



Home of the Tualatin River National Wildlife Refuge

SHERWOOD CITY COUNCIL MEETING MINUTES

22560 SW Pine St., Sherwood, Or

Pursuant to House Bill 4212 (2020), this meeting will be conducted electronically and will be live streamed at <https://www.youtube.com/user/CityofSherwood>

October 5, 2021

WORK SESSION

- 1. CALL TO ORDER:** Mayor Mays called the work session to order at 6:02 pm.
- 2. COUNCIL PRESENT:** Mayor Keith Mays, Council President Tim Rosener, Councilors Doug Scott, Kim Young, Sean Garland, and Russell Griffin. Councilor Renee Brouse was absent.
- 3. STAFF PRESENT:** City Manager Pro Tem Kristen Switzer, IT Director Brad Crawford, Community Development Director Julia Hajduk, Public Works Director Craig Sheldon, Finance Director David Bodway, Police Chief Jeff Groth, HR Manager Christina Jones, Economic Development Manager Bruce Coleman, and City Recorder Sylvia Murphy.

OTHERS PRESENT: Chris Bell with Bell and Associates, Kristin Leichner and Eric Anderson with Pride Disposal.

4. TOPICS

A. Input Session Sherwood AI Fresco Outdoor Dining Program

Mayor Mays recapped that previous City Manager Joe Gall had created the AI Fresco program, a special event permit, during the height of the pandemic which provided the opportunity for local restaurants to expand their spaces to serve customers. He explained that Council and staff had decided that the program would be revisited to determine if the program was something the City wished to continue, and the City and Council asked for public feedback on the program. Mayor Mays called on community member Kristen Keats to share her thoughts. Ms. Keats stated she supported the AI Fresco program as she frequented the businesses who utilized the program. She commented that she worked in Old Town and stated that the street closures had not been an inconvenience to her. Mayor Mays asked Ms. Keats if she supported doing the exact same program or if she had thoughts for changing the program in the future? Ms. Keats replied she was supportive of the program remaining the same. Charlie Harbick with Railroad Street Antique Mall commented that he was not in favor of the AI Fresco program as he felt the extent of the program only resulted in closing Railroad Street to the benefit of the three businesses that were located there. He commented he would like a better definition of the AI Fresco program and he felt that the program had affected him negatively. He explained that there were no directional signs telling drivers how to access the businesses on Railroad Street since it was closed, and customers had voiced their complaints to him regarding the closure. Mayor Mays asked if Mr. Harbick would be in favor of the program if it was changed

to not close Railroad Street and referred to the planned City project of changing the nearby gravel parking lot to a flex space and a review of how alleyways were used. Mr. Harbick replied he would be in favor of that. He commented that both he and Mayor Mays had worked on the Urban Renewal project of the sidewalks on Railroad Street and stated that they were designed specifically to accommodate outdoor seating and felt that it could be argued that there already was an al fresco program going on and he therefore did not see the necessity of closing the street. Allan Bower and Robert Bower with Clancy's commented that he felt that the Al Fresco program had had a negative impact on their establishment as well as other established patio businesses. He commented he felt that it was somewhat disingenuous of the City to solicit public feedback when resources had already been dedicated and moved out of the existing SEPA (special event permit application) program that was specifically designed for the use of entities in public spaces for temporary use. He commented he agreed with Mr. Harbick's comments regarding the inconveniences of the street closures. He commented the Al Fresco program devalued the establishments that had their own investments into their space when businesses were allowed to expand onto the sidewalks under the Al Fresco program. He commented that use of the sidewalks under the program was, "a public space being used for private profits" since those businesses did not pay any taxes on that space. He commented he felt that he did a lot for the state and the city and paid \$1.34 million in taxes annually into the state budget. He stated that he felt like he was being put into a position that he did not want to be in. Councilor Young asked Mr. Bower if he could think of a program that would work for all businesses? She commented that in the future the Al Fresco program needed to benefit all of the Old Town businesses, not just those three. Mr. Bower commented that he would be fine if businesses wished to give up their storefront parking spaces to expand out, but that did affect Old Town parking, traffic, and pedestrian safety. He commented that any changes to the way businesses were allowed to operate resulted in a domino effect to other businesses. He asked why the Al Fresco program was moved out of the SEPA program? Lawson Granger with Mason shared his thoughts on the Al Fresco program and commented that he felt that the Al Fresco program was still occurring and the only thing that had changed on July 29th was that Railroad Street was reopened. He commented he and other businesses he had spoken with did not understand why the program was ended. He commented that the COVID-19 pandemic was far from over and there was still much that was unknown. He commented that many diners were hesitant to eat indoors and as the colder months approach, it would result in a loss of revenue for his business unless he can continue to provide an outdoor dining option. He referred to the possibility that TVF&R would change their rules to allow for tents to be set up year-round and asked that the City do the same. He asked that Railroad Street be re-closed, and businesses allowed to put their tents up again as soon as possible. He asked that the Al Fresco program be expanded to include all Old Town businesses as well as arts and music. He suggested the alternative of making Railroad Street a one-way street to allow for outdoor dining that would not completely block the street. He stated that for both options he expected to pay rent to the City to be able to do so. He asked that the City envision an improved Al Fresco program for everyone to enjoy. Council President Rosener asked that City staff confirm with TVF&R regarding the rule changes around tents. Community Development Director Julia Hajduk replied she would confirm with TVF&R. She referred to submitted written comments from community members regarding the Al Fresco program (see record, Exhibit A). Councilor Young asked City staff to get more information on how other cities charged businesses for curblettes. Discussion occurred. Deb Yannariello with 503 Uncorked stated she agreed with what Mr. Lawson had said and that the Al Fresco program did create a destination for downtown Sherwood. She commented they were not asking for a "massive tent" outside year-round, only the ability to have something outside because their indoor area was very small and that tables with umbrellas did not solve the problem. She commented she would like to see a long-term program that brought all of the downtown businesses together. Mr. Harbick suggested that businesses on Railroad be allowed to use the alleyway space behind their businesses. Mayor Mays explained that the previous City Manager had used the SEPA program on an emergency basis during 2020 and early 2021

and commented that Council and the City Manager would like to review all of their options to determine what to do going forward. He commented they had heard from community members both for and against the Al Fresco program. Mayor Mays explained that SEPAs were not typically initiated by the city, but by private businesses or organizations and that they typically covered an event that lasted 1-3 days or were ongoing events such as the farmers market. Councilor Young asked about next steps for the Al Fresco program discussion and asked if Council would hold another work session on the topic? Mayor Mays commented that he expected the new City Manager Keith Campbell to review the testimony provided by the community and then decide when to hold another work session. Council President Rosener commented he wanted to hear City Manager Keith Campbell's thoughts on the topic but wanted to get another work session scheduled soon to discuss the Al Fresco program. He commented that two questions needed to be discussed: What type of process was needed for evaluating a program next year? And, what does the City do for the upcoming winter season? Councilor Griffin asked that City staff reach out to neighboring cities to get more information on what their al fresco programs looked like.

Record Note: A list of meeting attendees who wished to provide feedback on the Al Fresco program was emailed to Council prior to the meeting (See record, Exhibit B).

B. Solid Waste Rate Updates

Public Works Director Craig Sheldon explained that this meeting was a follow up work session from the September 7th work session on Solid Waste Rates. He recapped that Chris Bell had provided several different options at that meeting and Council had asked Mr. Bell to go back and review several figures regarding recycling and report back. Mr. Bell presented the "City of Sherwood Solid Waste & Recycling Collection" PowerPoint presentation (see record, Exhibit C) and recapped that there were three rate scenarios, and Council had narrowed it down to two options with the direction for Mr. Bell to review the impact of recycling on this year and next year's rates. He reported he had worked with Eric Anderson at Pride Disposal to draft the updated information. He recapped that current rates were implemented in January 2021, and the adjusted results for the 2020 rate fell within the 8-12%. He stated the estimated costs for 2021 for recycling processing was much better than previous years while yard debris processing, labor costs, and disposal costs would be increasing. He commented most haulers expected there to be an increase in Metro's fees on July 1, 2022. He provided background on recyclable material value and explained that the value of the recyclable material reduced the processing cost and the cost per ton at the MRF (Metro regional facilities) to sort and market the commingled mix is approximately \$110 per ton. He explained that there were five MRFs in the Portland region and the cost paid by Pride to process the commingled mix had decreased from \$170,889 in 2020 to \$83,910 in 2021, a 51% decrease in costs. He stated that the reduced costs increase the overall Return on Revenue from the initial 8.94% to 10.94%. Mr. Bell reported that the projected 2021 results were slightly under the 11% range, which eliminated one of the rate scenarios. He explained that there were two Alternatives for Council to consider for rate adjustment. Alternative 1 was the regular CPI percentage applied to the rates. Alternative 2 was that same rate scenario as Alternative 1 plus the increase in the tipping fee. Council President Rosener asked if the projected results were based on current rates or proposed rates? Mr. Bell replied that they were based on the rates that were already enforced. Council President Rosener asked if that was based on a calendar year or fiscal year? Mr. Bell replied it was based on a calendar year. Mr. Bell explained that if just the CPI was passed through, another rate adjustment review would probably be needed in 2022 to take effect in 2023. Council President Rosener asked if Metro's rate increase was already in place? Mr. Bell replied part of Metro's increase was in place and commented that Pride had two rate increases, one for contractual obligations to the company that they pay to haul the waste from Sherwood to The Dalles as well as the landfill, and also the regular

adjustments to payroll each year. Mayor Mays asked Mr. Bell and the representatives from Pride Disposal what their recommendation was? Mr. Bell replied that he had been recommending to other jurisdictions that they pass through the tipping fee increase because the cost was outside of the control of the haulers. Public Works Director Sheldon commented that he recommended doing the pass through of the tipping fees and explained that Pride would have additional expenses next year due to union negotiations. Councilor Young commented she was in favor of passing it through now rather than a future larger increase all at one time. Council President Rosener stated he was incredibly frustrated with Metro over all of this and explained that Metro had the authority to increase rates, introduce new fees, and demand that cities pass ordinances to manage those fees without any input from the community, citizens, or ratepayers nor any accountability to the public. He commented he was okay with Alternative 2. Mayor Mays commented he agreed with Council President Rosener's statement and he was also frustrated with Metro and he supported staff's recommendation of Alternative 2. Mayor Mays asked staff to put Alternative 2 on a future City Council agenda, and asked that it not be placed under consent so the community could provide their input.

5. RECESSED:

Mayor Mays recessed the work session at 6:55 pm and convened a regular session.

REGULAR SESSION

1. CALL TO ORDER: Mayor Mays called the meeting to order at 7:02 pm.

2. COUNCIL PRESENT: Mayor Keith Mays, Council President Tim Rosener, Councilors Doug Scott, Kim Young, Sean Garland, and Russell Griffin. Councilor Renee Brouse was absent.

3. STAFF PRESENT: City Manager Pro Tem Kristen Switzer, IT Director Brad Crawford, Community Development Director Julia Hajduk, Public Works Director Craig Sheldon, Finance Director David Bodway, Police Chief Jeff Groth, HR Manager Christina Jones, Economic Development Manager Bruce Coleman, City Engineer Bob Galati, Police Captain Ty Hanlon, Legal Intern Cecilia Bremner, and City Recorder Sylvia Murphy.

OTHERS PRESENT: Washington County staff Erin Wardell, Stephen Roberts, and Chris Deffebach.

4. APPROVAL OF AGENDA:

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

Mayor Mays addressed the next agenda item.

5. CONSENT AGENDA:

A. Approval of September 21, 2021 City Council Meeting Minutes

B. Resolution 2021-089 Authorizing City Manager or City Manager Pro Tem to sign a Professional Services Contract with KPFF Consulting Engineers for design of the Hwy99W Pedestrian Overcrossing

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

Mayor Mays addressed the next agenda item.

6. CITIZEN COMMENTS:

The City Recorder read aloud the comments submitted by Sherwood resident Neil Shannon and stated he wished to discuss the issues of parks in the Brookman Road Concept Plan area. He stated that it was important to note that all of the annexed property was located at the western end of the Concept Plan and surrounded the Cedar Creek and Goose Creek wetlands and stated that there was a 50-foot corridor extending from Redfern Drive to Brookman Road that was currently under threat as the developer was willing to clear cut and bulldoze the area to develop three lots. He stated that there were more than 50 ancient fir and cedar trees in that area and stated that the trees would make a wonderful addition to Sherwood's park and trail system. He stated he understood that Council did not have the decision making authority over the proposed subdivision but asked that Council share their concerns with the Planning Commission and City staff and that Code of Ordinance Division III 16.142.070.D.4.e (tree retention) be applied to the area in order to save the "last of Sherwood's old growth forest."

The City Recorder read aloud the comments submitted by Sherwood resident Dave Sweeney concerning the Brookman Road addition and the Cedar Creek Garden development. He stated he was very concerned about the potential loss of the 70-80 giant Douglas fir and cedar trees that would be lost during the construction of three lots. He stated it was extremely important to him and his neighbors that Council do everything within their power to preserve and protect "this beautiful piece of Sherwood history and legacy" and asked that Council share their concerns with the Planning Commission and City staff. He suggested that the area be preserved as a natural park area. He stated that he understood that the Brookman Road development was mandated to include a number of parks, and he was not aware of any area being designated for parks within the Brookman Cedar Creek Garden area and suggested that the narrow strip of land with the trees that ran from Brookman Road to Redfern Drive as well as additional unannexed land to the south would make a wonderful natural park area.

7. PRESENTATIONS:

A. Recognition of Eagle Scout Award Recipients

Mayor Mays recognized Jacob Goulding and Matthew Doyel for their achievement of attaining the rank of Eagle Scout and invited them to attend a future Council meeting.

The City Recorder read aloud the information that Jacob Goulding had submitted regarding his Eagle Scout project. He stated that for his project, he organized the construction of eight new performance boxes for the Sherwood High School cheerleaders to use at football games. He stated that the materials for the project were acquired thanks to the collaboration of Lowe's, Home Depot, Sherwin-Williams, and Clark Lumber. Construction and painting took place over three weekends with the help of his fellow troop members as well as family and friends.

B. Proclamation Declaring October as Domestic Violence Awareness Month

Police Captain Ty Hanlon introduced Executive Director of the Family Justice Center of Washington County Rachel Schutz. Ms. Schutz reported that the Family Justice Center was a collaborative organization in Washington County that served all Washington County residents and sought to end family violence in Washington County. She stated that nationally, one in four women and one in seven men will experience violence in their home at some point in their life and two out of three children will experience childhood trauma as they are growing up. She reported that Washington County rates of domestic abuse were higher than the national average. She stated that the Family Justice Center of Washington County worked with local law enforcement, the Washington County District Attorney, Washington County courts, and nonprofit providers in the county in order to assist those seeking help at the center to get all of their needs met simultaneously. She reported that every city within Washington County had declared October Domestic Violence Awareness month, something that had never been done before, and commented that she hoped that the county would be able to do what needed to be done in order to end domestic violence.

C. Washington County Update on the MSTIP Process

Community Development Director Julia Hajduk explained that MSTIP stood for Major Streets Transportation Improvement Program and introduced Washington County staff Erin Wardell, Chris Deffebach, and Stephen Roberts. Ms. Hajduk explained that the MSTIP program was what funded the Kruger and Elwert realignment as well the Tualatin-Sherwood Road widening project. Stephen Roberts explained that the county wished to provide a briefing on the MSTIP process they were undertaking that would allocate funds for the upcoming round of MSTIP projects. He stated that the funding would be received in fiscal year 2023 through fiscal year 2028 and stated that there was roughly a one year process they needed to complete in order to determine what projects and programs the county wanted to allocate funding towards. He presented the "MSTIP 23-28 Funding Allocation Work Plan" PowerPoint presentation (see record, Exhibit D) and commented that he felt that the MSTIP had been a transformational program for the county in terms of their ability to keep up with the rapid growth over the past 35 years and that the collaborative nature of the program was one of the keys to success to the program. Chris Deffebach provided an overview of the presentation and stated she hoped for Council feedback on priorities for funding and important outcomes. She provided an overview of the MSTIP allocation process on page 3 of the presentation. She provided an overview of the MSTIP program and explained that the program was funded through countywide property taxes and was designed as a pay-as-you-go program and was started in 1986. She reported that more than 150 projects had been funded and more than \$900 million had been allocated since 1986. She explained that the funding was allocated in five-year cycles and the project list was recommended by the Washington County Coordinating Committee (WCCC) and approved of by the Board of Commissioners. She reported that in 1997, the levy rate was reduced and became a part of the county's property tax rate. She reported that MSTIP 3e allocation ran from 2018-2023 and included a total funding allocation of \$175 million, \$35 million per year. The cycle allocated \$160 million for 23 multi-modal road projects, with \$7.5 million in Opportunity Funds set-aside, \$7 million for rural bridge replacement set-aside, and \$500,000 for Intelligent Transportation Systems improvements set-aside. She reviewed maps of the active and completed MSTIP projects and Sherwood-area MSTIP projects on pages 7-8 of the presentation. Council President Rosener asked if the Tualatin-Sherwood road widening MSTIP project she referred to was the road widening that widened the road to three lanes in the early 1990s? Ms. Deffebach replied that was correct and she commented that there was more work planned on that road as well, and no projects that had yet to be completed were included on the map. Discussion occurred regarding the need for the county to update the maps included in the presentation. Erin Wardell provided an overview of the MSTIP 23-28 Funding Allocation Work Plan on page 9 of the presentation and explained that there were four major milestones. She outlined that Milestone 1 was scheduled for Summer/Fall 2021 and included confirming the Work Plan

and the development of the equity framework and public engagement plan. Milestone 2 was scheduled for Winter 2021 and included allowing for community input on values, identification of eligibility criteria and evaluation metrics, and the initiation of project solicitation. Milestone 3 was scheduled for Spring/Summer 2022 and was comprised of the evaluation of projects, the identification of programmatic elements, and the release of the prioritized list and programmatic elements for public comment. Milestone 4 was scheduled for Fall 2022 and included Board of Commissioners adoption that included the project list, programmatic elements, and administrative procedures. Council President Rosener asked regarding Milestone 3's goal of the release of the prioritized list and asked who prioritized that list? Ms. Wardell replied that the Coordinating Committee would prioritize the list and the projects would go through a technical evaluation by jurisdictional staff representatives as well as some technical experts, such as Clean Water Services and the Washington County department of Health and Human Services. Then the Coordinating Committee's Transportation Advisory Committee would review the prioritized project list, complete their first round of prioritization, and then send the list back to the County Coordinating Committee who would then make the recommendation to the Board of Commissioners. Ms. Wardell commented that the county did not know how many projects would be submitted and stated that the entire list of projects would be reviewed by the County Coordinating Committee. She reported that part of the project solicitation process would include ensuring better transparency around showing all of the projects that had been submitted so jurisdictions could compare them to the evaluation criteria. Council President Rosener commented he viewed the projects as going through three phases: the phase where the project is deemed eligible to submit, the approval process phase, and then completing the project, and commented that for smaller cities, it was difficult and many times there was not enough funds available to get the projects ready for submittal. He asked that she address how smaller cities are able to get their projects ready for submittal. Ms. Wardell outlined that the past MSTIP eligibility criteria was that the project had to: meet multi-modal needs, was located on roadways of countywide significance, ranked as high local priority, and was geographically and financially balanced. She explained that for MSTIP, a city would know a project was ready for submittal if the project had been adopted into the jurisdiction's Transportation System Plan and the jurisdiction stated that it was a high priority. She commented that projects did not need to be at 30% design or any other such requirements before they were deemed ready for MSTIP submittal by the county. Council President Rosener commented that that process was easy to do for an already existing road, and asked what the process was for roads that did not exist yet? Ms. Wardell replied that if the project was not adopted into the city's Transportation System Plan under previous criteria, it would not be eligible for MSTIP funding. Council President Rosener asked if there was a process at the county level to review traffic problems or if it was at the local level that they had to do so? Ms. Wardell replied that the county's Transportation System Plan was consistent with a city's Transportation System Plan and generally, when cities made updates to their TSP, the county adopted those changes into their TSP in order to be consistent. She continued that generally, the county deferred to the city's plan documents and to the priorities of that city. Stephen Roberts added that the county did a lot of collaborative planning work with cities to look at the Urban Reserve, expansion areas, UGB expansion areas, and updating Transportation System Plans, and commented that with the MSTIP process, there had been some preliminary groundwork completed to assess that the project was needed, supported, and feasible. He commented that a lot of the project engineering and design work could be funded through the MSTIP program and that the county had plans to do a better job of getting a consistent baseline level of information on every project submittal so that each city had a consistent amount of information. He explained that this could include county staff working with smaller jurisdictions to help refine the proposals and develop the cost estimates. Council President Rosener asked if the city could apply for study money through the MSTIP process? Ms. Wardell replied that the county had funded design work for projects, but not studies. Ms. Wardell provided an overview of the System of Countywide Interest map on page 11 of the presentation and commented the map was created in 2007 and intended to show every arterial road and collector

roadway that was determined to serve a regional function. She stated the map had been updated several times and was currently undergoing another update, after which the collected proposed changes would be presented to the WCCC in November and they would recommend to the Board of Commissioners that the map be updated. Council President Rosener asked if there had been any conversations between Washington County and Clackamas County regarding coordinating on roadways that span both counties? Ms. Wardell replied that Washington County did coordinate with Clackamas county regarding long-range planning in the county's urban reserves, and commented that more coordination would be needed as more long-range plans were developed. Mayor Mays commented that there were lots of great processes and steps in Oregon regarding land use and one of the impacts of that in the Sherwood area was the Urban Reserve and Rural Preserve. He explained that all the land in the tri-county Metro area was designated as either Urban Reserve, Rural Preserve, or Undefined. He stated that Sherwood was located in the Urban Reserves and there had been conversations about expanding Brookman Road, Sherwood West, and a small area of land in Clackamas County. He stated that the small piece of land in Clackamas County was designated as Undefined and that until the land was designated as Urban Reserve, a new road could not be built under current state law. He commented that because of that, they technically built "roads to nowhere" for roads that continued into Clackamas County. Mayor Mays asked Stephen what the regional equivalent of a MSTIP program was for other regions in Oregon? Mr. Roberts replied that there really was not an equivalent program outside the region. Mayor Mays explained that that was part of the uniqueness of the program in that Washington County had created a revenue stream to make improvements, and neither Yamhill or Clackamas Counties had chosen to do so which resulted in less opportunity to help solve some of the issues. Discussion regarding working with neighboring counties occurred. Ms. Wardell stated that roads could be built on Undesignated land, but not in Rural Reserve areas and provided a brief overview of the process. Council President Rosener asked if a future five-lane capacity was necessary on Brookman Road? Mayor Mays commented it was important not to limit the future capacity. Community Development Director Julia Hajduk reported that for Brookman they were requiring the right of way for five lanes, but they were not going to require them to construct it to five lanes. Ms. Wardell provided an overview of the proposed MSTIP outcomes on page 12 of the presentation and stated they were:

- **Equity:** Provide a robust community engagement process that focuses on equity and inclusion, responds to needs of historically excluded communities and informs the final project selection.
- **Safety:** Provide a safe transportation system for all users.
- **Economic Vitality:** Provide a reliable transportation system that enhances the economic health of Washington County.
- **Livability:** Preserve and enhance Washington County's quality of life for all residents, workers and visitors.
- **Natural Environment:** Create and maintain a transportation system that first avoids, then minimizes, then mitigates impacts to the natural environment.

She explained that the proposed outcomes were from the county's Transportation System Plan for the first phase of public engagement and communications. She reported that the county was also seeking feedback from the community if the proposed outcomes resonated with them and if any additional outcomes should be added. She explained that the outcomes would inform the evaluation criteria for project solicitation and the project evaluation process. Ms. Wardell provided an overview of the county's community engagement approach and explained that the county would hire a consultant as a staff extension to help lend their expertise. They would also engage in two community outreach phases in Fall 2021 and Spring 2022 and they would be targeting historically excluded communities. Mr. Roberts reported that the county had shared this information with the Washington County Coordinating Committee several times and they had recommended the approval of the work plan to the Board of Commissioners. Mayor Mays recapped that the

WCCC, which was comprised mostly of mayors and council presidents, was keeping the balance of dividing up the dollars amongst the four county commission districts so that there was a benefit throughout the county. He commented that the areas within County Commissioner Roy Rogers area worked well together to help balance the projects. Mayor Mays asked if the future pedestrian undercrossing of Highway 99W would be eligible as a MSTIP project since Highway 99W was on the county's list of roads of significance? Community Development Director Julia Hajduk commented that the project was included in the city's TSP. Mr. Roberts replied that he believed that that project would be quite competitive for the Opportunity Fund that would provide local funding to go out for a state or federal grant. He commented that he had heard a lot of support for increasing the amount of money in the Opportunity Fund allocation because the program had been quite successful. Mayor Mays commented that it was his hope that the disbursement of the Opportunity Fund would be done equally amongst the four commission districts. Ms. Deffebach commented that that was difficult because it was out of the county's control who would get the grants awarded. Mayor Mays explained that he was asking that the process be reviewed to make the disbursement equitable. Discussion on previous Opportunity Grant cycles occurred. Council thanked them for their presentation.

Mayor Mays addressed the next agenda item. The City Recorder read the public hearings statement and reported that no public testimony had been received for the ordinance.

8. PUBLIC HEARINGS:

A. Ordinance 2021-009 Adding a new Chapter 5.34 to the Sherwood Municipal Code regarding non-residential leases (*First Reading*)

Legal Intern Cecilia Bremner explained that the proposed ordinance would add a new chapter to the Sherwood Municipal Code, Chapter 5.34 with the goal of increasing tenant awareness of use restrictions of non-residential leased properties through requiring a disclosure form and encouraging communication with the City. She explained that the reason for this was due to the fact that there had been some instances where tenants had not been aware of their restrictions on leased properties, either their use has not been allowed or there were significant fees associated with changing the purpose of the property. She stated that the code was comprised of three sections and would have an effective date of December 1, 2021 if approved. She explained that the December effective date would allow staff time to contact landlords and time to publicly notice the proposed changes. She reported that landlords would be required to disclose a form to tenants, which they would procure from the City website or from City Hall, that needed to be signed by both the tenant and the landlord prior to leasing. The form would indicate potential use restrictions and the impacts to tenants. Ms. Bremner explained that the tenant would be able to void their lease if the form was not signed or recover the costs from the landlord from bringing the property into compliance, with a maximum of \$20,000. She stated that the City would be in no way liable, and it was solely the responsibility of the tenant to bring a course of action. She reported that the second reading of the ordinance would be held on October 19, 2021. Mayor Mays stated that no public comments had been submitted and closed the public hearing portion of the meeting. He asked for questions or discussion from Council.

Councilor Griffin asked what the City's process would be to ensure that they contacted every landlord? Councilor Griffin asked if the reference to SDC charges of up to \$100,000 was necessary or could be reworded? Ms. Bremner addressed Councilor Griffin's second question and explained that the reason they quoted the \$100,000 figure was because they wanted to encourage tenants to contact the City as well as ensure that landlords were providing the form. She commented that if the lower figures were quoted instead,

it would not encourage tenants and landlords to sign the form. Councilor Griffin asked what the average charge was? Community Development Director Julia Hajduk replied that most of them were nothing or minimal, but the biggest issues had centered on when the charges were significant. She addressed the question regarding contacting Sherwood landlords and explained that they would start with contacting the property owners and work with the Building Department to identify landlords of non-residential sites. City Attorney Josh Soper added that they would also reach out to the various landlord organizations in the region so they could inform their members as well as the Chamber of Commerce. Councilor Griffin asked about the specifics of ensuring landlords were spoken to. Mr. Soper replied that they would utilize bulk mailings. Councilor Griffin commented that utilizing bulk mailings would not ensure every landlord would be contacted, only most landlords. Mayor Mays asked that staff be allowed time to consider all options and commented that he felt that using the addresses from property tax bills would result in a good list of landlords. Council President Rosener commented he was in favor of the ordinance because it would help protect small business owners. He asked if there was any way to require landlords to identify what the permitted use was? Ms. Bremner replied that that was discussed and it was determined that it would be difficult to accomplish because uses differed from property to property, and explained that they did not want to open the City up to potential liability as it was the tenant's responsibility to reach out to the City, not the other way around. Councilor Scott commented that at a certain point, a tenant's responsibility needed to be involved in the process and if the tenant made an informed decision not to contact the City about the property, it was their choice. Discussion occurred. Council President Rosener asked if there was a timing aspect that could be incorporated that would allow tenants the time to contact the City prior to signing their lease? Legal Intern Bremner replied that the ordinance included giving the tenant two full business days to contact the City. Council President Rosener and Councilor Scott asked if two full business days was long enough to allow for City staff to fully answer a tenant's questions? Council President Rosener asked that it be changed to 10 business days. Ms. Bremner commented that the only consideration on changing the timeframe would be that during that 10-day period, the landlord would be unable to lineup an alternative tenant if the original tenant chose not to sign. City Attorney Josh Soper added that the timeline could be changed to 10 days, but it was a balance of giving tenants enough time to do research, but also allowing landlords to seek out alternative tenants. Mr. Soper commented that finding that balancing point was a question for Council. Council President Rosener, Councilor Young, and Councilor Scott commented that they felt five days would be more appropriate. Councilor Scott asked if City staff felt that they could provide the appropriate information within that five day period? Community Development Director Hajduk replied that the City had a 24-hour turn around time for initial replies to people as a general customer service rule, but there were times when things needed to be researched further. She stated that she felt five days would be long enough to identify whether or not the use required a conditional use permit and have some preliminary conversations with the tenant about processes. She commented five days may not be long enough to have a discussion around SDC charges, depending on how much the tenant knew or was prepared for already. Councilor Scott commented that being able to at least identify and report that a conditional use permit or a change of occupancy would be required would be the most important information to relay to tenants. Mayor Mays commented that he agreed with Councilor Scott's suggestion that City staff be able to inform tenants of the need for a conditional use permit and/or a change of occupancy as that would help the tenant make an informed business decision. Discussion regarding the proposed ordinance's ability to help inform both landlords and tenants occurred. Councilor Griffin asked City Attorney Soper if the City was protected against a lawsuit regarding the ordinance's stipulation that the tenant could void the lease or recover the costs from the landlord? City Attorney Soper replied that this ordinance was "charting new territory" and because of that, nothing in the law was ironclad. He stated they had completed a lot of research on the topic and they believed that the City did have the authority to create this cause of action and that the language that stated that the City was not liable would indemnify the City if there was a lawsuit. Councilor Young asked how it

would be documented that a tenant voided their lease if they chose to do so? Ms. Bremner replied that if the tenant was in the lease for a while, and realized later that there were additional fees, they would have to pay the landlord up to that point. She commented that currently, there was no stipulation that written notice needed to be provided to the landlords that the tenant was voiding the lease, but a stipulation could be added. Discussion regarding written notices occurred. Councilor Scott commented that after the signed form was returned to the City, whatever happened between the landlord and tenant was not under the City's purview. Mayor Mays commented that the City provide a suggested form that the tenant could use to void the lease. Councilor Young commented that language could be added to the existing form that stated that the tenant had completed their due diligence or that they were voiding the lease. Council asked that City Attorney Soper review their options before the next reading.

Mayor Mays addressed the next agenda item.

9. CITY MANAGER REPORT:

City Manager Pro Tem Kristen Switzer reported that there were vacancies on the Library Advisory Board, Planning Commission, and Traffic Safety Committee. She encouraged those interested in applying to visit the website for more information.

Mayor Mays addressed the next agenda item.

10. COUNCIL ANNOUNCEMENTS:

Councilor Griffin reported that the Robin Hood Festival Association was currently planning their Winter Festival. He gave his kudos to City Manager Pro Tem Kristen Switzer for her work over the last five months.

Councilor Young thanked City Manager Pro Tem Kristen Switzer for her work over the last five months.

Councilor Scott reported that there was no Planning Commission meeting last week. He thanked City Manager Pro Tem Kristen Switzer and City staff for their work over the last five months.

Councilor Garland thanked City Manager Pro Tem Kristen Switzer and City staff for their work over the last five months.

Council President Rosener reported he had a meeting with Katherine Harrington discussing how the county partnered with cities at the elected and policy level. He reported that the county was working to ensure that renters knew that there was Renter Assist Funding available. He gave his kudos to City Manager Pro Tem Kristen Switzer for her work over the last five months.

Mayor Mays gave his kudos to City Manager Pro Tem Kristen Switzer for her work over the last five months. He reported that he was preparing for the abbreviated League of Oregon Cities meeting.

11. ADJOURN:

Mayor Mays adjourned the regular session at 8:58 pm and reconvened the work session.

WORK SESSION

1. **CALL TO ORDER:** Mayor Mays called the work session to order at 9:03 pm.
2. **COUNCIL PRESENT:** Mayor Keith Mays, Council President Tim Rosener, Councilors Doug Scott, Kim Young, Sean Garland, and Russell Griffin. Councilor Renee Brouse was absent.
3. **STAFF PRESENT:** City Manager Pro Tem Kristen Switzer, IT Director Brad Crawford, Community Development Director Julia Hajduk, Public Works Director Craig Sheldon, Finance Director David Bodway, Police Chief Jeff Groth, HR Manager Christina Jones, Economic Development Manager Bruce Coleman, and City Recorder Sylvia Murphy.
4. **TOPICS**

C. Chicken Code Discussion

Mayor Mays recapped that a permit was required to own chickens in Sherwood and the permit focused on owning a large number of chickens for the purposes of commercial sale. He explained that there was a large fee for the permit, which effectively banned chickens in residential areas. He explained that previous councilors wanted to discuss the topic multiple times, and Council had not acted to make any changes to the current code. Community Development Director Julia Hajduk presented the "Discussion of Chickens" PowerPoint presentation (see record, Exhibit E) and explained that currently, chickens were permitted as a conditional use only and the permit cost a little over \$4,000. She recapped that in 2011, as a part of the City's code cleanup process, chickens had been discussed and some regulations were developed but Council had chosen not to include those regulations in the code cleanup. Council asked staff to review the chicken permitting process again in 2015 and complete surveys and public engagement as well. She explained that staff had done so and developed some standards that were similar to other jurisdictions and the Planning Commission had not recommended approval of those changes based on public hearings they had held as they felt that there was not enough community support and found the testimony regarding neighborhood health and hygiene concerns persuasive. She continued that Council held a first reading and public hearing on the proposed code changes on September 15, 2015 and held public testimony and Council discussion, Council requested that staff amend the proposed language before the next hearing. The second reading was held on October 20, 2015 and during the meeting, there was a motion to amend the number of chickens on specific lot sizes. The proposed amendment failed and there was a motion read to adopt the proposed ordinance as prepared. The motion failed. She stated that chickens in residential areas continued to be permitted through an approved Conditional Use Permit. She presented the table of "Backyard chicken regulations in neighboring cities – as of September 2021" (see record, Exhibit F) and commented that most jurisdictions allowed chickens with varying degrees of regulation. She stated that Council President Rosener had asked her to look into code compliance issues other jurisdictions had experienced that allowed chickens and reported that she had spoken with the code compliance officer in Tualatin. She reported that Tualatin's code compliance officer had said that in the two and half years that he had been in the position, there had been roughly four complaints and were typically concerning rats. Ms. Hajduk stated that Councilor Scott had asked regarding HOAs and regulations and she explained that HOAs did not allow chickens and unfortunately, the City did not have an exhaustive list of the various Sherwood HOAs and their regulations. She reported that the Woodhaven and Wyndham Ridge HOAs, two of the largest HOAs in the City, did not allow chickens. Councilor Young explained that the reason Council was discussing chickens again was because they had received community comments regarding chickens several times. Mayor Mays asked if it

would be misleading to adopt changes to the ordinance since it was such a small portion of neighborhoods that would allow for chickens and/or their lot size was the correct size and commented he was in favor of not introducing something that might be a new source of conflict between neighbors. Councilor Young commented that it seemed that Sherwood was the only city around that did not allow chickens. Council President Rosener commented that he felt similarly and said that based on Ms. Hajduks' research, allowing chickens in residential areas was not the big issue that people seemed to think it was. He stated that he felt like the City was regulating something that did not need to be regulated and he felt that the City should not be regulating it. He clarified that he was fine with requiring a permit, but limiting the cost of the permit to \$50, and having other restrictions in place such as no roosters and coop sizes. Councilor Griffin stated he agreed with Council President Rosener and commented he would limit the permit cost to \$25 and agreed that other restrictions needed to be included such as coop locations and minimum lot sizes. Councilor Griffin referred to the current \$4,000 permit fee and stated it was ridiculous. Councilor Scott stated that that was a dishonest argument and that the City did not have a \$4,000 chicken fee, it was a \$4,000 conditional use permit that covered all types of conditional use permits in the city. He continued that it was untrue that the City had enacted a law that stated citizens had to pay \$4,000 to have chickens, the City did not enact anything which was why there a \$4,000 conditional use permit fee. Councilor Griffin commented that Councilor Scott was correct, but that from a citizen's point of view it cost \$4,000 to have chickens in Sherwood. Councilor Scott commented that he did not care either way about allowing or not allowing chickens in Sherwood, but felt that the City probably should allow for chickens in town so Council would not have to repeatedly discuss the topic in the future. He stated he had some concerns regarding rats, odor, and salmonella but felt that they were relatively minor concerns. He voiced that he was okay starting with the work completed in 2015 and Council could make some modifications if they chose to. He stated that there absolutely had to be an application process that included a checklist that had the applicant acknowledge that they had checked with their HOA, etc. Community Development Director Hajduk referred to a prior email to Council that included the draft application form and a 2015 draft neighbor notification form (see record, Exhibit G). Mayor Mays commented that he wanted to eliminate the staff burden from the permitting process and wanted a clear and concise document of the applicable rules that was signed by the applicant so that if an applicant had lied or failed to comply, they lost the right to have chickens and received a fine for lying. Regulations around minimum lot sizes, setbacks, distance from dwellings, lot lines, number of hens, no roosters, etc. occurred. Council President Rosener and Councilor Young signaled their agreement with Mayor Mays. Councilor Garland commented he was in the same boat as Councilor Young and he also shared similar concerns residents had voiced at the previous discussions for backyard chickens. He commented he was in favor of people being able to do their own thing and felt that in general he assumed good intent with people and hoped that people would be responsible chicken owners. He stated he was in favor of allowing chickens with some of the provisions that had been brought up such as a nominal permit fee and a signed form from the applicant acknowledging their responsibilities. Mayor Mays asked if another work session was needed? Community Development Director Hajduk replied that many of the provisions Council had asked to be included in the permitting process were already in the language from 2015. She read from the 2015 draft language. Mayor Mays asked that language be added that referred to the applicant checking with their HOA and the ramifications of not complying. Councilor Garland asked if this would need to go through the Planning Commission again? Ms. Hajduk said that it would probably be a good idea to run it through the Planning Commission since enough time had passed since the 2015 discussion and commented that it was developed enough to do public noticing and send it to the Planning Commission and then Council. Council President Rosener stated he was fine with that and explained that if any councilors had any issues with the draft changes another work session could be held. Councilor Scott asked if it was required that it go through the Planning Commission? Mayor Mays asked that Ms. Hajduk check with City Attorney Josh Soper to see if the Planning Commission needed to review it or if Council could proceed with it.

5. ADJOURN:

Mayor Mays adjourned the work session at 9:35 pm.

Attest:



Sylvia Murphy, MMC, City Recorder



Keith Mays, Mayor