middle? Mr. Roos replied that was correct. Mr. Jesic added that the culvert would meet ODOT's safety standards when it came to lighting. Mr. Waters added that those things would be evaluated in the preliminary design phase. Mr. Roos provided an overview of the costs and permits for each option on page 7 of the presentation and stated that overall costs ranged from \$8.35 million to \$20 million. Mayor Rosener asked if those figures took construction cost increases, reserves, and potential timeline delays into consideration? Mr. Roos replied that the figures had a 40% contingency built into them and were based on construction, engineering, and right-of-way acquisitions occurring within the next five years. He added that \$5 million should be added if a bridge was added to the middle option. City Engineer Waters addressed next steps and recapped Council's feedback. He outlined that Council decided to postpone completing the FEMA floodplain map revision until a project that would benefit from doing so occurred as well as a request that the preliminary design costs for the undercrossing be included in the budget. Mayor Rosener asked staff if there was any reason to complete the FEMA floodplain map revision now? Staff signaled there was no need to do so now. Mayor Rosener commented that he would like a more refined cost estimate in order to share it with Sherwood's lobbying team and other funding sources. Councilor Giles referred to the north option and asked if there was no additional culvert for the stream with that option? Mr. Roos replied that the existing culvert would accommodate the stream. Councilor Giles asked if that meant that there would be no wildlife passage with the northern option? Mayor Rosener replied that was correct and commented that even though the northern option cost less, it would likely be harder to procure funding for. Council President Mays stated that he was concerned about the safety aspects of the project and commented that he predicted that most people would prefer a more open and visible space. Councilor Young stated she agreed. Council President Mays commented that he would be okay with a 20% price increase if it meant constructing a safer feeling passage. Council President Mays referred to the Edy culvert and

asked if any of the options posed a risk to that culvert being overtopped? Mr. Roos replied that there was no risk of that happening. Mr. Jesic added that their models included all of those structures. Discussion regarding the proper process occurred.

B. Sherwood Communication Priorities

IT Director Brad Crawford presented the “Content Management Project” PowerPoint presentation (see record, Exhibit B) and explained that this was a follow up from the Council goal setting work session in January. He outlined he wanted Council feedback and direction on the desired features, functions, phases, and implementation timeline of a new Content Management System (CMS). He explained that a CMS was a database that held content that could be presented in various systems, such as websites, social media, mobile applications, digital signage, and television/streaming. He stated that it could also be a system that enabled forms, surveys, notifications, and resident portals. He outlined the four Council goals around citizen engagement as: create a new website platform and enhance social media; utilize modern communication tools, such as mobile surveys and text messaging, solicit feedback from residents; track, respond, and analyze citizen requests through a customer relationship management system; and develop a comprehensive approach to doing surveys that enabled the organization to improve both the strategy and execution. Councilor Scott clarified that in his view, surveys were one possible example of community outreach, but other options should also be available. Mayor Rosener referred to the third goal of having a customer relationship management system and stated that it should also be a workflow process system. Mr. Crawford recapped Council’s previous feedback on a new CMS as: deep citizen engagement, better social integrations, integration with backend systems, improved navigation and search, and refreshed website design. Mayor Rosener commented it was important to be able to create a CMS that allowed all residents to engage and participate with the city without having to come to a city facility to do so. Mr. Crawford replied that that type of experience was called a “digital experience platform” which allowed users to build the type of interaction they wanted with the city. Councilor Giles commented that allowing users to have a profile and manage their notification preferences and change their user experience was important and should be added to the list of goals. IT Director Crawford replied that one of the key points of the RFP statement of work would be identifying the need for an end user portal allowing users to log in and set their notification preferences. He commented that allowing users to have a profile was not common in government websites but was typical in commercial websites. He added that this type of feature was expensive because it was still new. Councilor Giles suggested that the new website offer a way for local businesses to advertise their services. Councilor Young commented that she did not want to advertise on behalf of any businesses. Councilor Giles clarified that it could be a funding model opportunity with the Sherwood Chamber of Commerce. Discussion occurred and Mayor Rosener stated that the CMS should advertise city-sponsored events, but Council would need to determine if they allowed third party advertisements. City Attorney Adams stated that there were some First Amendment implications that needed to be discussed first. Mr. Crawford outlined that his goal was to identify a system that could be expanded as needed over the next 10-20 years. Mayor Rosener stated that the system should also have the capability to allow department heads to configure forms or workflows as needed so IT did not have to be involved with every change. Councilor Scott commented regarding a responsive website and IT Director Crawford asked if a responsive website was sufficient or did Council also want to pursue a mobile app? He noted that a mobile app would likely take 2-3 fiscal years. Mayor Rosener commented that he felt that it should be “mobile first” and then a responsive design. Councilor Scott stated that the website had to be a responsive design so that it worked on mobile or desktop and adding an app was something he wanted the platform to be able to handle, but he did not necessarily advocate for launching with an app.

Councilor Giles stated that he was fine with a progressive web app and discussion occurred. Mayor Rosener clarified his “mobile first” comment and explained that he meant that most people access websites on their phones. Mr. Crawford reported that the city had conducted a survey and determined that 57% of people accessed the city’s website on their mobile phones. Councilor Scott stated that it was important that all processes be automated, and workflow should not be segmented by department. Mr. Crawford clarified that ideally, when support requests came in; multiple people could see and respond to those requests. Mayor Rosener stated that he wanted people to be able to pay all of their bills and fees via a single portal. IT Director Crawford outlined that there were two options for Council to consider. The first option was to purchase an “out of the box” CMS that supported surveys, forms, and had notifications and mobile already built in. The second option was to engage a consulting firm to develop an open platform CMS and enable the specific surveys, forms, notification, and mobile capabilities that met the city’s needs. He explained that the first option was the quickest option, but it came with potential drawbacks. He stated that the decision came down to how fast Council wished to move on the project and how integrated they wanted the CMS to be. He explained that the city could go out and purchase a survey tool that had a mobile app, and the city could start doing surveys in a few months, but it would “be its own thing. It would be its own website; it would be its own app.” Councilor Scott commented he did not want to “piece meal it.” Councilor Young stated she agreed with Councilor Scott. He provided an overview of out of the box solutions and stated that many times, it was a proprietary system; they were quicker to deploy; they likely had lower implementation costs but higher ongoing support costs; and they had native integrations for surveys, mobile apps, forms, and notifications. He provided an overview of the open platform option and stated that they tended to have a longer deployment timeline depending on scope; there were greater options for best of breed capabilities, such as surveys, notifications, mobile app, resident portal, and forms; they had a greater amount of support vendors, they had greater options for integration with City Systems, there was better portability; and they were likely to have a higher implementation cost but lower ongoing support costs. Mayor Rosener commented that the out of the box solution would solve “80% of your problems” but it would cost a lot more to get to 100%. IT Director Crawford stated that when it came to the resident portal aspect, the city had a very in-depth bill pay and community development process and getting those processes into another system was going to be difficult regardless of if it was an open platform or an out of the box solution. He stated that the big benefit of the website was its portability and explained that the city’s webpages were currently sitting in a database, which would allow them to skip having to recreate the pages when a new website was created. He added that staff would need to review each page and determine if it were still relevant or not as well as complete a review of the hierarchical structure to ensure that it was still appropriate. Councilor Young commented that it was important that this project not move so quickly that something important was missed which would end up costing more money to fix. IT Director Crawford addressed the proposed phasing and timeline and explained Phase 1 would span FY22-23 through FY23-24. Phase 1 would include: the bidding and selection of the CMS; CMS setup and configuration for current and future needs; website design; search and navigation improvements; forms integration for electronically submitting information to the city that included basic workflows and simple business processes; notifications; a basic resident portal with some form submission capabilities and email notification preferences. He clarified that he would include in the scope of work of the RFP the aspirational goals for the project to ensure that whatever system was selected, it would be able to grow and meet those goals. He outlined that Phase 2 would span FY23-24 and stated that he proposed including money in the budget to make Phase 2 attainable. He outlined that Phase 2 would have greater forms integration; integration with some city systems and tying form submissions to backend city systems; light mobile app integration with the ability to view city information, forms submission, notifications, and surveys. He explained Phase 3 would span FY24-25 and beyond and stated that this was an aspirational phase that

sought to provide deep mobile app capabilities, such as two-way interaction; deep citizen portal capabilities with service requests, building/planning submissions, and bill pay; and digital signage integration. Mayor Rosener asked if they had completed any research on what the most frequently cited reasons were for contacting the city or if there was currently a paper process that took a lot of customer time that could be turned into a form? IT Director Crawford replied that they would do research to determine what pages had the highest visitor rates. Councilor Scott stated that he would move up the online bill pay capability to an earlier phase if possible. Mr. Crawford explained that there was a lot of backend work that needed to be done before that could proceed and commented that whatever option the city purchased, it should offer an e-commerce portal with bill pay capabilities. He recapped next steps and explained that he would develop the RFP to go out to bid in April, with the goal to award in May, and begin work in June 2023. Councilor Young asked if the RFP could be written to include getting bids for both the open platform option and the out of the box option? Mr. Crawford replied that he would do so. Councilor Giles asked if a subcommittee should be formed for the RFP and offered to serve on the subcommittee. Discussion occurred and Councilor Scott asked if a subcommittee was necessary? Mr. Crawford replied that he would draft the RFP and send it to Council for review. Mayor Rosener asked that Mr. Crawford work with Councilor Giles on the RFP.

C. Five Year Forecast Discussion

Finance Director David Bodway presented the "Five-Year Forecast Work Session" PowerPoint presentation (see record, Exhibit C) and explained that the discussion would focus on the city's fund balance policy as well as the five-year forecast. He provided background on the city's fund balance policy on page 3 of the presentation and reported that Resolution 2010-054 was passed on December 7, 2010 and established that the city would maintain an Unrestricted fund balance of at least 10% of fund revenue and would strive to increase the amount by 1.5% annually with a goal of 20%. On November 29, 2016, Resolution 2016-069 was passed which established that the city would maintain an Unrestricted fund balance of at least 10% of fund revenue with a goal to maintain 20%. He commented that the city was always striving to hit the 20% mark, but lately the city had been in the 40% range. Mr. Bodway explained that he sought Council's feedback on the recommendation that the city's fund balance policy be updated to say that the city would maintain an Unrestricted fund balance of at least 20% of fund revenue in the General Fund. Mayor Rosener asked if this was in relation to the five-year forecast? Finance Director Bodway replied that it was in relation to the budget, not the five-year forecast and discussion occurred. Councilor Scott commented that this goal made sense to him. Mr. Bodway reported that budget season had started in February and Finance staff would receive departmental projections by mid-March which would allow him to get an idea of what the budget would look like by June 30th. Councilor Scott asked if the city would end up over 20%? Mr. Bodway replied that was correct. Council President Mays asked what the advantages were of having a healthy reserve? Finance Director Bodway replied that a healthy reserve provided flexibility in the future and would allow the city to have more options compared to a jurisdiction that had more restricted funds. Council President Mays asked if it would give the city a better borrowing rate? Mr. Bodway replied that was correct. Council President Mays asked what the typical amount to hold in reserve was so the city would not have to borrow money to pay its obligations until the city received its property tax dollars? Mr. Bodway replied roughly 20% was needed, but it was more about building in flexibility. Discussion regarding the history of the city's finances from 2006-2008 occurred and Council President Mays commented that he would like to see a reserve of 30-40%. Mayor Rosener commented that having a healthy reserved served multiple purposes such as getting a better bond rating, the ability for the city to cover operational costs until property tax dollars came in, as well as providing funds to help with emergencies. He referred to the city offering grant

money to local businesses at the start of the pandemic with the understanding that the money may not be paid back and stated that that was only possible because the city had a healthy reserve. Council President Mays stated he was in favor of the recommended change. Councilor Young clarified that if the need arose, Council could change the percentage held in reserve via a resolution. Finance Director Bodway clarified that this policy pertained to the upcoming budget. Councilor Scott commented that it was important to build in flexibility in case an urgent situation arose. Mr. Bodway replied that if there was contingency in the budget, and those funds were then needed at a later date, a resolution would need to be passed by Council in order to transfer those funds out. Councilors Young, Scott, and Giles stated they were in favor of the recommendation. Mayor Rosener directed Finance Director Bodway to prepare a resolution for Council. Mr. Bodway addressed the five-year forecast and explained that budget law restricted what he was able to talk about. He explained that he would release the budget calendar this week, departmental projections were due back to Finance by mid-March, and departmental budget requests were due back to Finance by the end of March. He reported that he was monitoring general economic conditions, inflation rates, PERS rates, residential development rates, etc. Mayor Rosener commented that a higher-level conversation needed to be had on how conservative or aspirational the budget should be which took into consideration potential budget cuts from the county. He commented that a lot of the city's growth was currently happening in the URA, and the city would not see any General Fund growth from that for years and that the city should be conservative when it came to property tax revenue as well as this year's forecast. Finance Director Bodway replied that he prepared conservative forecasts and explained that the property tax revenues for this fiscal year and next fiscal year was the winding down of the original URA. He referred to the URA and reported that he had asked for the last two debt issuances in order to pay them off by the end of this fiscal year and discussion occurred. Councilor Standke referred to the five-year forecast and asked Finance Director Bodway if he knew the global rate he would use for the budget yet? Mr. Bodway replied that this discussion was focused on the General Fund, which did not have many capital projects, and commented that he used 4% for calculating inflation and discussion occurred. He reported that he would bring a resolution updating the city's fund balance policy to Council at the March 7th City Council meeting.

5. ADJOURN:

Mayor Rosener adjourned the work session at 6:55 pm and convened a regular session.

REGULAR SESSION

- 1. CALL TO ORDER:** Mayor Rosener called the meeting to order at 7:00 pm.
- 2. COUNCIL PRESENT:** Mayor Tim Rosener, Council President Keith Mays, Councilors Kim Young, Doug Scott, and Dan Standke. Councilor Taylor Giles participated remotely. Councilor Renee Brouse was absent.
- 3. STAFF PRESENT:** City Manager Keith D. Campbell, City Attorney Ryan Adams, IT Director Brad Crawford, Community Development Director Eric Rutledge, Police Chief Ty Hanlon, City Engineer Jason Waters, Planning Manager Erika Palmer, and Planning Technician Colleen Resch.
- 4. APPROVAL OF AGENDA:**

Councilor Young stated that Consent Agenda Item C, "Resolution 2023-014 Authorizing the City Manager to amend the current Intergovernmental Agreement with Metro for the Solid Waste Community Enhancement Program" needed to be removed from the Consent Agenda and discussed under New Business.

MOTION: FROM COUNCILOR YOUNG TO CHANGE THE AGENDA. SECONDED BY COUNCILOR SCOTT. MOTION PASSED 6:0 ALL PRESENT MEMBERS VOTED IN FAVOR. (COUNCILOR BROUSE WAS ABSENT).

MOTION: FROM COUNCILOR YOUNG TO APPROVE THE AMENDED AGENDA. SECONDED BY COUNCILOR SCOTT. MOTION PASSED 6:0; ALL PRESENT MEMBERS VOTED IN FAVOR (COUNCILOR BROUSE WAS ABSENT).

5. CONSENT AGENDA:

- A. Approval of February 7, 2023 City Council Meeting Minutes**
- B. Resolution 2023-013, Authorizing an Increase in the Municipal Judge's Compensation**
- C. Resolution 2023-015, Appointing Amanda Bryan to the Sherwood Library Advisory Board**
- D. Resolution 2023-016, Declaring the Need to Acquire Real Property Interests to Construct and Thereafter Operate & Maintain SW Ice Age Drive through the Tonquin Employment Area**

MOTION: FROM COUNCIL PRESIDENT MAYS TO APPROVE THE CONSENT AGENDA. SECONDED BY COUNCILOR SCOTT. MOTION PASSED 6:0; ALL PRESENT MEMBERS VOTED IN FAVOR (COUNCILOR BROUSE WAS ABSENT).

6. CITIZEN COMMENTS:

Nathan Claus, 22211 SW Pacific Highway, came forward and stated that his parents had been working on developing their property. He explained that his parents were working with a small business owner named Carlos and explained Carlos's business. Mr. Claus explained that his parents had received a letter from the city informing them of a code violation on their property due to Carlos's utilization of the property for his business. He stated that he was frustrated because the letter did not contain an explanation as to why the use was not permitted. He stated that Carlos had called the city several times to resolve any issues, but he felt that there was a disconnect in the communication he received from the city. He stated that the city should try to reach out to people before sending out a code violation letter. He stated that the city should be excited about having a small business owner like Carlos providing a public service to the city and asked for better cooperation from the city.

Jim Claus, 22211 SW Pacific Highway, came forward and spoke on Carlos. Mr. Claus stated that he had put in automotive and parking on his property and stated that "it was a non-conforming use and they're allowing it." He explained that Carlos used the property for his daily use, not to store inventory. Mr. Claus spoke on easements and his history of working with the city. He spoke on Hanson v. ODOT and real estate. He stated that in the past he had cooperated, but the city had not. He stated that the city wanted to "turn Carlos into a Conditional Use Permit in a permitted zone, which in effect, makes it a cancellable license."

Susan Claus, 22211 SW Pacific Highway, called in and stated that her family had been at that address for many years and the issue was that they were only able to talk to the city's attorney on any matters. She explained that they were not represented by an attorney and stated that this was a simple matter that they wished to have clarity on. She stated that her property had General Commercial zoning, which allowed for the type of use that Carlos was utilizing the property for. She stated that there was a "disconnect" between staff and the Clauses were looking to address the problem so the issue could be resolved. She stated that there was a misunderstanding of words and what the process was. She stated that Carlos was providing living-wage jobs in the General Commercial Zone, which was a City Council goal. She asked that the issue not be "bottlenecked" and that the misunderstanding of permitted uses be resolved. She stated that Carlos was currently trying to make it to this meeting to provide comment and asked that Council accommodate him when he arrived.

Mayor Rosener commented that this was a busy meeting, but he would discuss the options to accommodate Carlos with staff.

Mayor Rosener addressed the next agenda item.

7. NEW BUSINESS:

A. Resolution 2023-014, Authorizing the City Manager to amend the current Intergovernmental Agreement with Metro for the Solid Waste Community Enhancement Program

Mayor Rosener explained that the incorrect company name was cited in the proposed resolution, and it needed to be corrected before adoption.

MOTION: FROM COUNCILOR YOUNG TO APPROVE RESOLUTION 2023-014, AUTHORIZING THE CITY MANAGER TO AMEND THE CURRENT INTERGOVERNMENTAL AGREEMENT WITH METRO FOR THE SOLID WASTE COMMUNITY ENHANCEMENT PROGRAM ON THE CONDITION THAT EXHIBIT A, AS ATTACHED TO RESOLUTION 2023-014, IS CORRECTED TO REFER SPECIFICALLY TO PRIDE RECYCLING AND NOT PRIDE DISPOSAL. SECONDED BY COUNCILOR SCOTT. MOTION PASSED 6:0. ALL PRESENT MEMBERS VOTED IN FAVOR (COUNCILOR BROUSE WAS ABSENT.)

Mayor Rosener addressed the next agenda item.

8. PRESENTATIONS:

A. Pedestrian Bridge Presentation

City Engineer Jason Waters presented the "Sherwood 99W Pedestrian Bridge Crossing City Council Update" PowerPoint presentation (see record, Exhibit D) and reported that the project was approaching 90% design. He introduced KPFF Project Manager Curt Vanderzanden, John Breshears with Architectural Applications, and Structural Engineer Nick Halsey. Mr. Vanderzanden explained that they would provide Council with an update on the progress on the pedestrian bridge and were seeking feedback regarding color selection for the bridge. Mr. Breshears recapped that the pedestrian bridge was broken up into five spans between supports. He outlined that the bridge deck would be concrete while the handrail, the structural components of the handrail, the wire mesh, and the cross-bracings for the

arches would be made out of stainless steel. He clarified that they were seeking Council input on the color for the primary steel members and cross members that went above and below the deck. Mr. Breshears explained that the available color choices would look different depending on the time of day and the available lighting. He stated that the numbered map on page 7 of the presentation represented potential sites for art. He explained that it had been decided that because of the speed and scale of this project, no art would be placed onto the bridge because doing so would slow down the process, and instead art would be placed somewhere in the landscape or in the approach ramps. He stated that each site noted on page 7 had been reviewed by the Cultural Arts Commission for their suitability for art and commented that the Cultural Arts Commission was currently working on determining how to create or commission artwork to enhance the project. Council President Mays referred to pedestrian bridges that had art that represented the community embedded in the concrete columns, and asked if something similar was possible for this project? Mr. Breshears replied that the Cultural Arts Commission had been interested in the possibility of embedding things in the deck of the bridge, such as nature symbols or scavenger hunt types of objects. He continued that adding impressions into concrete was a relatively minor project and would likely be easy to accommodate into the project. Mr. Breshears outlined that if Council wished to move forward with concrete impressions, KPFF would ask the contractor to carry a placeholder in the budget to accommodate the art project when the project went out to bid. Discussion occurred regarding the option to add art after the bridge was completed. Councilor Young explained that when this information was presented to the Cultural Arts Commission, they were told that if art was to be a part of the bridge with no impact to the construction timeline, then KPFF would need to know final decisions by April 2023. Council President Mays reported that the Cultural Arts Commission wanted Council feedback regarding sites A, B, and C and stated that the Cultural Arts Commission was looking at potentially putting "Welcome to Sherwood" signage at those sites. Councilor Scott stated that he did not want a "Welcome to Sherwood" sign on the bridge itself and discussion occurred. Mr. Breshears addressed bridge color options and explained that all of the diagonal and railing elements would be stainless steel and showed Council samples of the potential colors. He explained that they recommended stainless steel because it did not have to be painted or re-painted, which helped save money on maintenance. He provided an overview of the different types of light-colored arch bridges in the region on pages 9-11 of the presentation. He commented that white had become a very popular color for bridges in the last 25 years. Mayor Rosener commented that he was concerned that a white bridge would show dirt more quickly than a different colored bridge. Mr. Breshears provided an overview of the different types of colored arch bridges in the region on page 12 of the presentation. He stated that using weathering steel instead of paint was also an option and explained that the steel would form a layer of rust on the outside but was formulated so that the rust did not corrode the steel. Mayor Rosener asked how the rust held up to vandalism and spray painting? Mr. Breshears replied that a disadvantage of this option was that it was difficult to remove spray paint from the surface and may result in the area needing to be painted over in a paint that matched the rust. He stated that another disadvantage of weathering steel was that the water that ran off the structure tended to stain hard surfaces or concrete that it landed on. He stated that an advantage of weathering steel was that it never needed to be repainted and noted that the cost between weathering steel and a painted option were similar when it came to initial costs, but not when it came to ongoing paint maintenance costs. Mr. Breshears outlined that they had three color options for Council to consider: white, blue, and deep red. He outlined that a white bridge was very fashionable and made the bridge very visible and distinctive. He explained that a white bridge also allowed for the most color options when it came to lighting the bridge. Mayor Rosener asked if the lights could be animated? Mr. Breshears replied he believed that was an option and commented that ODOT had regulations about how much animation was permitted. He addressed the blue color option and outlined that this option would result in more muted lighting effects at night. He

noted that if blue was the chosen color, they recommended keeping the colored lights on the pillars and using white lighting on the steel instead. He addressed the deep red color option and commented that it provided a nice contrast to the green landscape and noted that this option would result in more muted lighting effects at night. Council President Mays commented that he was concerned about the paint color fading. Mr. Breshears explained that the paint coating system they would use had around a 20-year lifespan for the color and there were various anti-graffiti coatings available that could be applied to the surface of the bridge. He outlined that the natural weathering color option was unique because it was not a uniform color and was a “living finish” and was less reflective for light compared to paint. He stated that Council did not need to decide on a color choice at this meeting, but they did need to know soon if the bridge would be painted or would use weathering steel. Mayor Rosener and Councilor Young commented that they were not in favor of using weathering steel. Council President Mays commented that he was concerned about the upkeep of weathering steel when it came to vandalism. Councilors Scott and Giles commented that they were not in favor of the weathered steel option. Mayor Rosener clarified that Council had chosen to proceed with a painted bridge. Councilor Scott commented that he was in favor of the deep red color because of the contrast it provided to the surrounding landscape. He stated he also liked the white option because of the possible lighting effects it would provide. Councilor Standke commented he agreed with Councilor Scott and stated that if the red option were chosen, more lighting on the columns and other locations along the bridge could be added for a bigger visual impact at night. Councilor Young commented that she liked the red during the day and the white at night but felt that white was bland during the daytime. Council President Mays commented that he was leaning towards the white color option. Mr. Breshears clarified that there would be more stainless steel highlights than what was shown in the rendering which would show more of the bridge’s color. Councilor Giles commented that he liked the red more than the blue color option, but he was leaning more towards the white color option because of the flexibility it provided in terms of lighting and repainting. Councilor Scott asked if the lights would be on the arches themselves or shining onto the arches from below? Mr. Breshears explained that the lights would shine on the arches from below and explained that this was to make maintenance on the lights easier. Councilor Scott commented that he wanted the flexibility to have different lighting colors for the lower arches as well as additional lighting along the bridge. Mr. Breshears explained that there were three types of lighting on the bridge. He explained that the first was the structural/aesthetic lighting, and was what they were discussing at this meeting, there would also be light poles on the approach ramps, and lighting along the handrails to illuminate the deck of the bridge. He added that the light from the structural lights would also splash onto the stainless steel span. Councilor Scott asked that they confirm that it was possible to have different colored lights on the upper arches and the lower arches. Councilor Giles commented that he wanted to see a more realistic rendering of what the structural lights would look like with the stainless steel span because he wanted to highlight the “S-curve” the most. Mr. Halsey replied that the renderings in the presentation were a somewhat realistic rendering of what the final lighting design would highlight. Council President Mays asked regarding installing cameras and a safety alert at the mid-span. Mr. Vanderzanden replied that their original scope had only included accommodation for the cameras but based on a recent discussion, they were aware that they needed to start looking at camera placement and including that in the construction package. Council President Mays commented that he also wanted Police Chief Hanlon to provide his input on the public safety aspects of the bridge.

Mayor Rosener reopened citizen comments.

9. CITIZEN COMMENTS CONTINUED:

Carlos Villarroel came forward and stated that he was one of the owners of Timber State Drilling and Construction, a small construction business in Washington and Yamhill County. He explained that his company was using the Claus's property as a truck yard. He explained that Timber State Drilling and Construction was a directional drilling and boring business, mainly focused on telecom/technology. He stated he chose to live in this community because it was a small and safe community. He reported that he employed 20 people and thanked Community Development Director Eric Rutledge for working with him on the code violation. He stated that he intended to be a good business owner and to provide good employment opportunities.

Mayor Rosener addressed the next agenda item and City Attorney Ryan Adams read aloud the public hearing statement.

10. PUBLIC HEARINGS:

A. Ordinance 2023-001, Approving a 31-Lot Planned Unit Development (PUD) and Subdivision to be known as the Moser Pass PUD (Second Reading)

City Attorney Adams asked that Council disclose and explain the nature of any ex parte contact, bias, or conflict of interest and indicate if they intended to participate or abstain from the hearing. Councilor Young stated she did not have a conflict of interest. Council President Mays stated he did not have a conflict of interest and had no ex parte contact beyond speaking with staff. Mayor Rosener stated he did not have a conflict of interest and had no ex parte contact beyond speaking with staff. Councilor Scott stated that he had had no ex parte contact beyond speaking with staff and he planned to participate in the hearing. Councilor Standke stated that he had had no ex parte contact beyond speaking with staff and he planned to participate in the hearing. Councilor Giles stated that he had had no ex parte contact and he planned to participate in the hearing. City Attorney Adams asked Councilor Scott if he was comfortable participating in the meeting since he was not present at the last hearing on the proposed ordinance? Councilor Scott replied he was up to speed. Mr. Adams asked if anyone in the audience wished to challenge any Councilor's ability to participate? Hearing no challenges, Community Development Director Eric Rutledge presented the "LU 2022-020 SUB/PUD Moser Pass 32-Lot Subdivision/PUD" PowerPoint presentation (see record, Exhibit E) and outlined that the application had been through the Planning Commission, and the first hearing on the proposed ordinance was held at the February 7th City Council meeting. He explained that this was the second hearing and if the application were approved, the Final Development Plan would go to the Planning Commission and the final plat would be recorded with the county. He recapped that the application had been provided to affected agencies on December 12, 2022 and staff had provided public notice in accordance with the city's code. He said that staff had received several pieces of verbal testimony regarding the application, but no written comments. He provided an overview of the applicable Sherwood Zoning and Community Development Code (SZCDC) on page 4 of the presentation. Mr. Rutledge stated that the property was located on the east side of Murdock Road and north of the Upper Roy intersection and was a little over 12 acres in size. He addressed the zoning and explained that the site would be Very Low Density Residential (VLDR) which would allow for .07-1.0 units per acre, or if approved by the city, a PUD would be permitted which would allow for 1.4-2.0 units per acre. He stated that the code also allowed for a VLDR-PUD zoning designation if it complied with the Southeast Sherwood Master Plan and allowed .07-4.0 units per acre. He reported that the Applicant's latest proposal was for single-family dwellings at a density of 3.00 units per acre with a 10,000 square foot minimum lot size. He recapped comments from the first hearing on page 7 of the presentation and explained that Council had directed staff to produce

alternatives for them to consider. He outlined that “Option A” included findings of denial based on the PUD approval criteria of, “That exceptions from the standards of the underlying zoning district are warranted by the unique design and amenities incorporated in the development plan.” and “That the PUD will have a beneficial effect on the area which could not be achieved using the underlying zoning district.” He outlined “Option B” included findings of approval with changes to the plan that included: a pedestrian path in Tract C that was to be ADA compliant to match adjacent subdivision trails and/or hard-surface with guard rails and a 1-acre park with improvements that included a play structure, sports court, flat area for recreation and covered area for gathering, potential restroom, and potential parking. Mr. Rutledge provided an overview of the Council directed revisions to the plan map on page 9 of the presentation and explained that the green area showed staff’s recommendation for the location of the park. He noted that the current condition allowed for the Applicant to choose a different location for the park as long as the size and standards were met. He added that that type of change would go through the Planning Commission to ensure that those standards were met. He explained that staff had chosen the area as the potential location for the park because it was mainly a flat area that was easily accessible from the road, it could be easily built on, it had significant frontage on the public road, and it was more centrally located within the Southeast Sherwood Master Plan. He outlined other changes included: the narrowing of the entrance to Tract C and an additional entrance between Lot 16 and Lot 17, both of which would be a 15-foot walkway and the removal of the gazebo in favor of additional trail/open space in Tract C. He noted that the gathering space/leisure area would be provided by the proposed 1-acre park. He addressed “Condition of Approval B13 1-Acre Park” and stated that the park required trees, landscaping, and lighting; 20,000 square feet of flat area; ADA accessibility from the street; a 3,000 square foot nature play center; a full-size basketball court or full-size tennis court; a gazebo or other covered structure with seating with a minimum size of 600 square feet; and two benches outside the covered structure. He stated that the restroom was to match Cannery Square and the 90-degree parking stalls were optional. He noted that Public Works provided an estimate of \$185,000-215,000 for the cost of constructing similar bathrooms to Cannery Square and explained that any provided parking stalls would replace acreage within the park. He addressed changes to Tract C and stated that changes included: the removal of the gazebo, a minimum of 1.75-acre in size, an additional walkway between the street and Tract C, a hard-surface trail and guard rails where the trail was adjacent to a wall, and two benches. He explained that the 1-acre park removed 42,500 square feet of land, the easements over the lots shown in grey on page 11 of the presentation added 26,500 square feet of land for a net loss of 17,000 square feet of lot area. He explained that it was not a perfect indication of how many lots would be lost, but staff estimated that it would result in roughly two or three lots being lost. He provided an overview of the Applicant-proposed revisions to the plan map on page 12-13 of the presentation. He explained that the street adjacent to the park would have a retaining wall and the park would be roughly 10 feet below street level at its lowest point but would even out to street level on the north side. Mr. Rutledge outlined the City Council alternatives as: deny the application based on the findings in Attachment 1 to the staff memo dated February 14, 2023; approve the application based on the findings in Attachment 2 to the staff memo dated February 14, 2023 and full findings and conditions provided as Exhibit 1 to Ordinance 2023-001 and clarified that if Council wanted the restroom and/or parking to be added they needed to provide direction to staff on those additions; or approve the application with revisions to the findings in Attachment 2 to the staff memo dated February 14, 2023 and direct staff to draft final findings for adoption at the March 7, 2023 council meeting. He noted that if Council proceeded with the final alternative and there were significant changes, it may require that the staff report be updated and brought back to Council for final adoption. He noted that if that were the case, the public record would not need to remain open as this was the second hearing so Council could close the hearing, give staff direction, and bring the ordinance back for adoption at a later date. He clarified the

record could remain open to allow for public testimony if Council chose to do so. Community Development Director Rutledge outlined that there was the option of scheduling a continuance hearing for the March 7th City Council meeting, with March 16th being the 120-day deadline and notice of decision. Mayor Rosener stated he wished to move on to the Applicant's presentation.

Jennifer Arnold with Emerio Design and applicant Kenzie Roth with JT Roth Construction came forward. Ms. Arnold stated that she wanted to discuss the alternative they had submitted and commented that they had not been able to discuss the application with Council at the previous meeting and stated that she hoped that Council and the Applicant could have a discussion and "meet in the middle." She addressed their submitted alternative and explained that it was for a half-acre park, and they had changed the woodchip trail to a hard-surface trail. She explained that the trail connection between Lot 17 and Lot 18 was the midpoint between the last trail connection and the development to the south and the cul-de-sac of this development, which provided equal pedestrian access points. She stated that they felt that the proposed location for the half-acre park was a good location because it had good frontage and had good pedestrian connectivity. Mr. Roth said that his father started JT Roth Construction in 1978 and commented that the only way to be successful was by developing lots and stated that it was important that they get as many lots as possible. He expressed that "there becomes a point where this just doesn't work for us. We'll pull the application. We'll sit on it. We'll do something else." He stated he was trying to meet Council in the middle, but the conditions for approval Council was proposing did not "pencil" for them and commented that it was expensive to follow all of those conditions. Mr. Roth stated that they were voluntarily planning to reforest the area per the Southeast Sherwood Master Plan, they were bringing the Street of Dreams to Sherwood for the first time, and they had cleaned up over 20 acres of contaminated soil. He stated that the application started with 34 lots, then 32 lots, and now Council was asking for more land. He stated that his company was a local company, and they were trying to be good stewards of the land. He stated that they were trying to meet Council in the middle. Ms. Arnold explained that their proposed alternative included the requested amenities such as a play area, gazebo, more walking paths, and landscaping. Councilor Young asked for more information regarding the slope and retaining wall of the Applicant proposed alternative. Mr. Roth explained. Councilor Scott commented that he served on the Planning Commission for the first PUD in Southeast Sherwood as well as possibly the second PUD. He commented that what he recalled throughout the process was when the first PUD came in, there was concern about where the park land would be located, and the Planning Commission was told by the Applicant that the park land would be included in the following PUD. He commented that this happened again when the second PUD came through as well. Councilor Scott commented that the vision of the Southeast Sherwood Master Plan had not been accomplished. He stated that he felt that there was room for compromise and asked why the Applicant needed a second access point to the trail and commented that he felt that a single access point was enough. He asked what the threshold was for requiring a park to have a bathroom or parking and commented that the Applicant should be able to decide if they wanted to provide parking. Councilor Scott asked the Applicant why Council should accept not getting an amenity that was included in the Southeast Sherwood Master Plan? Mr. Roth stated that the Southeast Sherwood Master Plan did not take topography into consideration and was flawed. He stated that he understood that PUDs had to be reviewed "piece-by-piece" and commented that a park was included in the last PUD. He remarked that the Southeast Sherwood Master Plan presumed that all of the properties would be developed at the same time. Councilor Scott asked if any of the previous PUDs included a park? Mr. Roth replied that the previous PUD included open space. He stated that Council had to look at the Moser property compared to the Southeast Sherwood Master Plan Moser Property and commented that there was no park on the Moser property. Council President Mays commented that he was reviewing this as an individual PUD. Councilor Scott commented that he was as

well and added that he felt that the history of the site was important even though it was not a part of the decision criteria. Councilor Scott discussed what the public benefit of the proposed PUD was and commented that he felt it was reasonable to ask that a public benefit be included. Mr. Roth said they were using the same formula they used for other sites. Councilor Standke asked what the total open space acreage was for the half-acre park alternative? Mr. Roth replied that the open space totaled 115,000 square feet. Councilor Standke replied that at the previous hearing on the application, Council had expressed the desire for the PUD to provide more open space, per the Southeast Sherwood Master Plan. He outlined that the Southeast Sherwood Master Plan called for a little over four acres of open space, and commented he understood that the grove of trees was gone, but “open space was still open space for the community.” He stated that he felt that the application still fell short in providing the intended open space for the area. Mr. Roth replied that 75% of the open space was put on the Moser property in the Southeast Sherwood Master Plan because the plan assumed all of the properties would be developed at the same time. Councilor Standke replied that Mr. Roth was aware of what the requirements were for this area prior to submitting their application and asked what Mr. Roth’s reason was for not providing that open space? Mr. Roth replied that the Southeast Sherwood Master Plan was never adopted, and the criteria was subjective. He said that he had presumed that the formula they had used for the other sites was appropriate. He stated that they were “bringing back some visions” from the Southeast Sherwood Master Plan and commented that Councilor Standke was correct, that they were not matching the Southeast Sherwood Master Plan criteria exactly, but they were trying to do the best they could in order to make the site feasible for them. Mayor Rosener stated he wished to move on to public testimony from advocates.

Jim Claus, 22211 SW Pacific Highway, came forward and spoke on the Tualatin River Wildlife Refuge and stated that the city had not been working with the US Fish and Wildlife Service. He stated that the Tualatin River Wildlife Refuge was the first refuge established in a non-hunting area and he commented on impacts to the water table. He asked if the city had reached out to the US Fish and Wildlife Service to determine the city’s impacts to the refuge? He commented regarding a local tannery dumping site and stated that the city had not done any studies to determine what chemicals may be released by developing that area. He said that the city was having negative impacts on the Pacific Flyway with its development and the city had failed to do any testing. He spoke on the “scab lands” and urged the city to conduct tests to determine potential impacts to the environment as well as work with US Fish and Wildlife Service.

Jennifer Arnold with Emerio Design and applicant Kenzie Roth with JT Roth Construction came forward and asked if Council had any more questions for them? Councilor Young asked what the Applicant thought of the plan that was proposed by city staff? Mr. Roth replied that he had spoken with Community Development Director Rutledge about it and stated that he felt staff’s proposal was unfeasible. He provided a handout to Council of his three alternative proposals (see record, Exhibit F) and provided a brief overview of the proposals. He explained that the third option would result in him withdrawing his application and submitting a new application with the underlying zoning of VLDR. He explained that this would mean he would build cottage clusters in that area instead and stated that it would have no open space for the public. Council President Mays commented that cottage clusters would be incredibly popular in that area. Councilor Giles commented that he liked that idea as well. Council President Mays referred to city staff’s proposed alternative of losing two lots in order to provide needed park area and commented that the community would likely prefer a 1-acre park. Mr. Roth replied that it was not just about losing lots, but also the cost of building the requested amenities. Council President Mays replied that the only difference between staff’s proposal and Mr. Roth’s was that staff’s proposal included a hard

surface sports court and potentially a restroom facility. Council President Mays referred to his suggestion at the previous hearing of having the city pay for the construction of the restroom facility and expressed that it made more sense to him to have a 1-acre park with the same number of lots versus a half-acre park. He suggested removing one easement/access point to add more land back for potential lot development. Councilor Scott commented that he was in favor of removing one of the access trails and provide a .75-acre park instead of a 1-acre park. He commented that he was not in favor of dictating the location of the park, only the size of the park, nor was he in favor of requiring parking. He agreed that the city could pay for the construction of the restrooms. Councilor Standke asked what the elevation change was for the trail to the street? Ms. Arnold replied it was a 10% grade and was a difference of 10-12 feet from the street to the trail connection. Mayor Rosener asked how many lots would be lost using staff's proposed alternative? Mr. Roth replied that he had not calculated that information and discussion regarding the feasibility of narrowing lots occurred. Mr. Roth commented that he might be able to reconfigure some of the easements, which could result in him only losing one lot. Councilor Scott asked if his proposal of a .75-acre park and removing an access point was workable for the Applicant? Mayor Rosener commented that the .75-acre park would need to be located on usable land since some of the land was not usable. Councilor Young referred to discussions held at the previous hearing regarding the park location and recapped that Council felt it was important to locate the park where there was good public access in order to provide a public benefit. Mr. Roth replied to Councilor Scott's question and stated that Councilor Scott was free to advocate for that idea and Mr. Roth would do his best to accommodate it. Councilor Giles stated he liked that the trail surface had been changed to a hard surface to match the other trail in the area. He stated he was fine with removing the sports court requirement and expressed that his top priority was ensuring that the community was receiving a public benefit. Councilor Giles stated that he supported the idea of building cottage clusters in that area. Mayor Rosener stated that he was also in favor of building cottage clusters to help address missing middle housing in Sherwood. Mr. Roth referred to Lot 11 on the map on page 12 of Exhibit E and explained that the entrance to Lot 10 could be redesigned in order to provide a bigger park and Lot 9 would have a wider entrance. He commented that he would appreciate working with the city on adjusting the dimensions of Lots 11 and 17 as well as adding easements in the back for the path. Councilor Scott clarified that the Applicant was proposing that Lot 11 be added to the existing proposed park, and asked if the grade of that area was usable and contiguous with the proposed park? Mr. Roth replied that the building pads for Lots 10-12 were essentially level. Mayor Rosener asked what the acreage was for the grass and play area? Mr. Roth replied that the play area was 2,500 square feet but he did not have a calculation for the grass or bark dust area. Community Development Director Rutledge replied that it looked like the grass and bark dust area totaled less than a quarter of an acre. Councilor Young asked for clarification on what the Applicant was proposing. Mr. Roth explained that they would straighten the entrance to Lot 9 and add Lot 10 to the park.

Mayor Rosener closed the public hearing and asked for discussion or questions from Council. Councilor Scott asked staff what the reasoning was for adding a second access pathway? Community Development Director Rutledge replied that with the tracts getting converted to easements, there was no real change to the lot area, and a second pathway was added to provide better circulation. He explained that the underlying code required that a connection to open space be provided every 300 feet and said that Council could decide to remove the second pathway if they wished, and discussion occurred. Council President Mays stated that he liked the location of the park because of the access it provided and commented that he believed that the Applicant should be able to get 30-31 lots in the development. Mayor Rosener asked staff how many cottage clusters could be built in a 1-acre lot? Community Development Director Rutledge replied that he did not have that figure available, but he would look into it

and report back to Council. Council President Mays stated that he also did not want to dictate where the park should be located. Councilor Scott stated he did not think the city should decide where the park went and asked Community Development Director Rutledge what the differences were between the park amenities in the city's proposed alternative and the Applicant's proposed alternative? Mr. Rutledge replied that there was a half-acre size difference between the two proposals as well as a sports court and optional bathroom and parking. Councilor Scott proposed that the second access path be removed, the park be reduced from 1-acre to .75 acre, and a playground, covered structure, and a sports court should be provided. He added that the city should pay for the construction of the bathroom, and it be up to the Applicant to determine if they wanted to provide parking. Councilor Standke stated he preferred the park location in the staff's proposed alternative, but he was not sure if that was feasible for the Applicant. Council President Mays asked Councilor Scott who would build the bathroom in his proposal, the city, or the developer? Councilor Scott replied that the developer would build it and the city would pay for it and commented that he believed that that was in line with other city parks. Community Development Director Rutledge asked if the city would pay for the maintenance of the bathroom or something else and clarified that this park would be HOA owned and maintained. Council President Mays added that there could be an agreement to maintain the bathroom. Mr. Rutledge replied that he recommended that the developer put in the utilities and the grade, and the city pay for the actual restroom with the hookups provided by the developer. Councilor Young stated that she was unsure if cottage clusters were appropriate for that area and commented that she preferred the park location in staff's proposed alternative. She stated that she would be fine with a .75-acre park if it meant being located in the area proposed by staff, but she was open to the Applicant's proposed alternative of adding Lot 10. She stated she was in favor of the city paying for the construction and maintenance of the bathroom. Councilor Giles stated that he agreed with Councilors Young, Scott, and Standke. He stated that cottage clusters would be appropriate for that area. He stated that he preferred the park location in staff's proposed alternative as it provided a better public benefit, but he did not want to force the Applicant to put the park in that location if they did not want to. He commented that he felt that the area proposed for the park by the Applicant would result in it feeling too crowded, but it was up to the developer to make that decision. Councilor Giles stated that he would prefer to have the Applicant come back in two weeks with the adjustments they had made rather than vote on the proposed ordinance at this meeting. Mayor Rosener referred to the grade and width of the road that led to the cul-de-sac and commented that it would be problematic to have a park in that area due to the limited parking, so having a large amount of frontage for parking was a good idea. He added that this would also minimize conflict with the nearby neighborhoods. He stated he was in favor of keeping the park on the through street and ensuring that there was enough frontage for cars to park nearby. He commented he was open to a .75-acre park, but the Southeast Sherwood Master Plan had identified 4-acres of open space, and the current proposal provided much less than that. He stated that this was a PUD, so there needed to be a public benefit and commented that a large park with some amenities and a bathroom that the city would pay for was reasonable. Council President Mays asked Mayor Rosener for his opinion on removing one of the two access points. Mayor Rosener said he was fine with one access point and commented that he had concerns about trails located beneath retaining walls and referred to the tendency for garbage to accumulate in those areas. Councilor Giles stated he was fine with getting rid of one of the trail connections. Councilor Young put forward the idea that the park could provide a sports field instead of a hard surface sports court. Councilor Scott commented that the city could be less prescriptive in the type of sports court it was requiring and explained that they could stipulate the minimum dimensions instead. Councilor Giles commented that he wanted to see a different type of sports activity area instead of a sports court. Council President Mays suggested that the Parks and Recreation Advisory Board be the decision maker on the sports court element of the park. Councilor Scott added that the Applicant could

pick from the list of desired park features/equipment that was included in the Parks Master Plan. Community Development Director Rutledge explained the process for including the Parks and Recreation Advisory Board and the Planning Commission in the PUD's park discussion.

MOTION: FROM COUNCILOR YOUNG TO EXTEND THE MEETING UNTIL 10 PM. SECONDED BY COUNCIL PRESIDENT MAYS. MOTION PASSED 6:0. ALL PRESENT MEMBERS VOTED IN FAVOR (COUNCILOR BROUSE WAS ABSENT).

Council President Mays stated that he agreed that the Planning Commission should determine the sports court element of the park. Councilor Young stated she agreed.

MOTION: FROM COUNCIL PRESIDENT MAYS TO HAVE STAFF COME BACK IN TWO WEEKS WITH A FINAL PLAN FOR APPROVAL FOLLOWING STAFF'S SUGGESTION OF: A ONE-ACRE PARK LOCATED ON LOTS 29-32, THE REMOVAL OF THE TRAIL ACCESS POINT OFF OF UPPER ROY, STAFF'S SUGGESTED AMENITIES, A SPORTS COURT THAT WAS SUPPORTED BY THE PLANNING COMMISSION, A NATURE PLAY PLAN, A BATHROOM FUNDED AND MAINTAINED BY THE CITY, AND ON-STREET PARKING ON THE SOUTH SIDE OF UPPER ROY.

Councilor Giles stated that he was concerned that the city was not meeting the Applicant "in the middle."

MOTION SECONDED BY MAYOR ROSENER.

Councilor Scott stated that he did not support the motion and suggested stipulating that the park location be the area staff suggested and reducing the park down to .75-acres and giving Lot 29 back to the Applicant. He added that he supported the Planning Commission getting final approval for the sports court amenity, the city paying for the construction of the bathroom, and the removal of the second access point.

Councilor Young stated that she supported Councilor Scott's proposal.

Mayor Rosener stated that he was not in favor of Councilor Scott's proposal as he wanted to have as large a park as possible.

Councilor Standke stated that he did not support the original motion as he felt the .75-acre park was an appropriate compromise.

MOTION TO AMEND: FROM COUNCIL PRESIDENT MAYS TO IDENTIFY LOTS 30-32 AS THE PARK. SECONDED BY COUNCILOR YOUNG.

Mayor Rosener commented that doing so would provide a lot of on-street parking and discussion occurred.

MOTION AS AMENDED: FROM MAYOR ROSENER TO SET LOTS 30-32 AS THE PARK, REMOVE ONE TRAIL ACCESS POINT, APPLICANT TO SUPPLY SPORTS COURT AMENITY, A CITY-FUNDED AND MAINTAINED BATHROOM, PLAY AREA AMENITY, AND PLANNING COMMISSION TO APPROVE THE SPORTS COURT AMENITY WITH GUIDANCE FROM THE PARKS MASTER

PLAN. MOTION PASSED 6:0. ALL PRESENT MEMBERS VOTED IN FAVOR (COUNCILOR BROUSE WAS ABSENT).

Mr. Roth came forward and stated that he would try to make this work and commented that “this was the best use of the property.” He said that he would still like to work with the city and explained that they would try to put the path on the north side of Lots 11-17 as well as easements on the back to try and fit in another lot.

Record Note: Two emails were forwarded to Council from Community Development Director Rutledge on behalf of Applicant for Council's consideration regarding Applicant's proposed PUD park revisions (see record, Exhibit G).

Mayor Rosener addressed the next agenda item and City Attorney Adams read aloud the public hearing statement.

B. Ordinance 2023-002, Amending Divisions I, II, III, IV, VII, and VIII of the Sherwood Zoning and Community Development Code and repealing Ordinance 2022-006 establishing time, place, and manner restrictions on psilocybin service centers and the manufacturing of psilocybin products (First Reading)

Planning Manager Erika Palmer presented the “Sherwood Development Code Update” PowerPoint presentation (see record, Exhibit H) and explained that it was important to review the Development Code on a yearly basis to ensure that it complied with state regulations and was in line with the community's needs. She outlined the proposed text amendments to the Development Code and explained it was a Type V land use action. She explained that the Planning Commission had made a recommendation for Council to review and stated that Council was the final decision maker on the matter. She recapped that the Planning Commission had held four work sessions on the matter where they offered to receive public comment, but no formal public comments had been received. She provided an overview of the applicable criteria on page 4 of the presentation and commented that some of the proposed changes included the retitling of headings and section numbers. She outlined the proposal highlights on page 5 of the presentation and explained that the psilocybin standards adopted by Council in December 2022 were now formally integrated into the Development Code in order to meet new state laws. She explained that these standards were similar to the recreational marijuana standards for time, place, and manner. She addressed Industrial Design Standards and explained that most applicants were already screening their roof-mounted equipment and the Planning Commission was now recommending making that a requirement. She outlined that the Planning Commission had also updated the city's Commercial Design Standards to require multi-family development to have a minimum of the primary building elevation adjacent to a public right-of-way to include windows, entrance doors, and the side elevation facing a right-of-way would be required to have a minimum of 10% glazing. She stated that this proposed standard was the same as the recently adopted Residential Design Standards for all residential types in Sherwood. She outlined that additional proposal highlights included the reorganization of chapters with the goal of clarity and readability and reported that the city was also proposing to remove ash trees from the street tree list due to the Emerald Ash Borer infestation in the state. She noted that a correction was needed to Section 16.38.040.C.6 and explained that it should read “psilocybin odor” not “marijuana odor.” Planning Manager Palmer stated that all of the proposed amendments were consistent with regional, local, and state land use goals and policies and none of the proposed amendments were in direct conflict with any regional, local, or state land use goals and policies. She recommended a second

hearing on the proposed ordinance be held at the March 7th City Council meeting and outlined Council alternatives as: approve the proposed development code amendments with the findings in this staff report, modify the proposed development code amendments and/or findings and approve as modified in compliance with all applicable criteria, deny the proposed Development Code amendments based on the Planning Commission's findings, or continue the public hearing to a date certain if more information was needed. Mayor Rosener explained that this was in response to psilocybin and psilocybin facilities becoming legal in Oregon. He explained that the proposed ordinance was done to align with state statutes. Councilor Scott thanked the Planning Commission and staff for their work on cleaning up the Development Code.

Mayor Rosener opened the public hearing to receive public comment. Hearing none, Mayor Rosener closed the public hearing and asked for discussion or questions from Council. Hearing none, Mayor Rosener addressed the next agenda item.

11. CITY MANAGER REPORT:

City Manager Keith Campbell announced applications for the CEP would be open on March 1st and said that more information could be found on the city's website. He reported that the Sherwood School District and the Sherwood Police Department would hold a joint training on February 22nd at Sherwood High School.

Council President Mays asked Police Chief Ty Hanlon regarding recent staffing changes at the Police Department. Chief Hanlon replied that Officers Jason Christensen and Corey Jentsch had both been promoted to Sergeant.

Mayor Rosener addressed the next agenda item.

12. COUNCIL ANNOUNCEMENTS:

Councilor Young thanked Councilor Standke for attending the CDBG meeting and Councilor Giles for attending the Police Advisory Board meeting in her place as she was unable to attend. She reported that the Senior Center had been awarded a CDBG grant to complete necessary window and siding renovations.

Council President Mays reported he attended the Cultural Arts Commission meeting on February 20th where they discussed art for the pedestrian bridge.

Councilor Scott thanked Councilor Giles for attending the Parks and Recreation Advisory Board meeting in his place.

Councilor Standke reported that he attended the Planning Commission meeting where they discussed the Sherwood West Concept Plan and the potential need for a joint Planning Commission and City Council work session.

Councilor Giles reported he attended the most recent Parks and Recreation Advisory Board meeting where they discussed tree removals. He congratulated Sergeant Randy Johnson on his retirement. He reported he attended a performance at the Arts Center. He reported that the Library Advisory Board was reviewing their policies on book retention. He reported that he attended the Sherwood School Board

meeting where the board voted to support the local levy for the schools. He stated that he supported the levy.

MOTION: FROM COUNCILOR SCOTT TO EXTEND THE MEETING UNTIL 10:02 PM. SECONDED BY MAYOR ROSENER. MOTION PASSED 6:0. ALL PRESENT MEMBERS VOTED IN FAVOR (COUNCILOR BROUSE WAS ABSENT).

Mayor Rosener reported that he attended the Walk of Remembrance honoring Amelia Green and Elliana Kramer. He reported that he met with representatives from the cities of Tualatin, Durham, King City, and Tigard where they discussed issues important to Washington County and legislative initiatives. He reported he met with the Washington County Chair and Washington County Mayors where they discussed Washington County budget challenges.

13. ADJOURN:

Mayor Rosener adjourned the regular session at 10:02 pm and convened an executive session.

EXECUTIVE SESSION

1. **CALL TO ORDER:** Mayor Rosener called the meeting to order at 10:12 pm.
2. **COUNCIL PRESENT:** Mayor Tim Rosener, Councilors Doug Scott, Kim Young, Dan Standke, and Taylor Giles. Councilors Keith Mays and Renee Brouse were absent.
3. **STAFF PRESENT:** City Manager Keith D. Campbell, City Attorney Ryan Adams and outside Counsel Alan Rappleyea.

4. TOPICS:

A. ORS 192.660(2)(e), Real Property Transactions

5. ADJOURN:

Mayor Rosener adjourned the executive session at 10:35 pm.

Attest:

Sylvia Murphy, MMC, City Recorder

Tim Rosener, Mayor



SHERWOOD CITY COUNCIL MEETING MINUTES
22560 SW Pine St., Sherwood, Or
March 7, 2023

WORK SESSION

1. **CALL TO ORDER:** Council President Mays called the meeting to order at 6:00 pm.
2. **COUNCIL PRESENT:** Council President Keith Mays, Councilors Kim Young, Doug Scott, Taylor Giles, Renee Brouse, and Dan Standke. Mayor Tim Rosener was absent.
3. **STAFF PRESENT:** Community Services Director Kristen Switzer, HR Manager Lydia McEvoy, Police Chief Ty Hanlon, Finance Director David Bodway, City Attorney Ryan Adams, Community Development Director Eric Rutledge, IT Director Brad Crawford, City Engineer Jason Waters, Planning Manager Erika Palmer, Economic Development Manager Bruce Coleman, Center for the Arts Manager Chanda Hall, Records Technician Katie Corgan, and City Recorder Sylvia Murphy.
4. **TOPICS:**

A. Brookman Sanitary Sewer Line

City Engineer Jason Waters introduced Clean Water Services Project Engineer Doug Gresham and explained that this project had been on hold since early 2020 and an alignment and feasibility study had been completed in 2019. He reported that the city was planning to hold an open house on the project on April 13th at Middleton Elementary School. Mr. Waters noted that he and Public Works Director Craig Sheldon would present the high-level numbers for the project during the CIP plan. Council President Mays commented that “the numbers will sort out; we want the project done.” Mr. Waters presented the “Brookman Sanitary Sewer Trunk Line extension Project” PowerPoint presentation (see record, Exhibit A) and recapped that this project was in response to active development submittals in the Brookman area and the construction of Sherwood High School. He stated that the anticipated alignment followed the Cedar Creek and Goose Creek stream corridors and extended as a sanitary sewer trunk line south and west across Highway 99W, then north to a sanitary sewer main line in the Kruger/Elwert roundabout. He reported that 30-60% design work was underway, and AKS was currently working on the design and noted that there would be some slight changes and stated that the design would be presented at the April open house. City Engineer Waters explained that the sewer main line served the high school and was currently running on a temporary pump station to a public gravity system. He explained that getting the high school off the temporary pump station was critical because it would help save money and CWS (Clean Water Services) did not permit private pump stations, and this had been a temporary agreement. He reported that the modelling had been completed and the final pipe sizes would be determined soon which would inform the project costs. Council President Mays asked if there was a risk of the existing 15” pipe eventually being too small? CWS representative Doug Gresham replied that the 15” pipe did not

have the full-growth capacity for the area and upsizing the existing trunkline would be a future project. Mr. Waters replied he would calculate the timeline for hitting capacity and would forward his findings to Council. He provided an overview of the approximate alignment map from 2019 and explained that the original route presented in the feasibility study had been changed. He provided an overview of the proposed route change on page 4 of the presentation. He explained that this was done in order to accommodate vegetated corridors and streams. Mr. Gresham added that another contributing reason for the change was because the original route came into conflict with some septic systems and wells. City Engineer Waters noted that a portion of the project was located on county land, which was why CWS was handling the project. He outlined the summarized schedule for the project on page 6 of the presentation. He stated that completed project milestones included the alignment feasibility analysis and public outreach and easement negotiations. He noted that there were some remaining easements that needed to be negotiated. He stated that the project was currently developing the construction bid and asked Mr. Gresham for a timeframe for when this phase would be complete. Mr. Gresham replied that the project had finalized the alignment of the sewer line and stated that over the next several months, the project would go to Washington County to begin the land use process. He continued that procuring wetland permits and completing the necessary archeological and environmental studies would also be completed over the next several months. He reported that he anticipated the project being at 60% by summer 2023, which was when the project's legal description and acquisitions would be completed. He said that if everything went well, the plans would be completed in early fall 2023 and the project would go out to bid in spring 2024. City Engineer Waters noted that that timeline presumed the funding for the project would be in place by that time and explained that he would discuss costs with Council in about six months or when the project was at 60-90%. Council President Mays referred to regulations for tree removal and water work and asked if CWS was being proactive in preventing further delays for the project and referred to the project being three years behind schedule due to the COVID-19 pandemic. Mr. Gresham replied that CWS was working through those issues and commented that ideally, trees were removed outside of the migratory bird window and most of this project's wetland impacts were not considered "in-water" or "in-stream." He spoke on the completed first phase of construction and commented that that phase was slow going due to the difficult terrain and it would be difficult to predict how quickly the rest of the project would go. Councilor Giles asked if the pipe would need to be replaced once Sherwood West was fully built out? Mr. Gresham replied that the new construction for the Brookman trunk line was sized for the full build out of the area, but the existing Cedar Creek trunk was not designed to support the full build out of the area and may need to be replaced in the future. Mr. Gresham referred to the map on page 3 of the presentation and explained that it was a 21" line where the red line connected to the blue line and then it dropped down to a 12" by the time it got to the high school. He commented that he believed that the 15" would eventually need to be upsized to 24". Council President Mays asked that CWS use the numbers for the full build out of the Sherwood area and county areas that would be impacting the line, and then choose a pipe size based on that number. City Engineer Waters replied that he believed that the pipe could not be upsized based on areas outside of the UGB growth area. Councilor Scott asked if the city could pay for the upsizing? Council President Mays stated he wanted to know if that was a state law or a CWS policy. Councilor Giles clarified that Council wanted the selected pipe size to be future-looking but not grossly oversized for the future needs of the area. Council President Mays commented that there was not a big price difference between an 18" pipe and a 20" pipe. Mr. Gresham outlined that there were some areas to the south that would ultimately need a spurred trunk line on the other side of Cedar Creek. Council President Mays asked for a shaded map that showed the territory of Oregon that the pipe could serve and discussion on zoning occurred. City Engineer Waters reported that the city had held an open house for the project in 2019, and a new open house was scheduled for April 13th at Middleton Elementary School. He recapped next steps and

explained that they would hold a work session for this project in roughly six months, he and Public Works Director Sheldon would present the high-level assumptions for the projects at the budget meeting in June, and he would present the detailed project finances to Council in the fall.

B. City Procurement Policy

City Attorney Ryan Adams presented "Updates to Public Contracting Code" PowerPoint presentation (see record, Exhibit B) and explained he was seeking Council's feedback on the topic because it was concerning city policy. Mr. Adams reported that Oregon law required competition for almost all projects and contracts undertaken by a municipality. He outlined that contracts that were under \$10,000 required no competition, contracts over \$10,000 but under \$150,000 stipulated that intermediate procurement rules be followed, and contracts over \$150,000 stipulated that formal procurement rules be followed. He clarified that Sherwood's policy put the contract limit at \$5,000. Mr. Adams explained that ORS 279A.065 allowed cities to implement their own policies and provided background to Oregon Public Contracting Code. He recapped that HB 2341 passed in 2003 and substantially amended public procurement law in Oregon. He outlined that Sherwood passed Resolution 2005-006 (see record, Exhibit C) in 2005, which brought the city's code into alignment with the 2003 state law and noted that the city had not updated the resolution since that time. He explained that the city's Contracting Code needed to be updated to reflect the changes to the state law that had occurred since it passed in 2005. He clarified that in 2018, the city decided that the City Manager had the authority to execute contracts valued at \$100,000 or less and stated that that change had not been codified into the city's Contracting Code. He provided an overview of the potential updates to the city's Contracting Code on page 5 of the presentation and provided an example of SMC 1.10 which required that the City Manager interview all prospective contractors if a contract exceeded \$25,000. He explained that this requirement had no specific discretion to delegate interviews to department heads and also required that the City Manager interview finalists a second time and no specific delegation was allowed. He recommended that a list of Council and city staff eligible to sign contracts on behalf of the city be created. Mr. Adams recapped that other potential policy updates included discussing advertising with the LOC (League of Oregon Cities) and discussion occurred. Council President Mays asked for staff to determine if the LOC charged a fee for advertising. Mr. Adams addressed other potential considerations and outlined that Sherwood required formal procurement for contracts over \$25,000, but state law only required a formal procurement process for contracts over \$150,000. Councilor Young asked if the city had been following the policy of following a formal procurement process for contracts over \$25,000? City Attorney Adams replied that he believed that policy was being followed. Mr. Adams addressed other potential considerations and outlined that Sherwood's small procurement limit was currently \$5,000, but state law cited \$10,000. He referred to the LOC's "Model Policy for Public Contracting & Purchasing" manual (see record, Exhibit D) and explained that there were changes he would make to the manual, but it was a good base to start from. He stated that he wanted to provide annual training to management employees on city procurement policies. Council President Mays stated that he would also like a yearly review of the city's procurement code in order to stay current with any changes the state may have made. Mr. Adams replied that the ORS required contracting agencies to perform a review of the changes made to the public contracting model on a yearly basis. He referred to Exhibit D and stated that he wanted to revise the manual with senior staff and review those suggested changes with Council at a future work session. Councilor Young asked what the process was for contracts under the threshold for a formal procurement process? City Attorney Adams explained that the state required three separate quotes in writing for contracts between \$10,000-\$150,000. Councilor Giles commented that the city's \$25,000 threshold for requiring a formal procurement process should be increased because of the amount of work required and commented that

it was possibly impacting how quickly business could be completed. Mr. Adams stated that he also wanted to review the city's protest procedures for contracts with senior staff and provided an overview of the city's current protest process. He explained that any changes to the protest process would be included in the future work session to discuss the procurement policy changes.

C. Cultural Arts Commission's Recommendation – Art for the Pedestrian Bridge Project

Community Services Director Kristen Switzer explained that the Cultural Arts Commission had held two meetings to review options for pedestrian bridge art and were now seeking Council input on their recommendations. Center for the Arts Manager Chanda Hall presented the "Pedestrian Bridge Art" PowerPoint presentation (see record, Exhibit E) and explained that the Cultural Arts Commission had met with KPFF in January 2023 where they had discussed art for the pedestrian bridge and had identified potential public art locations. She reported that they had identified two main areas for pedestrian bridge art and explained that one was located on the east approach of the bridge span near the YMCA and the second area was the green space on the west side of the bridge span near the high school. She outlined that the area near the YMCA was very visible to traffic coming into Sherwood and provided a lot of vertical and horizontal space. Councilor Scott asked if the land for the west side art area would be owned by the city or by the high school? Council President Mays replied that the land would be owned by the city. Councilor Brouse asked if the art area on the east side was close to the sign for the YMCA? Council President Mays replied that was correct and discussion occurred regarding needing to relocate the YMCA sign. Ms. Hall stated that the Cultural Arts Commission had also identified the area provided by the belvederes as an additional area to place art. Councilor Scott referred to previous discussions with KPFF regarding timelines and stated that he thought that KPFF had reported that there was not enough time to incorporate art into the first phase of the project, but it was something that could be incorporated in a later phase. Community Services Director Switzer explained that it depended on what art was going to be included and explained that art such as concrete stamping could be incorporated into Phase 1 of the project. She noted that the Cultural Arts Commission considered the architectural design of the bridge to be the major focus of the project and the Commission was therefore focusing on art for the approaches to the bridge. Ms. Hall outlined that the Cultural Arts Commission had also considered gateway signage and stated that the Commission recommended that gateway signage be incorporated into the overall design given the bridge's location. Council President Mays asked for Council's thoughts on gateway signage and Councilor Young commented that that area was in a critical community gateway location. Councilor Scott commented that he was fine with gateway signage but wanted whatever was installed to be movable so that as the community expanded, the sign could be moved. Discussion occurred regarding wanting a "place-maker" sign instead of a boundary marking sign. Ms. Switzer asked Council if the place-making signage was something the Cultural Arts Commission should work on or did Council want to lead that project? Councilor Giles stated that he wanted the sign to be more artistic and attention grabbing versus signage and asked for the Cultural Arts Commission to work on the project. Ms. Hall outlined the potential art themes identified by the Cultural Arts Commission as: nature/native plants; history of the land and the town; clean, contemporary lines; and modern, unfussy. She explained the last two items were informed by the architectural design of the bridge. Ms. Switzer explained that the themes matched the community feedback collected during summer 2022. Councilor Giles stated that the durability of the art was very important when choosing mediums for the art and commented that he was in favor of concrete imprinting and incorporating the history of the land and the town into the art. Ms. Hall outlined the potential art forms the Cultural Arts Commission discussed as: stone, metal, or concrete art; stamped concrete; and landscape art. She addressed stone, metal, or concrete art and stated that the artist who created the concrete relief art on the side of the library was a local artist and could be hired for this project. She explained that there was ample vertical and horizontal space on the east approach of the bridge and using stone or concrete art would echo the current art at the library and would create design cohesiveness and provide needed durability. She

addressed stamped concrete and explained that this option could be used both vertically and in the areas around the approaches and belvederes. Council President Mays explained that the Cultural Arts Commission was focusing on using stone, metal, or concrete art on the YMCA side but was likely to use landscape art that played with perspective on the high school side. Councilor Giles commented that he liked landscape art because it changed with the season and the viewer's perspective. Council President Mays stated that it was important to get staff feedback regarding maintenance on any landscape art options. Ms. Hall added that they wanted to hire a landscape artist to design an art piece that was appropriate for the area and used native plants. Councilor Giles suggested having a portion of the landscaped area be walkable as it would provide an interaction for pedestrians but was also easy to maintain. Council President Mays commented that the high school side could have sculptures that symbolized the growth in knowledge that students experienced and referred to similar statues at Linfield University. Councilor Scott commented that he wanted the area to be an area that people interacted with, not just looked at and commented that there were a lot of different ways to accomplish that. Ms. Hall recapped that the Cultural Arts Commission recommended that the primary focus of the project would be the east approach of the bridge near the YMCA, art elements to the bridge's belvederes should be added, gateway signage should be incorporated, the west side approach should be the secondary focus, and they were asking that \$250,000-\$350,000 be dedicated to complete the project. Community Services Director Switzer asked for Council feedback on the amount of funding needed. Councilor Scott commented that the project should be considered multi-phased, with Phase 1 focused on the YMCA approach, and the costs for completing that phase be calculated, which would inform the budget, not the other way around. He continued that the belvederes and the area by the high school could be included in the following phases, which would give the Cultural Arts Commission more time to determine what they wanted for that side of the bridge and time to budget for those decisions. Council President Mays stated he agreed. Councilor Giles referred to potential cost savings regarding a concrete pad area on the high school side and commented that the city could pay for the construction of the concrete pad, but the students could provide the artwork, which could be changed out intermittently, and discussion occurred. He explained that because of the phased approach, the city would not immediately be putting art in that area, and it could provide an opportunity to partner with the school for the time period between the bridge's completion and the time that the art for that space was created. Ms. Hall commented that the City of Lake Oswego did something similar. Community Services Director Switzer commented that that might be a good CEP grant opportunity to build that space.

5. ADJOURN:

Council President Mays adjourned the work session at 6:58 pm and convened a regular session.

REGULAR SESSION

1. **CALL TO ORDER:** Council President Mays called the meeting to order at 7:03 pm.
2. **COUNCIL PRESENT:** Council President Keith Mays, Councilors Kim Young, Doug Scott, Taylor Giles, Renee Brouse, and Dan Standke. Mayor Tim Rosener was absent.
3. **STAFF PRESENT:** Community Services Director Kristen Switzer, City Attorney Ryan Adams, IT Director Brad Crawford, Community Development Director Eric Rutledge, Police Chief Ty Hanlon, Finance Director David Bodway, HR Manager Lydia McEvoy, Public Works Director Craig Sheldon, Planning Manager Erika Palmer, and City Recorder Sylvia Murphy.

4. APPROVAL OF AGENDA:

MOTION: FROM COUNCILOR YOUNG TO APPROVE THE AGENDA. SECONDED BY COUNCILOR BROUSE. MOTION PASSED 6:0; ALL PRESENT MEMBERS VOTED IN FAVOR (MAYOR ROSENER WAS ABSENT).

5. CONSENT AGENDA:

A. Resolution 2023-017, Revising the City Financial Policy for Fund Balance

MOTION: FROM COUNCILOR YOUNG TO APPROVE THE CONSENT AGENDA. SECONDED BY COUNCILOR BROUSE. MOTION PASSED 6:0; ALL PRESENT MEMBERS VOTED IN FAVOR (MAYOR ROSENER WAS ABSENT).

6. CITIZEN COMMENTS:

Sherwood resident Jane Vankuren came forward at stated she wished to speak on the rent price increases at the Cannery Row Apartments. She reported she had lived in the apartments since April 2018 and explained that the complex had new owners and new property managers. She stated that SR Watt Co., a company based in California, had purchased the complex. Ms. Vankuren reported that she had contacted Representative Courtney Neron in 2019 when there was a rent increase under different owners and property managers and had been referred to an attorney. She stated that in 2023, she had contacted Representative Neron's office for assistance and commented she was pleased to see the March 2023 Sherwood Gazette issue regarding the rent increases at the Cannery Row Apartments. Ms. Vankuren stated that she was circulating a petition to hold a town hall with residents, the owners of the Cannery Row Apartment complex, property managers Cushman & Wakefield, and Mayor Rosener. She stated that if they worked together, some good could come out of the situation. She commented that Mayor Rosener had told her that under state law, there was no direct action the city could take other than advocating, and thanked Mayor Rosener for his advocacy. She cited Representative Neron's comments regarding excessive rent increases and reported that Representative Neron was the chief sponsor of SB 611. Ms. Vankuren stated that she believed more and more people were being displaced by rent increases and outlined her community involvement in Sherwood since she moved to the city in 2013. She stated that the rent increase issue should be reviewed using the Rotary's Four-Way Test. She asked for help to address the issue and stated that this was an opportunity to "build peace in Old Town Sherwood, Oregon."

Council President Mays addressed the next agenda item and the City Recorder read aloud the public hearing statement for both public hearing items.

7. PUBLIC HEARINGS:

A. Ordinance 2023-001, Approving a Planned Unit Development (PUD) and Subdivision to be known as the Moser Pass PUD (*Third Reading*)

Community Development Director Eric Rutledge presented the "LU 2022-020 SUB/PUD Moser Pass 32-Lot Subdivision/PUD" PowerPoint presentation (see record, Exhibit F) and provided an overview of the Council-directed revisions to the plan on page 2 of the presentation. He outlined changes included: Lots

30 – 32 as shown on the Preliminary Plat would be converted to Tract F for a new park space; parking would be permitted on the south side of Upper Roy Street immediately adjacent to the park; a new sports court/facility would be provided by the developer, based on an identified need or community desire in the 2021 Parks Master Plan; the sports court/facility was to be approved by the Planning Commission; a park restroom would be provided that matched the existing restroom at Cannery Square, or a similar design and would be approved by the Planning Commission; the developer would be responsible for the installation of underground electrical and plumbing in the final location of the restroom; the city would be responsible for purchasing, installing, and the long-term maintenance of the restroom; the city would be responsible for setting the hours of operation, cleaning, and maintenance schedule of the restroom; and the requirement for a second pedestrian pathway between SW Upper Roy Street and Tract C was removed. He stated that staff recommended approving the proposed ordinance based on the findings included in Exhibit 1 to the ordinance. Council President Mays asked for questions or discussion from Council. Councilor Standke referred to the previously identified woodchip trail and asked if the trail would be paved or woodchipped? Mr. Rutledge replied that the previously woodchipped trail would be paved with concrete or asphalt and would have guard rails installed. Councilor Giles asked if it would match the other trail in the neighboring development? Mr. Rutledge replied that the trail in the neighboring development was asphalt, and he assumed the developers of the Moser Pass PUD would use asphalt as well due to cost.

MOTION: FROM COUNCILOR BROUSE TO APPROVE ORDINANCE 2023-001 SUBJECT TO THE FINDINGS AND CONDITIONS INCLUDED AS EXHIBIT 1 TO ORDINANCE 2023-001 IN THE COUNCIL PACKET DATED MARCH 7, 2023. SECONDED BY COUNCILOR GILES. MOTION PASSED 6:0; ALL PRESENT MEMBERS VOTED IN FAVOR (MAYOR ROSENER WAS ABSENT).

Council President Mays addressed the next agenda item.

B. Ordinance 2023-002, Amending Divisions I, II, III, IV, VII, and VIII of the Sherwood Zoning and Community Development Code and repealing Ordinance 2022-006 establishing time, place, and manner restrictions on psilocybin service centers and the manufacturing of psilocybin products *(Second Reading)*

Planning Manager Erika Palmer presented the staff report for the proposed ordinance and explained that the recommended code amendments had been reviewed and recommended by the Planning Commission. She reported that the Planning Commission had been working on the code clean up since fall 2022 and stated that there were four substantive changes to the development code. She outlined that the changes included changes to the criteria for model homes within the Temporary Uses chapter, a reduction of the Adjustment and Class B variance percentages in Chapter 16.84, a new proposed industrial design criterion in Chapter 16.90, and changes allowing psilocybin uses with development standards in the General Industrial (GI) zoning district to implement Measure 109. She reported that no additional public testimony had been received since the first reading at the February 21st meeting and offered to answer any questions from Council.

Council President Mays opened the public hearing to receive public comment. Hearing none, Council President Mays closed the public hearing and asked for discussion or a motion from Council.

MOTION: FROM COUNCILOR YOUNG TO READ CAPTION AND ADOPT ORDINANCE 2023-002 AMENDING DIVISIONS I, II, III, IV, VII, AND VIII OF THE SHERWOOD ZONING AND COMMUNITY

DEVELOPMENT CODE AND REPEALING ORDINANCE 2022-006 ESTABLISHING TIME, PLACE, AND MANNER RESTRICTIONS ON PSILOCYBIN SERVICE CENTERS AND THE MANUFACTURING OF PSILOCYBIN PRODUCTS. SECONDED BY COUNCILOR SCOTT. MOTION PASSED 6:0; ALL PRESENT MEMBERS VOTED IN FAVOR (MAYOR ROSENER WAS ABSENT).

Council President Mays addressed the next agenda item.

8. CITY MANAGER REPORT:

Council President Mays explained that City Manager Keith Campbell and Mayor Rosener were absent as they were in Washington D.C. advocating on behalf of Sherwood. Community Services Director Kristen Switzer provided an update on the construction of the festival plaza and reported that construction had started on the plaza. She reported that construction at Veterans Park would begin March 8th and was scheduled to be completed by June 30th. She added that the Robin Hood Plaza was scheduled to be completed by June 1st.

Council President Mays gave his kudos to Public Works and Police Department staff for their hard work during the inclement weather. Councilor Giles commented on the inclement weather and gave his kudos to Public Works staff for their work keeping the roads clear.

Council President Mays addressed the next agenda item.

9. COUNCIL ANNOUNCEMENTS:

Councilor Standke thanked Public Works staff for their hard work during the inclement weather.

Councilor Scott gave his kudos to city staff, the developer, and the Planning Commission for their work getting the Moser Pass PUD approved. He thanked city staff and the Planning Commission for their work on the Development Code clean up. He reported that he attended the March 6th Parks and Recreation Advisory Board meeting where they discussed 2023 priorities and the land use application process. He reported he attended the town hall regarding the potential sale of the Sherwood Regional YMCA facility.

Councilor Brouse thanked staff for their hard work during the inclement weather. She reported a gala supporting the Sherwood Police Department would be held on April 28th and tickets could be purchased online. She reported that a Rotarian event would be held in Sherwood on April 22nd.

Councilor Young reported that she would attend the Sherwood School Board meeting on March 8th. She reported that there would be three Sherwood School Board positions open on the May 2023 ballot and encouraged those interested to run. She reported that Sherwood resident Kylie Johnson was elected to serve as the Oregon Youth Governor. She reported that a second town hall regarding the potential sale of the Sherwood Regional YMCA facility was scheduled for March 9th at City Hall. She reported that she assisted with the Sherwood Foundation for the Arts puzzle tournament. She reported that she and Mayor Rosener met with Commissioner Treece of Washington County where they discussed the county's budget crisis.

Councilor Giles addressed the Boy Scouts troop in the audience of the meeting and explained the passage of Ordinance 2023-001.

Council President Mays reported on his attendance at the WRWC meeting. He reported he attended the Cultural Arts Commission meeting where they discussed art for the pedestrian bridge. He explained that Mayor Rosener was in Washington D.C. with City Manager Campbell advocating on behalf of Sherwood for federal funds.

10. ADJOURN:

Council President Mays adjourned the regular session at 7:40 pm.

Attest:

Sylvia Murphy, MMC, City Recorder

Tim Rosener, Mayor

TO: Sherwood City Council

FROM: Keith D. Campbell, City Manager

SUBJECT: Resolution 2023-018, Adopting City Council Pillars, Goals, and Deliverables for Fiscal Year 2023-2024

Issue:

Shall the City Council adopt City Council Pillars, Goals, and Deliverables for FY2023-24?

Background:

On January 7th, 2023, the Sherwood City Council held a special meeting to review and discuss the current list and status of goals and activities that were adopted in 2022 and to consider and develop revised objectives for the upcoming FY 2023-24 fiscal year. The City contracted with Dr. Mike Mowery from Strategic Government Resources (SGR) who lead the meeting and the discussion. Mr. Mowery provided a report on this meeting which is provided as Exhibit A to this staff report.

Using Mr. Mowery's report City Staff worked to refine and create a final working document to help define and clarify City Council's priorities and objectives for FY 2022-23. The final work product is provided as Exhibit B to the resolution.

By approving this resolution, the City Council is clearly identifying its priorities for the upcoming FY 2023-24. The purpose of adoption of this resolution is to provide to internal and external stakeholders the City Council's priorities. The proposed budget for FY 2023-24, and allocation of city resources will be prioritized based on the adopted resolution.

Financial Impacts:

There are no additional direct financial impacts as a result of approval of this resolution. The adoption of the resolution will be used for future allocations of city resources.

Recommendation:

Staff respectfully recommends City Council approval of Resolution 2023-018, adopting City Council Pillars, Goals, and Deliverables for FY2023-2024.



City of Sherwood Council Retreat 2023

Final Report

January 16, 2023

The City Council from the City of Sherwood met on Saturday, January 7, 2023, for a Council Retreat. The purpose of the meeting was to update the Council's strategic goals for the upcoming year. The retreat was attended by all of the Council except for Doug Scott and Renee Brouse. They both had unavoidable conflicts that required them to be out of town. The City Manager and Department Heads were also in attendance. The retreat was facilitated by Strategic Government Resources (SGR). This is a summary of the discussions from the retreat.

Strategic Pillars, Goals, and Deliverables

The format for the retreat was to discuss each of the Council's 6 Strategic Pillars one at a time. The Council discussed whether the strategic pillar should continue to be a pillar or not. In addition to this, the Council reviewed each of the goals under the pillar and the progress that had been made toward this goal. The Council discussed whether a goal needed to continue to be listed, and the Council also discussed the possibility of adding new goals under each Strategic Pillar.

There was some discussion under each Strategic Pillar of the Deliverables under that Strategic Pillar. The City Manager and Staff answered questions regarding the various Deliverables. Typically, Strategic Pillars and Goals are set by the Council, and Deliverables are created by the Staff in alignment with and toward fulfillment of the Council's Goals.

2023 Strategic Pillars and Goals

Pillar 1: Economic Development

Goals:

- Promote Strong Diverse Economic Growth Opportunities
- Build Infrastructure to Support New Commercial and Industrial Development
- Balancing the Tax Base

- Work with Metro, regional partners, and the State of Oregon to bring Sherwood West land into UGB
- Bring Jobs to Sherwood that provide wages that allow people to live and work in Sherwood
- Sherwood West Planning
- Tonquin Employment Area
- Prioritization of Infrastructure Development Deliverables for Best ROI

Pillar 2: Infrastructure

Goals:

- Build Pedestrian Connectors between Sherwood East and West
- Continue to invest in Sherwood Broadband Utility as an important infrastructure for Sherwood and Beyond
- New Public Works Facility
- Cedar Creek Pedestrian Wildlife Undercrossing
- Invest in Business Process Improvements

Pillar 3: Livability and Workability

- Continue to Support and Enhance Senior Services
- Trails and Walkability
- Promote and monitor diverse housing that will accommodate and attract people from a wide variety of life stages and needs
- Public Art
- Mental Health and Wellness within the organization and the community
- Investment in Community Gathering Spaces or Community Enhancements
- Invest in Parks (Acquire New Land for Parks and expansion and Improvements of Current Parks)

Pillar 4: Public Safety

- Public Safety Planning
- Collaborate with School District
- Promote Bike and Pedestrian Safety
- Promote Driver Safety

Pillar 5: Fiscal Responsibility

- Pursue New Internal and External Revenue Sources
- Efficient Service Delivery
- Facilitate Grant Readiness
- Quarterly Meetings to Stay Current on Budget Expectations
- Regularly Evaluate the Risks to Traditional Sources of Revenue
- Be Transparent and Proactive to Changes in the Economy

Pillar 6: Citizen Engagement

- A Communication Plan that is Comprehensive and Strategic to Modernize City-Wide Communication
- A High Level of Customer-Centric Approach to Citizens Engaging with the City
- Diversity, Equity, Inclusion, and Accessibility
- Engaging with Youth
- Efficient Management of Meetings for All Boards and Commissions
- Citizen Academy



RESOLUTION 2023-018

ADOPTING CITY COUNCIL PILLARS, GOALS AND DELIVERABLES FOR FY2023-2024

WHEREAS, the Sherwood City Council historically meets early in each calendar year in a goal setting session to identify specific Council Goals and Activities for the upcoming year and budget priorities for the upcoming fiscal year; and

WHEREAS, Council held a special meeting on January 7th, 2023 to discuss and update their previous Council Goals and Activities that were approved by Resolution 2022-021 on April 5th, 2022; and

WHEREAS, the results of these meetings are identified in the attached as Exhibit B, FY2023-24 City Council Pillars, Goals, and Deliverables document; and

WHEREAS, by approving this document by resolution, Council is clearly identifying its priorities for the benefit of City staff to implement as well for the public and stakeholders to understand the Council priorities and objectives for FY2023-24.

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

Section 1. The Sherwood City Council approves the FY2023-24 Council Pillars, Goals, and Deliverable worksheet, attached as Exhibit B to this Resolution.

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

Duly passed by the City Council this 21st of March 2023.

Tim Rosener, Mayor

Attest:

Sylvia Murphy, MMC, City Recorder

Pillar 1: Economic Development

Goals:

- Promote Strong Diverse Economic Growth Opportunities
- Build Infrastructure to Support New Commercial and Industrial Development
- Balancing the Tax Base
- Work with Metro and Regional Partners, and the State of Oregon, to bring Sherwood West land into UGB
- Bring Jobs to Sherwood that Provide Wages that Allow People to Live and Work in Sherwood
- Sherwood West Planning
- Tonquin Employment Area
- Prioritization of Infrastructure Development Deliverables for Best ROI

Deliverables:	Deliverable Time Frame		
	0-1 Year	2-3 Years	3+ Years
Deliverable 1:1 Improve Development Code to Promote Stronger Economic Development			
1:1(a) Code Audit and Stakeholder Meetings to Determine Opportunity for Improvement	X		
1:1(b) Process Amendments		X	
Deliverable 1:2 Create Annexation Policies & Processes to Manage our Growth Goals as it Relates to Infrastructure, School Capacity, & Long-Term Community Needs	X		
Deliverable 1:3 Target Metrics for Jobs/Housing Balance	X		
Deliverable 1:4 Completion and Adoption of Sherwood West Re-Look Plan	X		
Deliverable 1:5 Ask Metro to include Sherwood West into the UGB	X	X	

Pillar 2: Infrastructure

Goals:

- Build Pedestrian Connectors between Sherwood East and West
- Continue to invest in Sherwood Broadband Utility as an Important Infrastructure for Sherwood and Beyond
- New Public Works Facility
- Cedar Creek Pedestrian Wildlife Undercrossing
- Invest in Business Process Improvements

Deliverables:	Deliverable Time Frame		
	0-1 Year	2-3 Years	3+ Years
Deliverable 2:1 Improve Development Code to Promote Stronger Economic Development	X	X	
Deliverable 2:2 Sherwood 99W Pedestrian Bridge			
2:2(a) Sherwood 99W Pedestrian Bridge 100% Design	X		
2:2(b) Sherwood 99W Pedestrian Bridge Construction	X	X	
Deliverable 2:3 Cedar Creek Pedestrian Wildlife Undercrossing			
2:3(a) Cedar Creek Pedestrian Wildlife Undercrossing 30% Design Study	X	X	
Deliverable 2:4 Complete Sherwood Broadband Fiber to the Home Build Out	X	X	X
Deliverable 2:5 Complete YMCA Agreement	X		
Deliverable 2:6 Purchase and/or Replace Antiquated Software	X	X	
Deliverable 2:7 Reconfigure Existing Software to Adapt to Current Needs	X	X	
Deliverable 2:8 Develop Shovel Ready Fiber Expansion Projects	X	X	X
Deliverable 2:9 Oregon Street Brownfield Cleanup- New Public Works Facility Location			

Pillar 3: Livability & Workability

Goals:

- Continue to Support and Enhance Senior Services
- Trails and Walkability
- Promote and Monitor Diverse Housing that will Accommodate a Wide Variety of Life Stages and Needs
- Public Art
- Mental Health and Wellness Within the Organization and the Community
- Investment in Community Gathering Spaces or Community Enhancements
- Investment in Parks (Acquire New Land for Parks and Expansion and Improvements of Current Parks)

Deliverables:	Deliverable Time Frame		
	0-1 Year	2-3 Years	3+ Years
Deliverable 3:1 Consider Obtaining Age Friendly City Certification	X		
Deliverable 3:2 Design Concepts for Single-Story Flex Building on Lot in Front of Arts Building	X	X	
Deliverable 3:3 Design Plan for Cedar Creek Trail Amenities	X		
Deliverable 3:4 Public Art in Roundabouts (2x)	X	X	
Deliverable 3:5 Monitor Housing, Track Progress on Issues, Actively Participate, as Needed, with Legislature and Rule Making Committees			
3:5(a) Develop Annual Report on Housing	X		
3:5(b) Staff Participate in Rule Making & Monitor and Track Changes	X		
Deliverable 3:6 Employee and City Volunteer Recognition and Appreciation Programs	X		
Deliverable 3:7 Programs to Encourage Innovation and Creative Solutions and Ideas	X		
Deliverable 3:8 Involve the Community and other Government Partners in Discussions on the Importance of Community Wellness and Mental Health Awareness	X		
Deliverable 3:9 Review City Owned Property as it relates to Community Gathering Spaces or Community Enhancements	X		

Pillar 4: Public Safety

Goals:

- Public Safety Planning
- Collaborate with School District
- Promote Bike and Pedestrian Safety
- Promote Driver Safety

Deliverables:	Deliverable Time Frame		
	0-1 Year	2-3 Years	3+ Years
Deliverable 4:1 Funding Additional SRO	X	X	
Deliverable 4:2 Enhance Visibility and Use of Police Reserve Program	X	X	
Deliverable 4:3 Work with SSD on Safe Route to School Programs	X	X	
Deliverable 4:4 Programs to Recruit and Retain Officers	X	X	X
Deliverable 4:5 Identify and Complete Infill for Sidewalk Improvements/ADA	X		
Deliverable 4:6 Develop an Action Plan with County to Improve Safety on County Owned Roads in Sherwood and UGB	X	X	
Deliverable 4:7 Charge Traffic Safety Committee to Review Speed Limits in City Limits	X		

Pillar 5: Fiscal Responsibility

Goals:

- Pursue New Internal and External Revenue Sources
- Efficient Service Delivery
- Facilitate Grant Readiness
- Quarterly Meetings to Stay Current on Budget Expectations
- Regularly Evaluate the Risks to Traditional Sources of Revenue
- Be Transparent and Proactive to Changes in Economy

Deliverables:	Deliverable Time Frame		
	0-1 Year	2-3 Years	3+ Years
Deliverable 5:1 Pursue Federal Grants and Monies	X		
Deliverable 5:2 Pursue State Grants and Monies	X		
Deliverable 5:3 Complete Banking RFP	X		
Deliverable 5:4 Organizational Assessment and Review on Delivery of Services	X	X	

Pillar 6: Citizen Engagement

Goals:

- A Communication Plan that is Comprehensive and Strategic to Modernize City-Wide Communication
- A High Level of Customer-Centric Approach to Citizens Engaging with the City
- Diversity, Equity, Inclusion, and Accessibility
- Engaging with Youth
- Efficient Management of Meetings for All Boards and Commissions
- Citizen Academy

Deliverables:	Deliverable Time Frame		
	0-1 Year	2-3 Years	3+ Years
Deliverable 6:1 Create new Website Platform and Enhance Social Media	X		
Deliverable 6:2 Citizen Academy	X		
Deliverable 6:3 Utilize Modern Communication Tools (Mobile Surveys, Text Messaging) to Solicited Feedback from Residents		X	
Deliverable 6:4 Track, Respond and Analyze Citizen Requests through a Customer Relationship Management System		X	
Deliverable 6:5 Consider Engagement/Communication Specialist	X	X	
Deliverable 6:6 Develop a Comprehensive Approach to doing Surveys that Enables the Organization to Improve both the Strategy and Execution	X		
Deliverable 6:7 Continue to Refine our Marketing Materials for Industry		X	
Deliverable 6:8 Refine Branding	X	X	
Deliverable 6:9 Review and Update Hiring Processes through DEIA	X		
Deliverable 6:10 Consider Youth Advisory or Similar	X		

Agenda Item: New Business

TO: Sherwood City Council

FROM: Keith D. Campbell, City Manager

Through: Ryan Adams, City Attorney

SUBJECT: Resolution 2023-019, Purchase and Sale Agreement between the City of Sherwood and the Young Men's Christian Association of Columbia-Willamette, an Oregon nonprofit Corporation, doing business as YMCA of Columbia-Willamette

Issue:

Shall the City Council authorize the Mayor to sign a Purchase and Sale Agreement with the Young Men's Christian Association of Columbia-Willamette, an Oregon nonprofit, doing business as YMCA of Columbia- Willamette?

Background:

In 1996 the City of Sherwood Residents passed a twenty-year General Obligation Bond to construct a public facility located at 23000 S.W. Pacific Highway. In the fall of 1998, construction was completed, and the City of Sherwood entered into a twenty-year agreement with the YMCA of Columbia- Willamette to operate the facility. As part of the agreement the City of Sherwood owned the facility and the land, and the YMCA had the responsibility for the operations and all maintenance inside of the facility. The City is responsible for the maintenance of the outside of the facility, and for the landscaping and upkeep of the property.

In 2018 the City of Sherwood and the YMCA of Columbia- Willamette agreed to a new five-year operating agreement. In 2021 the City and the YMCA begun negotiations to explore selling the land and improvements. On February 24th the City of Sherwood and the YMCA released a joint press release to announce a tentative agreement between the parties for a "Purchase and Sale Agreement" (Exhibit A) of the "Land and Improvements" generally located at 23000 S.W. Pacific Highway. The city and the YMCA held two town hall meetings, the first was on March 2nd at the YMCA, the second was on March 9th at Sherwood City Hall.

The Purchase and Sale Agreement is for \$5,000,000 in cash. The sale price was based on appraisals from the YMCA and the City of Sherwood. As part of the Purchase and Sale agreement the city will retain the skate park, and the undeveloped area adjacent to Woodhaven Commons. The city will also receive easements for the Hwy 99 Pedestrian Bridge and access to the skate park. The agreement contains a twenty-year "right of first refusal" should the YMCA decide to sell the property.

Financial Impacts:

The sale of the "Land" and the "Improvements" will be for \$5,000,000 cash upon completion of the sale. In addition, the city has \$456,140 in planned capital improvements over the next five years, which will be removed from the "Capital Improvement Plan." Additionally, the city anticipates savings of approximately \$15,000 per year in maintenance and upkeep of the land at the property.

Recommendation:

The City Attorney has reviewed the "Purchase and Sale Agreement" listed as "Exhibit A." After reviewing the document, the City Attorney recommends the city council strike from the "Purchase and Sale Agreement" Section 9.1 (i) and 9.1 (j) before formal consideration of Resolution 2023-019.

Staff respectfully recommends City Council approval of Resolution 2023-019 with the proposed update to the "Purchase and Sale Agreement" between the City of Sherwood and the Young Men's Christian Association of Columbia-Willamette, an Oregon nonprofit Corporation, doing business as YMCA of Columbia-Willamette.



RESOLUTION 2023-019

PURCHASE AND SALE AGREEMENT BETWEEN THE CITY OF SHERWOOD AND THE YOUNG MEN'S CHRISTIAN ASSOCIATION OF COLUMBIA-WILLAMETTE, AN OREGON NONPROFIT CORPORATION, DOING BUSINESS AS YMCA OF COLUMBIA-WILLAMETTE

WHEREAS, In 1996, Sherwood Residents passed a 20-Year General Obligation Bond to construct a facility generally located at 23000 S.W. Pacific Highway that would become the Sherwood Family YMCA;

WHEREAS, In 1998, The Sherwood Family YMCA opened its doors, operated by the YMCA of Columbia Willamette under a Twenty-Year Agreement with the City of Sherwood;

WHEREAS, In 2018 the City of Sherwood and the YMCA of Columbia Willamette entered into a Five-Year operating agreement set to expire on October 31st, of 2023;

WHEREAS, The City of Sherwood and the YMCA of Columbia Willamette have completed negotiations on a "Purchase and Sale Agreement" between the two parties;

WHEREAS, The Purchase and Sale includes of the "Land" and "Improvements" generally located at 23000 S.W. Pacific Highway, except for the exclusion of the following item, the Skate Park and access to the skate park, the undeveloped area adjacent to Woodhaven Commons, and easements for the Hwy 99 Pedestrian Bridge;

WHEREAS, The YMCA of Columbia Willamette will grant the City of Sherwood a Twenty-Year "Right of First Refusal" if the YMCA decides to sell the property.

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

Section 1. The Sherwood City Council approves the Purchase and Sale Agreement, attached as Exhibit A to this Resolution, between the City of Sherwood and the Young Men's Christian Association of Columbia-Willamette, and Oregon nonprofit, doing business as YMCA of Columbia Willamette

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

Duly passed by the City Council this 21st of March 2023.

Attest:

Tim Rosener, Mayor

Sylvia Murphy, MMC, City Recorder

Resolution 2023-019

March 21, 2023

Page 1 of 1, with Exhibit A (27 pages)

PURCHASE AND SALE AGREEMENT

This Purchase and Sale Agreement (this “**Agreement**”) is dated as of _____, 2023 (the “**Effective Date**”), between City of Sherwood, Oregon, a municipal corporation (“**Seller**”), and The Young Men’s Christian Association of Columbia-Willamette, an Oregon nonprofit corporation, doing business as YMCA of Columbia-Willamette (“**Buyer**”).

Recitals

- A. Seller owns certain land described on Exhibit A attached hereto (the “**Land**”), which has a street address of 23000 S.W. Pacific Highway, Sherwood, Oregon 97140. The Land and the buildings and other improvements situated on the Land (collectively, the “**Improvements**”) shall hereinafter be referred to as the “**City Property**.”
- B. As of the Effective Date, Buyer possesses and uses a portion of the City Property pursuant to a Master Services Agreement between Seller and Buyer (the “**Master Services Agreement**”).
- C. Buyer desires to purchase from Seller, and Seller desires to sell to Buyer, all of the City Property with the exception of the skate park (the “**Skate Park**”) and the wooded area (the “**Wooded Area**”), which are generally depicted on Exhibit B attached hereto, the ownership of which will be retained by Seller. Seller and Buyer acknowledge that a partition or subdivision will need to take place so that the City Property, excluding the Skate Park and the Wooded Area, may be lawfully conveyed to Buyer. For purposes of this Agreement, the term “**Real Property**” shall mean the City Property, excluding the Skate Park and the Wooded Area.

Agreement

- Purchase and Sale.** Seller agrees to sell to Buyer, and Buyer agrees to purchase from Seller, upon the terms and conditions set forth in this Agreement: (a) the Real Property; (b) all of Seller’s right, title, and interest in and to all building systems, fixtures, equipment, machinery, irrigation systems and equipment and other items of personal property owned by Seller and used in connection with the operation, maintenance, and/or repair of the Real Property (the “**Personal Property**”); (c) all rights, privileges, interests, licenses, claims, easements, benefits, covenants, conditions and servitudes of any type or nature that are appurtenant to or otherwise benefit the Real Property (collectively, the “**Appurtenances**”); (d) to the extent assignable, all of Seller’s interest in all licenses, permits, approvals, certificates of occupancy, dedications, and entitlements issued, approved or granted by any governmental entity or public utility in connection with the Real Property, together with all renewals and modifications thereof (collectively, the “**Licenses and Permits**”); (e) all of Seller’s interest in any as-built plans, drawings and specifications for the improvements on the Real Property and all architectural, structural, mechanical, electrical and landscaping plans and specifications, surveys, engineering studies and reports relating to the Real Property (collectively, the “**Plans**”); and (f) to the extent assignable, any warranties or guarantees received by Seller from any contractors, subcontractors, suppliers or materialmen in connection with any construction, repairs or alterations of the Real Property (collectively, the “**Warranties**”). The items described in clauses (a) through (f) of this Section 1 shall hereinafter be collectively referred to as the “**Property**.”
- Purchase Price.** The purchase price for the Property (the “**Purchase Price**”) shall be the sum of Five Million Dollars (\$5,000,000). On or before the Closing Date (as such term is defined in Section 3.2 of this Agreement), Buyer shall deposit into escrow with the Title Company (as such term is defined in Section 3.1 of this Agreement), in the form of cash, wire transfer of funds, or a cashier’s check, the Purchase Price, subject to adjustments and credits as set forth in this Agreement, which the Title Company shall disburse to Seller at Closing (as such term is defined in Section 3.2 of this Agreement).
- Escrow.**
 - Opening of Escrow.** Buyer shall open escrow at Lawyers Title of Oregon, LLC, Attention: Peggy Neikirk, 1455 S.W. Broadway, Suite 1400, Portland, Oregon 97201 (the “**Title Company**”) for consummating the transaction that is the subject of this Agreement. Seller or Buyer shall deliver a copy of this Agreement, fully executed, to the Title Company. Buyer and Seller hereby authorize their respective attorneys to execute and deliver into escrow any additional or supplemental instructions as may be necessary or convenient to implement the terms of this Agreement and to close this transaction. In the event of any conflict between such additional or supplemental instructions and the express terms of this Agreement, the terms of this Agreement shall control.

3.2 **Closing Date.** This transaction shall close at or through the office of the Title Company on a date selected by Buyer that is reasonably acceptable to Seller and that is not more than sixty (60) days after the Due Diligence Date (as such term is defined in Section 9.2 of this Agreement). “**Closing**” shall occur when the Deed (as such term is defined in Section 10.1(a) of this Agreement) is recorded and the Purchase Price is disbursed to Seller pursuant to Section 2 of this Agreement. The date on which the Closing occurs shall hereinafter be referred to as the “**Closing Date**.”

4. **Title Exceptions.**

4.1 **Title Report.** A preliminary title report for issuing title insurance related to the City Property (the “**Title Report**”), together with copies of documents affecting title referenced in the Title Report, shall be ordered from the Title Company by Buyer and provided to Seller and Buyer.

4.2 **Objectionable Exceptions.** Within thirty (30) days after the last to occur of the Execution Date (as such term is defined in Section 25.12 of this Agreement) and Buyer’s receipt of the Title Report (the “**Objection Period**”), Buyer shall notify Seller in writing of all title exceptions to which Buyer objects (the “**Objectionable Exceptions**”). Those exceptions not objected to by Buyer within the Objection Period shall be deemed “**Permitted Exceptions**.” Within fifteen (15) days after receiving Buyer’s notice of Objectionable Exceptions, Seller will notify Buyer whether Seller will remove, prior to Closing, the Objectionable Exceptions. (If Seller fails to provide such notice to Buyer within such fifteen (15)-day period, Seller shall be deemed to have elected not to remove the Objectionable Exceptions.) If Seller is unable or unwilling to remove any Objectionable Exceptions, Buyer shall, within ten (10) days after receiving Seller’s response (or within ten (10) days after the expiration of the fifteen (15)-day period for Seller’s response if Seller fails to provide notice to Buyer within such fifteen (15)-day period), by notice to Seller, elect whether to purchase the Property subject to the Objectionable Exceptions that will not be removed by Seller, or terminate this Agreement. If Buyer elects to terminate this Agreement, Buyer shall have no further obligations under this Agreement. If Buyer fails to notify Seller within such ten (10)-day period that Buyer elects to terminate this Agreement, or if Buyer elects to purchase the Property subject to the Objectionable Exceptions that will not be removed by Seller, Buyer shall be deemed to have waived its objection to such Objectionable Exceptions, and they shall be deemed “**Permitted Exceptions**.” Notwithstanding any other term or provision of this Agreement, any monetary liens against the Property (which shall include, without limitation, judgment liens, construction or mechanic’s liens, mortgages, and trust deeds affecting the Property or any portion thereof) shall not be deemed Permitted Exceptions and shall be removed by Seller prior to Closing.

5. **Seller’s Documents and Buyer’s Inspections.**

5.1 **Seller’s Documents.** Within ten (10) days after the Execution Date, Seller shall deliver to Buyer the documents described on Exhibit C attached hereto (“**Seller’s Documents**”), to the extent such documents are in the possession, custody, or control of Seller.

5.2 **Buyer’s Inspections.** Buyer and its representatives may conduct any inspection, investigation, test, or survey, including without limitation environmental assessments, of the City Property as Buyer deems necessary. Buyer shall promptly repair any damage to the City Property resulting from any such inspection, investigation, test, or survey.

6. **Partition; Easement Agreement; Skate Park Agreement.** Promptly after the Execution Date, Seller shall seek a partition or subdivision (the “**Partition**”) that will make the Skate Park, the Wooded Area, and the Real Property separate legal parcels such that the Real Property may be lawfully conveyed to Buyer. Buyer shall reasonably cooperate, at no cost or expense to Buyer, in connection with the Partition; and Buyer shall be allowed to participate in the process of determining the boundary lines for the Real Property. Seller and Buyer acknowledge that it is likely that Seller and Buyer, as a condition to the Partition, will be required to enter into an easement agreement pursuant to which Buyer grants Seller an easement over a portion of the Real Property such that users of the Skate Park will have vehicular and pedestrian ingress to the Skate Park from Woodhaven Drive, vehicular and pedestrian egress from the Skate Park to Woodhaven Drive, and certain parking rights in the parking lot on the Real Property as part of the sale and with no reduction in Purchase Price (the “**Skate Park Easement Agreement**”). Among other things, the Skate Park Easement Agreement will contain language pursuant to which Seller agrees to indemnify Buyer for, hold Buyer harmless from, and defend Buyer against claims for personal injury and/or death and property damage asserted by users of the Skate Park and of the portions of the Real Property that are the subject of the Easement Agreement. At Closing, Seller and Buyer intend to enter into an agreement (the “**Skate Park Use Agreement**”) pursuant to which Seller shall grant Buyer certain

rights to use the Skate Park. The Skate Park Easement Agreement and the Skate Park Use Agreement must be satisfactory in form and content to Seller and Buyer in the sole discretion of each.

7. **Pedestrian Bridge Easement Agreement.** Seller intends to construct a pedestrian bridge over Highway 99W (the “**Pedestrian Bridge**”) and is, as of the Effective Date, developing plans for the Pedestrian Bridge. The eastern end of the Pedestrian Bridge will likely be situated at or near the southwest corner of the Real Property, near the intersection of Sunset Boulevard and Highway 99W. At Closing, Seller and Buyer intend to enter into an easement agreement (the “**Pedestrian Bridge Easement Agreement**”) pursuant to which Buyer will grant Seller an easement for pedestrian access over a portion of the Real Property for pedestrian ingress to and egress from the eastern end of the Pedestrian Bridge; provided, however, that such agreement must be satisfactory in form and content to Seller and to Buyer in the sole discretion of each.

8. **Seller’s Contingencies.** In addition to the other conditions set forth in this Agreement, Seller’s obligation to close this transaction shall be subject to the following conditions:

(a) Buyer shall have complied in all material respects with all of Buyer’s covenants and agreements to be performed under this Agreement; and the representations and warranties of Buyer under this Agreement shall, in all material respects, as of the Execution Date and Closing Date, be true and complete.

(b) Buyer’s delivery to the Title Company on or before the Closing Date, for disbursement as provided herein, the Purchase Price pursuant to Section 2 of this Agreement, and any other amounts due to Seller pursuant to this Agreement, and the documents and materials described in Section 10.2 of this Agreement.

(c) The Partition shall have been completed and approved under conditions of final approval that are satisfactory to Seller in Seller’s sole discretion, and the boundary lines and the legal descriptions of the new parcels created for the Wooded Area and Skate Park shall be satisfactory to Seller in Seller’s sole discretion.

(d) The execution by Buyer of the Skate Park Easement Agreement, which must be satisfactory in form and content to Seller in Seller’s sole discretion.

(e) The execution by Buyer of the Skate Park Use Agreement, which must be satisfactory in form and content to Seller in Seller’s sole discretion.

(f) The execution by Buyer of the Pedestrian Bridge Easement Agreement, which must be satisfactory in form and content to Seller in Seller’s sole discretion.

(g) The termination of the Master Services Agreement pursuant to a termination agreement (the “**Agreement Terminating the Master Services Agreement**”), executed by Buyer, that is satisfactory in form and content to Seller in Seller’s sole discretion.

9. **Buyer’s Contingencies.**

9.1 **Conditions.** Buyer’s obligation to purchase the Property is subject to the satisfaction of each of the following conditions:

(a) Buyer’s satisfaction, in Buyer’s sole and absolute discretion, with the Property and every aspect thereof, including without limitation the physical condition of the Property, zoning and land use restrictions applicable to the Property, the location of the Property, all systems, utilities, and access rights relating to the Property, the condition of title, any survey of the Property, the economic feasibility of the Property to Buyer, Seller’s Documents, the suitability of the Property for Buyer’s intended use, and the environmental condition of the Property.

(b) Seller having complied in all material respects with all of Seller’s covenants and obligations to be performed by Seller under this Agreement (including, without limitation, the delivery of the documents and materials described in Section 10.1 of this Agreement), and the representations and warranties of Seller under this Agreement shall, in all material respects, as of the Effective Date and Closing Date, be true and complete.

(c) Issuance to Buyer at Closing of the Title Policy (as such term is defined in Section 12 of this Agreement) in the amount of the Purchase Price.

(d) There shall have been no material adverse changes to the Property or to the condition of the Property created or caused by Seller between the Effective Date and the Closing Date.

(e) The Partition shall have been completed and approved under conditions of final approval that are satisfactory to Buyer in Buyer's sole discretion, and the boundary lines of the Real Property and the legal description of the Real Property shall be satisfactory to Buyer in Buyer's sole discretion.

(f) The execution by Seller of the Skate Park Easement Agreement, which must be satisfactory in form and content to Buyer in Buyer's sole discretion.

(g) The execution by Seller of the Skate Park Use Agreement, which must be satisfactory in form and content to Buyer in Buyer's sole discretion.

(h) The execution by Seller of the Pedestrian Bridge Easement Agreement, which must be satisfactory to Buyer in Buyer's sole discretion.

(i) That certain Amended and Restated Declaration of Protective Covenants, Conditions and Restrictions for Woodhaven dated as of December 7, 1998, and recorded in the real property records of Washington County, Oregon, on January 14, 1999, as Fee No. 99004854.1 [**Confirm recording number**] (the "**Amended and Restated Declaration**") shall have been properly and validly amended, in accordance with the terms and provisions of the Amended and Restated Declaration and applicable law, to remove and release the City Property from the scope and coverage of the Amended and Restated Declaration such that (1) the Real Property is no longer deemed to be part of the "Property," as such term is defined in the Amended and Restated Declaration, and (2) the "Association," as such term is defined in the Amended and Restated Declaration, shall have no right or control whatsoever over the Real Property or any other portion of the Property. Such amendment shall be recorded, at Seller's expense, in the real property records of Washington County, Oregon, and shall be satisfactory to Buyer in Buyer's sole discretion.

(j) Seller's execution and delivery to the Title Company, at or prior to Closing, of the Agreement Terminating the Master Services Agreement, which shall be satisfactory in form and content to Buyer in Buyer's sole discretion.

9.2 Due Diligence Date. If on or before August __, 2023 (the "**Due Diligence Date**"), any of the conditions described in Section 9.1(a) of this Agreement are not satisfied or waived by Buyer, or if Buyer otherwise determines, in Buyer's sole and absolute discretion, that the Property, or any aspect thereof, for any reason or no reason whatsoever, is not satisfactory to Buyer, Buyer may terminate this Agreement by written notice to Seller given on or before the Due Diligence Date, in which event Buyer shall have no further obligations under this Agreement. If Buyer fails to provide such written notice of termination on or before the Due Diligence Date, the conditions set forth in Section 9.1(a) above shall be deemed to have been satisfied or waived by Buyer. Buyer may elect to provide written notice to Seller, prior to August __, 2023, of the satisfaction of or Buyer's waiver of the conditions set forth in Section 9.1(a) of this Agreement; and if Buyer provides such notice, the date on which such notice is given to Seller shall be deemed to be the Due Diligence Date.

9.3 Closing Conditions. If any of the conditions described in Sections 9.1(b), 9.1(c), 9.1(d), 9.1(e), 9.1(f), 9.1(g), 9.1(h), 9.1(i), and 9.1(j) of this Agreement have not been satisfied or waived by Buyer on or before the date that is sixty (60) days after the Due Diligence Date, Buyer may terminate this Agreement by written notice to Seller given at any time before the Closing, in which event Buyer shall have no further obligations under this Agreement.

10. Deliveries to Title Company.

10.1 By Seller. On or before the Closing Date, Seller shall deliver the following in escrow to the Title Company:

(a) A statutory warranty deed (the "**Deed**"), executed by Seller in the presence of a notary public, in substantially the same form and content as that which is attached hereto as Exhibit D, conveying the Real Property to Buyer, subject only to the Permitted Exceptions. (The Permitted Exceptions shall be set forth on Exhibit B to the Deed.)

(b) A Bill of Sale (the "**Bill of Sale**"), executed by Seller and in substantially the same form and content as that which is attached hereto as Exhibit E, transferring the Personal Property to Buyer. (The "Effective Date" of the Bill of Sale shall be the Closing Date.)

(c) An Assignment of Appurtenances, Licenses and Permits, Plans, and Warranties (the “**Assignment of Appurtenances**”), executed by Seller and in substantially the same form and content as that which is attached hereto as Exhibit E, pursuant to which Seller assigns to Buyer Seller’s right, title, and interest in and to the Appurtenances, the Licenses and Permits, the Plans, and the Warranties. (The “Effective Date” of the Assignment of Appurtenances shall be the Closing Date.)

(d) The Skate Park Easement Agreement, executed by Seller in the presence of a notary public.

(e) The Skate Park Use Agreement, executed by Seller.

(f) The Pedestrian Bridge Easement Agreement, executed by Seller in the presence of a notary public.

(g) The Agreement Terminating Master Services Agreement, executed by Seller.

(h) The Memorandum of Right of First Refusal, as such term is defined in Section 24.2 of this Agreement, executed by Seller in the presence of a notary public.

(i) A certification of Seller, executed by Seller, representing and warranting that Seller is not a “foreign person” as defined in Internal Revenue Code Section 1445.

(j) Such proof of Seller’s authority and authorization to enter into this Agreement and consummate the transaction contemplated by it, as may be reasonably required by the Title Company.

(k) Such affidavits or other documents, executed by Seller, that may be reasonably required by the Title Company to issue to Buyer the Title Policy and any extended coverage title insurance or title endorsements that may be purchased by Buyer.

10.2 By Buyer. On or before the Closing Date, Buyer shall deliver the following in escrow to the Title Company:

(a) The Purchase Price in accordance with Section 2 of this Agreement.

(b) The amount due to Seller, if any, after the adjustments and prorations are computed in accordance with Sections 13 and 14 of this Agreement.

(c) The Assignment of Appurtenances, executed by Buyer.

(d) The Skate Park Easement Agreement, executed by Buyer in the presence of a notary public.

(e) The Skate Park Use Agreement, executed by Buyer.

(f) The Pedestrian Bridge Easement Agreement, executed by Buyer in the presence of a notary public.

(g) The Agreement Terminating Master Services Agreement, executed by Buyer.

(h) The Memorandum of Right of First Refusal, executed by Buyer in the presence of a notary public.

(i) Such proof of Buyer’s authority and authorization to enter into this Agreement and consummate the transaction contemplated by it, as may be reasonably required by the Title Company.

11. Delivery of Possession. On the Closing Date, Seller shall deliver to Buyer exclusive possession of the Property.

12. Title Insurance. At Closing, Seller shall provide to Buyer, at Seller’s expense, an ALTA standard owner’s title insurance policy (the “**Title Policy**”), issued by the Title Company, in the amount of the Purchase Price, insuring fee title to the Real Property vested in Buyer, subject only to the Permitted Exceptions and the usual preprinted exceptions. Buyer shall have the right, if Buyer so elects, to cause the Title Policy to be issued as an extended coverage policy, provided that Buyer pays the additional premiums and all survey costs associated therewith.

13. Adjustments. At Closing, Seller shall pay for one-half of all escrow fees and costs, all real property transfer taxes and excise taxes (including without limitation the Washington County transfer tax), Seller’s share of prorations (if

any) pursuant to Section 14 of this Agreement, the cost of recording the Memorandum of Right of First Refusal, and any and all dues and/or assessments that are then due and owing or otherwise payable from or in connection with the City Property pursuant to the Amended and Restated Declaration. At Closing, Buyer shall pay all charges relating to the recordation of the Deed and of any security instruments relating to Buyer's financing, one-half of all escrow fees and costs, and Buyer's share of prorations (if any) pursuant to Section 14 of this Agreement. Buyer and Seller shall pay their own respective legal and professional fees.

14. **Prorations.** Any real property taxes and other assessments with respect to the Real Property for the tax or assessment year in which the Closing occurs shall be prorated as of the Closing Date. Seller shall pay any and all delinquent taxes and assessments on or before the Closing Date. For the purpose of calculating prorations, Buyer will be deemed to be in title to the Property and entitled to the income and responsibility for the expenses therefor, beginning at 12:01 a.m. on the Closing Date. Except as otherwise stated herein, all prorations shall be made in accordance with the customary practice in Washington County, Oregon. Such prorations, if and to the extent known and agreed on as of the Closing Date, shall be paid by Buyer to Seller (if the prorations result in a net credit to Seller) or by Seller to Buyer (if the prorations result in a net credit to Buyer) by increasing or reducing the cash to be paid by Buyer at Closing. Except as otherwise provided herein, any such prorations not determined or not agreed on as of the Closing Date shall be paid by Buyer to Seller, or by Seller to Buyer, as the case may be, in cash as soon as is practicable following the Closing Date. The terms and provisions of this Section 14 shall survive the Closing.

15. **Seller's Representations and Warranties; Indemnity.**

15.1 Seller represents and warrants to Buyer as of the Effective Date and, unless Seller notifies Buyer otherwise in writing, as of the Closing, as follows:

(a) Seller has the legal power, right, and authority to enter into this Agreement and the instruments referred to herein and to consummate the transaction contemplated herein.

(b) The execution, delivery and performance by Seller of Seller's obligations under this Agreement do not constitute a default under any of the provisions of any law, governmental rule, regulation, judgment, decree or order by which such Seller is bound, or under any provision of any contract to which such Seller is a party.

(c) There is no litigation, claim, or arbitration pending or, to Seller's Knowledge, threatened with regard to the Property or its operation.

(d) There are no leases, subleases, or other tenancies relating to the Property except for the Master Services Agreement.

(e) To Seller's Knowledge, the Property is not currently in violation of any law, including Environmental Laws. "**Environmental Laws**" includes any present and future local, state and federal laws, regulations, rules, or ordinances relating to the environment and environmental conditions, including without limitation the Resource Conservation and Recovery Act of 1976 ("**RCRA**"), 42 U.S.C. § 6901 et seq., the Comprehensive Environmental Response Compensation and Liability Act of 1980 ("**CERCLA**"), 42 U.S.C. §§ 9601 et seq., as amended by the Superfund Amendments and Reauthorization Act of 1986, the Hazardous Materials Transportation Act, 49 U.S.C. § 5101 et seq., the Clean Air Act, 42 U.S.C. § 7401 et seq., the Clean Water Act, 33 U.S.C. §§ 1251 et seq., the Toxic Substances Control Act, 15 U.S.C. §§ 2601 et seq., the Safe Drinking Water Act, 42 U.S.C. §§ 300f et seq., and all federal, state, or local regulations, orders and decrees now or hereafter promulgated thereunder. There are no underground storage tanks in or beneath the surface of the Real Property. Seller has not received any notice or notices from any regulatory agency regarding any violation of Environmental Laws with respect to the Property.

(f) Seller has not granted an option and has not executed a contract with any other party regarding a purchase or sale of the Property or any portion thereof or interest therein that remains in effect as of the Effective Date. There are no existing rights of first refusal or first offer or options to purchase the Property or any portion thereof. Seller has not sold, transferred, conveyed, or entered into any agreement regarding "air rights" or other development rights or restrictions relating to the Property.

(g) All persons and entities supplying labor, materials, and/or equipment to the Property at the request of Seller have been paid in full and, to Seller's Knowledge, no person or entity is entitled to file or record a construction lien or mechanic's lien with respect to the Property.

15.2 Seller's Knowledge. The term "**Seller's Knowledge**," as used in Section 15.1 above, shall mean the current actual knowledge of Seller, with no duty of inquiry or investigation, except for a review of Seller's files by Seller's city manager.

15.3 Indemnity. To the fullest extent permitted by law, Seller shall indemnify Buyer for, hold Buyer harmless from, and defend Buyer (with counsel reasonably acceptable to Buyer) against all claims, liabilities, demands, damages, suits, proceedings, judgments, costs and expenses (including, without limitation, reasonable attorney fees) resulting or arising from (a) the breach or falsity of any of the representations and/or warranties set forth in Section 15.1 above and/or (b) the existence in or on the Real Property or beneath the surface of the Real Property, as of the Closing Date, of any Hazardous Materials that were not placed upon or otherwise brought to the Real Property by Buyer. The term "**Hazardous Materials**" as used in this Agreement means any hazardous or toxic substance, material, waste or similar term that is regulated by local authorities, the State of Oregon and/or the federal government under Environmental Laws including, but not limited to, (A) pollutants, contaminants, pesticides, asbestos, petroleum or petroleum products or byproducts thereof, any natural gas, natural gas liquids, liquefied natural gas, or synthetic gas, any formaldehyde, any polychlorinated biphenyls (PCBs), radioactive substances, solid wastes or hazardous or extremely hazardous, special, dangerous, or toxic wastes, substances, chemicals or materials within the meaning of any Environmental Laws, including any "hazardous substance" as defined in or under CERCLA, and any "hazardous waste" as defined in or under RCRA; and (B) any other pollutants, contaminants, hazardous, dangerous or toxic chemicals, materials, wastes or other substances, including any industrial process or pollution control waste or asbestos, which pose a hazard to the environment or the health and safety of any person. Notwithstanding clause (a) of this Section 15.3, Seller shall have no liability to Buyer for a breach of any representation or warranty set forth in Section 15.1 above if Buyer obtains actual knowledge of such breach prior to the Closing and fails to terminate this Agreement by notice to Seller prior to the Closing. The terms and provisions of this Section 15.3 shall survive the Closing.

16. Buyer's Representations and Warranties. In addition to any express agreements of Buyer contained herein, the following constitute representations and warranties of Buyer to Seller as of the Effective Date and, unless Buyer notifies Seller otherwise in writing, as of the Closing:

(a) Buyer has the legal power, right, and authority to enter into this Agreement and the instruments referred to herein and to consummate the transaction contemplated herein.

(b) The execution, delivery and performance by Buyer of Buyer's obligations under this Agreement do not constitute a default under any of the provisions of any law, governmental rule, regulation, judgment, decree or order by which Buyer is bound, or under any provision of any contract to which Buyer is a party or by which Buyer is bound.

17. As Is. Except as expressly set forth in this Agreement or in the Deed or any of the other documents that are to be delivered by Seller to the Title Company or Buyer at Closing (collectively, the "**Other Closing Documents**"), Buyer acknowledges that no warranties, guarantees or representations have been or are being made by Seller or any agent or representative of Seller concerning the Property. Buyer accepts the Property, "AS IS, WITH ALL FAULTS" without any representations or warranties by Seller or any agent or representative of Seller, expressed or implied, except as set forth in this Agreement, the Deed, or the Other Closing Documents. Seller shall not be responsible for any failure to investigate the Property on the part of Buyer.

18. Casualty and Condemnation. If, prior to Closing, any portion of the Real Property is damaged or destroyed by fire or other cause or taken or threatened to be taken under power of eminent domain, Seller shall give Buyer written notice thereof within ten (10) days after Seller first receives knowledge or notice of such damage, destruction, taking, or threatened taking, and Buyer may elect to terminate this Agreement by giving written notice of its election to Seller within fifteen (15) days after receiving notice of such damage, destruction, taking, or threatened taking. If Buyer does not give such written notice within such fifteen (15)-day period, then Closing shall occur as scheduled, with no reduction in the Purchase Price, and Seller will assign to Buyer the physical damage proceeds of any insurance policies payable to Seller or Seller's portion of any condemnation award; and, if it is an insured casualty, the amount of any deductible of Seller's insurance (not to exceed the amount of the loss) shall be credited against the Purchase Price. If Buyer elects to terminate this Agreement as provided above, this Agreement shall be deemed canceled and of no

further force or effect. In such event, Seller shall be entitled to retain all insurance and/or condemnation proceeds received by Seller with respect to such destruction or condemnation.

19. **Notices.** All notices or other communications required or permitted under this Agreement shall be in writing and shall be (a) personally delivered (including by means of professional messenger service), which notice or other communication shall be deemed given on the date of its receipt at the office of the addressee; (b) sent by registered or certified mail, postage prepaid, return receipt requested, which notice or other communication shall be deemed given two (2) business days after the date of its deposit in the United States mail; (c) sent by overnight delivery using a nationally recognized overnight courier service, which notice or other communication shall be deemed given one business day after the date of its deposit with such courier; or (d) if an email address is shown below, sent by email, which notice or other communication shall be deemed given on the date sent as long as such date is a business day and is received by 5 p.m. (Pacific time) on that day; if the email is sent on a day that is not a business day or is received after 5 p.m. (Pacific time) on a business day, the notice or other communication that is contained in such email shall be deemed given on the first business day after the day on which the email is sent. Notices shall be sent to the following addresses:

To Seller: City of Sherwood
22560 S.W. Pine Street
Sherwood, Oregon 97140
Email: campbellk@sherwoodoregon.gov

To Buyer: YMCA of Columbia-Willamette
9500 S.W. Barbur Boulevard, Suite 200
Portland, Oregon 97219
Attn: Tyler Wright
Email: twright@ymcacw.org

With a copy sent James F. Dulcich
on the same day Schwabe, Williamson & Wyatt, P.C.
to: 1211 S.W. Fifth Avenue, Suite 1900
Portland, Oregon 97204
Email: jdulcich@schwabe.com

Notice of change of address shall be given by written notice in the manner detailed in this Section 19. Notices may be given by a party or a party’s attorney.

20. **Brokers.** Buyer represents and warrants to Seller that no broker or finder has been engaged by Buyer in connection with the transaction contemplated by this Agreement. Seller represents and warrants to Buyer that no broker or finder has been or engaged by Seller in connection with the transaction contemplated by this Agreement. Seller shall indemnify Buyer for, hold Buyer harmless from, and defend Buyer against any claims for commissions or fees asserted by any broker or finder claiming by, through, or under Seller; and Buyer shall indemnify Seller for, hold Seller harmless from, and defend Seller against any claims for commissions or fees asserted by any broker or finder claiming by, through, or under Buyer.

21. **Required Actions of Buyer and Seller.** Buyer and Seller agree to execute all such reasonable instruments and documents and to take all reasonable actions pursuant to the provisions of this Agreement in order to consummate the purchase and sale contemplated herein, and shall use their respective commercially reasonable efforts to accomplish the Closing in accordance with the provisions herein. The immediately preceding sentence shall not affect Buyer’s right to terminate this Agreement pursuant to Section 4.2, 9.2, 9.3, 18, or 22.1 of this Agreement.

22. **Remedies.**

22.1 **Buyer’s Remedies.** If the conditions set forth in Section 8 of this Agreement are satisfied or waived by Seller and Seller fails to convey the Property to Buyer as the result of Seller’s breach of or default under this Agreement or failure to perform as required by this Agreement, through no fault of Buyer, Buyer may elect (a) to terminate this Agreement or (b) seek and enforce specific performance of this Agreement.

22.2 **Seller’s Remedies.** If the conditions set forth in Section 9.1 of this Agreement are satisfied or waived by Buyer and the Closing of the sale of the Property fails to occur as the result of Buyer’s breach of or default under this

Agreement or failure to perform as required under this Agreement, through no fault of Seller, Seller's sole remedy hereunder shall be to terminate this Agreement by giving notice to Buyer of such termination. In the event of such termination, neither Seller nor Buyer shall have any further duties or obligations under this Agreement.

23. **Assignment.** Buyer may not assign Buyer's rights and obligations under this Agreement without the prior written consent of Seller. No assignment shall release the Buyer herein named from any obligation or liability under this Agreement; the Buyer herein named and any assignee or assignees shall be jointly and severally liable for all such obligations and liabilities.

24. **Right of First Refusal.** Seller shall have a right of first refusal to purchase the Property from Buyer pursuant to the terms and provisions of this Section 24 (the "**Right of First Refusal**").

24.1 **Procedure.** If, at any time between the Closing Date and the date that is twenty (20) years after the Closing Date, Buyer receives from any third party that is not affiliated with Buyer (an "**Offeror**") a bona fide offer to purchase the Property (the "**Offer**"), and Buyer is willing to accept such Offer, Buyer shall, prior to accepting the Offer, provide Seller with written notice of the Offer (the "**Offer Notice**"), which Offer Notice shall describe the economic and other material terms of the Offer (the "**Offer Terms**"). Within thirty (30) days after Seller's receipt of the Offer Notice ("**Seller's 30-day Response Period**"), Seller shall notify Buyer in writing whether Seller intends to purchase the Property pursuant to the Offer Terms. If Seller provides Buyer with written notice within Seller's 30-day Response Period that Seller accepts the Offer Terms, Seller and Buyer shall use commercially reasonable efforts to promptly enter into a purchase and sale agreement, in a commercially reasonable form to be prepared by Buyer and reasonably acceptable to Seller, that includes the Offer Terms and such other commercially reasonable terms. If Seller fails to notify Buyer within Seller's 30-day Response Period that Seller accepts Offer Terms, or if Seller notifies Buyer within Seller's 30-day Response Period of Seller's acceptance of the Offer but Seller and Buyer fail to enter into a purchase and sale agreement within forty-five (45) days after Buyer provides Seller with an initial draft of a purchase and sale agreement, and such failure is not due solely to Buyer's unreasonable delays, the Offer shall be deemed to have been rejected, and Buyer shall be free to sell the Property to the Offeror during the twelve (12) month period following the date of such rejection, for a sale price equal to or greater than ninety percent (90%) of the sale price set forth in the Offer Terms. If such sale of the Property to the Offeror occurs within such twelve (12)-month period, Seller shall have no further Right of First Refusal with respect to the Property, and Seller shall, within twenty (20) days after Buyer's written request, execute in the presence of a notary public and deliver to Buyer an instrument in commercially reasonable form and content, prepared by Buyer, that confirms the termination of the Right of First Refusal described in this Section 24.1; and Buyer is authorized to record such instrument in the real property records of Washington County, Oregon. If the sale to the Offeror is not consummated within twelve (12) months after Seller's rejection of the Offer for a sale price equal to or greater than ninety percent (90%) of the sale price set forth in the Offer Terms, then, before Buyer may sell the Property to such Offeror, Buyer must resubmit the latest offer of the Offeror to Seller pursuant to the provisions of this Section 24.1, and such resubmitted offer shall be deemed to be the Offer for purposes of this Section 24.1. At such time as Seller rejects or is deemed to have rejected the Offer Terms, Seller shall, upon Buyer's request, execute and deliver to Buyer a commercially reasonable certificate prepared by Buyer stating that Buyer has complied with the procedure set forth in this Section 24.1 and that Seller has rejected the Offer Terms.

24.2 **Memorandum.** Seller and Buyer shall, at Closing, execute a Memorandum of Right of First Refusal that is in substantially the same form and content as that which is attached hereto as Exhibit G (the "**Memorandum of Right of First Refusal**"). The Memorandum of Right of First Refusal shall be recorded at Closing at Seller's expense.

24.3 **Expiration of the Right of First Refusal.** The Right of First Refusal shall expire and be of no further force or effect on the date that is twenty (20) years after the Closing Date, unless it is sooner terminated pursuant to Section 24.1 above. Upon such expiration, Seller shall, within twenty (20) days after Buyer's written request, execute in the presence of a notary public and deliver to Buyer an instrument in commercially reasonable form and content, prepared by Buyer, that confirms the expiration and termination of the Right of First Refusal; and Buyer is authorized to record such instrument in the real property records of Washington County, Oregon.

24.4 **Survival.** The terms and provisions of this Section 24 shall survive the Closing.

25. **Miscellaneous.**

25.1 **Partial Invalidity.** If any term or provision of this Agreement or the application to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those to which it is held invalid or unenforceable, shall not

be affected thereby, and each such term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

25.2 **Waivers.** No waiver of any breach of any covenant or provision contained herein shall be deemed a waiver of any preceding or succeeding breach thereof, or of any other covenant or provision herein contained. No extension of time for performance of any obligation or act shall be deemed an extension of the time for performance of any other obligation or act.

25.3 **Exhibits.** The exhibits referenced in this Agreement are a part of this Agreement as if fully set forth in this Agreement.

25.4 **Successors and Assigns.** Subject to Section 23 of this Agreement, this Agreement shall be binding on and shall inure to the benefit of the permitted successors and permitted assigns of the parties to it.

25.5 **Representation.** The initial draft of this Agreement was prepared by Schwabe, Williamson & Wyatt, P.C., which represents Buyer. Seller acknowledges that Seller had an opportunity to consult with separate legal counsel prior to executing this Agreement. Seller and Buyer waive any claim that any term or condition of this Agreement should be construed against the drafter. This Agreement will be construed as if it had been prepared by both of the parties hereto.

25.6 **Attorney Fees.** In the event that Seller or Buyer institutes against the other a suit, action, arbitration, or other legal proceeding of any nature whatsoever, relating to this Agreement or to the rights or obligations of the parties with respect thereto, the prevailing party shall be entitled to recover from the other party the prevailing party's reasonable attorney, paralegal, accountant, expert witness (whether or not called to testify at trial or other proceeding) and other professional fees and all other fees, costs, and expenses actually incurred and reasonably necessary in connection therewith, including but not limited to deposition transcript and court reporter costs, as determined by the judge or arbitrator at trial or other proceeding, and including such fees, costs and expenses incurred in any appellate or review proceeding, or in collecting any judgment or award, or in enforcing any decree rendered with respect thereto, in addition to all other amounts provided for by law. This cost and attorney fees provision shall apply with respect to any litigation or other proceedings in bankruptcy court, including litigation or proceedings related to issues unique to bankruptcy law.

25.7 **Entire Agreement.** This Agreement (including any exhibits attached to it) is the final expression of, and contains the entire agreement between the parties with respect to the subject matter of the Agreement and supersedes all prior letters of intent and understandings with respect to the subject matter of the Agreement. This Agreement may not be modified, changed, supplemented, or terminated, and no obligations under it may be waived, except by written instrument signed by both parties. The parties do not intend to confer any benefit on any person, firm, or corporation other than the parties hereto.

25.8 **Counterparts.** This Agreement may be executed in counterparts, each of which will be considered an original and all of which together will constitute one and the same agreement.

25.9 **Time of Essence.** Seller and Buyer hereby acknowledge and agree that time is strictly of the essence with respect to each and every term, condition, obligation, and provision of this Agreement.

25.10 **Construction.** Headings at the beginning of each section and subsection of this Agreement are solely for the convenience of the parties and are not a part of this Agreement. Whenever required by the context of this Agreement, the singular shall include the plural, and the masculine shall include the feminine, and vice versa. Unless otherwise indicated, all references to sections are to this Agreement. Unless otherwise specified, in computing any period of time described in this Agreement, the day of the act or event after which the designated period of time begins to run is not to be included and the last day of the period so computed is to be included, unless the last day is a Saturday, Sunday, or legal holiday, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday, nor legal holiday. As used in this Agreement, "**business day**" means a day other than a Saturday, Sunday or legal holiday.

25.11 **Governing Law.** The parties expressly agree that this Agreement shall be governed by, interpreted under, and construed and enforced in accordance with the laws of the State of Oregon.

25.12 **Execution Date.** The “**Execution Date**” of this Agreement is the later of the dates shown beneath the parties’ signatures below.

25.13 **Statutory Disclaimer.** THE PROPERTY DESCRIBED IN THIS INSTRUMENT MAY NOT BE WITHIN A FIRE PROTECTION DISTRICT PROTECTING STRUCTURES. THE PROPERTY IS SUBJECT TO LAND USE LAWS AND REGULATIONS THAT, IN FARM OR FOREST ZONES, MAY NOT AUTHORIZE CONSTRUCTION OR SITING OF A RESIDENCE AND THAT LIMIT LAWSUITS AGAINST FARMING OR FOREST PRACTICES, AS DEFINED IN ORS 30.930, IN ALL ZONES. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON’S RIGHTS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92.010 OR 215.010, TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL, TO VERIFY THE EXISTENCE OF FIRE PROTECTION FOR STRUCTURES AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010.

SELLER:	BUYER:
CITY OF SHERWOOD, OREGON, a municipal corporation	THE YOUNG MEN’S CHRISTIAN ASSOCIATION OF COLUMBIA- WILLAMETTE, an Oregon nonprofit corporation, doing business as YMCA of Columbia-Willamette
By:_____	By:_____
Name:_____	Tyler Wright, President
Title:_____	Date: _____, 2023
Date: _____, 2023	

Exhibits:

- Exhibit A: Legal Description of the Land
- Exhibit B: Depiction of the Skate Park
- Exhibit C: Seller’s Documents
- Exhibit D: Statutory Warranty Deed
- Exhibit E: Bill of Sale
- Exhibit F: Assignment of Appurtenances
- Exhibit G: Memorandum of Right of First Refusal

**EXHIBIT A
TO
PURCHASE AND SALE AGREEMENT
(Legal Description of the Land)**

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**EXHIBIT B
TO
PURCHASE AND SALE AGREEMENT
(Depiction of the Skate Park)**

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**EXHIBIT C
TO
PURCHASE AND SALE AGREEMENT**

(Seller's Documents)

1. Any surveys relating to the City Property.
2. Copies of all reports, tests, and/or studies relating to the condition of the City Property, including, without limitation, environmental reports, soils and geotechnical reports, and any inspection reports.
3. All permits, warranties or similar documents relevant to the City Property or any rights appurtenant to the City Property.
4. Any written notices or claims received by Seller with respect to the City Property that remain unresolved.
5. Copies of all files, records, permits, reports, and correspondence to or from any governmental agency relating to the use, storage, release, spill, leakage, or disposal of Hazardous Materials at or affecting the City Property, or any other matters that would materially affect the value of the City Property.
6. Any as-built plans and permits relating to the Improvements and all documents relating to the construction, maintenance, and/or repair of the Improvements and any other portions of the City Property.

**EXHIBIT D
TO
PURCHASE AND SALE AGREEMENT**

After recording, return to:

Tyler Wright
YMCA of Columbia-Willamette
9500 S.W. Barbur Boulevard, Suite 200
Portland, Oregon 97219

*Until a change is requested, all tax statements
shall be sent to the following address:*

Tyler Wright
YMCA of Columbia-Willamette
9500 S.W. Barbur Boulevard, Suite 200
Portland, Oregon 97219

STATUTORY WARRANTY DEED

City of Sherwood, Oregon, a municipal corporation, Grantor, conveys and warrants to The Young Men's Christian Association of Columbia-Willamette, an Oregon nonprofit corporation, doing business as the YMCA of Columbia-Willamette, Grantee, the real property located in Washington County, Oregon, described on the attached Exhibit A, free of encumbrances except for those described on the attached Exhibit B.

The true consideration for this conveyance is \$5,000,000.

BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010. THIS INSTRUMENT DOES NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92.010 OR 215.010, TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL, TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES, AS DEFINED IN ORS 30.930, AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010.

Dated this _____ day of _____, 202__.

GRANTOR:

CITY OF SHERWOOD, OREGON, a
municipal corporation

By: _____

Name: _____

Title: _____

STATE OF OREGON)
)ss.
COUNTY OF WASHINGTON)

The foregoing instrument was acknowledged before me on _____, 202__, by
_____, as _____ of City of Sherwood, Oregon, a municipal
corporation, Grantor.

Notary Public for Oregon
My commission expires: _____

**EXHIBIT A
TO
STATUTORY WARRANTY DEED
(Legal Description of the Real Property)**

**EXHIBIT B
TO
STATUTORY WARRANTY DEED
(Permitted Exceptions)**

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**EXHIBIT E
TO
PURCHASE AND SALE AGREEMENT**

BILL OF SALE

This Bill of Sale, effective as of _____, 202__ (the “**Effective Date**”), is given by City of Sherwood, Oregon, a municipal corporation (“**Seller**”), in favor of The Young Men’s Christian Association of Columbia-Willamette, an Oregon nonprofit corporation, doing business as the YMCA of Columbia-Willamette (“**Buyer**”).

A. Seller and Buyer entered into a Purchase and Sale Agreement with an effective date of _____, 2023 (the “**Sale Agreement**”), pursuant to which Seller agreed to sell to Buyer and Buyer agreed to purchase from Seller certain real property described on Exhibit A attached hereto (the “**Real Property**”), together with associated personal property.

B. For valuable consideration, the receipt of which is hereby acknowledged, Seller hereby sells, transfers and assigns to Buyer all of Seller’s right, title, and interest in and to all building systems, fixtures, equipment, machinery, irrigation systems and equipment, and other items of personal property owned by Seller and used in connection with the Real Property including, without limitation, the items of personal property described on the attached Exhibit B (collectively, the “**Personal Property**”). Seller hereby represents, covenants and warrants to Buyer that the Personal Property is being sold, transferred, and assigned to Buyer free and clear of all liens, encumbrances, and security interests whatsoever, and that Seller has the right to sell, transfer, and assign the Personal Property to Buyer.

SELLER:

CITY OF SHERWOOD, OREGON, a
municipal corporation

By:_____

Name:_____

Title:_____

**EXHIBIT A
TO
BILL OF SALE**

(Legal Description of the Real Property)

**EXHIBIT B
TO
BILL OF SALE**

(Specific Items of Personal Property)

1

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**EXHIBIT F
TO
PURCHASE AND SALE AGREEMENT**

**ASSIGNMENT OF APPURTENANCES, LICENSES AND PERMITS,
PLANS, AND WARRANTIES**

This Assignment of Appurtenances, Licenses and Permits, Plans, and Warranties (this “**Assignment**”) is entered into as of this ____ day of _____, 202__ (the “**Effective Date**”), between City of Sherwood, Oregon, a municipal corporation (“**Assignor**”), and The Young Men’s Christian Association of Columbia-Willamette, an Oregon nonprofit corporation, doing business as the YMCA of Columbia-Willamette (“**Assignee**”).

Recitals

A. Assignor and Assignee entered into a Purchase and Sale Agreement with an effective date of _____, 2023 (the “**Sale Agreement**”). Pursuant to the Sale Agreement, Assignor is selling to Assignee, and Assignee is purchasing from Assignor, simultaneously with the delivery of this Assignment, all of Assignor’s right, title, and interest in that certain real property located in Sherwood, Oregon, and described on Exhibit A attached hereto (the “**Property**”).

B. Pursuant to the Sale Agreement, Assignor agreed to transfer and assign to Assignee all of Assignor’s right, title, and interest in and to all Appurtenances, Licenses and Permits, Plans, and Warranties, as such terms are defined in the Sale Agreement.

Assignment

Now, therefore, for valuable consideration, Assignor and Assignee agree as follows:

1. Assignor hereby assigns, transfers and sets over unto Assignee all of Assignor’s right, title, and interest in and to all Appurtenances, Licenses and Permits, Plans, and Warranties, as such terms are defined in the Sale Agreement, free and clear of all liens, encumbrances, and security interests whatsoever.

2. In the event that any party to this Assignment institutes a suit, action, arbitration, or other legal proceeding of any nature whatsoever against the other party, relating to this Assignment or to the rights or obligations of the parties with respect thereto, the prevailing party shall be entitled to recover from the other party the prevailing party’s reasonable attorney, paralegal, accountant, expert witness (whether or not called to testify at trial or other proceeding) and other professional fees and all other fees, costs, and expenses actually incurred and reasonably necessary in connection therewith, including but not limited to deposition transcript and court reporter costs, as determined by the judge or arbitrator at trial or other proceeding, and including such fees, costs and expenses incurred in any appellate or review proceeding, or in collecting any judgment or award, or in enforcing any decree rendered with respect thereto, in addition to all other amounts provided for by law. This cost and attorney fees provision shall apply with respect to any litigation or other proceedings in bankruptcy court, including litigation or proceedings related to issues unique to bankruptcy law.

3. This Assignment shall be binding on and inure to the benefit of the parties hereto and their respective successors in interest and assigns.

4. This Assignment may be signed in one or more counterparts, each of which shall be deemed an original and all of which counterparts shall be deemed one and the same instrument.

SELLER:

CITY OF SHERWOOD, OREGON, a
municipal corporation

By:_____

Name:_____

Title:_____

BUYER:

THE YOUNG MEN’S CHRISTIAN
ASSOCIATION OF COLUMBIA-
WILLAMETTE, an Oregon nonprofit
corporation, doing business as YMCA of
Columbia-Willamette’

By:_____
Tyler Wright, President

EXHIBIT A
TO
ASSIGNMENT OF APPURTENANCES, LICENSES AND PERMITS,
PLANS, AND WARRANTIES

(Legal Description of the Real Property)

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**EXHIBIT G
TO
PURCHASE AND SALE AGREEMENT**

After Recording, Return to:

City of Sherwood, Oregon
22560 S.W. Pine Street
Sherwood, Oregon 97140
Attention: _____

MEMORANDUM OF RIGHT OF FIRST REFUSAL

This Memorandum of Right of First Refusal (this “**Memorandum**”) is executed by City of Sherwood, Oregon, a municipal corporation (the “**City**”), whose address is 22560 S.W. Pine Street, Sherwood, Oregon 97140, and The Young Men’s Christian Association of Columbia-Willamette, an Oregon nonprofit corporation, doing business as YMCA of Columbia-Willamette (the “**YMCA**”), whose address is 9500 S.W. Barbur Boulevard, Suite 200, Portland, Oregon 97219, as a memorandum of an unrecorded right of first refusal (the “**Right of First Refusal**”), as such Right of First Refusal is described in that certain Purchase and Sale Agreement having an effective date of _____, 2023, between the City, as seller, and the YMCA, as buyer (as amended from time to time, the “**Sale Agreement**”) concerning the real property described on Exhibit A attached hereto and having a street address of 23000 S.W. Pacific Highway, Sherwood, Oregon 97140 (the “**Property**”).

- 1. Right of First Refusal.** The YMCA, as owner of the Property, has granted the City a Right of First Refusal to purchase the Property, upon and subject to the terms, provisions, and conditions set forth in the Sale Agreement. The Right of First Refusal will expire on the date that is twenty (20) years after the date of the recordation of this Memorandum unless it is sooner terminated pursuant to the terms, provisions, and conditions set forth in the Sale Agreement.
- 2. Miscellaneous.** This Memorandum is not a complete summary of the Right of First Refusal or the terms and provisions of the Sale Agreement relating thereto. Provisions in this Memorandum should not be used in interpreting the terms of the Right of First Refusal. In the event of a conflict between this Memorandum and the terms and provisions of the Sale Agreement relating to the Right of First Refusal, the terms and provisions of the Sale Agreement shall control.

[Signature Page Follows]

THE CITY:

CITY OF SHERWOOD, OREGON, a
municipal corporation

By: _____

Name: _____

Title: _____

THE YMCA:

THE YOUNG MEN'S CHRISTIAN
ASSOCIATION OF COLUMBIA-
WILLAMETTE, an Oregon nonprofit
corporation, doing business as YMCA of
Columbia-Willamette

By: _____

Tyler Wright, President

STATE OF OREGON)
)ss.
County of _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 202__, by _____, as _____ of City of Sherwood, Oregon, an municipal corporation.

Notary Public for Oregon
My Commission Expires: _____

STATE OF OREGON)
)ss.
County of _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 202__, by Tyler Wright, as President of The Young Men's Christian Association of Columbia-Willamette, an Oregon nonprofit corporation, doing business as YMCA of Columbia-Willamette.

Notary Public for Oregon
My Commission Expires: _____

**EXHIBIT A
TO
MEMORANDUM OF RIGHT OF FIRST REFUSAL
(Legal Description of the Real Property)**

1

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TO: Sherwood City Council

FROM: Eric Rutledge, Community Development Director

Through: Keith D. Campbell, City Manager and Ryan Adams, City Attorney

SUBJECT: **Ordinance 2023-003, Amending Title 12 of the Sherwood Municipal Code and Adopting Standards and Procedures for a Permanent Outdoor Seating Program**

Issue: Shall the City Council adopt Ordinance 2023-003, amending Title 12 of the Municipal Code and adopting a permanent program for outdoor seating?

Background:

In Spring 2022 the City launched a pilot program that allowed Old Town businesses to occupy a portion of the public right-of-way (sidewalk or up to two on-street parking stalls) for seating customers. In February 2023 the City Council held a work session to discuss the results of the program and whether to make it permanent. Council directed staff to draft an ordinance making the program permanent with the following changes to the pilot:

- Apply program city-wide and shall not be limited to Old Town
- Sidewalk use shall be permitted year-around
- Street (parking stall) use shall only be permitted seasonally
- Allow annual renewal of permit with minimal renewal fee

Proposed Code: The proposed code language is provided as Exhibit A to Ordinance 2023-003. Strict design standards continue to apply, including those involving pedestrian and vehicle circulation, tents, and lighting. Businesses will be required to provide proof of liability insurance and valid OLCC permits (if alcohol is served) prior to receiving a permit.

Financial Impacts: Other than the cost of codification and updating the Municipal Code, there are no financial impacts to the City by adopting the proposed amendments.

Alternatives:

- Approve the ordinance and code language as written
- Approve the ordinance and code language with modifications
- Do not approve the ordinance and code language

Recommendation:

Staff respectfully recommends approval of the proposed amendments. As this is the first reading on the ordinance, staff recommends holding the first public hearing, including acceptance of public testimony, prior to issuing a final decision at the second reading.



ORDINANCE 2023-003

AMENDING TITLE 12 OF THE SHERWOOD MUNICIPAL CODE AND ADOPTING STANDARDS AND PROCEDURES FOR A PERMANENT OUTDOOR SEATING PROGRAM

WHEREAS, The City facilitated a pilot Outdoor Seating Program to provide additional opportunity for restaurant and business seating in Sherwood; and

WHEREAS, Outdoor seating refers to use of City right-of-way for service of prepared food and beverages or seating for patrons of a business licensed to provide such services; and

WHEREAS, City Council has reviewed the results of the pilot program and wishes to make the program permanent; and

WHEREAS, the proposed amendments were subject to full and proper notice and review as required by the municipal code and state law; and

WHEREAS, the Sherwood City Council held two public hearings on March 21, 2023, and April 4, 2023, to take public testimony and deliberate; and

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

Section 1. Title 12 of the Sherwood Municipal Code is amended to include a new chapter 12.03 as set forth in Exhibit A, attached to this Ordinance.

Section 2. The City Recorder is hereby directed to enter a copy of this Ordinance in the record of the proceedings of this Council and to take such other actions necessary to effectuate this addition to the Municipal Code.

Section 3. 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 April 4, 2023.

Tim Rosener, Mayor

Date

Attest:

Sylvia Murphy, MMC, City Recorder

	<u>AYE</u>	<u>NAY</u>
Standke	_____	_____
Giles	_____	_____
Scott	_____	_____
Young	_____	_____
Brouse	_____	_____
Mays	_____	_____
Rosener	_____	_____

Chapter 12.03 OUTDOOR SEATING PERMIT

12.03.010 Applicability.

An Outdoor Seating Permit is required for businesses seeking authorization for long term and on-going seating in City right-of-way (i.e. sidewalks and on-street parking spaces). "Outdoor seating" refers to use of City right-of-way for service of prepared food or beverages, as well as seating for patrons of a business by a business licensed to provide such services.

12.03.20 Application Requirements and Duration of Permit.

- A. Form
A request for an Outdoor Seating Permit shall be made on forms prescribed and provided by the City and shall be prepared and submitted in compliance with this Code. An application shall be reviewed against the standards and criteria effective at the time of application submittal. Signature from the abutting property owner and business owner or their legal representatives must be on the application form.
- B. Fee
Designated fee for permit based on the City of Sherwood Fee Schedule.
- C. Submittal Requirements
 - 1. Application Form
 - 2. Certificate of Liability Insurance, with limits of liability as determined by the City's Risk Manager
 - 3. Copy of Oregon Liquor Control Commission (OLCC) permits (If alcohol use is planned in the public right-of-way)
 - 4. Copy of any required Tualatin Valley Fire and Rescue (TVF&R) permit for tents
 - 5. A detailed site plan, drawn to scale, showing the following information:
 - a. Business frontage width along street
 - b. Sidewalk width
 - c. On-street parking location and width
 - d. If proposing to use on-street parking spaces, proposed location and style of barriers
 - e. Street name/address of business
 - f. Existing public infrastructure including trash cans, benches, signs, hydrants, storm drains, etc
 - g. Location of ADA parking and ADA ramps
 - h. Proposed location of tables, chairs, and related items
 - i. Location of any proposed tents or structures with sufficient detail to confirm the tent standards are met
 - j. Other related components not listed above (e.g. special equipment etc.)
- D. Duration of Permit and Annual Renewal
 - 1. Permits are valid for a period of 12-months from the date of issuance, based on the seasonal restrictions described below
 - a. A permit issued for use of the sidewalk is valid year-round and must be renewed annually
 - b. A permit issued for use of the street is valid between March 1 and October 31 of each year and must be renewed annually from the date of issuance

12.03.30 Design and Placement Standards

A. General Rules

1. Materials - The permit holder is solely responsible for the costs all equipment, materials, barricades, and signage as is required for compliance to this program.
2. Maintenance - Permittee shall maintain the permitted area, and all areas immediately adjacent to the permitted area, in a good, clean and safe condition. Upon the expiration of the permit, Permittee shall remove all personal property from the permitted area.
3. Inspection - The City may inspect all permitted areas for compliance with permit requirements and for safety at any time.
4. Right-of-Way - This program only allows use of City of Sherwood right-of-way; right-of-way owned by other jurisdictions is not eligible for use under this program. Only sidewalks and on-street parking spaces may be used; no other portions of City right-of-way (e.g. vehicular travel lanes) may be used.

B. Sidewalk Use Standards

1. Placement – A permit may only allow use of sidewalk space within the width of the applicant’s sidewalk-facing storefront. The sidewalk shall be maintained in accordance with ADA standards and shall provide a minimum 5 ft. wide clear zone for pedestrian circulation. This means a straight 5 ft. path is required down an entire sidewalk block and no seating or other obstructions is allowed in this area. If the sidewalk abutting the storefront cannot provide seating while meeting this standard, an outdoor seating permit will not be issued.
2. Structures - Sidewalk space may not have any fixtures that disturb the sidewalk material and all components must be above-ground. No overhead structures or canopies, aside from outdoor-grade fabric umbrellas, are permitted.
3. Heating and Electrical - The only lighting permitted to be used in sidewalk areas is battery-operated, tabletop lighting such as tea lights or similar used atop dining tables. Heaters may be allowed if approved by Tualatin Valley Fire & Rescue (TVF&R).

C. On-street Parking Use Standards

1. Placement
 - a. Outdoor Seating Permits allow for use of a maximum of two parking spaces directly in front of the applicant business. If one or both of the two parking spaces are in front of an adjacent business, written permission from the adjacent business owner must be obtained and included with the application.
 - b. All outdoor dining materials must be placed:
 - 1) A minimum of 20 feet from a crosswalk or a stop sign.
(Note: Overhead structures will need to be located further from a stop sign. See Overhead Structures below.)
 - 2) A minimum of 10 feet from a fire hydrant
 - 3) Without blocking drive aisles or fire lanes
 - 4) Without covering storm drains or water and gas valves in the street. In circumstances where this is impractical, the City Engineer will review and may approve on a case-by-case basis if the applicant can show that the placement will not pose a safety risk and will not unreasonably limit access.
2. Platforms

All on-street parking spaces that abut a curb and will be used for outdoor dining must include a deck that meets the following requirements:

 - a. Must bring the floor height level with the height of the public sidewalk
 - b. Must be constructed in a way that does not disturb the public right-of-way and must rest above-ground
 - c. Must have a railing
 - d. Must be designed to allow for proper draining

- e. Applicants are required to obtain stamped drawings of all structural components from a structural engineer, including decking and railing details.
- 3. Overhead Structures
Overhead structures will be allowed if they meet the following requirements:
 - a. Overhead structures must be constructed of wood, steel, outdoor-grade fabric, umbrellas, metal panels, corrugated plastic, or be properly weighted temporary weather protection such as tents or canopies.
 - b. Any side panels between the required railing and the bottom of the overhead structure must be clear.
 - c. Applicants are required to obtain stamped drawings of all structural components from a structural engineer, including decking and railing details.
 - d. Overhead structures are not permitted within the first permissible space next to a stop sign.
 - e. In circumstances where the structure will block a street sign, the City Engineer will review the design and may approve based on a case-by-case basis if the applicant can show that the placement will not pose a safety risk.
 - f. Overhead structures may not be permanently affixed to the ground and shall not cause damage to any portion of the right-of-way including the roadway or sidewalk.
- 4. Heating and Electrical
Use of heaters are permitted, with approval from Tualatin Valley Fire & Rescue (TVF&R). Electricity, if used must be that of the business and not utilize the outlets in the City Right of Way
- 5. Seasonal Removal
The applicant is responsible for removing the on-street seating by October 31 of each year. If the seating is not removed, the City may take action to remove the seating and associated improvements in accordance with section 12.03.040 below.

D. Tent Standards

- 1. For tents near intersections, the tent must be placed so as not to interfere with driver sight distance.
- 2. The maximum combined tent coverage area is 700 square feet.
- 3. All tents must be fire retardant and fire rated.
- 4. All tents must have a minimum of 8' clearance between the lowest point of the tent roof and the ground.
- 5. No staking of tents is permitted in public right-of-way.
- 6. All tent legs must be weighted as below or as otherwise recommended by manufacturer/installer:
 - a. Each leg must have a minimum of 40lbs of weight.
 - b. Ropes and straps must be in good repair and of sufficient strength rating.
 - c. Bungee and rubber straps are prohibited.
 - d. Weights must be on the ground and not dangling.
 - e. Weights and lines must not pose a hazard and must be clearly visible.
 - f. Items that make acceptable weights:
 - 1) 5 gallon bucket full of water, sand, or concrete
 - 2) 4" PVC pipe at least 36" long filled with concrete
 - 3) Large commercially available tent weights
 - 4) Sandbags or salt bags 40lbs or heavier
- 7. Tents shall be secured as soon as they are put up and brought down as soon as weight is removed. Unsecured tents shall not be left in place at any time.
- 8. Smoking is prohibited under tents.
- 9. The tent shall not block fire hydrants, storm drains, manholes, catch basins, or other similar infrastructure improvements.
- 10. No connection of the tent to any water, sanitary, or storm sewer utility shall be allowed.

11. Tents shall not obstruct pedestrian connections.
12. During permit review, tents may be subject to additional requirements for public safety by the City and TVF&R.

12.03.040 Removal of private facilities within ROW.

- A. No less than 30 days after written notice from the city, the owner of any private facilities located in the ROW (including private facilities attached to public facilities) shall, at its own expense, temporarily or permanently disconnect, remove, relocate, change, or alter the position of, any private facilities located within the ROW whenever the city has determined that such is reasonably necessary for the construction, repair, maintenance, or installation of any public improvement (regardless of whether the city or another entity is constructing said improvement) located in, or the operations of the city in, the ROW.
- B. The city retains the right and privilege to temporarily or permanently disconnect, remove, relocate, change, or alter the position of any private facilities located within the ROW (including private facilities attached to public facilities) in the event of an emergency, as the city may determine to be necessary, appropriate, or useful in response to any imminent danger to public health, safety, or property.
- C. The city retains the right and privilege to temporarily or permanently disconnect, remove, relocate, change, or alter the position of any private facilities located within the ROW (including private facilities attached to public facilities) in the event the outdoor seating remains in the street between November 1 and February 28.
- D. If the owner of any private facilities located in the ROW (including private facilities attached to public facilities) ceases to use such private facilities for a period of 30 days, the owner shall immediately remove such facilities from the ROW and restore the ROW and any other facilities located in the ROW which may be impacted by such removal. The 30-day period set forth in this subsection may be extended by written approval of the city engineer for good cause.
- E. If the owner of any private facilities located within the ROW fails to meet any of the obligations set forth in this section, in addition to any other available remedies, the city may take the actions that were the obligation of the facility owner. If the city elects to do so, the city will provide written notice to the facility owner of the action taken and the costs incurred by the city in so doing, and the facility owner will reimburse the city in full within 30 days.

12.03.050 Revocation.

The City Engineer or designee may revoke an Outdoor Seating Permit at any time for a failure to maintain liability insurance or for a violation of any standard or provision of this Chapter.

12.03.060 Violations.

- A. The city engineer, or designee, is authorized to revoke an Outdoor Seating Permit upon determining that the permit holder has violated this chapter, permit conditions, or any applicable construction or other standards.
- B. Seating or use of the ROW as described in this chapter without a valid permit, and any other violation of this chapter, permit conditions, or any applicable construction or other standards, is a class B violation. Each day on which a violation occurs shall constitute a separate violation.
- C. The municipal court may order a person responsible for a violation of this chapter to restore the property, damaged area, or street surface to the standards described in the Engineering Design and Standard Details Manual. The court may include in the order such other conditions the court deems necessary to ensure adequate and appropriate restoration. Alternatively, the municipal court may direct the city to perform, either directly or indirectly, the restoration with the costs of such restoration assessed against the person responsible for the violation.
- D. Violations of this chapter may also constitute violations of other provisions of the Sherwood Municipal Code, including but not limited to SMC 10.12.190 (Obstructing Streets).