

CITY OF WILSONVILLE
CITY COUNCIL MEETING MINUTES

A regular meeting of the Wilsonville City Council was held at the Wilsonville City Hall beginning at 7:30 p.m. on Monday, August 7, 2017. Mayor Knapp called the meeting to order at 7:39 p.m., followed by roll call and the Pledge of Allegiance.

The following City Council members were present:

Mayor Knapp
Councilor Starr
Councilor Stevens
Councilor Lehan
Councilor Akervall - Excused

Staff present included:

Bryan Cosgrove, City Manager
Jeanna Troha, Assistant City Manager
Barbara Jacobson, City Attorney
Kimberly Veliz, City Recorder
Chris Neamtzu, Planning Director
Nancy Kraushaar, Community Development Director
Delora Kerber, Public Works Director
Susan Cole, Finance Director
Andy Stone, IT Manager
Jordan Vance, Economic Development Manager
Kimberly Rybold, Associate Planner
Kerry Rappold, Natural Resources Program Manager
Tod Blankenship, Parks Supervisor
Angela Handran, Community Outreach Specialist
Amanda Guile-Hinman, Assistant City Attorney
Mark Ottenad, Public / Government Affairs Director
Daniel Pauly, Senior Planner

Motion to approve the order of the agenda.

Motion: Councilor Starr moved to approve the order of the agenda. Councilor Lehan seconded the motion.

Vote: Motion carried 4-0.

COMMUNICATIONS

A. Metro Update

Craig Dirksen, councilor for Metro presented an update on Metro. Mr. Dirksen provided Council with handouts on the following: the June 2017 Regional Snapshot and the other handout on HB 2017-10. The presentation topics included a regional snapshot, transportation package, regional flexible funds, land use, 2040 planning and development grants, parks and nature, convention center hotel, and economic impact of venues.

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CITIZEN INPUT & COMMUNITY ANNOUNCEMENTS

This is an opportunity for visitors to address the City Council on items not on the agenda. It is also the time to address items that are on the agenda but not scheduled for a public hearing. Staff and the City Council will make every effort to respond to questions raised during citizens input before tonight's meeting ends or as quickly as possible thereafter. Please limit your comments to three minutes.

Peter Kusyk suggested closing Schroeder and focusing the funds on improvements on Kolbe Way. Mr. Kusyk talked about the traffic to the community garden and dog park. He expressed concerned about the weight of garbage and construction vehicles over the bridge. Additionally, he submitted a letter for the record.

Vince Manley concerned because he is a new resident in town and was not sure of the process. Mr. Manley also expressed concerns about the bridge; including the vehicle and foot traffic.

City Manager Cosgrove recommended that staff contact Mr. Manley to provide him with background information on the issue.

Nathan Osborne opposes the dog park and community garden on Schroeder Way. Mr. Osborne echoed the first speaker's comments and supports deadening Schroeder Way. He also raised his concerns about the entire Master Plan process.

Forest Edwards addressed the Council regarding his concerns with the dog park. Like the other speakers, Mr. Edwards is in opposition of the dog park and community garden on Schroeder Way. Mr. Edwards wanted to address Council to insure they are considering all factors with their decision on relocating the dog park. His main concerns include heavy pedestrian and/or vehicle traffic, sight lines and visibility issues.

Edward Potheise lives on Schroeder Way and desires to see it dead-ended. Mr. Potheise is in opposition of moving the dog park from its current location. He is concerned about the foot traffic and people driving down the road to fast.

Steve Gregg appreciated staff for taking a hard look at the intersection. Mr. Gregg agreed with the comments of all the previous speakers. He too is in opposition of the dog park and community garden relocation and supports the idea of deadening the street. He requested that Council and staff consider potential future traffic impacts due to Frog Pond when considering options.

Sharon Selvaggio, Healthy Wildlife and Water Program; submitted a letter of support via email for the proposed Resolution No. 2650 Designating the City of Wilsonville as a Bee City USA Affiliate.

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MAYOR'S BUSINESS

Mayor Knapp asked to pause and take a moment to remember Jon Gail who passed on July 21.

A. Upcoming Meetings

Mayor Knapp mentioned upcoming meetings and past meetings, he attended on behalf of the City. He noted that the next Council meeting will be Thursday, August 24 due to the solar eclipse on Monday, August 21.

B. Relay for Life Proclamation (staff – Handran)

Angela Handran, Community Outreach Specialist introduced Relay For Life board member Mr. Wolfer. He invited Council to view the luminary bags displayed in Council Chambers, while he spoke about the event. Mr. Wolfer extended an invitation to Council to attend the event, which is scheduled to take place on August 17, at Town Center Park starting at 6 p.m.

Mayor Knapp read the proclamation into the record, declaring the 7th day of August as “Wilsonville Relay For Life Day”. Mayor Knapp then presented the Relay For Life committee with a copy of the proclamation and took photos with the group.

C. Library Board Reappointments

1. Reappointment of Caroline Berry to for a second term beginning 7/1/17 to 6/30/21.

Motion to reappoint Caroline Berry to the Library Board.

Motion: Councilor Lehan moved to ratify the reappointment of Caroline Berry to the Library Board with a term from 7/1/17 to 6/30/21. Councilor Stevenson seconded the motion.

Vote: Motion carried 4-0.

D. Tourism Promotion Committee Reappointments

1. Reappointment of Jeff Brown to Position 3 for a second term beginning 7/1/17 to 6/30/20.
2. Reappointment of Albert Levit to Position 4 for a second term beginning 7/1/17 to 6/30/20.

Motion to reappoint Jeff Brown and Albert Levit to the Tourism Promotion Committee.

Motion: Councilor Lehan moved to ratify the reappointments of Jeff Brown and Albert Levit to the Tourism Promotion Committee. Councilor Stevenson seconded the motion.

Vote: Motion carried 4-0.

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COUNCILOR COMMENTS

- A. Council President Starr commented that Jon Gail will be missed.
- B. Councilor Stevens had no report.
- C. Councilor Lehan echoed the comments about Jon Gail.

PUBLIC HEARING

Ms. Jacobson read the title of Ordinance No. 807 into the record on first reading. Ms. Jacobson then clarified it was 2,206 square feet.

A. **Ordinance No. 807** – 1st Reading

An Ordinance Of The City Of Wilsonville Annexing Approximately 2,206 Square Feet Of Territory On The South Side Of SW Advance Road West Of SW 63rd Avenue Into The City Limits Of The City Of Wilsonville, Oregon. The Territory Is More Particularly Described As An Eastern Portion Of Tax Lot 2100 Of Section 18, T3S, R1W, Clackamas County, Oregon, West Linn-Wilsonville School District, Owner. (staff – Rybold)

Mayor Knapp provided the land use public hearing format and opened the public hearing on Ordinance No. 807 at 8:51p.m.

No Councilors abstained, declared a conflict of interest, and/or reported any ex parte contact.

Kimberly Rybold, Associate Planner presented the staff report along with a PowerPoint presentation.

Ms. Rybold announced as required by statute the criteria applicable to this application is stated on page 2 of the staff report, and has been entered into the record as Exhibit A, Attachment 3 of Ordinance No. 807. Copies of the report made available to the public.

Staff report executive summary.

The subject property was acquired by the West Linn-Wilsonville School District in order to complete the required improvements for SW 63rd Avenue. This road will provide access to Meridian Creek Middle School, which is currently under construction, along with a public park that is planned on the east side of SW 63rd Avenue. Annexation of this property will allow for dedication of the right-of-way to the City of Wilsonville. A minor UGB amendment was recently approved by Metro to bring the 2,206 square-foot site into the UGB.

End of executive summary.

Tim Woodly, Director of Operations for the West Linn for Wilsonville School District spoke on behalf of the School District. He appreciated Council and the Development Review Board (DRB) for their work, and agreed with the staff report and the recommendation.

Mayor Knapp invited additional speakers, seeing none he closed the public comment at 8:57 p.m.

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Motion: Councilor Starr moved to approve Ordinance No. 807 on first reading. Councilor Lehan seconded the motion.

Vote: Motion carried 4-0.

SUMMARY OF VOTES:

Mayor Knapp	Yes
Council President Starr	Yes
Councilor Stevens	Yes
Councilor Lehan	Yes
Councilor Akervall	Excused

Mayor Knapp stated that if anyone desires to appeal this decision to LUBA, they must make an application stating the grounds for the appeal and file the appeal with LUBA as prescribed by State Law.

NEW BUSINESS

A. **Resolution No. 2649**

A Resolution Of The City Of Wilsonville Establishing The Methodology For The Preliminary Frog Pond West Infrastructure Supplemental Fee And The Boeckman Bridge Transportation Mitigation Fee, And Establishing A Fund. (staff – Kraushaar/Cole/Guile-Hinman)

Ms. Jacobson read the title of Resolution No. 2649 into the record.

Community Development Director Nancy Kraushaar, Finance Director Susan Cole, and Assistant City Attorney Amanda Guile-Hinman finished the presentation started earlier in Work Session.

Staff report.

ISSUE BEFORE COUNCIL: On July 17, 2017, City Council approved the Frog Pond Master Plan (“Master Plan”). The Frog Pond Master Plan included a Frog Pond West Infrastructure Funding Plan providing for the distribution of costs for the north half of Boeckman Road, the west half of Stafford Road, and the Neighborhood Park (“Unfunded Projects”) through an infrastructure supplemental fee (“Infrastructure Supplemental Fee”). The Infrastructure Funding Plan contemplates a City-led development effort for these Unfunded Projects, although the fiscal responsibility for funding will be with the Frog Pond West developers. Details on the Infrastructure Supplemental Fee and the Boeckman Bridge transportation mitigation fee (“Boeckman Bridge Fee”) (collectively, the “Frog Pond West Fees”) are discussed below.

EXECUTIVE SUMMARY: The Resolution details how Frog Pond West developers make financial contributions for the Unfunded Projects and the future Boeckman Bridge adjacent to Frog Pond West while the City leads the development of these projects. The figure below details the current estimated cost of the Unfunded Projects and the estimated financial contribution by developers.

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The Resolution also details the incorporation of a Boeckman Bridge Fee, separate from the Infrastructure Supplemental Fee, which will directly fund the unfunded portion of the proposed Boeckman Bridge, proportionate to the impact of Frog Pond West.

Projects	Total Project Cost Public Sector Construction	Oversize Components (City SDCs)	City Share	Net Project Cost to Recover (rounded)	Number of EDUs	Allocation per EDU	Admin Overhead 12.0%	Total Allocation per EDU
Boeckman Rd	3,747,161	122,986	2,026,941	1,597,000	538	2,970	356	3,326
Boeckman Rd sanitary sewer	690,625	265,756	-	425,000	490	870	104	974
Stafford Rd	2,585,548	439,544	-	2,146,000	538	3,990	479	4,469
Stafford Rd sanitary sewer	213,281	20,312	-	193,000	490	390	47	437
Stafford Rd water	365,625	71,094	-	295,000	472	630	76	706
Neighborhood parks	2,407,221	-	-	2,407,000	457	5,270	632	5,902
Total	10,009,461	919,692	2,026,941	7,063,000		14,120	1,694	15,814

1) Unfunded Projects: The unfunded projects for the Frog Pond West development are the north half of Boeckman Road, the west half of Stafford Road, and the Neighborhood Park, included in the chart above. These projects are the fiscal responsibility of Frog Pond West developers. In the interest of a more efficient and expedient completion of these projects, the City has elected to lead the development of these Unfunded Projects while collecting fees from the developers. This will allow the City to exercise more quality control over the projects. This will also allow the City to respond more effectively to changes in schedules and will allow development to follow a more flexible and unified plan.

The proposed Infrastructure Supplemental Fee is in addition to the regular system development charges (SDCs) collected from Frog Pond West developers and will directly fund the Unfunded Projects only. The Infrastructure Supplemental Fee is calculated based on equivalent dwelling units (EDUs) projections of completed Frog Pond West development at an 80% “underbuild.” The Infrastructure Supplemental Fee may be adjusted twice each year, beginning July 15, 2018, based on inflation and several other factors, which ensures that the fee will keep up with development as actual costs of development become realized.

2) Boeckman Bridge: Frog Pond West developers will be responsible for their share of the Boeckman Bridge. The Resolution accounts for this share using a Boeckman Bridge Fee that is proportional to Frog Pond West’s share of the long-range trip forecast for the bridge.

This Boeckman Bridge Fee is separate from and in addition to the Infrastructure Supplemental Fee and regular SDCs. It is applicable only to the construction of the unfunded portion of the Boeckman Bridge. The Boeckman Bridge Fee is based on the average daily trips forecast for the Boeckman Bridge in 2035. Since the projected 2035 average daily trips for Frog Pond West’s

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residential development is 9.2%, the amount to be raised by Frog Pond West's residential development will be 9.2% of the total unfunded portion of the bridge. The actual fee will vary depending on how much of the Boeckman Bridge will be unfunded.

Boeckman Bridge is currently estimated to cost \$14 million. For each \$1 million of "net unfunded" bridge cost (not covered by the Urban Renewal Agency (URA) or other citywide sources), the fee would be \$161 (9.2% times \$1,000,000, divided by 571 housing units). The actual fee will depend on the unfunded portion of Boeckman Bridge, for example:

- If \$2 million unfunded, the fee per EDU would be \$322
- If \$10 million unfunded, the fee per EDU would be \$1,610
- If \$14 million unfunded, the fee per EDU would be \$2,254

EXPECTED RESULTS: Adoption of the Frog Pond West Fees will ensure efficient completion of the Unfunded Projects and Boeckman Bridge, as well as an equitable distribution of the costs of these projects to developers.

TIMELINE: The Resolution becomes effective on adoption by City Council.

CURRENT YEAR BUDGET IMPACTS: At this time, the impact on the current year budget is not known. The south half of Boeckman Road is included in the five-year Capital Improvement Program (CIP), slated for fiscal year 2018-19. It is possible that design for both the south and north sections of Boeckman Road could begin this budget year, in which case a Budget Supplemental would be necessary.

COMMUNITY INVOLVEMENT PROCESS: Throughout the process of drafting the Infrastructure Funding Plan, which this Resolution implements, there has been extensive collaboration between the project team and interested parties. This collaboration has allowed for vetting of many issues resulting in the Infrastructure Funding Plan that was adopted as part of the Master Plan, which guides this Resolution. In addition, the Frog Pond Master Plan has been the topic of public hearings and public open houses.

POTENTIAL IMPACTS or BENEFIT TO THE COMMUNITY: The approval of the Frog Pond West Fees will ensure a more efficient completion of the Unfunded Projects and Boeckman Bridge, which will lessen the traffic burden on citizens.

ALTERNATIVES: Frog Pond West developers could pay for their portion of the Unfunded Projects and complete the Unfunded Projects themselves. However, Frog Pond West developers have expressed extreme aversion to that alternative and it would likely cause significant delays in the completion of the development projects.

End of staff report.

Presentation appended to the minutes.

Ms. Guile-Hinman disclosed that the reason the methodology for the preliminary Frog Pond West infrastructure supplemental fee and the Boeckman Bridge transportation mitigation fee has come

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to Council's attention now is that developers are submitting plans to the City to develop within Frog Pond West. The Planning Department has upcoming pre-application meetings with developers. In addition, staff is aware that developers will pursue development quickly within Frog Pond West. Rather than playing catch up staff is attempting to get ahead of the rush. In order for staff to do, so necessary tools must be put into place to ensure that development is done correctly, safely and is fully funding.

Staff is aware that fifteen thousand eight hundred fourteen dollars (\$15,814) has been the number published regarding the infrastructure supplemental fee in particular. There have been numerous caveats and revisals to that number. However, that number is the published number that developers have been relying on. By establishing this methodology, it signals that fifteen thousand eight hundred fourteen dollars (\$15,814) is no longer an estimate but the number the City has adopted. Additionally, it places developers on notice of when and how that number will be adjusted. This resolution provides context and more certainty for developers regarding their cost estimates. This is needed for some developers to move forward on purchasing land and developing in Frog Pond West. Staff also believes it is important to adopt this number through this resolution while they have buy in from the developers. This resolution fine-tunes the provisions that are already included in the adopted infrastructure-funding plan as part of the Frog Pond West Master Plan.

Councilor Starr expressed concerns on what is to be done about the bridge, giving the issues of unknown funding. Ms. Guile-Hinman answered that the first building permits will not be issued until late spring 2018 at the earliest. Moreover, the Urban Renewal should be decided in early 2018 therefore regardless of the outcome staff will have information at that time of where developers will be obtaining building permits. The only document that will obligate developers to pay the Boeckman Bridge fee before staff knows the outcome of Urban Renewal may be the development and annexation agreements. These can be amended and are not yet finalized. Each agreement will be tailored to the specific development, and be subjected to approval by Council.

Ms. Guile-Hinman added to the extent the bridge is not fully funded there is a percentage that will be calculated for Frog Pond East and Frog Pond South developments, similarly to how Frog Pond West was calculated. That study has yet to be done in the concept-planning phase. Some traffic studies have been performed but the level of detail that was performed for Frog Pond West has not been completed yet. The idea would be that both Frog Pond East and Frog Pond South would have to pay their portioned share, with the fee to be paid to the City.

Frog Pond West could not pay for the whole bridge by itself. In the event that additional funding sources are needed, that would then be the time to calculate how Frog Pond East and South might be contributing some additional money. If an increase needed an option might be to increase SDCs or some other method.

Ms. Kraushaar commented that Council could consider creating some sort of reimbursement district, where for example a building permit could be set it up to pay back the Urban Renewal fund or the City. If that was a decision Council wanted to make in the future, they could choose to set aside Urban Renewal for any amount of the bridge. However, legal counsel would need to confirm whether or not you could form such district before it was located into the UGB.

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Ms. Kraushaar added that if there were annexations/development agreements before that it should be made clear that there is uncertainty, and they are signing off on that uncertainty of the bridge costs.

Ms. Guile-Hinman mentioned that the template can be modified, but it does say it is the fee for the portion of the bridge that is unfunded. Therefore, if the bridge were fully funded there would not be a fee.

Mayor Knapp appreciated the clear answers to the questions that were asked in work session.

Motion: Councilor Stevenson moved to approve Resolution No. 2649. Councilor Lehan seconded the motion.

Vote: Motion carried 4-0.

B. Resolution No. 2650

A Resolution Of The City Of Wilsonville Designating The City Of Wilsonville As A Bee City USA® Affiliate (staff – Rappold)

Ms. Jacobson read the title of Resolution No. 2650 into the record.

Kerry Rappold provided background and the reason for Resolution No. 2650.

In support of City Council Goal to become a bee city, to maintain the Bee City USA designation the following must be completed:

1. Annually celebrate National Pollinator Week or some other appropriate occasion with educational events, pollinator habitat plantings, or restoration, proclamations, or promotions that showcase the City's commitment to enhancing pollinator health and habitat.
2. Install and maintain at least one authorized Bee City USA street sign in a prominent location, and create and maintain a webpage on the City website which includes, at minimum, a copy of this resolution, links to the national Bee City USA website, contact information for the City's Bee City USA liaison – the Natural Resources Program Manager, contact information for the Parks and Recreation Advisory Board, and reports of the pollinator-friendly activities the community has accomplished in the previous year(s).
3. Develop and implement a program to create or expand pollinator-friendly habitat, which can include, but is not limited to:
 - a. Identification and inventory of City real property that can be enhanced with pollinator-friendly plantings;
 - b. Creation of a recommended locally native species list to include forbs, grasses, vines, shrubs, and trees and a list of local suppliers for those species;
 - c. Creation of a least toxic integrated pesticide management plan;
 - d. Dissemination of informational and educational materials to the public; and

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- e. Tracking annual area of pollinator habitat created or enhanced by square footage and/or acreage.
- 4. Adopt, through the City Council, a policy in the Parks and Recreation Master Plan to acknowledge and commit to the Bee City USA designation.
- 5. Review pesticide management policies and practices as they relate to pollinator conservation, identify appropriate locations for pollinator-friendly plantings, and consider other appropriate measures.
- 6. After completing the first full year as a Bee City USA affiliate, each January, apply for renewal of the City of Wilsonville's Bee City USA designation following the format provided by Bee City USA, including a report of the previous year's Bee City USA activities, and paying the renewal fee based on the City's population. The costs associated with the Bee City USA program will be rather minor (i.e., signage, pollinator celebration, and reporting requirements) due to the existing work being completed with the Bee Stewards program. Annual costs are estimated to be \$10,000 - \$15,000 to implement the Bee City USA program, which will be primarily for staff time. The annual Bee City USA fee is \$200.

Motion: Councilor Lehan moved to adopt Resolution No. 2650 designating Wilsonville as a Bee City. Councilor Starr seconded the motion.

Vote: Motion carried 4-0.

- C. Appeal of Planning Director's Interpretation – Jordan Ward (staff – Neamtzu)

Formal request submitted via email from Jordan Ward ("Appellant") through Chris Neamtzu, Planning Director to City Council. Mr. Ward requested that the Appeal of Planning Director's Interpretation be removed from the August 7, 2017 agenda and rescheduled to the September 18, 2017 Council meeting.

Motion: Councilor Lehan moved to continue item C. Planning Director's Interpretation at the request of the applicant to Monday, September 18. Councilor Starr seconded the motion.

Vote: Motion carried 4-0.

CITY MANAGER'S BUSINESS

City Manager Bryan Cosgrove requested to move his review to first meeting in September and Council agreed.

Mr. Cosgrove presented the following business items:

- A. Work Plan Updates Quarter 2

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B. Work Plan 2017-2018

Additionally, Mr. Cosgrove thanked the Councilors for being present at the memorial ceremony for Jon Gail. He expressed gratitude towards the Parks and Recreation Department, and IT Department for the help they provided in setting up the memorial.

Announced the City received a windfall of about net \$750,000 in the transit fund that will make the five-year forecast line flip to the positive. Thanked legal and the former transit director.

LEGAL BUSINESS

A. Regulation of Panhandling and Related Constitutional Limitations

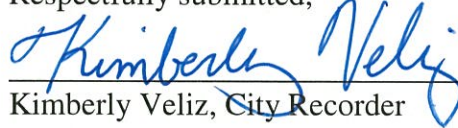
City Attorney Barbara Jacobson discussed the informational memo she provided Council in regards to the regulation of panhandling and related constitutional limitations.

Memo appended to the minutes.

ADJOURN

Mayor Knapp adjourned the meeting at 9:50 p.m.

Respectfully submitted,

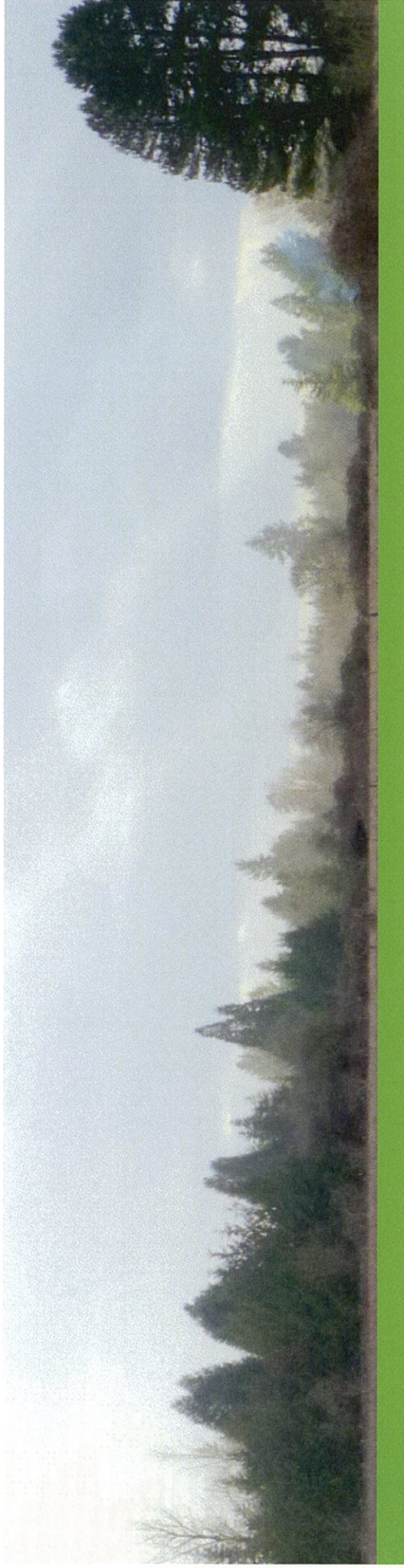


Kimberly Veliz, City Recorder

ATTEST:



Tim Knapp, Mayor



Frog Pond West Infrastructure Funding Resolution

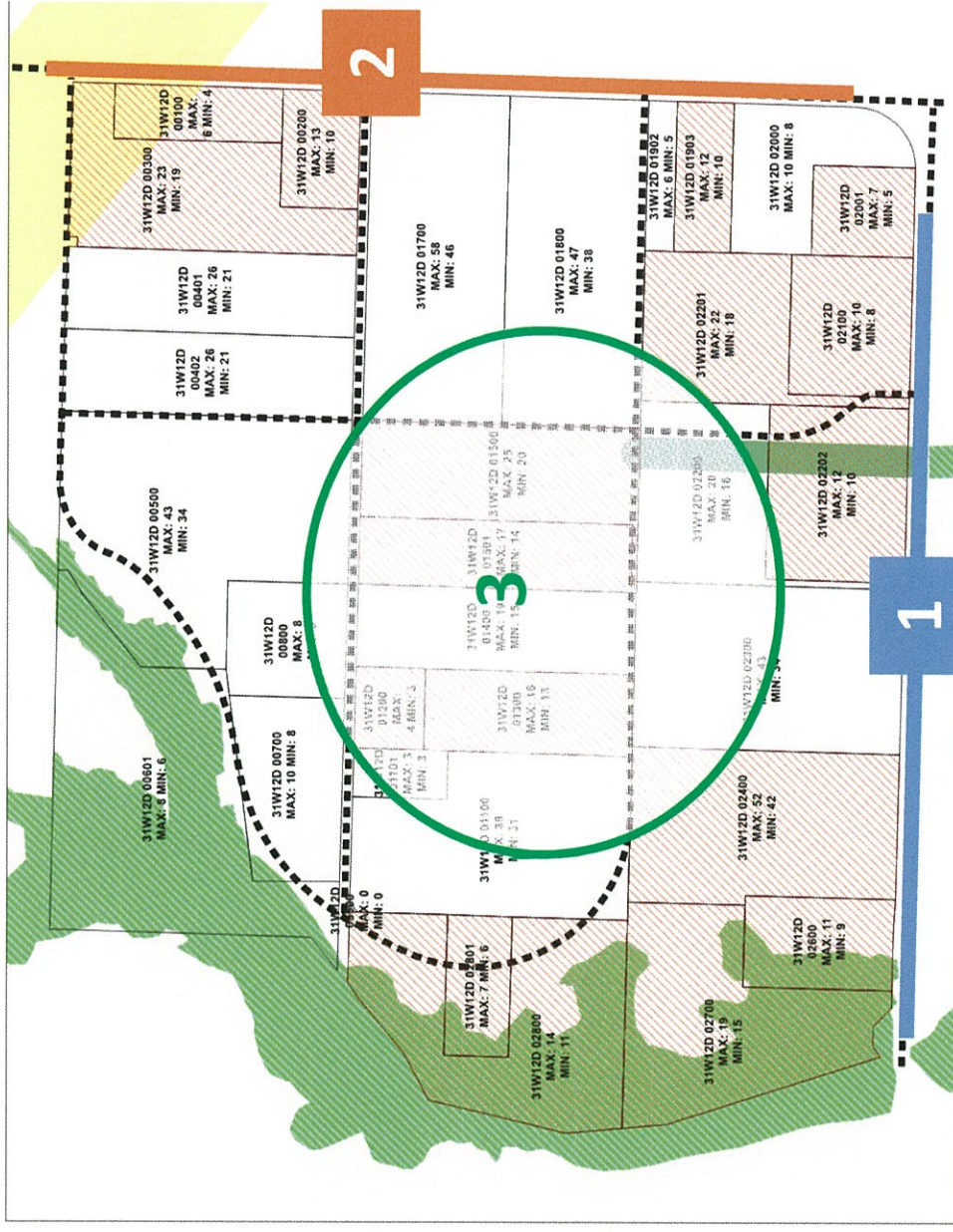
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Unfunded Projects

1. Boeckman Road including sanitary sewer
2. Stafford Road including sanitary sewer and water
3. Neighborhood Park

Off-site Infrastructure

- Boeckman Bridge



The Frog Pond West Infrastructure Funding Plan

- Adopted as part of the Frog Pond West Master Plan
- Identified three (3) Unfunded Projects
 - Northern portion of Boeckman Road
 - Western portion of Stafford Road
 - Neighborhood Park
- Stated preferred strategy of equitable distribution of Unfunded Projects' costs
 - Also preferred City-led construction of Unfunded Projects
- Acknowledged percentage of unfunded cost of Boeckman Bridge borne by Frog Pond West development



Infrastructure Funding Resolution

- Infrastructure Supplemental Fee for the 3 Unfunded Projects
- Boeckman Bridge Transportation Mitigation Fee for Boeckman Bridge; separate from Infrastructure Supplemental Fee
 - Boeckman Bridge has possible other funding sources (urban renewal/SDCs) and only a small percentage of the cost is the responsibility of Frog Pond West development
- Initial Infrastructure Supplemental Fee is \$15,814 per Equivalent Dwelling Unit (EDU)
- Initial Boeckman Bridge Fee is \$161 per \$1 million of bridge cost not funded from other sources

Infrastructure Supplemental Fee - Methodology

- Equitable distribution of the 3 Unfunded Projects' costs and assuming 80% build-out

Projects	Total Project Cost Public Sector Construction	Oversize Components (City SDCs)	City Share	Net Project Cost to Recover (rounded)	Number of EDUs	Allocation per EDU	Admin Overhead 12.0%	Total Allocation per EDU
Boeckman Rd	3,747,161	122,986	2,026,941	1,597,000	538	2,970	356	3,326
Boeckman Rd sanitary sewer	690,625	265,756	-	425,000	490	870	104	974
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Neighborhood parks	2,407,221	-	-	2,407,000	457	5,270	632	5,902
Total	\$10,009,461	\$919,692	\$2,026,941	\$7,063,000		\$14,120	\$1,694	\$15,814

Calculated by applying total estimated cost of each of the Unfunded Projects (2nd column), less oversize components and City contribution (3rd and 4th columns), divided over number of EDUs (6th column) and then adding in administrative overhead of 12% (8th column).



Boeckman Bridge Fee - Methodology

- Based on average daily trips (ADT) projected in 2035 for Frog Pond West
- Frog Pond West development responsible for 9.2% of total unfunded cost of Boeckman Bridge, divided among 571 EDUs (total build-out)
 - For every \$1 million of unfunded bridge cost, Boeckman Bridge Fee will be \$161 ($9.2\% \times \$1 \text{ million} \div 571 \text{ EDUs} = \161)
 - If \$2 million unfunded, the fee per EDU will be \$322 ($2 \times \161)
 - If \$10 million unfunded, the fee per EDU will be \$1,610 ($10 \times \161)
 - If \$14 million unfunded, the fee per EDU will be \$2,254 ($14 \times \161)
- If Boeckman Bridge is fully funded through other sources (urban renewal), then no fee required



Adjustment of Fees

- Infrastructure Supplemental Fee and Boeckman Bridge Fee each adjusted bi-annually beginning July 15, 2018
 - May be adjusted each July 15 and January 15 beginning July 15, 2018
 - Allows adjustment based on any or all of several factors:
 - Construction Cost Index
 - Interest/financing costs incurred by the City
 - New cost estimates from planning/design
 - Actual design and construction costs as projects completed
 - Revisions to City Public Works Standards
 - Number of EDUs
 - Other unanticipated costs or revenue offsets



Payment and Recording of Fees

- Payment of Infrastructure Supplemental Fee and Boeckman Bridge Fee due at issuance of building permit
- City creating a Frog Pond West Fund to record collection of payments
- If funds remaining in Frog Pond West Fund, will be used for capital projects for Frog Pond West
- Developers have to enter into Annexation and Development Agreements obligating them to pay the Infrastructure Supplemental Fee and Boeckman Bridge Fee at issuance of building permit



MEMORANDUM

TO: Honorable Mayor and City Council
City Manager

FROM: Barbara Jacobson, City Attorney
Amanda Guile-Hinman, Assistant City Attorney

DATE: July 25, 2017

RE: **Regulation of Panhandling and Related Constitutional Limitations**

I. STATEMENT

This memorandum discusses the legality of regulating panhandling or solicitations by individuals on public sidewalks, in the public right of way, or on other public property. As discussed more fully below, prohibition of panhandling or solicitation on public property is generally unconstitutional under both the Constitution of the State of Oregon and the Federal Constitution.

A few cities in Oregon have passed ordinances prohibiting “abusive solicitation” or the “unlawful transfer” of items from a vehicle to an individual outside the vehicle while the vehicle is in the vehicle section of the public right of way. These approaches attempt to limit panhandling without violating Oregon and federal constitutional protections but, thus far, are untested in Oregon courts.

II. LEGAL ISSUES

1. Are panhandlers on public property protected under the Oregon or Federal Constitutions?
2. What ordinances have other cities in Oregon enacted regarding panhandling?
3. Can the City regulate panhandling on private property?
4. How is panhandling defined in the Wilsonville Code?

III. SHORT ANSWERS

1. Yes. Panhandlers are protected on public property under Article I, Section 8 of the Oregon Constitution and also under the First Amendment to the U.S. Constitution. An

exception to this protection is where there is a real and legitimate health and safety concern or violation of a law that outweighs free speech (“strict scrutiny test”).

2. Several cities have passed “unlawful transfer” ordinances, which make it unlawful to transfer control or possession of any item within the vehicle to a pedestrian within the vehicle portion of the public right of way. Generally, the “unlawful transfer” ordinances fine the individual in the vehicle, not the pedestrian. Springfield gained a lot of press when it passed such an ordinance, against the advice of legal counsel and the police. To date, they have not issued any tickets under this ordinance.
3. The City cannot regulate panhandling on private property unless, again, there is a serious and imminent health and safety concern or violation of a law.
4. Under current City Code, “Panhandling” means any solicitation made in person upon any street, public place, or park in the City in which a person requests an immediate donation of money or other gratuity from another person, and includes seeking donations: “(a) By vocal appeal or for music, singing or other street performance... However, panhandling shall **not** include the act of passively standing or sitting nor performing music, singing or other street performance with a sign or other indication that a donation is being sought, without any vocal request other than response to an inquiry by another person” (emphasis added). In other words, a person standing quietly with a sign asking for money on the sidewalk or at the side of the road is **not** a panhandler under the Wilsonville Code.

IV. DISCUSSION

A. Constitutionality of Anti-Panhandling Ordinances

1. Constitutionality Under Article I, Section 8 of the Oregon Constitution

Oregon’s constitutional right to freedom of speech (Article I, Section 8) prohibits any law “restraining the free expression of opinion, or restricting the right to speak, write, or print freely on any subject whatever; but every person shall be responsible for the abuse of this right.”

Article I, Section 8 is “a very broad prohibition” on what the government is not allowed to restrict. *State v. Ciancanelli*, 339 Or 282, 293 (2005).

Historically, Oregon places an “especially high value on individual liberty” (*id.* at 306), and so Oregon courts view the adoption of Article I, Section 8 as “intended to prohibit any laws directed at restraining verbal or nonverbal expression of ideas of any kind.” *Id.* at 311. The

ACLU of Oregon notes that the free speech guarantee in the Oregon Constitution is widely considered one of the nation's strongest in the country. Oregon courts divides laws that may implicate expression into three (3) categories:

- (1) "laws that explicitly and in terms prohibit speech itself, regardless of whether the speech causes or is an attempt to cause harm." An example of this category is a law prohibiting obscenities. These laws are facially unconstitutional unless there is "some historical exception that was well established when the first American guarantees of freedom of expression were adopted and that the guarantees then or in 1859 demonstrably were not intended to reach." *State v. Rich*, 218 Or App 642, 646 (2008) (emphasis added).
- (2) "laws that prohibit the accomplishment of, or attempt to accomplish, harm and specify that one way that the harm might be caused is by speech." An example of the second kind of law is a statute prohibiting one person from using a verbal threat to coerce another person into doing something he/she does not want to do. These types of laws are "presumptively constitutional unless they are incurably overbroad." *Id.* (emphasis added).
- (3) "laws that, without reference to or specification of speech, prohibit the accomplishment of, or attempt to accomplish, harm that, in some circumstances, could be caused by speech." An example of the third kind of law is a trespass statute that, although it does not mention speech or expression, could be enforced against a political protester engaged in political expression. These laws are facially constitutional, but they could violate Article I, Section 8 depending on the particular facts of the case, in other words, an as-applied challenge. *Id.* (emphasis added).

Regulations against panhandling have difficulty not being classified under the first type of laws regulating expression. This is because a regulation against panhandling is targeting individuals who are asking for money, employment, or other items – in other words, it is regulating individuals simply based on their speech. When a law punishes speech, it is *per se* unconstitutional unless there is a historical exception to free speech guarantees. *Id.* at 647. Such historical exceptions are perjury, solicitation of a crime (i.e., inducing someone else to commit a crime), some forms of theft, forgery, and fraud. *State v. Robertson*, 293 Or 402, 412 (1982). It must be noted, however, even if a law does fall under a historical exception under Oregon law, it must still be narrowly construed under federal law "to avoid over breadth or to scrutiny of its

application to particular facts.” *Id.* In other words, the federal strict scrutiny test will be applied even though the law or regulation is based on a historical exception limiting speech.

Unsurprisingly, litigation in Oregon repeatedly demonstrates that regulating panhandling violates an individual’s freedom of speech under Article I, Section 8 and does not fall under a historical exception. In 1996, the ACLU of Oregon represented an individual who was convicted of unlawful solicitation under ORS 814.090(1), which prohibited a person from soliciting employment or business or from selling or soliciting contributions from persons in a vehicle on or near a highway. *City of Springfield v. Aquizap*, 144 Or App 190 (1996). The State conceded that ORS 814.090(1)(a) violated Article I, Section 8 of the Oregon Constitution. The Oregon Court of Appeals affirmed the State’s concession. However, the statute remained “on the books” for several years. During that time, at least one other case was settled because the law had previously been ruled unconstitutional. As reported by *The Oregonian*, in 2004, the City of Portland agreed to pay \$19,500 to a man who accused Portland of violating his free speech rights by illegally arresting him for panhandling at freeway off-ramps. In 2005, the Oregon State Legislature repealed the law on the basis that it was unconstitutional.¹

In 2008, the City of Medford banned panhandling at intersections, near ATMs, and in public parking lots. In response, on March 3, 2008, the ACLU of Oregon filed a lawsuit against the City, *Volkart v. City of Medford*, alleging the ordinance violated Article I, Section 8. In 2009, the Jackson County Circuit Court ruled the ban was unconstitutional, finding that it violated Article I, Section 8. Medford appealed to the Oregon Court of Appeals, and on June 15, 2009, the Court of Appeals assigned the case to the Appellate Settlement Conference Program. Medford amended its Ordinance throughout the litigation, and again in 2010, and now prohibits

¹ As discussed below, in 2008, ORS 814.070 was amended to regulate requests for money or other items on public highways.

only “abusive solicitation,” which is similar to WC 10.310(4). Medford likely chose to adopt an “abusive solicitation” ordinance so it would fall under the second type of laws discussed above, that is, laws that are presumptively constitutional because they prohibit the accomplishment of, or the attempt to accomplish, harm that might be caused by speech. There has not been a legal challenge to this law, and the City Attorney does not know if anyone has ever been cited under it.

Given that Oregon’s strong constitutional right to free speech dictates that laws punishing speech are *per se* unconstitutional unless some historical exception exists, prohibiting panhandling or solicitations for money or other goods, in and of itself, is unconstitutional because such a prohibition would be regulating the content of an individual’s speech by preventing such person from simply asking for money or other hand-outs.

2. Constitutionality of Anti-Panhandling Ordinances under the First Amendment of the Federal Constitution

Federal jurisprudence analyzing regulations on speech under the First Amendment of the U.S. Constitution establishes a high burden that governments must meet in order to legally regulate speech. A municipality may create “reasonable regulations governing the time, place or manner of speech.” *American Civil Liberties Union of Idaho, Inc. v. City of Boise*, 998 F.Supp.2d 908, 915 (D. Idaho 2014). To satisfy the Federal Constitution, such regulations must meet three criteria: “(1) it must be content-neutral; (2) it must be narrowly tailored to serve an *[sic]* significant governmental interest; and (3) it must leave open ample alternative channels for communication of the information.” *Id.* at 916. If the regulation is not content neutral, i.e., it regulates the content of speech, then the regulation must withstand a “strict scrutiny review.” That means the city must show its ordinance is the least restrictive means of furthering a compelling government interest and the ordinance is necessary to achieve that interest. *Id.*

Content-based ordinances are presumptively unconstitutional because meeting the strict scrutiny test is virtually impossible.

Both the Ninth Circuit (federal appellate court for Oregon) and courts within the Ninth Circuit² have found that regulations against panhandling or solicitations on sidewalks are content-based restrictions and are unconstitutional. In the Ninth Circuit case of *Comite de Jornaleros de Redondo Beach v. City of Redondo Beach*, 657 F.3d 936 (9th Cir. 2011), the court held that a city ordinance prohibiting solicitation of business, employment, and contributions on streets and highways violated the First Amendment under the U.S. Constitution. In that case, the court examined whether the prohibition was overbroad, which occurs when “a substantial number of its applications are unconstitutional, judged in relation to the statute’s plainly legitimate sweep.” *Id.* at 944. The court began its analysis of whether the prohibition was overbroad by stating that solicitation is protected expression under the First Amendment and also that “[p]ublic streets and sidewalks occupy a special position in terms of First Amendment protection.” *Id.* at 945 (internal quotation and citation omitted). Because the ordinance regulated protected speech – solicitations – in a public forum – on streets and highways – the court applied the “time, place, and manner test,” which allows the government to impose reasonable restrictions on the time, place, or manner of protected speech, “provided the restrictions are justified without reference to the content of the regulated speech, that they are narrowly tailored to serve a significant governmental interest, and that they leave open ample alternative channels for communication of the information.” *Id.* (internal quotation and citation omitted).

² Since Oregon is under the Ninth Circuit’s jurisdiction, a federal challenge to a city ordinance must abide by precedent from the Ninth Circuit (unless overturned by the U.S. Supreme Court).

The court looked at whether the ordinance was narrowly tailored, explaining the government has the burden of showing that “the remedy it has adopted does not burden substantially more speech than is necessary to further the government’s legitimate interests.” *Id.* at 948. (internal quotation and citation omitted). The court held that the regulation was not narrowly tailored because there were several examples of prohibited speech that do not cause the types of problems that motivated the ordinance. For example, the ordinance applied to children selling lemonade on the sidewalk outside their homes, Girl Scouts selling cookies on the sidewalk outside their school, sign bearers on sidewalks seeking customers or offering handbills, motorists who stop on a residential street to inquire whether a neighbor’s daughter or son would be interested in performing yard work or babysitting, or school children shouting and holding “car wash” signs to passing vehicles for a car wash fundraiser. *Id.*

In examining whether an ordinance is narrowly tailored, it is unlikely to be narrowly tailored if less restrictive means of achieving the same goals exist. The court reasoned, “Though we cannot apply a stringent least-restrictive-alternative test, we also cannot uphold the Ordinance if it burdens substantially more speech than is necessary to protect traffic safety and flow.” *Id.* at 949 (internal quotation and citation omitted). The court noted that the city had various laws that could achieve the results it sought without burdening speech, such as laws prohibiting jaywalking, stopping a car so as to obstruct the normal movement of traffic, or city ordinances prohibiting standing in roadways other than in crosswalks if doing so interferes with the lawful movement of traffic. *Id.* The court held the ordinance was not so narrowly tailored to achieve a compelling city interest and so was facially unconstitutional.

The key distinction between the First Amendment of the U.S. Constitution and Article I, Section 8 is that Oregon’s Constitution is even more protective of free speech than is the federal

Constitution. Oregon courts cannot examine whether an ordinance is narrowly tailored to a compelling governmental interest unless there is a historical exception allowing limiting speech, such as perjury or fraud. If the ordinance regulates speech – which regulating panhandling or solicitation does – then only a historical exception will prevent a state court ruling it unconstitutional on its face. If a historical exception does exist (one does not exist for panhandling), the regulation or law still faces a strict scrutiny test requiring it to be narrowly tailored. *Robertson*, 293 Or at 412.

Federal courts will presume that an ordinance regulating speech is unconstitutional and will examine whether the ordinance is narrowly tailored to a compelling governmental interest, and within that analysis will examine whether less restrictive alternatives exist or whether the ordinance provides ample alternatives for the expression. *Reed v. Town of Gilbert, Ariz.*, 135 S.Ct. 2218 (2015) (law is content-based if law applies to particular speech because of the topic, idea, or message expressed; content-based law is presumptively unconstitutional and may only be justified if the government proves it is narrowly tailored to serve compelling state interests); *Nemo v. City of Portland*, 910 F. Supp. 491 (D. Or. 1995) (city regulation requiring a permit for any activity involving a group of four or more people who are soliciting the public's attention was not narrowly tailored to serve a significant government interest).

In addition to challenges under the Oregon Constitution, several Oregon cities have also faced federal challenges to their panhandling ordinances. In 2003, Beaverton and Oregon Department of Transportation settled a federal civil rights lawsuit, paying \$40,000 to two panhandlers who were excluded from highway exit ramps. Cases like these two and the Portland and Medford cases cited above demonstrate that panhandling ordinances face significant state

and federal challenge, especially in Oregon, where the government entity will bear the burden of proving the constitutionality of the ordinances.

B. Other Solutions

1. State Approach – The “Fill the Boot” Statute

In 1983, the Oregon state legislature made it unlawful to solicit employment or business or to sell or solicit contributions from persons while the solicitor was located on or near a highway. In 1996, the Court of Appeals issued its decision in *City of Springfield v. Aquizap*, in which the Court of Appeals agreed with the state’s concession that the statutory provision (ORS 814.090(1)(a)) violated Article I, Section 8 of the Oregon Constitution.

In 1999, the Oregon state legislature amended ORS 814.090, still retaining the prohibition from solicitations on highways, but exempting fire service professionals who were issued permits by the Department of Transportation. Then, in 2005, the Oregon state legislature repealed ORS 814.090 in order to bring its statutes in line with the Oregon Constitution. In other words, the legislature determined that ORS 814.090 was unconstitutional.

By repealing ORS 814.090 in 2005, the remaining statute, ORS 814.070, prohibited a pedestrian from taking a position upon or proceeding along the highway if there is an adjacent usable sidewalk or shoulder. Under the then-current version of ORS 814.070, after the repeal noted above, it was illegal for firefighters to do a “fill the boot” fundraiser.

As a result, in 2008, firefighters lobbied the Oregon Legislature to pass SB 1084 (the “fill the boot” law) so that firefighters could not be found to be in violation of ORS 814.070 as long as they followed certain stated protocol. SB 1084 retained the prohibition for a pedestrian to take a position upon or to proceed along the highway when an adjacent sidewalk was present, but provided an exemption if the individual met four conditions, one of which was obtaining a

permit from the Oregon Transportation Commission. The permit requires liability insurance of not less than \$1 million (ORS 814.072), essentially making it impossible for panhandlers to be on the highway (though they can be on sidewalks). This law thus falls under the third category of laws to determine whether the law is in violation of Article I, Section 8 – i.e., it does not expressly regulate speech, but may regulate speech through its enforcement. Such laws are facially constitutional, but may be challenged as applied to specific individuals. No cases could be found challenging the current “fill the boot” version of ORS 814.070.

2. Unlawful Transfer Ordinances

Cities that try to regulate panhandling through a means other than traffic laws already contained in the Oregon Revised Statutes generally pass an “unlawful transfer” ordinance. These ordinances prohibit the transfer of an item from a vehicle to a person outside when the vehicle is within the vehicle lane of the public right of way. The citations are issued either to the individual in the vehicle or both the individual in the vehicle and the individual to whom the item is passed. Some of these cities have a permit process to allow approved persons to transfer money in a public right of way. Below is a summary of some “unlawful transfer” ordinances adopted in Oregon cities.

- Springfield – Unlawful transfer (“UT”) ordinance, violation and possible fine of \$50; no permitting process authorized
- Roseburg – UT ordinance, violation and fine of up to \$75, but does not apply to persons participating in a “pedestrian activity” for which a permit has been issued in accordance with OAR 734, Division 58³

³ OAR 734 Div. 58 establishes the requirements for issuing permits for pedestrian activities on state highways and the responsibilities of pedestrians participating in the permitted activities. This is the regulation resulting from the “Fill the Boot” Law – SB 1084 (ORS 814.070).

- Coos Bay – UT ordinance, violation and fine of up to \$100, but does not apply to persons participating in a “pedestrian activity” for which a permit has been issued in accordance with OAR 734, Division 58
- Rogue River – UT ordinance with council approval process for pedestrian activity; punishable by a fine up to \$1,000; does not apply to persons participating in a “pedestrian activity” for which a permit has been issued in accordance with OAR 734, Division 58
- Grants Pass – UT ordinance, fine set by resolution of City Council, does not apply to persons participating in a “pedestrian activity” for which a permit has been issued in accordance with OAR 734, Division 58
- Umatilla – UT ordinance, does not apply to persons participating in a “pedestrian activity” for which a permit has been issued in accordance with OAR 734, Division 58 or to a person or vehicle participating in an event approved by the city council where event fees, passes, documents or other materials are passed between event staff and vehicle operators in the conduct of the event and the event is limited to a specific date, time and location
- Central Point – UT ordinance, violation and fine up to \$75, but does not apply to persons participating in a “pedestrian activity” for which a permit has been issued in accordance with OAR 734, Division 58

The City of Springfield garnered considerable attention when it adopted its unlawful transfer ordinance. The City Attorney reached out to the City Attorney for Springfield and learned that Springfield has not issued a single citation under the unlawful transfer ordinance.

3. Abusive/Aggressive Panhandling

In addition to Wilsonville's aggressive panhandling provision, two cities – Medford and Brookings – have adopted “abusive panhandling” ordinances which are substantially similar to Subsection (4) of WC 10.310. Medford adopted its ordinance after its prior panhandling regulation was ruled unconstitutional by Jackson County Circuit Court. The City Attorney's office does not recommend retaining this portion of WC 10.310 because there are less restrictive alternatives that currently exist under Oregon criminal laws – such as crimes for harassment and assault – that address such scenarios giving rise to “abusive” or “aggressive” panhandling.

V. LAW ENFORCEMENT PERSPECTIVE

Wilsonville does not have its own police force. Wilsonville contracts with Clackamas County and, because of that, the officers in Wilsonville must take direction from the County, not the City, as to when it is appropriate to make arrests and for what charge(s) to arrest people. Unlike the City, Clackamas County does **not** have a panhandling ordinance, which may indicate Clackamas County will not support officer enforcement of any expansion of Wilsonville's panhandling ordinance due to constitutional concerns. Because of the long history of finding against the enforcement of panhandling cases nationwide, but especially in Oregon, police officers are reluctant to, and in fact may refuse to, enforce a panhandling ordinance. If Wilsonville were to be sued on the constitutionality of an arrest, Clackamas County is required to defend the City under the current contract. When the City elects to modify, repeal, or replace an ordinance that the Sheriff's Office believes may be problematic for law enforcement, it is reviewed by County Counsel, who will advise them as to enforceability. Police departments do not favor ordinances that restrict speech, especially when there are other laws on the books that can get at speech or behavior that crosses a legal line. Examples of existing laws that can

already be used with respect to panhandling include laws against impeding traffic, trespassing (on private property), disturbing the peace, violating noise ordinances, assault, and harassment, to name a few.

VI. CONCLUSION

Panhandling is protected speech under the Oregon and Federal Constitutions, and Oregon cities must adhere to **both**, not one or the other. Under Article I, Section 8 of the Oregon Constitution, the City can only prohibit speech if one of the above-referenced historical exceptions to free speech guarantees exists. Under the United States Constitution's First Amendment, the City must show that the ordinance meets a compelling governmental interest and is narrowly tailored to address that interest. In order to avoid constitutional challenges, some cities within Oregon have adopted unlawful transfer ordinances because such ordinances do not restrict speech but rather an action, i.e., reaching an arm out a window to hand somebody money. Of course, what such a law does is punish the good Samaritan. Although the argument is that such ordinances do not technically prohibit speech, they are certainly aimed at stopping panhandling indirectly because the direct way has been repeatedly found to be unconstitutional. Although several cities have adopted an unlawful transfer ordinance, we know that at least in Springfield they have not written a single ticket under it. While I think it is safe to say that most people do not enjoy seeing people standing on the streets and sidewalks asking for money, it is their constitutional right to do so, whether their claims are legitimate or not. Those in vehicles and on foot also have a constitutional right not to give money. For all of the foregoing reasons, the City Attorney's office does not recommend enacting an unlawful transfer ordinance but does recommend that City staff work with law enforcement to ensure safety and that people are not stepping out into traffic to collect money.