



TELEVISED

FINAL AGENDA

FORREST C. SOTH CITY COUNCIL CHAMBER
4755 SW GRIFFITH DRIVE
BEAVERTON, OR 97005

REGULAR MEETING
NOVEMBER 15, 2004
6:30 p.m.

CALL TO ORDER:

ROLL CALL:

PROCLAMATIONS:

Association of Operating Room Nurses Perioperative Nurse Week:
November 14 – 20, 2004

PRESENTATIONS:

04231 Presentation of Risk Management Function for the City of Beaverton

CITIZEN COMMUNICATIONS:

COUNCIL ITEMS:

STAFF ITEMS:

CONSENT AGENDA:

Minutes of Regular Meeting of November 8, 2004.

04232 Authorize Acceptance of FY03 Critical Infrastructure Protection Grant Awarded to the City of Beaverton and Establish the Necessary Appropriations Through a Specific Purpose Grant Budget Adjustment Resolution (Resolution No. 3787)

04233 Special Purpose Grant Budget Adjustment Resolution for 2004 Local Law Enforcement Block Grant (LLEBG) (Resolution No. 3788)

04234 A Resolution Designating Territory in the Vicinity of the Intersection of Cedar Hills Boulevard and Barnes Road to be Annexed to the City of Beaverton (Resolution No. 3789)

04235 A Resolution Designating Territory Near Downtown Beaverton to be Annexed to the City of Beaverton (Resolution No. 3790)

WORK SESSION:

- 04236 An Ordinance Amending Chapter 2 of the Beaverton City Code by Establishing a Process for Evaluating Claims for Compensation Under the Amendments to Oregon Revised Statute Chapter 197 As Approved Under Ballot Measure 37 in the 2004 General Election and Declaring an Emergency (Ordinance No. 4333)

ORDINANCES:

First Reading:

- 04237 An Ordinance Amending Chapter 2 of the Beaverton City Code by Establishing a Process for Evaluating Claims for Compensation Under the Amendments to Oregon Revised Statute Chapter 197 As Approved Under Ballot Measure 37 in the 2004 General Election and Declaring an Emergency (Ordinance No. 4333)

Second Reading:

- 04228 An Ordinance Amending Chapter 5 of the Beaverton Code to Add a New Section 5.16 Relating to Civil Rights (Ordinance No. 4330)
- 04229 An Ordinance Amending Provisions of Chapters Four and Five of the Beaverton City Code Relating to Nuisances Affecting the Public Health (Ordinance No. 4331)
- 04230 Design Review Update (Ordinance No. 4332)

EXECUTIVE SESSION:

In accordance with ORS 192.660 (1) (h) to discuss the legal rights and duties of the governing body with regard to litigation or litigation likely to be filed and in accordance with ORS 192.660 (1) (e) to deliberate with persons designated by the governing body to negotiate real property transactions and in accordance with ORS 192.660 (1) (d) to conduct deliberations with the persons designated by the governing body to carry on labor negotiations. Pursuant to ORS 192.660 (3), it is Council's wish that the items discussed not be disclosed by media representatives or others.

ADJOURNMENT

This information is available in large print or audio tape upon request. In addition, assistive listening devices, sign language interpreters, or qualified bilingual interpreters will be made available at any public meeting or program with 72 hours advance notice. To request these services, please call 503-526-2222/voice TDD.

PROCLAMATION

OFFICE OF THE MAYOR
CITY OF BEAVERTON



WHEREAS, surgery today is highly technical, sophisticated and exacting; and

WHEREAS, the perioperative registered nurse is highly skilled in providing nursing care and managing the perioperative environment and that the surgical patient needs expert care for the mind, body and spirit; and

WHEREAS, the surgical patient and family are experiencing a major event in their lives and that the perioperative registered nurse is an expert in allaying the patient's fears, preparing the patient for what will happen during surgery, providing family support, and discussing how the patient will feel during the entire surgical experience; and

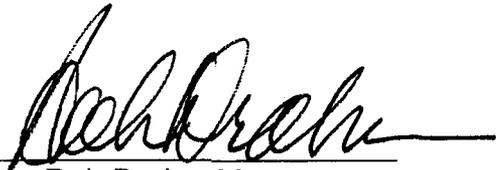
WHEREAS, perioperative registered nurses have a long tradition of working toward patient safety and improving the quality of patient care and that surgical patients rely on the skills, knowledge, and expertise of perioperative registered nurses; and

NOW, THEREFORE, I, Rob Drake, Mayor of the City of Beaverton, Oregon, do hereby proclaim the week of November 14-20, 2004 as:

ASSOCIATION OF OPERATING ROOM NURSES PERIOPERATIVE NURSE WEEK

in the City of Beaverton to recognize perioperative registered nurses who care for patients before, during and after surgery.




Rob Drake, Mayor

AGENDA BILL

**Beaverton City Council
Beaverton, Oregon**

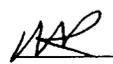
SUBJECT: Presentation of Risk Management Function
for the City of Beaverton

FOR AGENDA OF: 11/15/04 **BILL NO:** 04231

Mayor's Approval: 

DEPARTMENT OF ORIGIN: HR 

DATE SUBMITTED: 11/08/04

CLEARANCES: City Attorney 

PROCEEDING: Presentation

EXHIBITS:

BUDGET IMPACT

EXPENDITURE REQUIRED\$0	AMOUNT BUDGETED\$0	APPROPRIATION REQUIRED \$0
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HISTORICAL PERSPECTIVE:

Through the Human Resources Department, the Risk Management Program and Employee Benefits Program assists the organization in managing its financial resources through minimization of the effects of risk. Major areas in the Risk Management Program include worker's compensation, property, and general liability. The Employee Benefits Program includes self-insured unemployment and employee health and welfare programs. Services provided include claims administration, financing of claims through insurance or self-insurance, wellness and loss prevention activities.

INFORMATION FOR CONSIDERATION:

Risk Management provides legally mandated safety services and insurance programs, as well as discretionary services designed to reduce the long-term cost of risk to the City. Risk financing components of the program include the retention of risk through self insurance and the transfer of risk through commercial insurance and bonds. Risk Management also attempts to recover the cost of losses caused by third parties.

Risk Management works with the management of the City to increase safety training and awareness for the purpose of reducing accidents, injuries and claims costs. The low incidents of workers' compensation claims filed are indication of the overall effectiveness of the City's safety programs.

Risk Management places an emphasis on subrogation efforts to reduce the net cost of losses to the City. As the City's population grows, the number of losses will continue to increase. Subrogation effectiveness can minimize the impact of those increases.

RECOMMENDED ACTION:

Listen to the presentation.

DRAFT

BEAVERTON CITY COUNCIL
REGULAR MEETING
NOVEMBER 8, 2004

CALL TO ORDER:

The Regular Meeting of the Beaverton City Council was called to order by Mayor Rob Drake in the Forrest C. Soth City Council Chamber, 4755 SW Griffith Drive, Beaverton, Oregon, on Monday, November 8, 2004, at 6:30 p.m.

ROLL CALL:

Present were Mayor Drake, Counc. Betty Bode, Dennis Doyle, Fred Ruby, Forrest Soth and Cathy Stanton. Also present were City Attorney Alan Rappleyea, Chief of Staff Linda Adlard, Finance Director Patrick O'Claire, Engineering Director Tom Ramisch, Operations/Maintenance Director Gary Brentano, Human Resources Director Nancy Bates, Police Chief David Bishop, and City Recorder Sue Nelson.

PRESENTATIONS:

04223 Presentation of Shields and Swearing In of Three Officers to the Beaverton Police Department

Mayor Drake welcomed the new Police Officers to the City of Beaverton.

Police Chief Bishop swore in the new officers Daniel Frye, Douglas Jones and Andrew Halbert.

Mayor Drake presented the shields to the officers.

Chief Bishop thanked the officers' families and friends for their support.

CITIZEN COMMUNICATIONS:

Rev. Ja West addressed the Council about various personal and religious concerns.

COUNCIL ITEMS:

Coun. Soth said he attended the League of Oregon Cities Annual Conference this weekend and he felt it was the best conference ever; the sessions were excellent.

Coun. Stanton said she also attended the League Conference. She said she participated in a session that discussed understanding the new statute. She said Measure 37's ramifications were unclear at this point; it would be interesting to see how the statute affected everyone in the coming years.

Coun. Stanton said on Thursday, November 18, 2004, the Westside Economic Alliance would be holding a Regional Planning and Business Symposium at Lloyd Center. She said she would not be able to attend but she hoped another Council member could attend.

Coun. Bode recognized citizen Denise Wolfer for her work in the community. Ms. Wolfer formed a support group for mothers of children who were serving in the Marines. She commended Mrs. Wolfer for helping these parents.

Coun. Doyle said on November 20, 2004, the Police Activities League (PAL) would be holding its Annual Auction and Fund Raiser. He said information was available on the PAL Web site and he was selling tickets for the event.

STAFF ITEMS:

There were none.

CONSENT AGENDA:

Coun. Stanton MOVED, SECONDED by Coun. Soth, that the Consent Agenda be approved as follows:

Minutes of Regular Meeting of November 1, 2004

04224 Liquor License Application: New Outlet – Beaverton Grocery Outlet

04225 Traffic Commission Issues No. TC 565-567

Contract Review Board:

04226 Design and Construction Engineering Services Contract Award – Summer Creek Sanitary Sewer Trunk Relocation Project

Coun. Stanton said she would abstain from voting on the November 1, 2004 Minutes as she was not at that meeting.

Question called on the motion. Couns. Bode, Doyle, Ruby, Soth and Stanton voting AYE, the MOTION CARRIED unanimously. (5:0) Coun. Stanton abstained from voting on the minutes of November 1, 2004, as she was not at that meeting.

ORDINANCES:

Second Reading:

City Attorney Alan Rappleyea read the following ordinances for the second time by title only:

04217 An Ordinance Amending Ordinance No. 4187, Figure III-1, the Comprehensive Plan Land Use Map and Ordinance No. 2050, the Zoning Map for Property Known as Steele Park Located on the Eastside of SW 170th Avenue, Immediately South of Elmonica Elementary School; CPA 2004-0011/ZMA 2004-0011 (Ordinance No. 4327)

04218 An Ordinance Amending Ordinance No. 4187, Figure III-1, the Comprehensive Plan Land Use Map and Ordinance No. 2050, the Zoning Map for Peck Park/TVF&R Station 61 which is Nine Parcels Located Along SW Murray Blvd.; CPA 2004-0014/ZMA 2004-0014 (Ordinance No. 4328)

04219 An Ordinance Amending Ordinance No. 4187, Figure III-1, the Comprehensive Plan Land Use Map and Ordinance No. 2050, the Zoning Map for Property Located at 12030 SW Center Street; CPA 2004-0015/ ZMA 2004-0015 (Ordinance No. 4329)

Coun. Soth MOVED, SECONDED by Coun. Doyle, that the ordinances embodied in Agenda Bills 04217, 04218 and 04219, now pass. Roll call vote. Couns. Bode, Doyle, Ruby, Soth and Stanton voting AYE, the MOTION CARRIED unanimously. (5:0)

ORDINANCES:

Mayor Drake explained the first reading for ordinances under Agenda Bills 04229 and 04230 would be held at this time. The first reading for the ordinance under Agenda Bill 04228 would be later in the evening.

Suspend Rules:

Coun. Bode MOVED, SECONDED by Coun. Soth, that the rules be suspended, and that the ordinances embodied in Agenda Bills 04229 and 04230 be read for the first time by title only at this meeting, and for the second time by title only at the next regular meeting of the City Council. Couns. Bode, Doyle, Soth, Ruby and Stanton voting AYE, the MOTION CARRIED unanimously. (5:0)

First Reading:

Rapplelea read the following ordinances for the first time by title only:

04229 An Ordinance Amending Provisions of Chapters Four and Five of the Beaverton City Code Relating to Nuisances Affecting the Public Health (Ordinance No. 4331)

04230 Design Review Update Project (TA 2003-0005) (Ordinance No. 4332)

PUBLIC HEARING:

04227 An Ordinance Amending Chapter 5 of the Beaverton Code to Add a New Section 5.16 Relating to Civil Rights (Ordinance No. 4330); and

04228 An Ordinance Amending Chapter 5 of the Beaverton Code to Add a New Section 5.16 Relating to Civil Rights (Ordinance No. 4330)

Rapplelea presented a brief summary that included that the ordinance was initiated by the Human Rights Advisory Commission (HRAC), reviewed by the City Attorney's Office, and then forwarded to the Council for a work session and public hearing. He said the ordinance reflected existing Oregon State and case law, and was similar to ordinances adopted by other jurisdictions in Oregon. He said making this ordinance similar to existing law provided legal guidance if the ordinance was challenged.

Rappleyea briefly reviewed the provisions of the ordinance. He said the definitions relied on the definitions in State statutes and the ordinance contained definitions for Gender Identity and Sexual Orientation. He said the areas covered in the ordinance were employment, real estate and public accommodations. He added the source-of-income discrimination was limited to unlawful real property transactions and public accommodations; this mirrored State law. He said the exceptions section also mirrored State law. He said regarding enforcement, the City would enter an intergovernmental agreement with the Bureau of Labor and Industries (BOLI), who currently enforced these ordinances for a number of other jurisdictions. He explained someone raised an issue that State law prohibited local governments from granting special rights or privileges based on sexual orientation. He said existing Court of Appeals case law clearly stated this dealt with granting special rights and not prohibiting discrimination; discrimination was different than granting special rights.

Mayor Drake opened the public hearing.

James Maguire, Beaverton, Chair, Human Rights Advisory Commission (HRAC), said the HRAC started working on the ordinance over a year ago. He said this ordinance was not brought forward in response to State Ballot Measure 36 or in response to Multnomah County issuing marriage licenses to same-sex couples. He said the HRAC began work on this ordinance in response to the State Legislature's failure to take action on Senate Bill 786, which added sexual orientation and gender identity to the State's existing non-discrimination laws. He said the HRAC felt if the State Legislature would not take action on a bill which was the right thing to do, the cities had the responsibility to pass these ordinances locally. He said this ordinance covered sexual orientation and gender identity. He added if Beaverton adopted the ordinance it would join other local governments (Eugene, Portland, Lake Oswego, Bend, and Benton and Multnomah Counties) where these ordinances were well received and implemented.

Maguire said this ordinance was needed because discrimination against gay people was a harsh reality. He said discrimination resulted in unfair employment practices, a disregard for harassment and violence, denial of access to public and private accommodations, and lack of housing options for families. He said this ordinance was important legislation that would bring parity in law to everyone. He said this ordinance fit Beaverton City Goal No. 1: to preserve and enhance the sense of community and Goal 5: to assure a safe and healthy community. He said bringing this ordinance forward would be facilitating the City's goals.

Karl Rohde, Lake Oswego City Councilor, said Lake Oswego was an accepting and tolerant community. He said the Lake Oswego Council adopted this ordinance last October and there wasn't any opposition at the hearing. He said later he was asked to debate the issue of same-sex marriage at a local forum and only one letter in opposition was received. He said in discussing this with citizens, many people were surprised to learn these rights were not extended to gay and lesbian people in the community, and they felt that was wrong. He said he personally hoped Beaverton would join Lake Oswego in extending these rights to all of its citizens. He said this would send the message that Beaverton was an open and tolerant community.

Mayor Drake confirmed this was Rohde's eighth year as a Lake Oswego City Councilor.

Coun. Soth asked Rohde what were the questions regarding Constitutional issues, particularly 1st, 4th, 5th and 14th Amendments.

Rohde explained the Constitutional Amendments did not come into play; Lake Oswego was not in violation of any of those Amendments.

Coun. Doyle asked if the ordinance had helped Lake Oswego.

Rohde said it was difficult to know if it had helped as no polling was done and there weren't any lawsuits brought against an employer or retail center as result of discrimination. He said after the ordinance was passed all the Lake Oswego councilors were approached by citizens expressing support for the adoption of the ordinance. He said this was a reflection of community values that Lake Oswego did not tolerate discrimination against any of its citizens.

Coun. Stanton asked if Lake Oswego contracted with BOLI for enforcement.

Rohde replied Lake Oswego had contracted with BOLI although they had not had to use BOLI since the ordinance was adopted.

Amy Sakari, Beaverton, stated she lived and worked in Beaverton and she was in favor of this ordinance. She said the ordinance was well worded and conveyed the tolerant and welcoming attitude deserving of Beaverton.

Anne Lenzi, Beaverton, said she supported the ordinance. She said discrimination on the basis of sexual gender was as abhorrent as discrimination on the basis of race. She said passage of the ordinance would send a strong message that the City respected all of its citizens; it would make Beaverton a stronger city and a better place to live.

Esther Griffin, Beaverton, said she and her family lived in Beaverton for 16 years and she had worked here for eight years. She said she disliked discrimination of any kind. She applauded the HRAC and the City for proposing this ordinance. She said she was proud her city extended a welcoming hand to everyone and would not tolerate any less.

Mayor Drake explained this ordinance would assure equal rights for everyone; it would not give any special rights.

Wayne Marshall, Beaverton, said he became aware of discrimination as he grew up and its negative impact. He said until everyone was treated equally, no one was truly equal. He said he supported the ordinance.

Coun. Soth asked Marshal if he had experienced any discrimination in housing, employment or public accommodations.

Marshall replied he left a job because of his sexuality.

Coun. Doyle thanked him for raising the issues discussed during the work session. He said the teen suicide rates seriously concerned him. He stressed it was important to continue to work on eliminating discrimination.

Coun. Stanton asked Marshall if the job he left was in Beaverton.

Marshall replied it was in Tanasbourne.

Michael Luevane, Beaverton, said he supported the ordinance. He said he felt there was no reason anyone should be in fear of losing their job, home or income because of any type of discrimination.

Jessica DuBois, Portland, said she was the Field Director at Basic Rights Oregon, a State-wide organization working to end discrimination based on sexual orientation and gender identity. She said she supported the ordinance as it created parity in law and it declared the City would not tolerate discrimination against any of its citizens.

Coun. Doyle asked what Basic Rights Oregon planned for the next legislative session.

DuBois said they were still figuring out their plans for the next session. She also stated that for the past several months Basic Rights Oregon had received calls from citizens across the state who faced heightened levels of harassment in the workplace because of Ballot Measure 36. She said this ordinance would make that type of harassment illegal.

Daniel Russell, Beaverton, said he lived and worked in Beaverton and he supported the ordinance. He said he was a human resources professional and his company had a non-discrimination policy that included sexual orientation and gender identity. He said the policy served the company well and it was common sense legislation.

Roger Hughes, Beaverton, said he lived and worked in Beaverton. He said he was a corporate recruiter for an international high-tech firm. He said his company employed people from around the world and to be competitive they needed to be in a community that embraced its diversity. He said this ordinance was vital to providing a safe community and he encouraged Council to adopt the ordinance.

Coun. Stanton encouraged Hughes and Russell to get involved in their Neighborhood Association.

Adrian Hill, Beaverton, said she lived in Beaverton from age of 3 to 18. She said she had a gay friend who committed suicide when he was 14. She said this ordinance was important because it sent a message to the youth that the City wanted everyone to be safe and Beaverton would not tolerate discrimination.

Jenn Burleton, Beaverton, said she and her partner had lived in Beaverton for ten years. She said they lived here because Beaverton had a progressive spirit. She said it was important to send the message that the City would not allow discrimination.

Sue Kozak, Beaverton, said she and her partner were married this year after living together for 25 years. She said they lived in Beaverton for over 20 years and she had served on many committees and the NAC throughout those years. She urged Council to pass this ordinance for it was the right thing to do.

Angela Milstead, Beaverton, said she supported this ordinance as the sister of a gay man. She said she saw how discrimination affected his life and she worried how it would affect his future. She said she wanted to ensure that no one was denied basic rights based on gender identity or sexual orientation.

Rev. Peg Pfab, Beaverton, said she was the pastor of the Southminster Presbyterian Church in Beaverton. She said her Church and congregation had fully included everyone for many years. She said she hoped Beaverton would also become a community that would not discriminate against anyone because of sexual orientation. She said the symbolic value of this ordinance was enormous for all people.

Rose Galente, Beaverton, said she and her partner had been in a Beaverton restaurant where a young man was afraid to be seen talking to her in fear that he might lose his job. She said she supported the ordinance.

Francine Kaufman, Portland, said she was in support of the ordinance.

Jim Baldwin, Beaverton, said he was a citizen of Beaverton since 1993 and he opposed the ordinance because of his religious beliefs.

Julie Shaw, Beaverton, said she was concerned about small businesses. She asked if a job applicant or employee were vocal about their sexual orientation, and an employer or the customers had serious beliefs that this was wrong, what were the ramifications of firing someone because they refused to be quiet about their sexual orientation.

Mayor Drake said the City could not give her legal advice. He suggested if the ordinance was adopted, she consult an employment attorney if she had concerns about the ordinance.

Coun. Stanton said this was the perfect opportunity to pray for that person and model appropriate behavior.

Lisa Lane, Beaverton, said she supported the ordinance. She said she and her partner had been together for 15 years. She said she was denied employment because of her sexuality. She said she wanted to be considered as equal as everyone else.

Mayor Drake closed the public hearing.

Coun. Bode said she was the founding Chair of the HRAC and she supported the effort that everyone work with a passion for acceptance of one another.

Suspend Rules:

Coun. Bode MOVED, SECONDED by Coun. Ruby, that the rules be suspended, and that the ordinance embodied in Agenda Bill 04228 be read for the first time by title only at this meeting, and for the second time by title only at the next regular meeting of the Council.

Coun. Soth suggested in departure from regular procedure, since this was a public hearing, that Council discussion occurs before the first reading. He explained normally there was no discussion; the City Attorney read the ordinance title, it would go for second reading at the next meeting and become effective thirty days after.

Mayor Drake agreed with Coun. Soth and said he intended to ask for Council discussion prior to the first reading of the ordinance title by the City Attorney.

Coun. Stanton said creating parity in law was important. She explained how she previously supported and lobbied for parity in employee benefits. She said she felt comfortable this ordinance created parity. She said she was pleased Beaverton was acting on this ordinance since the State Legislature failed to do so.

Coun. Soth said he would support the motion. He said they were not addressing this in relation to any religious views. He said this was a constitutional issue. He said the U. S. and State Constitutions addressed citizens and the term "citizens" to him was all inclusive. He said this extended those constitutional protections to all. He said since the State Legislature chose not to act on these matters; it was up to local governments to protect its citizens.

Coun. Doyle said this ordinance was important to the young people in the community. He said the City was codifying court decisions made throughout the State, based on the Constitution. He said the Council was doing the job the State Legislature should have done. He said this was long overdue and he was comfortable with the work of the HRAC and the City Attorney. He said he enjoyed and appreciated hearing from the citizens on this issue.

Coun. Ruby said he agreed with all the comments made. He said it was encouraging to hear from the citizens who found Beaverton to be a welcoming and supporting environment for gay and lesbian citizens. He said this ordinance was important because it created an atmosphere where it was unlawful and unpopular to discriminate.

Mayor Drake said he felt the Council was taking the right action and he supported it.

Call for Question. Vote on Motion to Suspend Rules: Couns. Bode, Doyle, Soth, Ruby and Stanton voting AYE, the MOTION CARRIED unanimously. (5:0)

First Reading:

Rappleyea read the following ordinance for the first time by title only:

04228 An Ordinance Amending Chapter 5 of the Beaverton Code to Add a New Section 5.16 Relating to Civil Rights (Ordinance No. 4330)

Coun. Stanton confirmed with Mayor Drake that the second reading would be at the next Council meeting and one month from then the ordinance would become Code.

ADJOURNMENT

There being no further business to come before the Council at this time, the meeting was adjourned at 8:10 p.m.

Sue Nelson, City Recorder

APPROVAL:

Approved this _____ day of _____, 2004.

Rob Drake, Mayor

AGENDA BILL

**Beaverton City Council
Beaverton, Oregon**

SUBJECT: Authorize Acceptance of FY03 Critical Infrastructure Protection Grant Awarded to the City of Beaverton and Establish the Necessary Appropriations Through a Specific Purpose Grant Budget Adjustment Resolution

FOR AGENDA OF: 11/15/04 **BILL NO:** 04232

Mayor's Approval: 

DEPARTMENT OF ORIGIN: Emergency Management 

DATE SUBMITTED: 11/2/04

CLEARANCES: Finance 
Engineering 
City Attorney 
Mayor's Off. 

PROCEEDING: Consent Agenda

- EXHIBITS:**
1. Specific Purpose Grant Budget Adjustment Resolution
 2. Grant Award Conditions and Certifications
 3. Grant Application and Proposed Budget

BUDGET IMPACT

EXPENDITURE REQUIRED \$0	AMOUNT BUDGETED \$0	APPROPRIATION REQUIRED \$0
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HISTORICAL PERSPECTIVE:

The City of Beaverton has been awarded a Critical Infrastructure Protection Grant under the State Homeland Security Grant Program. The U.S. Department of Homeland Security, Office for Domestic Preparedness is providing funds to States for the purchase of specialized equipment for the protection of critical infrastructure, which includes municipal water systems. The equipment items requested in the grant application are based on a county-wide needs and capability assessment that was developed in accordance with federal requirements, as well as the vulnerability assessment conducted on the City's water system by CH2MHill. The grant is in the amount of \$143,900 on a reimbursement basis, and no matching funds are required. The funds must be used to purchase the equipment identified in the revised grant application.

INFORMATION FOR CONSIDERATION:

The State Homeland Security Grant Program provides funds to units of local government to increase the level of protection of critical infrastructure, which includes municipal water systems. The funds received will be used to increase the physical security of the City's water system.

All of the materials included in the grant request were identified during the countywide needs assessment and the vulnerability assessment conducted on the City's water system. Throughout the vulnerability and needs assessment process, an integrated and interoperable approach was taken in the consideration of all the security requirements.

Since the grant funds have been awarded, staff recommends that the corresponding appropriations be established immediately through a transfer resolution. Oregon Budget Law [ORS 294.326(3)] permits the acceptance of specific purpose grants and their associated appropriations through a resolution. Attached is a Specific Purpose Grant Budget Adjustment Resolution that establishes the specific purpose grant revenue and provides the appropriations for the equipment within the Homeland Security Grant Program under the Mayor's Department Budget.

RECOMMENDED ACTION:

Council authorize the Mayor to sign and accept the \$143,900 grant from the Office of Domestic Preparedness and approve the Specific Purpose Grant Budget Adjustment Resolution establishing a budget for the grant within the Homeland Security Grant Program.

GRANTEE COPY

OREGON OFFICE OF HOMELAND SECURITY
CRIMINAL JUSTICE SERVICES DIVISION
STATE HOMELAND SECURITY GRANT PROGRAM

GRANT AWARD CONDITIONS AND CERTIFICATIONS

PROGRAM NAME:	Critical Infrastructure Protection	GRANT NO:	#03-196
GRANTEE:	City of Beaverton c/o Emergency Management	FY 2003 AWARD:	\$143,900
ADDRESS:	P.O. Box 4755 Beaverton, OR 97076-4755	AWARD PERIOD:	3/1/03 thru 12/31/04
PROGRAM DIRECTOR:	Michael Mumaw	TELEPHONE:	(503) 642-0383
		FAX:	(503) 642-4814
PROGRAM CONTACT:	Same	TELEPHONE:	(503) 642-0383
			(503) 642-4814
FISCAL CONTACT:	J.J. Schultz	TELEPHONE:	(503) 526-2245

BUDGET

INCOME

Federal Grant Funds \$143,900

TOTAL INCOME: \$143,900

EXPENSES

Equipment \$143,900

TOTAL EXPENSES: \$143,900

This document along with the terms and conditions and grant application attached hereto and any other document referenced constitutes an agreement between the Criminal Justice Services Division (CJSD) of the Oregon Office of Homeland Security and the Grantee. No waiver, consent, modification or change of terms of this agreement shall be binding unless agreed to in writing and signed by both the Grantee and CJSD. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this agreement. The Grantee, by signature of its authorized representative, hereby acknowledges that he/she has read this agreement, understands it, and agrees to be bound by its terms and conditions (including all references to other documents). Failure to comply with this agreement and with applicable state and federal rules and guidelines may result in the withholding of reimbursement, the termination or suspension of the agreement, denial of future grants, and/or damages to CJSD.

TERMS AND CONDITIONS

I. CONDITIONS OF AWARD

- A. The Grantee agrees to operate the program as described in the application and to expend funds in accordance with the approved budget unless the Grantee receives prior written approval by CJSD to modify the program or budget. CJSD may withhold funds for any expenditure not within the approved budget or in excess of amounts approved by CJSD. Failure of the Grantee to operate the program in accordance with the written agreed upon objectives contained in the grant application and budget will be grounds for immediate suspension and/or termination of the grant agreement.
- B. The Grantee agrees that all public statements referring to the program must state that funds for this program come from the U.S. Department of Homeland Security, Office for Domestic Preparedness, State Homeland Security Grant Program, and must state the percent or dollar amount of federal funds used in the program.
- C. Maintenance, Retention and Access to Records; Audits.
1. Maintenance and Retention of Records. The Grantee agrees to maintain accounting and financial records in accordance with Generally Accepted Accounting Principles (GAAP) and the standards of the Office of the Comptroller set forth in the May 2002 Office of Justice Programs (OJP) Financial Guide, including without limitation in accordance with Office of Management and Budget (OMB) Circulars A-87, A-102, A-122, A-128, A-133. All financial records, supporting documents, statistical records and all other records pertinent to this grant or agreements under this grant shall be retained by the Grantee for a minimum of five years for purposes of State of Oregon or Federal examination and audit. It is the responsibility of the Grantee to obtain a copy of the OJP Financial Guide from the Office of the Comptroller and apprise itself of all rules and regulations set forth.
 2. Access to Records. CJSD, Oregon Secretary of State, the Office of the Comptroller, the General Accounting Office (GAO) or any of their authorized representatives, shall have the right of access to any pertinent books, documents, papers, or other records of Grantee and any contractors or subcontractors of Grantee, which are pertinent to the grant, in order to make audits, examinations, excerpts, and transcripts. The right of access is not limited to the required retention period but shall last as long as the records are retained.
 3. Audits. If Grantee *expends* \$500,000 or more in Federal funds (from all sources) in its fiscal year, Grantee shall have a single organization-wide audit conducted in accordance with the provisions of OMB Circular A-133. Copies of all audits must be submitted to CJSD within 30 days of completion. If Grantee *expends* less than \$500,000 in its fiscal year in Federal funds, Grantee is exempt from Federal audit requirements for that year. Records must be available for review or audit by appropriate officials as provided in Section I.D.1 herein.
 4. Audit Costs. Audit costs for audits not required in accordance with OMB Circular A-133 are unallowable. If Grantee did not *expend* \$500,000 or more in Federal funds in its fiscal year, but contracted with a certified public accountant to perform an audit, costs for performance of that audit shall not be charged to the grant.
- D. Funding.
1. Matching Funds. **This Grant does not require matching funds.**
 2. Supplanting. The Grantee certifies that federal funds will not be used to supplant state or local funds, but will be used to increase the amount of funds that, in the absence of federal aid, would be made available to the Grantee to fund programs consistent with State Homeland Security Grant Program guidelines.

E. Reports. Failure of the Grantee to submit the required program, financial, or audit reports, or to resolve program, financial, or audit issues may result in the suspension of grant payments and/or termination of the grant agreement.

1. Progress Reports. The Grantee agrees to submit a semi-annual report on its progress in meeting enhanced physical security capabilities. Reports must be received no later than **July 31, 2004 and January 15, 2005.** Any progress report that is outstanding for more than one month past the due date may cause the suspension and/or termination of the grant. Grantee must receive prior written approval from CJSD to extend a progress report requirement past its due date.
2. Financial Reimbursement Reports.
 - a. In order to receive reimbursement, the Grantee agrees to submit a signed Request for Reimbursement (RFR) which includes **supporting documentation for all grant expenditures.** RFRs may be submitted quarterly but no less frequently than semi-annually during the term of the grant agreement. At a minimum, RFRs must be received no later than **July 31, 2004 and January 15, 2005.**

Reimbursements for expenses will be withheld if progress reports are not submitted by the specified dates or are incomplete. **Any RFR that is outstanding for more than one month past the due date may cause the suspension and/or termination of the grant.** Grantee must receive prior written approval from CJSD to extend an RFR requirement past its due date.
 - b. Reimbursement rates for travel expenses shall not exceed those allowed by the State of Oregon. Requests for reimbursement for travel must be supported with a detailed statement identifying the person who traveled, the purpose of the travel, the times, dates, and places of travel, and the actual expenses or authorized rates incurred.
 - c. When requesting reimbursement for equipment costing over \$5,000, the Grantee agrees to provide a description of the equipment, purchase price, date of purchase, and identifying numbers if any.
 - d. Reimbursements will only be made for actual expenses incurred during the grant period. The Grantee agrees that no grant funds may be used for expenses incurred before **March 1, 2003 or after December 31, 2004.** Reimbursements will not be made for services or fees (contractual, maintenance, warranties) that extend beyond the grant award period.
 - e. Grantee shall be accountable for and shall repay any overpayment, audit disallowances or any other breach of grant that results in a debt owed to the Federal Government. CJSD shall apply interest, penalties, and administrative costs to a delinquent debt owed by a debtor pursuant to the Federal Claims Collection Standards and OMB Circular A-129.
3. Audit Reports. Grantee shall provide CJSD copies of all audit reports pertaining to this Grant Agreement obtained by Grantee, whether or not the audit is required by OMB Circular A-133.

- F. Indemnification. The Grantee shall, to the extent permitted by the Oregon Constitution and by the Oregon Tort Claims Act, defend, save, hold harmless, and indemnify the State of Oregon and CJSD, their officers, employees, agents, and members from all claims, suits and actions of whatsoever nature resulting from or arising out of the activities of Grantee, its officers, employees, subcontractors, or agents under this grant.

Grantee shall require any of its contractors or subcontractors to defend, save, hold harmless and indemnify the State of Oregon, Criminal Justice Services Division, and the Oregon Office of Homeland Security, their officers, employees, agents, and members, from all claims, suits or actions of whatsoever nature resulting from or arising out of the activities of subcontractor under or pursuant to this grant.

Grantee shall, if liability insurance is required of any of its contractors or subcontractors, also require such contractors or subcontractors to provide that the State of Oregon, Criminal Justice Services Division, and the Oregon Office of Homeland Security and their officers, employees and members are Additional Insureds, but only with respect to the contractor's or subcontractor's services performed under this grant.

- G. Copyright and Patents.

1. Copyright. If this agreement or any program funded by this agreement results in a copyright, the CJSD and the Office for Domestic Preparedness reserve a royalty-free, nonexclusive and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for government purposes, the work or the copyright to any work developed under this agreement and any rights of copyright to which Grantee, or its contractor or subcontractor, purchases ownership with grant support.

2. Patent. If this agreement or any program funded by this agreement results in the production of patentable items, patent rights, processes, or inventions, the Grantee or any of its contractors or subcontractors shall immediately notify CJSD. The CJSD will provide the Grantee with further instruction on whether protection on the item will be sought and how the rights in the item will be allocated and administered in order to protect the public interest, in accordance with federal guidelines.

- H. No Implied Waiver, Cumulative Remedies. The failure of Grantor to exercise, and any delay in exercising any right, power, or privilege under this Agreement shall not operate as a waiver thereof, nor shall any single or partial exercise of any right, power, or privilege under this Agreement preclude any other or further exercise thereof or the exercise of any other such right, power, or privilege. The remedies provided herein are cumulative and not exclusive of any remedies provided by law.

- I. Governing Law; Venue; Consent to Jurisdiction. This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit, or proceeding (collectively, "Claim") between Grantor (and/or any other agency or department of the State of Oregon) and Grantee that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court for the State of Oregon; provided, however, if the Claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. **Grantee, By Execution Of This Agreement, Hereby Consents To The In Personam Jurisdiction Of Said Courts.**

- J. Notices. Except as otherwise expressly provided in this Section, any communications between the parties hereto or notice to be given hereunder shall be given in writing by personal delivery, facsimile, or mailing the same by registered or certified mail, postage prepaid to Grantee or Grantor at the address or number set forth on page 1 of this Agreement, or to such other addresses or numbers as either party may hereafter indicate pursuant to this section. Any communication or notice so addressed and sent by registered or certified mail shall be deemed delivered upon receipt or refusal of receipt. Any communication or notice delivered by facsimile shall be deemed to be given when receipt of the transmission is generated by the transmitting machine. Any communication or notice by personal delivery shall be deemed to be given when actually delivered. The parties also may communicate by telephone, regular mail or other means, but such communications shall not be deemed Notices under this Section unless receipt by the other party is expressly acknowledged in writing by the receiving party.

- K. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of Grantor, Grantee, and their respective successors and assigns, except that Grantee may not assign or transfer its rights or obligations hereunder or any interest herein without the prior consent in writing of Grantor.

- L. Survival. All provisions of this Agreement set forth in the following sections shall survive termination of this Agreement: Section I.C (Maintenance, Retention and Access to Records; Audits); Section I.E (Reports); and Section I.F (indemnification).
- M. Severability. If any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if this Agreement did not contain the particular term or provision held to be invalid.
- N. Relationship of Parties. The parties agree and acknowledge that their relationship is that of independent contracting parties and neither party hereto shall be deemed an agent, partner, joint venturer or related entity of the other by reason of this Agreement.

II. Grantee Compliance and Certifications

- A. Debarment, Suspension, Ineligibility and Voluntary Exclusion. The Grantee certifies by accepting grant funds that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, nor voluntarily excluded from participation in this transaction by any Federal department or agency. (This certification is required by regulations published May 26, 1988, implementing Executive Order 12549, Debarment and Suspension, 28 CFR Part 69 and 28 CFR Part 67.)
- B. Compliance with Applicable Law. The Grantee agrees to comply with all applicable laws, regulations, and guidelines of the State of Oregon, the Federal Government and CJSD in the performance of this agreement including but not limited to:
 1. The provisions of 28 CFR applicable to grants and cooperative agreements including Part 18, Administrative Review Procedure; Part 20, Criminal Justice Information Systems; Part 22, Confidentiality of Identifiable Research and Statistical Information; Part 23, Criminal Intelligence Operating Policies; Part 30, Intergovernmental Review of Department of Justice Programs and Activities; Part 42, Non-Discrimination/Equal Employment Opportunity Policies and Procedures; Part 61, Procedures for Implementing the National Environmental Policy Act; Part 63, Floodplain Management and Wetland Protection Procedures, and Federal laws or regulations applicable to Federal assistance programs.
 2. Uniform Relocation Assistance and Real Property Acquisitions Act of 1970 (P.L. 91-646).
 3. Section 102(a) of the Flood Disaster Protection Act of 1973, P.L. 93-234, 87 Stat.97, approved December 31, 1976.
 4. Section 106 of the National Historic Preservation Act of 1966 as amended (16 USC 470), Executive Order 11593, and the Archeological and Historical Preservation Act of 1966 (16 USC 569a-1 et seq.)
 5. National Environmental Policy Act of 1969, 42 USC 4321 et seq.
 6. Flood Disaster Protection Act of 1973, 42 USC 4001 et seq.
 7. Clean Air Act, 42 USC 7401 et seq.
 8. Clean Water Act, 33 USC 1368 et seq.
 9. Federal Water Pollution Control Act of 1948, as amended, 33 USC 1251 et seq.
 10. Safe Drinking Water Act of 1974, 42 USC 300f et seq.
 11. Endangered Species Act of 1973, 16 USC 1531 et seq.
 12. Wild and Scenic Rivers Act of 1968, as amended, 16 USC 1271 et seq.
 13. Historical and Archaeological Data Preservation Act of 1960, as amended, 16 USC 469 et seq.
 14. Coastal Zone Management Act of 1972, 16 USC 1451 et seq.
 15. Coastal Barrier Resources Act of 1982, 16 USC 3501 et seq.
 16. Indian Self-Determination Act, 25 USC 450f.
 17. Hatch Political Activity Act of 1940, as amended, 5 USC 1501 et seq.
 18. Animal Welfare Act of 1970, 7 USC 2131 et seq.

19. Demonstration Cities and Metropolitan Development Act of 1966, 42 USC 3301 et seq.
20. Federal Fair Labor Standards Act of 1938 (as appropriate), as amended, 29 USC 201 et seq.

C. Certification of Non-discrimination.

1. The Grantee, and all its contractors and subcontractors, certifies that no person shall be excluded from participation in, denied the benefits of, subjected to discrimination under, or denied employment in connection with any activity funded under this agreement on the basis of race, color, age, religion, national origin, handicap, or gender. The Grantee, and all its contractors and subcontractors, assures compliance with the following laws:
 - a. Non-discrimination requirements of the Omnibus Crime Control and Safe Streets Act of 1968, as amended;
 - b. Title IV of the Civil Rights Act of 1964, as amended;
 - c. Section 504 of the Rehabilitation Act of 1973, as amended;
 - d. Title II of the Americans with Disabilities Act (ADA) of 1990,
 - e. Title IX of the Education Amendments of 1972;
 - f. The Age Discrimination Act of 1975;
 - g. The Department of Justice Nondiscrimination Regulations 28 CFR Part 42, Subparts C, D, E, and G;
 - h. The Department of Justice regulations on disability discrimination, 28 CFR Part 35 and Part 39.
2. In the event that a Federal or State court or administrative agency makes a finding of discrimination after a due process hearing on the grounds of race, color, age, religion, national origin, handicap or gender against the Grantee or any of its contractors or subcontractors, the Grantee or any of its contractors or subcontractors will forward a copy of the finding to the Criminal Justice Services Division (CJSD). CJSD will forward a copy of the finding to the Office for Civil Rights, Office of Justice Programs.

D. Civil Rights Compliance. All recipients of federal grant funds are required, and Grantee agrees, to comply with nondiscrimination requirements of Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000d et seq. (prohibiting discrimination in programs or activities on the basis of race, color, and national origin); Omnibus Crime Control and Safe Streets Act of 1968, as amended, 42 U.S.C. §3789d(c)(1) (prohibiting discrimination in employment practices or in programs and activities on the basis of race, color, religion, national origin, and gender); Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794 et seq. (prohibiting discrimination in employment practices or in programs and activities on the basis of disability); Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12131 (prohibiting discrimination in services, programs, and activities on the basis of disability); The Age Discrimination Act of 1975, 42 U.S.C. § 6101-07 (prohibiting discrimination in programs and activities on the basis of age); and Title IX of the Education Amendments of 1972, 20 U.S.C § 1681 et seq. (prohibiting discrimination in educational programs or activities on the basis of gender).

E. Equal Employment Opportunity Program. If the Grantee, or any of its contractors or subcontractors, has 50 or more employees, is receiving more than \$25,000 pursuant to this agreement, and has a service population with a minority representation of three percent or more, the Grantee, or any of its contractors or subcontractors, agrees to formulate, implement and maintain an equal employment opportunity program relating to employment practices affecting minority persons and women. If the Grantee, or any of its contractors or subcontractors, has 50 or more employees, is receiving more than \$25,000 pursuant to this agreement, and has a service population with a minority representation of less than three percent, the Grantee or any of its contractors or subcontractors, agrees to formulate, implement and maintain an equal employment opportunity program relating to its practices affecting women. The Grantee, and any of its contractors and subcontractors, certifies that an equal employment opportunity program as required by this section will be in effect on or before the effective date of this agreement. Any Grantee, and any of its contractors or

subcontractors, receiving more than \$500,000, either through this agreement or in aggregate grant funds in any fiscal year, shall in addition submit a copy of its equal employment opportunity plan at the same time as the application submission, with the understanding that the application for funds may not be awarded prior to approval of the Grantee's, or any of its contractors or subcontractors, equal employment opportunity program by the Office for Civil Rights, Office of Justice Programs.

If required to formulate an Equal Employment Opportunity Program (EEOP), the Grantee must maintain a current copy on file which meets the applicable requirements.

F. National Environmental Policy Act (NEPA); Special Condition for U.S. Department of Justice Grant Programs.

1. Prior to obligating grant funds, Grantee agrees to first determine if any of the following activities will be related to the use of the grant funds. Grantee understands that this special condition applies to its following new activities whether or not they are being specifically funded with these grant funds. That is, as long as the activity is being conducted by the Grantee, a contractor, subcontractor or any third party and the activity needs to be undertaken in order to use these grant funds, this special condition must first be met. The activities covered by this special condition are:
 - a. new construction;
 - b. minor renovation or remodeling of a property either (a) listed on or eligible for listing on the National Register of Historic Places or (b) located within a 100-year floodplain;
 - c. a renovation, lease, or any other proposed use of a building or facility that will either (a) result in a change in its basic prior use or (b) significantly change its size; and
 - d. implementation of a new program involving the use of chemicals other than chemicals that are (a) purchased as an incidental component of a funded activity and (b) traditionally used, for example, in office, household, recreational, or educational environments.
2. Application of This Special Condition to Grantee's Existing Programs or Activities: For any of the Grantee's or its contractors' or subcontractors' existing programs or activities that will be funded by these grant funds, the Grantee, upon specific request from the Office for Domestic Preparedness, agrees to cooperate with the Office for Domestic Preparedness in any preparation by the Office for Domestic Preparedness of a national or program environmental assessment of that funded program or activity.

G. Certification Regarding Drug Free Workplace Requirements. Grantee certifies that it will provide a drug-free workplace by:

1. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the Grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;
2. Establishing a drug-free awareness program to inform employees about:
 - a. The dangers of drug abuse in the workplace;
 - b. The Grantee's policy of maintaining a drug-free workplace;
 - c. Any available drug counseling, rehabilitation, and employee assistance programs; and
 - d. The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace.
3. Requiring that each employee engaged in the performance of the grant be given a copy of the employer's statement required by paragraph (a).
4. Notifying the employee that, as a condition of employment under the award, the employee will:
 - a. Abide by the terms of the statement; and
 - b. Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace not later than five days after such conviction.
5. Notifying the Grantee within ten days after receiving notice from an employee or otherwise receiving actual notice of such conviction.

6. Taking one of the following actions, within 30 days of receiving notice, with respect to any employee who is so convicted:
 - a. Taking appropriate personnel action against such an employee, up to and including termination; or
 - b. Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by federal, state, or local health, law enforcement, or other appropriate agency.
7. Making a good faith effort to continue to maintain a drug-free workplace.

III. Suspension or Termination of Funding

The Criminal Justice Services Division may suspend funding in whole or in part, terminate funding, or impose another sanction on a State Homeland Security Grant Program recipient for any of the following reasons:

- A. Failure to comply substantially with the requirements or statutory objectives of the State Homeland Security Grant Program guidelines issued thereunder, or other provisions of federal law.
- B. Failure to make satisfactory progress toward the goals and objectives set forth in the application.
- C. Failure to adhere to the requirements of the grant award and standard or special conditions.
- D. Proposing or implementing substantial plan changes to the extent that, if originally submitted, the application would not have been selected.
- E. Failing to comply substantially with any other applicable federal or state statute, regulation, or guideline. Before imposing sanctions, the Criminal Justice Services Division will provide reasonable notice to the Grantee of its intent to impose sanctions and will attempt to resolve the problem informally.

IV. Grantee Representations and Warranties

Grantee represents and warrants to Grantor as follows:

1. Existence and Power. Grantee is a political subdivision of the State of Oregon. Grantee has full power and authority to transact the business in which it is engaged and full power, authority, and legal right to execute and deliver this Agreement and incur and perform its obligations hereunder.
2. Authority, No Contravention. The making and performance by Grantee of this Agreement (a) have been duly authorized by all necessary action of Grantee, (b) do not and will not violate any provision of any applicable law, rule, or regulation or order of any court, regulatory commission, board or other administrative agency or any provision of Grantee's articles of incorporation or bylaws and (c) do not and will not result in the breach of, or constitute a default or require any consent under any other agreement or instrument to which Grantee is a party or by which Grantee or any of its properties are bound or affected.
3. Binding Obligation. This Agreement has been duly authorized, executed and delivered on behalf of Grantee and constitutes the legal, valid, and binding obligation of Grantee, enforceable in accordance with its terms.
4. Approvals. No authorization, consent, license, approval of, filing or registration with, or notification to, any governmental body or regulatory or supervisory authority is required for the execution, delivery or performance by Grantee of this Agreement.

Carmen Merlo, Division Director
Oregon Office of Homeland Security
Criminal Justice Services Division
4760 Portland Road NE
Salem, OR 97305

Date

Signature of Authorized Grantee Official

Date

Name/Title

FY03 Infrastructure Protection Grant

Program Narrative

The **City of Beaverton** is located seven miles west of Portland (Oregon) in the Tualatin River Valley, encompasses 15 square miles and is home to a little more than 79,000 residents. The City is Oregon's fifth largest city and is the largest incorporated city in Washington County (2000 Census), which is Oregon's second largest county (by population).

Part One: Coordination with Statewide Needs Assessment - The City of Beaverton and Washington County are located just west of the State's largest and highest risk metropolitan area (i.e., Portland/Multnomah County). The County is home to several large international companies (e.g., Intel, Nike), a biohazard level 3 lab, and many other critical facilities. The City's Police Department provides mutual aid, including a Mobile Response Team (MRT) to other jurisdictions in the metropolitan area including unincorporated Washington County and the City of Portland. The City's Operations Department (public works) is part of the Cooperative Public Agencies of Washington County and their mutual aid agreement.

Washington County and the Portland metro area are home individuals who have been arrested, tried, and convicted of conspiring to assist international terrorist organizations in their "war" against the US. Several organizations in the County have been targeted by domestic terrorism activities including anthrax threats; ELF and ALF protests; and incidents involving improvised explosive devices (IEDs). Local governments in the County, including Beaverton, began a coordinated effort in 2000 to develop a county-wide strategy for responding to threats and actual incidents involving the use of chemical, biological, radiological, nuclear, and explosive

(CBRNE) devices. The initial strategy called for HAZMAT and special law enforcement teams to enter the hot zone; all other firefighters and law enforcement as well as public works teams to operate in the warm zone; and remaining first responders to work in the cold zone. The strategy also called for positioning shared detection and decontamination equipment at the County's largest fire agencies and for the County's law enforcement agencies to have basic explosive device recognition and personal protection equipment.

The County-wide strategy was expanded in subsequent years to include other response disciplines (e.g., public health, hospitals, public safety communications, emergency management, etc.) and functions (e.g., USAR) and the scope broadened to incorporate prevention and mitigation with response. This expanded strategy includes:

- Enhanced voice and data communication recommendations intended to improve interoperability, security, redundancy, and survivability;
- Standards/Guidelines for critical facility security including hospitals;
- Inclusion of public health personnel in on-scene operations including the hot zone;
- Guidelines for hospital personal protective, detection, and decontamination equipment;
- A countywide USAR capability with specific equipment identified for each of the County's fire agencies; and
- Considerations for protection of local government computer networks including "at the fence" (wide area network) and "at the door" (local area network) equipment and procedures.

Although driven primarily by the federal terrorism needs assessment process, the County's strategy has also been heavily influenced by real world events (e.g., anthrax and white powder

incidents) and by work of the County's Anti-Terrorism Advisory Committee (ATAC). The multi-agency ATAC has developed countywide guidelines for quarantine, smallpox response, white powder incidents, homeland security alert levels, and more.

An important aspect of the County's terrorism prevention, mitigation, and response strategy is its linkage to and coordination with regional and state strategies. Much of the County's initial strategy was developed in concert with the Metropolitan Medical Response System (MMRS) and its supporting plan. More recently, the County's strategy has been coordinated with:

- The Portland/Vancouver Urban Area Strategy developed pursuant to the requirements of the Department of Homeland Security's Urban Area Security Initiative (UASI);
- The State Interoperability Executive Council (SIEC) guidelines for voice communication interoperability;
- The state USAR task force guidelines for state and regional USAR capabilities; and
- State health plans and guidelines for bioterrorism incident detection and response.

The City was an active participant in the development of the County-wide strategy and the needs and capabilities assessment. The City is currently active in the Portland/Vancouver Urban Area Strategy for UASI and an active member of ATAC. The Police Department is involved in several multi-agency teams including the Joint Terrorism Task Force (JTTF), and Washington County's special tactics (TNT), narcotics (WIN), and the Lab response teams.

Part Two: Program Description/Identification of Equipment, Planning, Training, or

Organizational Needs - This section reflects a list of the current equipment needs for the City of Beaverton relative to the purpose of this grant and the items listed are identified in the

County-wide Needs Assessment.

A. Consistent with the Washington County terrorism needs assessment, the City of Beaverton is seeking equipment to increase the physical security of critical city facilities including the city's water system.

- Several recommended security upgrades were funded under the FY03 State Homeland Security Grant and through other City funding sources; but they are only one quarter of the recommendations identified by a recent vulnerability assessment. Additional security improvements may go unfunded as the traditional funds available are needed for the routine maintenance and operational improvements to the system to ensure the customers receive the level of service they expect. Tab A has a prioritized list of the specific security improvements being requested.

B. With the exception of those materials that become a permanent part of a facility or non-portable system, or are specific to a particular individual, all of the equipment and supplies requested pursuant to this grant will be made available for use during a local or regional event. All of the materials included in the grant request were identified during the countywide needs assessment process and much of the material was intended to be pre-positioned around the county for local and regional use. Throughout the needs assessment process, an integrated and interoperable approach was taken in the consideration of all equipment categories. The needs assessment team not only ensured compatibility within the county, but it also pursued compatibility with regional hospitals, regional HAZMAT teams, regional public safety communication providers, statewide technical rescue efforts, and the Metropolitan Medical Response System.

Part Three: Goals, Objectives, and Performance Measures

Goal 1: Increase the physical security of critical city facilities.

Objective A: Implement recommended security improvements on the water system.

Performance Measure: Number grant-funded activities completed.

Part Four: Implementation and Evaluation Plan

The program director will ensure that the program becomes operational within 60 days of the grant becoming effective. A point person will be identified for each goal area and that person will coordinate and accomplish each objective for that particular goal. The program director will be responsible for tracking the status of the performance measures and will complete the semi-annual progress reports. The program director will also coordinate purchasing and accountability through the appropriate city departments and the city's Finance Department. The identified point persons will coordinate the required training associated with the grant-funded equipment through the Beaverton Police Department's Training Division. Necessary training will be scheduled within two months of funding unless it involves a certification process and that process is unavailable during the first two months. In such case, that specific training will be accomplished as soon as it is available. The equipment purchase process will be started within three months of funding becoming available.

Part Six: Identification of Available Resources

The City has implemented some of the security upgrades identified during the vulnerability assessment using general funds and water system revenue. Additional upgrades are being completed with FY03 Homeland Security Grant funds.

Part Seven: Budget

INFRASTRUCTURE PROTECTION GRANT

The items listed were not included in previous grant awards

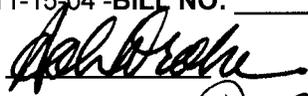
Ref No.	Proposed Improvements	Cost Description	Qty	Line Item Totals
SWW-10	Replace/retrofit the existing reservoir hatch with a tamper-resistant sidewalk door.	Estimated Cost: \$7,500 per hatch.	1	\$ 7,500
SWW-11 / SMP-8 / SMS-7 / CM-12	Add intrusion alarms to reservoir hatches and vent.	Estimated Cost: \$5,250 per hatch or vent alarm contact and conduit connection. Four reservoir sites, five reservoirs.	10	\$52,500
SWW-14	Add additional intrusion motion sensors to the interior of site buildings.	Estimated Cost: \$3,000 for motion sensor and conduit connection Estimated 5 sensors.	5	\$15,000
SMP-5 / SMS-5 / CM-10	Replace the existing reservoir vent with a tamper resistant vent.	Estimated Cost: \$10,500 per vent. Three sites, four reservoirs.	4	\$ 42,000
SMS-14	Replace existing site lighting fixtures and wiring.	Estimated Cost: \$750 per pole including light fixture and new wiring. Estimated 10 lighting poles	10	\$ 7,500
SMS-15	Add safety cage above the existing ladder guard for standpipe reservoir.	Estimated Cost: \$4,500 installed price	1	\$ 4,500
SMS-16	Add an alarm to detect the defeat of the ladder guard on the standpipe reservoir.	Estimated Cost: \$3,000 per alarm plus \$5,000 allowance for conduit connection.	1	\$ 8,000
CM-11	Add a hatch cover to the reservoir hatch.	Estimated Cost: \$1,400 per hatch. Estimated 1 per reservoir.	1	\$ 1,400
MUR-4	Add door status monitoring to building door.	Estimated Cost: \$1,500 for status switch and conduit connection Estimated 1 door.	1	\$ 1,500
	Cost increases	To cover additional equipment costs		\$4,000
PHASE 1 TOTAL				\$ 143,900

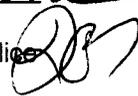
AGENDA BILL

**Beaverton City Council
Beaverton, Oregon**

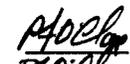
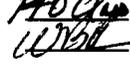
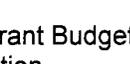
SUBJECT: Special Purpose Grant Budget Adjustment Resolution for 2004 Local Law Enforcement Block Grant (LLEBG)

FOR AGENDA OF: 11-15-04 -**BILL NO:** 04233

Mayor's Approval: 

DEPARTMENT OF ORIGIN: Police 

DATE SUBMITTED: 11-03-04

CLEARANCES: Purchasing 
Finance 
City Attorney 

PROCEEDING: Consent Agenda

EXHIBITS: 1. Special Purpose Grant Budget Adjustment Resolution
2. Agenda Bill 04203

BUDGET IMPACT

EXPENDITURE REQUIRED \$0	AMOUNT BUDGETED \$0	APPROPRIATION REQUIRED \$0
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HISTORICAL PERSPECTIVE:

On October 4, 2004, Council held a Public Hearing on the proposed use of the 2004 Local Law Enforcement Block Grant funds. Following the Public Hearing, Council approved Agenda Bill 04203, which authorized the acceptance of the grant in the amount of \$12,922, approved the use of \$1,436 in matching forfeiture funds to purchase Taser equipment, and directed staff to bring forward an agenda bill authorizing a Special Purpose Grant Budget Adjustment Resolution.

INFORMATION FOR CONSIDERATION:

On October 28, 2004, the Beaverton Police Department was notified that the U.S. Department of Justice had approved the grant and that the grant funds would be deposited into the City's bank account within five business days. On November 2, the City received (electronically) the grant funds in the amount of \$12,922. With the receipt of the grant funds, staff expects that approximately \$150 will be earned in interest income. The grant requires that any interest income received be used for the purposes of the grant.

Since the grant funds have been received, staff recommends that the corresponding appropriations be established immediately through a transfer resolution, and that Council approve the expenditure of \$1,436 out of the forfeiture fund to purchase Taser equipment. Oregon Budget Law [ORS 294.326(3)] permits the acceptance of special purpose grants and their associated appropriations through a resolution. Attached is a special purpose grant budget adjustment resolution that establishes the receipt of the special purpose grant revenue, the matching funds from the forfeiture funds, the anticipated interest income, and provides the appropriations for the purchase of Taser equipment.

RECOMMENDED ACTION:

Authorize the attached special purpose grant budget adjustment resolution for the 2004 Local Law Enforcement Block Grant.

Agenda Bill No: 04233

A RESOLUTION APPROVING THE ACCEPTANCE OF A SPECIFIC PURPOSE GRANT AND THE ASSOCIATED APPROPRIATIONS IN THE GENERAL FUND OF THE CITY DURING THE FY 2004-05 BUDGET YEAR AND APPROVING THE APPROPRIATIONS FOR THE FUND

WHEREAS, the City Council reviews and approves the annual budget; and,

WHEREAS, during the year the Council may authorize the acceptance of special purpose grant funds and the associated appropriations through a special purpose grant budget adjustment resolution; and,

WHEREAS, a special purpose grant entitled "Local Law Enforcement Block Grant" was received in the amount of \$12,922 with a matching requirement of \$1,436 that is available from the forfeiture funds, and an estimated \$150 in interest income, and the Council desires to appropriate the grant award and the matching requirement in the General Fund; now therefore,

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF BEAVERTON, OREGON:

Section 1. The Finance Director is hereby authorized and instructed to adjust the General Fund's budgets to reflect receipt of the special purpose grant revenue, the matching requirement from the forfeiture funds, the interest income, and the associated appropriation:

General Fund

Revenues:

Grants – Federal	001-03-0000-327	\$12,922
Confiscated (Forfeited) Property	001-03-0000-393	\$ 1,436
Investment Interest Earnings	001-03-0000-384	<u>\$ 150</u>
		\$14,508

Expenditures:

Police LLEBG Grant Expenses	001-60-0622-463	\$14,508
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Adopted by the Council this _____ day of _____, 2004

Approved by the Mayor this _____ day of _____, 2004

Ayes: _____

Nays: _____

ATTEST:

APPROVED:

SUE NELSON, City Recorder

ROB DRAKE, Mayor

AGENDA BILL

**Beaverton City Council
Beaverton, Oregon**

SUBJECT: Public Hearing on the Proposed Use of the
2004 Local Law Enforcement Block Grant
(LLEBG) Funds

FOR AGENDA OF: 10-04-04 **BILL NO:** 04203

Mayor's Approval: *[Signature]*

DEPARTMENT OF ORIGIN: Police *[Signature]*

DATE SUBMITTED: 9-21-04

CLEARANCES: Finance *[Signature]*
City Attorney *[Signature]*

PROCEEDING: Public Hearing

EXHIBITS: Resolution 3771

BUDGET IMPACT

EXPENDITURE REQUIRED \$0	AMOUNT BUDGETED \$0	APPROPRIATION REQUIRED \$0
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HISTORICAL PERSPECTIVE:

On July 19, 2004, the City Council adopted a resolution authorizing the filing of an application for a 2004 Local Law Enforcement Block Grant (LLEBG) through the U.S. Department of Justice. The LLEBG program provides funds to units of local government to underwrite projects that reduce crime and improve public safety. The LLEBG program is a formula program based on the jurisdiction's number of Uniform Crime Reports (UCR) Part I violent crimes reported to the FBI.

The City of Beaverton has been awarded a 2004 Local Law Enforcement Block Grant (LLEBG) through the U.S. Department of Justice in the amount of \$12,922 with a matching fund requirement of \$1,436. The Beaverton Police Department is proposing that grant funds be used to purchase Taser equipment.

The purpose of the public hearing is to provide an opportunity for public input on the proposed use of funds, and meet grant requirements. Likewise, the Chief's Advisory Board met on September 8, 2004, as a condition of the grant, and approved the proposed use of funds to purchase the Taser equipment.

INFORMATION FOR CONSIDERATION:

The Beaverton Police Department proposes the purchase of Taser equipment, including Tasers, training and field cartridges, and holsters to enhance its law enforcement capabilities. Tasers are less lethal weapons that use compressed air to fire two wire probes that attach to a subject and deliver electrical energy to incapacitate combative or high risk individuals.

The Department has effectively used Tasers since last year, and has Policies and Procedures in place for the appropriate use and required training for operation. Currently, the Department has a limited number of Tasers, and the proposed purchase of additional Tasers would provide equipment coverage for all shifts.

RECOMMENDED ACTION:

Hold a public hearing to solicit public input for the proposed use of LLEBG grant funds, and authorize the acceptance of \$12,922, and the use of \$1,436 in matching funds from the forfeiture fund to purchase Taser equipment. Direct staff to bring forward an agenda bill with a specific purpose grant adjustment resolution authorizing the expenditure appropriations.

Agenda Bill No: 04203

A RESOLUTION
AUTHORIZING THE FILING OF AN APPLICATION
FOR A LOCAL LAW ENFORCEMENT BLOCK GRANT
FOR THE 2004 FISCAL YEAR

Whereas, the City of Beaverton seeks award from the US Department of Justice of a Local Law Enforcement Block Grant for the 2004 fiscal year; and

Whereas, a condition of receipt of such grant is that the City's governing body adopt a resolution authorizing the filing of the application for the grant; and

Whereas, a condition of receipt of such grant is that a person be identified as the official representative of the grant applicant, and that the person be authorized to file all grant documentation and take such other action required in connection with the application, including providing such additional information as may be required by the US Department of Justice; now, therefore,

The City of Beaverton Resolves as Follows:

Section 1. The City is hereby authorized to apply to the US Department of Justice for a Local Law Enforcement Block Grant for the 2004 fiscal year.

Section 2. Michelle Harrold is hereby identified as the official representative of the City to file all grant documentation and take such other action as may be required in connection with the grant application, including providing such additional information as may be required by the Department of Justice.

Passed by the Council this 19th day of July 2004.

Approved by the Mayor this 20th day of JULY 2004.

ATTEST:



Sue Nelson, City Recorder

APPROVED:



ROB DRAKE, Mayor

AGENDA BILL

**Beaverton City Council
Beaverton, Oregon**

SUBJECT: A Resolution Designating Territory In The Vicinity Of The Intersection of Cedar Hills Boulevard and Barnes Road To Be Annexed To The City of Beaverton

FOR AGENDA OF: 11/15/04 **BILL NO:** 04234

Mayor's Approval: [Signature]

DEPARTMENT OF ORIGIN: CDD [Signature]

DATE SUBMITTED: 11/10/04

CLEARANCES: City Attorney [Signature]
Planning Services HB

PROCEEDING: CONSENT AGENDA

EXHIBITS: Resolution
Exhibit A - Map

BUDGET IMPACT

EXPENDITURE REQUIRED \$0	AMOUNT BUDGETED \$0	APPROPRIATION REQUIRED \$0
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HISTORICAL PERSPECTIVE:

The City Council and Mayor recently approved the "City of Beaverton Urban Service Area and Corporate Limits Annexation Policies" by adoption of Resolution No. 3785. This document directs staff to take a more assertive approach to annexing territory into the City. Oregon Revised Statutes section 222.750 authorizes cities to annex areas "When territory not within a city is surrounded by the corporate boundaries of the city or by the corporate boundaries of the city and the ocean shore or a stream, bay, lake or other body of water...". The owners of property or residents within the territory proposed for annexation need not consent. These are generally referred to as island annexations.

INFORMATION FOR CONSIDERATION:

The Mayor and staff are recommending that implementation of this more assertive annexation policy begin with the territory indicated on the attached map. This is an area that contains developed commercial uses. The area also contains properties that will be developing or redeveloping at high densities, and annexing it will give the City control over that development. Development in the area will add to the City's tax base. City Police are currently patrolling the streets in the area, which are in the City, and it would be more efficient if the area on either side of those streets is in the City.

ORS 222.111(2) indicates that a proposal for annexation of territory may be initiated by a city on the motion of its legislative body. Staff interprets that provision to require Council adoption of a resolution directing initiation of each proposed island annexation.

RECOMMENDED ACTION:

Approve the attached resolution and map by consent.

RESOLUTION NO. 3789

**A RESOLUTION DIRECTING CITY INITIATION OF
ANNEXATION OF TERRITORY**

WHEREAS, the City of Beaverton has adopted Urban Service Area and Corporate Limits Annexation Policies; and

WHEREAS, the City's progress toward annexing its assumed urban services area has been slow; and

WHEREAS, previous incremental annexations have resulted in City limits that are odd and create confusion about their location, with many unincorporated "islands" surrounded by properties within the City; and

WHEREAS, the City desires to create more logical boundaries and create complete incorporated neighborhoods; and

WHEREAS, a more assertive policy toward annexation of certain types of properties could improve the City's ability to provide services to its residents efficiently and at a reasonable cost; and

WHEREAS, a more assertive annexation policy could result in more City control of development in adjacent unincorporated areas that could affect the City; and

WHEREAS, the Washington County 2000 policy is to have all urban unincorporated areas annexed by cities over time; and

WHEREAS, the City now needs to identify particular areas to begin implementing the adopted Annexation Policies; therefore,

**BE IT RESOLVED BY THE COUNCIL OF THE CITY OF
BEAVERTON, OREGON**

Council directs the Mayor to pursue the annexation of territory identified on the map attached hereto as Exhibit A to this resolution.

Adopted by the Council this ____ day of _____, 2004.

Approved by the Mayor this ____ day of _____, 2004.

Ayes: _____

Nays: _____

ATTEST:

APPROVED:

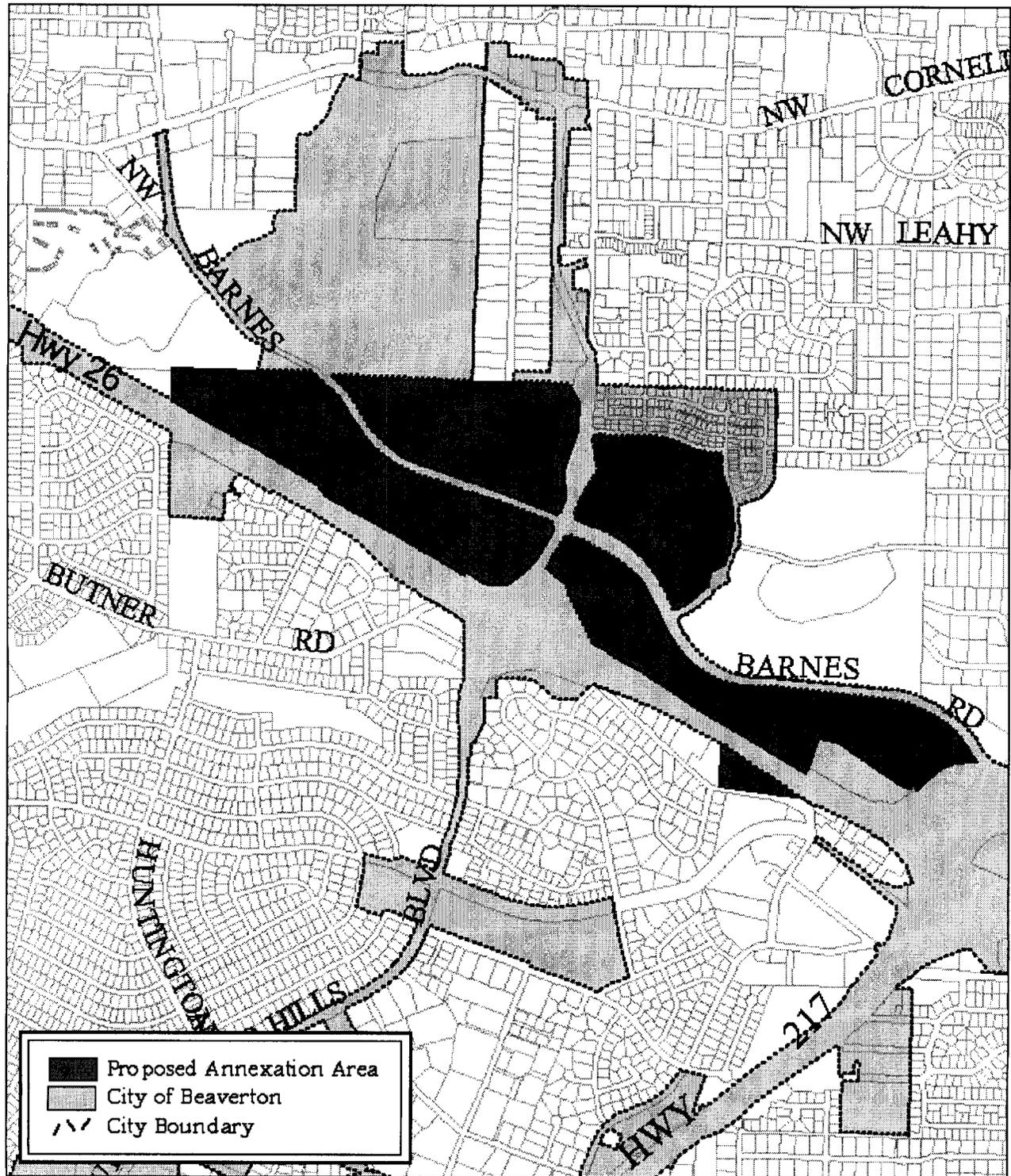
SUE NELSON, City Recorder

ROB DRAKE, Mayor

ANNEXATION MAP

Resolution
No. 3789

Exhibit A



City of Beaverton

Barnes Road / Cedar Hills Blvd. Area Annexation
COMMUNITY DEVELOPMENT DEPARTMENT

Planning Services Division

12/08/04

Map #
Various

N



Application #

ANX2004-0013

AGENDA BILL

**Beaverton City Council
Beaverton, Oregon**

SUBJECT: A Resolution Designating Territory Near
Downtown Beaverton To Be Annexed To
The City of Beaverton

FOR AGENDA OF: 11/15/04 **BILL NO:** 04235

Mayor's Approval: *[Signature]*

DEPARTMENT OF ORIGIN: CDD *[Signature]*

DATE SUBMITTED: 11/10/04

CLEARANCES: City Attorney *[Signature]*
Planning Services *[Signature]*

PROCEEDING: CONSENT AGENDA

EXHIBITS: Resolution
Exhibit A - Map

BUDGET IMPACT

EXPENDITURE REQUIRED \$0	AMOUNT BUDGETED \$0	APPROPRIATION REQUIRED \$0
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HISTORICAL PERSPECTIVE:

The City Council and Mayor recently approved the "City of Beaverton Urban Service Area and Corporate Limits Annexation Policies" by adoption of Resolution No. 3785. This document directs staff to take a more assertive approach to annexing territory into the City. Oregon Revised Statutes section 222.750 authorizes cities to annex areas "When territory not within a city is surrounded by the corporate boundaries of the city or by the corporate boundaries of the city and the ocean shore or a stream, bay, lake or other body of water...". The owners of property or residents within the territory proposed for annexation need not consent. These are generally referred to as island annexations.

INFORMATION FOR CONSIDERATION:

The Mayor and staff are recommending that implementation of this more assertive annexation policy begin with the territory indicated on the attached map. The area is surrounded by Beaverton's Regional Center/Downtown, and annexing it would help create a more complete neighborhood. The area is perceived by many people as being in the City of Beaverton and this would reduce confusion about jurisdiction. City Police are currently patrolling the streets in the area and responding to emergency calls from the property, and it would be more efficient if the area is in the City.

ORS 222.111(2) indicates that a proposal for annexation of territory may be initiated by a city on the motion of its legislative body. Staff interprets that provision to require Council adoption of a resolution directing initiation of each proposed island annexation.

RECOMMENDED ACTION:

Approve the attached resolution and map by consent.

RESOLUTION NO. 3790

**A RESOLUTION DIRECTING CITY INITIATION OF
ANNEXATION OF TERRITORY**

WHEREAS, the City of Beaverton has adopted Urban Service Area and Corporate Limits Annexation Policies; and

WHEREAS, the City's progress toward annexing its assumed urban services area has been slow; and

WHEREAS, previous incremental annexations have resulted in City limits that are odd and create confusion about their location, with many unincorporated "islands" surrounded by properties within the City; and

WHEREAS, the City desires to create more logical boundaries and create complete incorporated neighborhoods; and

WHEREAS, a more assertive policy toward annexation of certain types of properties could improve the City's ability to provide services to its residents efficiently and at a reasonable cost; and

WHEREAS, a more assertive annexation policy could result in more City control of development in adjacent unincorporated areas that could affect the City; and

WHEREAS, the Washington County 2000 policy is to have all urban unincorporated areas annexed by cities over time; and

WHEREAS, the City now needs to identify particular areas to begin implementing the adopted Annexation Policies; therefore,

**BE IT RESOLVED BY THE COUNCIL OF THE CITY OF
BEAVERTON, OREGON**

Council directs the Mayor to pursue the annexation of territory identified on the map attached hereto as Exhibit A to this resolution.

Adopted by the Council this ____ day of _____, 2004.

Approved by the Mayor this ____ day of _____, 2004.

Ayes: _____

Nays: _____

ATTEST:

APPROVED:

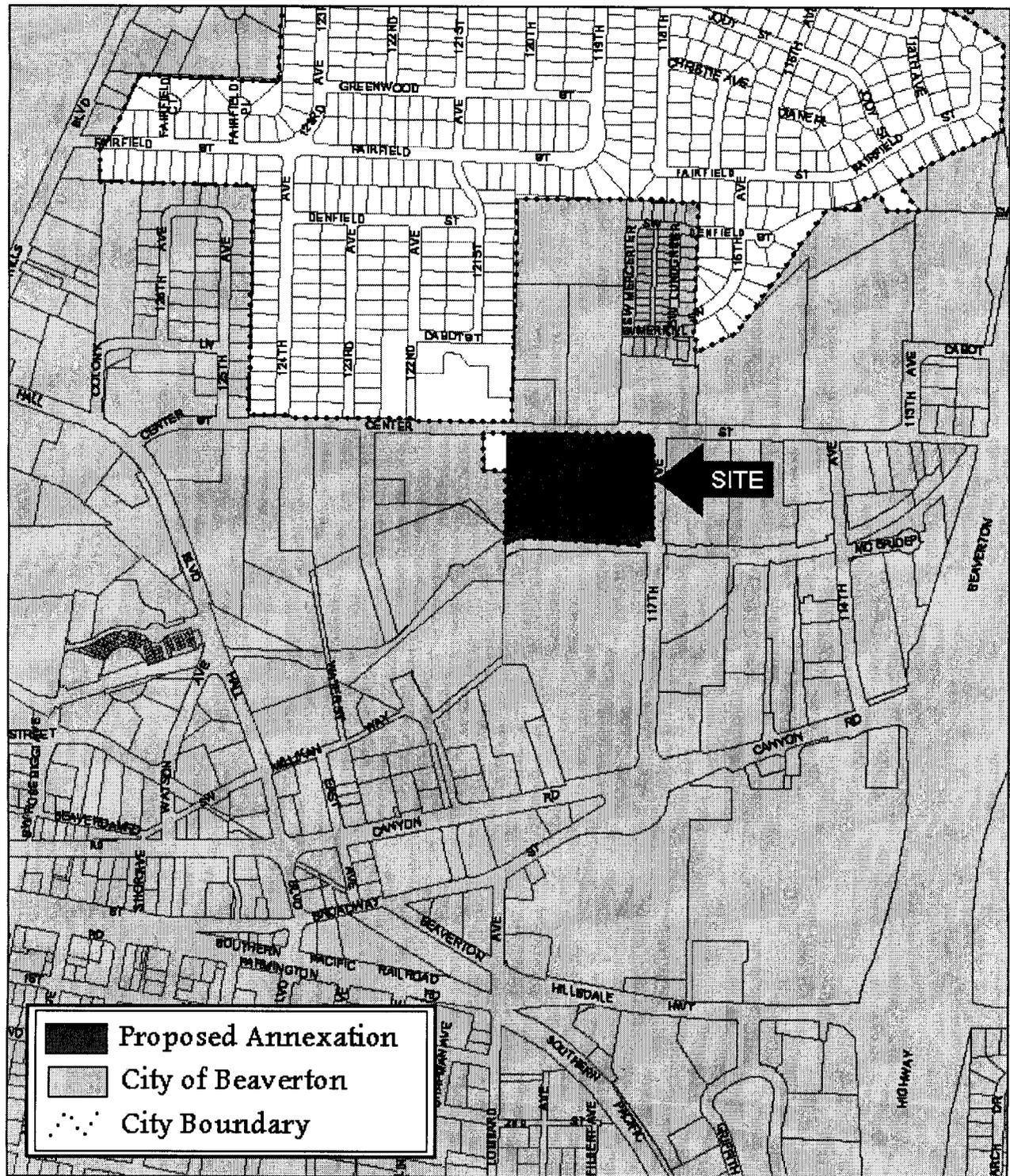
SUE NELSON, City Recorder

ROB DRAKE, Mayor

VICINITY MAP

Resolution
No. 3790

EXHIBIT "A"



City of Beaverton

Mobile Home Corral Annexation
COMMUNITY DEVELOPMENT DEPARTMENT
Planning Services Division

12/08/04

Map #
1s110CD

N



Application #
ANX2004-0014

AGENDA BILL

**Beaverton City Council
Beaverton, Oregon**

SUBJECT: An Ordinance Amending Beaverton City Code Chapter 2 By Establishing A Process For Evaluating Claims For Compensation Under the Amendments to Oregon Revised Statute Chapter 197 as Approved Under Ballot Measure 37 in the 2004 General Election and Declaring an Emergency.

FOR AGENDA OF: 11-15-04 **BILL NO:** 04236

Mayor's Approval: *[Signature]*

DEPARTMENT OF ORIGIN: City Attorney *AR*

DATE SUBMITTED: 11-15-04

CLEARANCES: CDD *[Signature]*

PROCEEDING: Work Session

EXHIBITS: Ordinance

BUDGET IMPACT

EXPENDITURE REQUIRED \$0	AMOUNT BUDGETED \$0	APPROPRIATION REQUIRED \$0

HISTORICAL PERSPECTIVE:

Ballot Measure 37 passed on November 2, 2004. The Measure provides a requirement that the City either waives or pays for its land use regulations that are imposed on property before the current owner or any member of the current owner's family purchased the property.

INFORMATION FOR CONSIDERATION:

The proposed ordinance provides a process in which a person can submit a claim under Ballot Measure 37. If applicants follow this process, it will provide the information that the City needs to determine whether the claim is valid and if so, whether to pay the claim or to waive or modify the land use regulations that cause a reduction in the property's value.

RECOMMENDED ACTION:

Conduct a work session.

ORDINANCE NO. 4333

AN ORDINANCE AMENDING BEAVERTON CITY CODE CHAPTER 2 BY ESTABLISHING A PROCESS FOR EVALUATING CLAIMS FOR COMPENSATION UNDER THE AMENDMENTS TO OREGON REVISED STATUTE CHAPTER 197 AS APPROVED UNDER BALLOT MEASURE 37 IN THE 2004 GENERAL ELECTION AND DECLARING AN EMERGENCY.

WHEREAS, On November 2, 2004 the voters of the state of Oregon approved Ballot Measure 37 which amends Oregon Revised Statute Chapter 197 to require, under certain circumstances, payment to property owners if government regulation reduces property value; and

WHEREAS, Ballot Measure 37 provides that a property owner, in order to receive compensation, must apply for compensation to the government whose regulation allegedly has caused a reduction in the fair market value of property and the government has 180 days from such application to deny or pay the claim, take action to waive the application of the regulation to the property, or enforce the regulations subject to civil right of action; and

WHEREAS, Ballot Measure 37 does not set forth a specific process for review of applications for compensation and it is in the best interest of affected governments, including Beaverton to establish such a process in order to be able to assess such claims in a timely manner; and

WHEREAS, since Measure 37 is anticipated to take effect on December 2, 2004 and could result in a significant number of claims for compensation or waivers of City regulations, the City finds it is immediately necessary and in the public interest to declare an emergency, to adopt this ordinance without extensive notice and public hearings and to provide for its effectiveness immediately upon its passage pursuant to the City Charter and state law.

THE CITY OF BEAVERTON ORDAINS AS FOLLOWS:

Section 1. Chapter 2 of the Beaverton Code is amended to add the following as Section 2.07.

2.07.001 Short Title.

BC 2.07.001-.080 shall be known and may be cited as the "Regulatory Claims Procedure Ordinance" and may also be referred to herein as "this section."

2.07.005 Purpose and Applicability.

- A. The purpose of this section is to:
1. Establish a process whereby claims under Oregon Revised Statute, Chapter 197 (November 2, 2004 amendment, hereafter "Measure 37") may be properly submitted by claimants and evaluated by the City quickly, openly, thoroughly and consistently with the Oregon and U.S. Constitution;

2. Enable persons with legitimate claims an adequate and fair opportunity to present such claims to the City, while preserving and protecting limited public funds;
3. Authorize, where appropriate, limitations on the applicability of City regulations, which are shown to cause a significant reduction in property value;
4. Provide a record of decision capable of judicial review.

B. It is not the purpose of this section to amend, repeal or enforce the Comprehensive Plan, Development Code, statewide land use plan or any other land use statute, regulation or policy.

2.07.010 Definitions. As used in this section, the following mean:

Appraisal – An examination of and opinion about the fair market value of real property issued by a certified general appraiser, licensed by the Oregon Appraiser Certification and Licensing Board.

Claimant or Applicant – The property owner for which a claim is made pursuant to this section.

Community Development Director or Director – The person designated by the Mayor as Community Development Director or such other person or persons as authorized to act in that capacity.

Exempt Regulation – A regulation restricting or prohibiting activities commonly and historically recognized as public nuisances under common law; a regulation restricting or prohibiting activities for the protection of public health and safety; a regulation to implement a requirement of federal law to the extent required; a regulation enacted prior to the date of acquisition of the property by the owner or a family member of the owner who owned the subject property prior to acquisition or inheritance by the owner, which ever occurred first; or a regulation that prohibits selling pornography or performing nude dancing.

Fair Market Value – The price stated in terms of dollars that a willing buyer would pay for the property without any obligation to buy from a willing seller without any obligation to sell. “Reduction in fair market value” means the difference in the fair market value of the property before and after application of the regulation.

Family Member – Shall include the wife, husband, son, daughter, mother, father, brother, brother-in-law, sister, sister-in-law, son-in-law, daughter-in-law, mother-in-law, father-in-law, aunt, uncle, niece, nephew, stepparent, stepchild, grandparent, or grandchild of the owner of the property, an estate of any of the foregoing family members, or a legal entity owned by any one of a combination of these family members or the owner of the property.

Federal Requirement – Any statute, code or regulation adopted by the U. S. Congress or any federal agency or state agency delegated to act in the name of a federal agency, which imposes upon the states or local governments or both an obligation to enact or enforce regulations over the use of real property.

Land Use Regulation - Shall include:

- a) Any statute regulating the use of land or any interest therein;
- b) Administrative rules and goals of the Land Conservation and Development Commission;

- c) Local government comprehensive plans, zoning ordinances, land division ordinances, and transportation ordinances;
- d) Metropolitan service district regional framework plans, functional plans, planning goals and objectives; and
- e) Statutes and administrative rules regulating farming and forest practices.

Measure 37 – The amendment to Oregon Revised Statute 197, as approved by the Oregon electorate on November 2, 2004.

Nuisance – Any act, omission, structure or condition on property, which unreasonably interferes with a right common to members of the general public and not necessarily related to the use and enjoyment of land by any person other than the owner of property that is the situs of the nuisance. A “historically and commonly recognized nuisance” shall have the meaning contained in Measure 37, and as construed by the Oregon appellate courts. Without limiting the foregoing, the City may consider whether a use of property is declared by the Beaverton Code or the Beaverton Development Code to be a nuisance.

Owner – Is the present owner of the property, or any interest therein.

Ownership Interest – A legally recognized interest in the proceeds of any sale of an interest in the property in question.

Public entity – Shall include the state, a metropolitan service district, a city, or a county.

Real Property – All lots, parcels or tracts, or any combination thereof, that are owned by the Claimant, including structures built or located on the property. Real property does not include public property, personal property or easements over, above or below public property. Real property does not include a franchise issued by the City to place or erect public or private utility facilities within or along public right of way.

Restricts the Use – A regulation that restricts the type of use of private real property, but does not include a regulation that effects either the extent of a use or a regulation that governs development or construction.

Use of Property – Any activity that a private property owner can undertake on their property without creating a nuisance, without violating federal law or any local ordinance designed to the minimum extent possible to implement requirements of federal law and without violating any city or county regulation in effect at the time the owner became owner of the property.

Waiver of Enforcement of a Regulation or License – A license issued by the City, pursuant to Section 2.07, suspending City enforcement of the requirements of a City regulation as to a particular property and its owner, which is determined to restrict the owner’s use of property, is not exempt from Oregon Revised State Chapter 197, and for which the City has elected not to pay compensation pursuant to Measure 37.

2.07.012 Pre-Application Conference.

- A. Before submitting an application for a claim pursuant to this section, the claimant may schedule and attend a pre-application conference with the Director to discuss the application. The pre-application conference shall follow the procedure set forth by the Director. The applicant shall pay the applicable fee as established by resolution of the City Council.

- B. To schedule a pre-application conference, the claimant must contact the Director. The pre-application conference is for the claimant to provide a summary of the claimant's application for a claim and for the Director to provide information to the claimant about regulations that may effect the application, including this section. The Director may provide the claimant with a written summary of the pre-application conference within 10 days after it is held.
- C. The Director is not authorized to settle any claim at a pre-application conference. Any omission or failure by staff to recite to a claimant all relevant applicable land use regulations will not constitute a waiver or admission by the City.

2.07.015 Application.

- A. An application for a claim under this section shall be filed by an owner or the owner's authorized agent, along with such number of copies as the Director may require. The application shall be filed with the Director on an application form as approved by the Director, accompanied by documentation in support of the application, as listed in this subsection. Within 10 days following tender of an application the Director shall review the application to determine whether it is complete and ready for filing. If the Director determines the application is not complete, the Director shall, within that 10 day period, notify the applying owner by sending via first-class mail, of exactly what additional information is necessary to make the application complete and ready for filing. If the Director believes there is doubt, under Measure 37, as to whether the additional information can be required as a condition of acceptance of filing of the application, the Director also may notify the claimant in writing that although the Director considers the application not complete and ready for filing, the Director nevertheless will proceed to process the application if the additional information is not supplied by a date set by the Director, not to exceed 20 days after the date of the notification. The application shall be deemed complete and filed as of the date of receipt of the additional information, except that if the applying owner does not supply the additional information by the date set by the Director, then the application shall be deemed complete and filed as of the date the application was received.
- B. The application shall be signed by the Property Owner(s), including without limitation each person having an ownership interest (as defined herein) in the private real property.
- C. Unless waived by the Director an application shall include the following information:
 - 1. A description by street address, if any, and by Washington County Assessment and Taxation map and tax lot number of the property upon which the regulation is imposed;
 - 2. A description by street address, if any, and by the county property tax assessor's map and tax lot number of each parcel of land owned by the owner or owners of the private real property that is either directly contiguous to the property described in paragraph 1 of this subsection, or

is indirectly contiguous through contiguity with another parcel under the same ownership, together with the following:

- a. The date of acquisition of the property and each contiguous parcel;
 - b. Information showing the extent to which the owner has treated the private real property, as to which the owner is applying for compensation, and the directly or indirectly contiguous parcels as a unified use or as a single economic unit, for example in the purchase and financing of the land and in the owner's or owners' development of and economic planning for the land;
 - c. The extent to which application of the subject regulation that is being challenged enhances the value of the property and each contiguous parcels; and
 - d. The amount of any compensation previously paid by any unit of government under Measure 37 in relation to each such parcel.
3. The names and street addresses of the record owners of property on the most recent property tax assessment roll and within 500 feet of the property described in paragraphs 1 and 2 of this subsection;
4. Proof of Ownership. A title report issued within 30 days of the date of the application and by a property title insurance company authorized to conduct business within the State of Oregon and insuring to the City that the claimant is the Property Owner of the Real Property. Such report shall name all persons with legal, equitable and security interests in the property and the date and instrument showing the time and manner in which such property interest or interests were established. Claimant shall also submit a complete list of all other interests or encumbrances, including without limitation leases and encroachments, of which the claimant is aware or has reason to think may exist;
5. Identification of the Regulation.
- a. A specific and detailed reference to each and every regulation that the claimant asserts will restrict the use of property and has the effect of reducing the value of the Property. The reference shall identify by number or section the law, rule, ordinance, resolution, goal or other enforceable enactment, or a copy of the regulation for which claim is submitted; and
 - b. A statement whether the claim is based on adoption, first enforcement, or application of the regulation. If based on adoption of the regulation, the date of adoption of the regulation. If based on first enforcement of the regulation, the date and manner of first enforcement and any documentation establishing the date and manner of first enforcement. If based on application of the regulation, the date and manner of application and any documentation establishing the date and manner of application.

6. A written description addressing the approval criteria, including without limitation the impact of each and every City regulation on the subject property and the reason(s) why under Measure 37 such regulation restricts the use of the property and impacts the value of the property. The claimant shall describe the greatest degree of development that would be permitted if the identified regulation were waived by the City;
7. Amount of Claim.
 - a. A statement of the amount of the claim in dollars based on Claimant's alleged reduction in fair market value resulting from application of the City regulation; and
 - b. An appraisal of the subject property showing the reduction in the fair market value of the property as that reduction is defined under Measure 37. To the extent practicable, the opinion of compensable reduction in fair market value shall be apportioned among each regulation such that the City may separately consider the alleged impact on fair market value of each regulation. The appraisal shall be prepared and signed by a certified general appraiser, licensed by the Oregon Appraiser Certification and Licensing Board and shall conform with Uniform Standards for Professional Appraisal Practice. The appraisal shall address the market feasibility of the use for which compensation is sought, taking into account all relevant factors, including the potential impact of Measure 37 on other properties, the availability of necessary public services, probability of obtaining necessary approvals from other governmental bodies and other constraints;
 - c. An itemization of any prior payments made to the Property Owner relating to a claim on the property, including any contiguous parcels under substantially the same ownership;
 - d. Any other relief sought by the claimant from other governments;
 - e. Copies of all appraisals, market studies, economic feasibility studies, development schemes, environmental assessments or similar studies related to the property prepared within the 2-year period prior to submittal of the claim.
8. A waiver of any claims for regulations not identified;
9. Exemptions. A statement, including analysis, as to why the regulations are not exempt from application for compensation under Measure 37, including:
 - a. Adoption or enforcement of a nuisance;
 - b. Imposition to the extent required, of a regulation to implement a federal requirement;
 - c. Regulation prohibiting the use of the Property for the purpose of selling pornography or performing nude dancing;

10. A copy of all enforcement actions taken by any governmental body as regards the Property;
11. All other documents, information or argument to be relied upon by the claimant in support of the application;
12. An Application Fee as established by resolution and amended from time to time by the City Council. The City shall refund the application fee if it is determined by the City or by a court that the applicant is entitled to compensation under Measure 37 or that the City cannot make payment of an application fee a condition of acceptance of filing of an application under Measure 37. If the applicant refuses to submit a fee and the claim is processed by the City and it is determined that claim is not valid, the City may submit a bill for the cost to the claimant. If the bill is not paid within 30 days, the City may pursue collection efforts including filing a lien on the property;
13. A sworn statement that the information submitted is true and complete to the best knowledge and belief of the claimant.

2.07.020 Notice of Application for Claim.

- A. Upon receipt of a complete application, the Director shall cause notice of the filing of the claim to be given as follows, within 7 days from the date of determination of completeness.
- B. Notice of the hearing under this ordinance shall be made by regular first-class mail to:
 1. The Applicant and to owners of record of property on the most recent property tax assessment roll within 500 feet of where such property is located;
 2. The Chair of the Neighborhood Association Committee in which the Property is located;
 3. The Directors of the following Departments of Washington County: Land Use and Transportation and Assessment and Taxation;
 4. The Director of Metro's Growth Management Services;
 5. The Director of the Oregon Department of Land Conservation and Development;
 6. Such other persons or entities who have expressed an interest in or requested notice of possible waiver of enforcement of regulations under Measure 37; and
 7. Any local, state or federal agency, which the Director believes would be affected by a waiver of the regulation from the Property.

The failure of the Director to give notice as provided in this subsection, or the failure of any person to receive notice given under this subsection, shall not invalidate any action of the City Council under this section. The notice provisions of this subsection shall not restrict the giving

of notice by other means, including the posting in public places, newspaper publication, radio, television or by posting on the City's web site.

- C. The notice provided by this subsection shall:
1. Explain the nature of the application, including the name of the Claimant and the amount of the Claim;
 2. List the applicable criteria from this ordinance;
 3. List the regulation(s) that is the subject of the claim;
 4. Set forth the street address, if available, or other easily understood geographical reference to the claimant's property;
 5. State the date, time and location of the hearing at which the City Council will consider the claim as well as evidence bearing on such claim and determine whether compensation should be paid under this section or the subject regulation(s) should be waived as to the claimant;
 6. State that failure of an issue to be raised in a hearing, in person or by letter, or failure to provide statements or evidence sufficient to afford the decision maker an opportunity to respond to the issue precludes appeal to the Land Use Board of Appeals or other appropriate appeal tribunal based on that issue;
 7. Be mailed at least 20 days before the hearing unless the Director determines that a shorter notice period is required in order to assure that the City Council may make a written decision upon the claim and provide for adequate time for payment of any determined just compensation or license waiving enforcement of a City regulation(s) within the 180-day period required by Measure 37;
 8. Include the name of the City staff to contact and the telephone number where additional information may be obtained;
 9. State that a copy of the application, all documents and evidence submitted by or on behalf of the applicant and applicable criteria are available for inspection at no cost and will be provided at a reasonable cost;
 10. State that a copy of the staff report will be available for inspection at no cost at least seven days prior to the hearing (unless reduced in time pursuant to paragraph 7 of this subsection), and will be provided at a reasonable cost;
 11. Include a general explanation of the requirements for submission of testimony and the procedure for conduct of hearings.
- D. All documents or evidence relied upon by the applicant shall be submitted to the City and be made available to the public. Any staff report shall be made available at least 7 days in advance of the hearing (unless reduced in time pursuant to paragraph 7 of subsection C), except that any appraisal prepared on behalf of the City, which may be submitted at the hearing.
- E. The claimant may request an extension for filing a complete application, for a continuance of the City's review of such application. A request for extension or

continuance shall be deemed a waiver of the 180-day time frame for responding to the application by the amount of any requested extension or continuance.

2.07.025 Review of Application.

The Director, following filing of an application under this section that is deemed complete, and following consideration of the information included in the application and any other evidence, shall determine whether a waiver of enforcement of the regulation may be necessary to avoid the owner or owners being entitled to compensation under Measure 37, and, if so, the extent of the waiver needed and the amount of compensation to which the owner or owners would be entitled without a waiver. If the Director determines that a waiver of enforcement of the regulation is or may be needed to avoid the owner being entitled to compensation, the Director, under the advice of the Finance Director and City Attorney, shall compare the public benefits from application of the regulation to the owner's private real property to the public burden of paying the required compensation if a waiver of enforcement of the regulation is not granted, taking into consideration the financial resources of the City for the payment of such claims. Based on this comparison, the Director shall prepare a written report stating the result of its comparison. If the Director has determined that a waiver of enforcement of the regulation may be needed, the report also shall make a recommendation either to grant a waiver that will avoid the owner being entitled to compensation; grant a license waiving enforcement of the regulation that will either avoid compensation or not avoid compensation but will reduce the compensation to which the owner is entitled and pay the amount of reduced compensation to which the Director believes the owner is entitled; deny a waiver of enforcement of the regulation and pay the amount of compensation to which the Director believes the owner is entitled; or take some other appropriate action, such as acquiring the entire private real property or any portion thereof by condemnation.

2.07.030 City Council Hearing.

- A. Except as otherwise provided in this subsection, the hearing shall be conducted by the City Council in accordance with the Council rules for the conduct of administrative and quasi-judicial hearings.
- B. At the beginning of the public hearing under this section, the presiding officer or a member of City staff shall state:
 1. The applicable substantive criteria;
 2. That the hearing will proceed in the following general order: staff report, applicant's presentation, testimony in favor of the application, testimony in opposition to the application, rebuttal, record closes, deliberation, decision;
 3. That all testimony and evidence submitted, orally or in writing, must be directed toward the applicable approval criteria. If any person believes that other criteria apply in addition to those addressed in the staff report, those criteria must be listed and discussed on the record. The Mayor may reasonably limit oral presentations in length or content depending upon time constraints. Either the City or the claimant may require that the appraiser or other person relied on by the other party attend the hearing

with all relevant materials and be available for questioning by the Council. If the person is not available, the Council may strike from the record any information provided by the person at any stage. Any party may submit written materials of any length while the public record is open;

4. Failure to raise an issue on the record, with sufficient specificity and accompanied by statements or evidence sufficient to afford the City and all parties to respond to the issue, may preclude appeal on that issue to the appropriate appellate tribunal;
5. Any party wishing a continuance or to keep open the record must make that request while the record is still open;
6. The City Councilors (and the Mayor, if a decision maker) must disclose any ex parte contacts, conflicts of interest or bias before the beginning of each hearing item and provide an opportunity for challenge. Advised parties must raise challenges to the procedures of the hearing at the hearing and raise any issue relative to ex parte contacts, conflicts of interest or bias, prior to the start of the hearing.

C. Any request made for an opportunity to continue the hearing, to present additional evidence or testimony or to make final written argument shall be subject to restriction or elimination, as the City Council determines convenient or necessary to assure that a written decision is made and sufficient administrative time remains thereafter to cause payment of compensation or waiving enforcement of the regulation within the required 180-days from the date of filing a claim. The Council shall have sole discretion as to whether to admit evidence, but material required to be submitted as part of the application or that the Director should have received and considered at the time of making its review and recommendation shall not be admitted unless the Council finds that extraordinary circumstances beyond the control of the offering party prevented earlier submittal. The Council may condition receipt of new information from the claimant on the claimant stipulating to an extension of time for consideration of the material and a waiver of the 180-day deadline provided for under Measure 37.

- D. The Council shall determine whether the following criteria have been met:
1. The Application is complete;
 2. The claimant is a qualifying Property Owner under Measure 37 as follows:
 - a. The subject property is located within the City and is subject to the ordinance or regulation, which is the basis of the application for claim;
 - b. The use which the claimant alleges is restricted under a City regulation and does not constitute a nuisance;
 - c. The City regulation is not required as part of any federal requirement and is not an exempt regulation;
 - d. The owner of the property as shown on the application was the owner of the property prior to the date the regulation was adopted, first enforced or applied;

- e. There is substantial evidence to support the claim of reduction in the fair market value of the subject property;
 - f. The amount of compensation claimed or determined to be potentially due;
 - g. The availability of public financial resources to pay the claim in consideration of competing priorities in the public interest;
 - h. The impact of waiving enforcement of the regulation(s) or otherwise permitting the use on other properties and the public interest; and
 - i. Such other factors as are determined to be in the interest of the property owner and the public to consider to adjudicate the claim.
3. The cited regulation(s) reduce the fair market value of the property and entitle the Owner to compensation or waiver of enforcement of the regulation pursuant to Measure 37.

E. At the conclusion of the hearing the City Council shall announce its decision orally. Such decision shall not be considered the final City decision until the City Council has adopted written findings in support of its decision. The City Council shall determine whether the applying owner may be entitled to compensation under Measure 37 unless the City grants a license waiving enforcement of the regulation and, if so, the amount of compensation that may be due and shall compare the public benefits from application of the regulation to the owner's private real property to the public burden of paying the required compensation to the owner if a license waiving enforcement of the regulation is not granted, taking into consideration the financial resources of the City for the payment of such claims. If the City Council has determined that either compensation or a waiver is or may be required, then based on this comparison:

1. If the City Council finds that the public burden of paying the required compensation, taking into consideration the City's financial resources for the payment of such claims, is sufficient to justify denying the public benefit from application of the regulation to the owner's private real property, the City Council may grant a license waiving enforcement of the regulation to the extent necessary to avoid the owner or owners being entitled to compensation;
2. If the City Council finds that the public benefit from application of the regulation to the owner's or owners' private real property is sufficient to justify the public burden of paying the required compensation, taking into consideration the City's financial resources for the payment of such claims, the City Council may deny a license waiving enforcement of the regulation and identify a specified amount of compensation to be paid;
3. The City Council may find that the public benefit from application of the regulation to the owner's private real property is sufficient to justify the public burden of paying some of the required compensation, taking into

consideration the City's financial resources for the payment of such claims, but that other of the public benefits are not sufficient to justify the public burden of paying the balance of the required compensation. If so, the City Council may grant a license waiving enforcement of the regulation to the limited extent necessary to avoid the owner being entitled to compensation as to that part of the specified regulation providing public benefit and identify a specified amount of compensation to be paid as to that part of the regulation as to which a waiver from enforcement is not granted; or

4. The City Council may take some other appropriate action, including a resolution of intent to acquire an interest in the property by condemnation;
 5. The City Council, in its discretion, may impose a condition that its decision will be effective only if the owner or owners of the private real property sign an agreement, in a form acceptable to the City, that waives any further claims in relation to application of the subject regulation to the private real property as to which a license or compensation is sought;
 6. The City Council may take other appropriate action conditional on the City receiving a defined amount of contributions from others, such as persons who believe they would be negatively affected by an exemption, by a specified date. In the event the City Council makes such a conditional decision, then the Finance Department shall establish an account into which it shall deposit all contributions the City has received for the payment of compensation. On the date specified for receipt of the defined amount of contributions, the Finance Department shall certify whether the defined amount of contributions has been received. If the defined amount of contributions has been certified as received, then the compensation shall be paid and the license deemed denied or granted only to the limited extent approved by the City Council, as of the payment date. If the defined amount of contributions has been certified as not received, then the license shall be deemed granted as of the certification date and all contributions received by the City shall be returned to the persons who made the contributions.
- F. If the Council finds the criteria set forth in subsection 2.07.030D have been met, the Council shall adopt a written Order (which may be combined with the written findings and conclusion) either directing that payment of just compensation be made to the Property Owner and to any other persons holding an interest in the Property, in such manner as approved by the City Attorney, or issuing a license waiving enforcement of the regulation in accordance with subsection 2.07.045 of this section. The City Council may delay, withhold or condition the entry of its written Order (including placement of just compensation funds in escrow) depending upon whether and at what time Measure 37 became effective.

- G. A copy of the findings, conclusion and Order shall be mailed by first-class mail to:
1. The claimant and to all other interested persons who both submitted written testimony or testified before the City Council;
 2. The government agencies that were provided notice of the Claim pursuant to subsection 2.07.020.B.3-5.

2.07.035 Burden of Proof.

The burden of proof of any material element shall be upon the claimant for all matters required to show that the claimant is a qualifying Property Owner under Measure 37 and the amount of compensation for reduced property value caused by the cited regulation or regulations. The burden shall be upon the City to establish that the regulation is exempt from the obligation to pay compensation.

2.07.040 Standards for Interpretation.

- A. Applications for claims shall be interpreted consistently with statutory laws and judicial decisions under Oregon Revised Statute, Chapter 197.
- B. This section is not intended in any way to expand the rights or remedies available to property owners under Measure 37 or any other law. Neither shall it be construed so as to contravene the express terms of Measure 37.
- C. Any City decision on a claim which is inconsistent with any appellate court ruling under Measure 37 issued after the City's decision may be the subject of a revocation proceeding instituted by the City under subsection 2.05.050 et. seq. of the Beaverton City Code or any other appropriate remedy available by law. If the City Council has taken an action under subsection 2.07.030 and the owner nevertheless files a court action seeking compensation or additional compensation from the City in relation to the specified regulation as it affects the owner's private real property, and if a final court decision determines that the extent of the license provided in the City Council's final order was not sufficient to avoid the owner(s) being entitled to compensation or additional compensation, then the extent of any license granted by the City shall be deemed to be the extent of any license necessary to avoid the owner(s) being entitled to compensation or additional compensation, effective as of the date of the City Council's decision.

2.07.045 License Waiving Enforcement of City Regulation.

- A. There is hereby established a City license, which waives City enforcement of one or more specified City regulations found by the Council to reduce the value of a Claimant's Real Property. Such license shall have the following characteristics:
1. It shall be signed by the Director on behalf of the City and issued only to a claimant pursuant to the process set forth in this section;
 2. It shall be personal to the owner and nontransferable. The license shall expire upon the licensee's death or in the case of non-natural persons its expiration or termination;

3. It shall remain effective so long as the claimant owns the property to the same extent as at the time the claim was allowed;
 4. Such license shall be presented to the City as part of any application for development of the subject property for which a waiver of the subject regulation is sought;
 5. The City may record the license of a memorandum of the license in the deed records of the County.
- B. Issuance of a license under this subsection shall not cause the repeal of the regulation(s) being challenged.
- C. The City Attorney is authorized to prepare an appropriate form of license under this subsection.

2.07.050 Payment of Claim.

- A. If the Council determines that a valid claim has been presented and established under this section and sufficient funds are available and appropriated therefor, the Council may authorize payment to the claimant. The amount of payment shall be based on the Council's determination of the diminution in property value attributed to the City regulation.
- B. Payment shall be tendered upon Claimant's recordation in the Washington County Department of Records and Elections of a notice, covenant, or declaration in a form approved by the City Attorney that the cited regulation(s) are applicable to the Property.
- C. Any City payment of compensation under this section shall be to the owner or owners in proportion to their ownership interests in the private real property as to which a waiver of the regulation or compensation was applied for. If there is a dispute among owners as to their proportional interests in the private real property, or if the City otherwise deems it appropriate, the City shall make the payment to an escrow agent in trust for the benefit of the owners, or may interplead the payment in a legal action, for distribution to the owners based on their proportional interests as soon as the owners have resolved their dispute or agreed on the appropriate distribution. The City Council may make a decision to pay compensation under this section conditional on the owner providing title insurance to the City, insuring the City as to the identities of the current owners of all legal, equitable, and security interests in the private real property.
- D. If the Council grants the claim and provides for compensation as the remedy, the claimant shall be entitled to reasonable costs and attorney's fees if compensation is not paid within 180 days of receipt of the complete application. The claimant shall have 14 days after the decision to submit a detailed statement which shall be reviewed and, if approved, paid within 14 days of receipt of the statement by the City.

2.07.055 Record.

- A. The City Recorder shall maintain records of all monies paid and licenses issued pursuant to this section.
- B. The Director shall cause a copy of any license issued under this section to be mailed to the Washington County Director of Assessment and Taxation with a request that such information be considered in determining the assessed value of the subject property.

2.07.060 Conditions Related to Future Court Decisions.

- A. If the City Council grants a license or limited license as a means to avoid having to compensate, or as a means to limit compensation to, an owner or owners under Measure 37, and if, based on a subsequent appellate court interpretation or invalidation of Measure 37, in the same or another case, the applying owner was not entitled to compensation in relation to the regulation from which the license waiving the regulation was granted, then the waiver or limited waiver shall be deemed to have been invalid and ineffective as of and after the date of the City Council's order granting the waiver or limited waiver. Any such invalidity and ineffectiveness shall be limited as necessary to avoid the City being required to compensate the owner under Measure 37.
- B. The City Council may make a decision to pay compensation under this section conditional on the owner or owners signing an agreement, in a form acceptable to the City, that, if an appellate court subsequently interprets or invalidates Measure 37, in the same or another case, in a manner such that the owner was or owners were not entitled to compensation in relation to the subject regulation, then the owner or owners will repay the compensation received by the owner or owners to the City, with the repayment obligation being a lien against the subject private real property until paid. Whether or not the owner or owners sign such an agreement, if an appellate court subsequently interprets or invalidates Measure 37, in the same or another case, in a manner such that the owner was or owners were not entitled to compensation in relation to the subject regulation, then the owner or owners shall repay the compensation received by the owner or owners to the City, with the repayment obligation being a lien against the subject private real property until paid. Any such repayment obligation and lien shall be limited as necessary to avoid the City being required to compensate the owner under Measure 37.

2.07.065 No Reapplication.

If an application is denied or withdrawn prior to the issuance of a final written order by the City Council, no application for the same or substantially similar compensation claim may be made by the owner of the subject property.

2.07.070 Validity of City Council Action.

No failure of any person or body to comply with a procedural requirement set out in this section shall invalidate any action of the City Council under this section.

2.07.075 Private Cause of Action. If the Council's approval of a claim by waiving or granting a license to waive the enforcement of a regulation causes a reduction in value of other property located in the vicinity of the Claimant, these property owners shall have a cause of action in state circuit court to recover from the Claimant the amount of the reduction, and shall be also entitled to attorney fees.

2.07.080 Attorney Fees on Delayed Compensation. If a demand made under Measure 37 and this ordinance is denied or not fully paid within 180 days of the date of filing a completed demand, the owner's reasonable attorney fees and expenses necessary to collect compensation will be added as additional compensation, provided compensation is awarded to the owner. If such demand is denied, not fully paid, or other action taken under Measure 37, within 180 days of the date of filing the completed demand, and the owner commences suit or action to collect compensation, if the City is the prevailing party in such action, then the City shall be entitled to any sum which a court, including any appellate court, may adjudge reasonable attorney's fees. In the event the City is the prevailing party and is represented by in-house counsel, the prevailing party shall nevertheless be entitled to recover reasonable attorney fees based upon the attorney fee rates and charges reasonably and generally accepted in Beaverton, Oregon for the type of legal services performed.

Section 2. Severability. It shall be the legislative intent that if any part of this ordinance shall be held invalid or unconstitutional, including without limitation compliance with statewide planning goals, the remaining parts of this ordinance shall remain in force and effect.

Section 3. Emergency Clause. The Council finds that immediate adoption of this ordinance is necessary to implement a new state law, which is anticipated to take effect on December 2, 2004. The Council therefore declares an emergency to exist, and this ordinance shall take effect immediately on its passage.

First reading this ___ day of _____, 2004.

Passed by the Council this ___ day of _____, 2004.

Approved by the Mayor this ___ day of _____, 2004.

ATTEST:

APPROVED:

SUE NELSON, City Recorder

ROB DRAKE, Mayor

AGENDA BILL

**Beaverton City Council
Beaverton, Oregon**

SUBJECT: An Ordinance Amending Beaverton City Code Chapter 2 By Establishing A Process For Evaluating Claims For Compensation Under the Amendments to Oregon Revised Statute Chapter 197 as Approved Under Ballot Measure 37 in the 2004 General Election and Declaring an Emergency.

FOR AGENDA OF: 11-15-04 **BILL NO:** 04237

Mayor's Approval: 

DEPARTMENT OF ORIGIN: City Attorney 

DATE SUBMITTED: 11-15-04

CLEARANCES: CDD 

PROCEEDING: First Reading.

EXHIBITS: Ordinance

BUDGET IMPACT

EXPENDITURE REQUIRED \$0	AMOUNT BUDGETED \$0	APPROPRIATION REQUIRED \$0
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HISTORICAL PERSPECTIVE:

Ballot Measure 37 passed on November 2, 2004. The Measure provides a requirement that the City either waives or pays for its land use regulations that are imposed on property before the current owner or any member of the current owner's family purchased the property.

INFORMATION FOR CONSIDERATION:

The proposed ordinance provides a process in which a person can submit a claim under Ballot Measure 37. If applicants follow this process it will provide the information that the City needs to determine whether the claim is valid and if so, whether to pay the claim or to waive or modify the land use regulations that cause a reduction in the property's value.

RECOMMENDED ACTION:

First reading.

ORDINANCE NO. 4333

AN ORDINANCE AMENDING BEAVERTON CITY CODE CHAPTER 2 BY ESTABLISHING A PROCESS FOR EVALUATING CLAIMS FOR COMPENSATION UNDER THE AMENDMENTS TO OREGON REVISED STATUTE CHAPTER 197 AS APPROVED UNDER BALLOT MEASURE 37 IN THE 2004 GENERAL ELECTION AND DECLARING AN EMERGENCY.

WHEREAS, On November 2, 2004 the voters of the state of Oregon approved Ballot Measure 37 which amends Oregon Revised Statute Chapter 197 to require, under certain circumstances, payment to property owners if government regulation reduces property value; and

WHEREAS, Ballot Measure 37 provides that a property owner, in order to receive compensation, must apply for compensation to the government whose regulation allegedly has caused a reduction in the fair market value of property and the government has 180 days from such application to deny or pay the claim, take action to waive the application of the regulation to the property, or enforce the regulations subject to civil right of action; and

WHEREAS, Ballot Measure 37 does not set forth a specific process for review of applications for compensation and it is in the best interest of affected governments, including Beaverton to establish such a process in order to be able to assess such claims in a timely manner; and

WHEREAS, since Measure 37 is anticipated to take effect on December 2, 2004 and could result in a significant number of claims for compensation or waivers of City regulations, the City finds it is immediately necessary and in the public interest to declare an emergency, to adopt this ordinance without extensive notice and public hearings and to provide for its effectiveness immediately upon its passage pursuant to the City Charter and state law.

THE CITY OF BEAVERTON ORDAINS AS FOLLOWS:

Section 1. Chapter 2 of the Beaverton Code is amended to add the following as Section 2.07.

“2.07.001 Short Title.

BC 2.07.001-.080 shall be known and may be cited as the “Regulatory Claims Procedure Ordinance” and may also be referred to herein as “this section.”

2.07.005 Purpose and Applicability.

- A. The purpose of this section is to:
1. Establish a process whereby claims under Oregon Revised Statute, Chapter 197 (November 2, 2004 amendment, hereafter “Measure 37”) may be properly submitted by claimants and evaluated by the City quickly, openly, thoroughly and consistently with the Oregon and U.S. Constitution;

2. Enable persons with legitimate claims an adequate and fair opportunity to present such claims to the City, while preserving and protecting limited public funds;
3. Authorize, where appropriate, limitations on the applicability of City regulations, which are shown to cause a significant reduction in property value;
4. Provide a record of decision capable of judicial review.

B. It is not the purpose of this section to amend, repeal or enforce the Comprehensive Plan, Development Code, statewide land use plan or any other land use statute, regulation or policy.

2.07.010 Definitions. As used in this section, the following mean:

Appraisal – An examination of and opinion about the fair market value of real property issued by a certified general appraiser, licensed by the Oregon Appraiser Certification and Licensing Board.

Claimant or Applicant – The property owner for which a claim is made pursuant to this section.

Community Development Director or Director – The person designated by the Mayor as Community Development Director or such other person or persons as authorized to act in that capacity.

Exempt Regulation – A regulation restricting or prohibiting activities commonly and historically recognized as public nuisances under common law; a regulation restricting or prohibiting activities for the protection of public health and safety; a regulation to implement a requirement of federal law to the extent required; a regulation enacted prior to the date of acquisition of the property by the owner or a family member of the owner who owned the subject property prior to acquisition or inheritance by the owner, which ever occurred first; or a regulation that prohibits selling pornography or performing nude dancing.

Fair Market Value – The price stated in terms of dollars that a willing buyer would pay for the property without any obligation to buy from a willing seller without any obligation to sell. “Reduction in fair market value” means the difference in the fair market value of the property before and after application of the regulation.

Family Member – Shall include the wife, husband, son, daughter, mother, father, brother, brother-in-law, sister, sister-in-law, son-in-law, daughter-in-law, mother-in-law, father-in-law, aunt, uncle, niece, nephew, stepparent, stepchild, grandparent, or grandchild of the owner of the property, an estate of any of the foregoing family members, or a legal entity owned by any one of a combination of these family members or the owner of the property.

Federal Requirement – Any statute, code or regulation adopted by the U. S. Congress or any federal agency or state agency delegated to act in the name of a federal agency, which imposes upon the states or local governments or both an obligation to enact or enforce regulations over the use of real property.

Land Use Regulation - Shall include:

- a) Any statute regulating the use of land or any interest therein;
- b) Administrative rules and goals of the Land Conservation and Development Commission;

- c) Local government comprehensive plans, zoning ordinances, land division ordinances, and transportation ordinances;
- d) Metropolitan service district regional framework plans, functional plans, planning goals and objectives; and
- e) Statutes and administrative rules regulating farming and forest practices.

Measure 37 – The amendment to Oregon Revised Statute 197, as approved by the Oregon electorate on November 2, 2004.

Nuisance – Any act, omission, structure or condition on property, which unreasonably interferes with a right common to members of the general public and not necessarily related to the use and enjoyment of land by any person other than the owner of property that is the situs of the nuisance. A “historically and commonly recognized nuisance” shall have the meaning contained in Measure 37, and as construed by the Oregon appellate courts. Without limiting the foregoing, the City may consider whether a use of property is declared by the Beaverton Code or the Beaverton Development Code to be a nuisance.

Owner – Is the present owner of the property, or any interest therein.

Ownership Interest – A legally recognized interest in the proceeds of any sale of an interest in the property in question.

Public entity – Shall include the state, a metropolitan service district, a city, or a county.

Real Property – All lots, parcels or tracts, or any combination thereof, that are owned by the Claimant, including structures built or located on the property. Real property does not include public property, personal property or easements over, above or below public property. Real property does not include a franchise issued by the City to place or erect public or private utility facilities within or along public right of way.

Restricts the Use – A regulation that restricts the type of use of private real property, but does not include a regulation that effects either the extent of a use or a regulation that governs development or construction.

Use of Property – Any activity that a private property owner can undertake on their property without creating a nuisance, without violating federal law or any local ordinance designed to the minimum extent possible to implement requirements of federal law and without violating any city or county regulation in effect at the time the owner became owner of the property.

Waiver of Enforcement of a Regulation or License – A license issued by the City, pursuant to Section 2.07, suspending City enforcement of the requirements of a City regulation as to a particular property and its owner, which is determined to restrict the owner’s use of property, is not exempt from Oregon Revised State Chapter 197, and for which the City has elected not to pay compensation pursuant to Measure 37.

2.07.012 Pre-Application Conference.

- A. Before submitting an application for a claim pursuant to this section, the claimant may schedule and attend a pre-application conference with the Director to discuss the application. The pre-application conference shall follow the procedure set forth by the Director. The applicant shall pay the applicable fee as established by resolution of the City Council.

- B. To schedule a pre-application conference, the claimant must contact the Director. The pre-application conference is for the claimant to provide a summary of the claimant's application for a claim and for the Director to provide information to the claimant about regulations that may effect the application, including this section. The Director may provide the claimant with a written summary of the pre-application conference within 10 days after it is held.
- C. The Director is not authorized to settle any claim at a pre-application conference. Any omission or failure by staff to recite to a claimant all relevant applicable land use regulations will not constitute a waiver or admission by the City.

2.07.015 Application.

- A. An application for a claim under this section shall be filed by an owner or the owner's authorized agent, along with such number of copies as the Director may require. The application shall be filed with the Director on an application form as approved by the Director, accompanied by documentation in support of the application, as listed in this subsection. Within 10 days following tender of an application the Director shall review the application to determine whether it is complete and ready for filing. If the Director determines the application is not complete, the Director shall, within that 10 day period, notify the applying owner by sending via first-class mail, of exactly what additional information is necessary to make the application complete and ready for filing. If the Director believes there is doubt, under Measure 37, as to whether the additional information can be required as a condition of acceptance of filing of the application, the Director also may notify the claimant in writing that although the Director considers the application not complete and ready for filing, the Director nevertheless will proceed to process the application if the additional information is not supplied by a date set by the Director, not to exceed 20 days after the date of the notification. The application shall be deemed complete and filed as of the date of receipt of the additional information, except that if the applying owner does not supply the additional information by the date set by the Director, then the application shall be deemed complete and filed as of the date the application was received.
- B. The application shall be signed by the Property Owner(s), including without limitation each person having an ownership interest (as defined herein) in the private real property.
- C. Unless waived by the Director an application shall include the following information:
 - 1. A description by street address, if any, and by Washington County Assessment and Taxation map and tax lot number of the property upon which the regulation is imposed;
 - 2. A description by street address, if any, and by the county property tax assessor's map and tax lot number of each parcel of land owned by the owner or owners of the private real property that is either directly contiguous to the property described in paragraph 1 of this subsection, or

is indirectly contiguous through contiguity with another parcel under the same ownership, together with the following:

- a. The date of acquisition of the property and each contiguous parcel;
- b. Information showing the extent to which the owner has treated the private real property, as to which the owner is applying for compensation, and the directly or indirectly contiguous parcels as a unified use or as a single economic unit, for example in the purchase and financing of the land and in the owner's or owners' development of and economic planning for the land;
- c. The extent to which application of the subject regulation that is being challenged enhances the value of the property and each contiguous parcels; and
- d. The amount of any compensation previously paid by any unit of government under Measure 37 in relation to each such parcel.

3. The names and street addresses of the record owners of property on the most recent property tax assessment roll and within 500 feet of the property described in paragraphs 1 and 2 of this subsection;
4. Proof of Ownership. A title report issued within 30 days of the date of the application and by a property title insurance company authorized to conduct business within the State of Oregon and insuring to the City that the claimant is the Property Owner of the Real Property. Such report shall name all persons with legal, equitable and security interests in the property and the date and instrument showing the time and manner in which such property interest or interests were established. Claimant shall also submit a complete list of all other interests or encumbrances, including without limitation leases and encroachments, of which the claimant is aware or has reason to think may exist;
5. Identification of the Regulation.
 - a. A specific and detailed reference to each and every regulation that the claimant asserts will restrict the use of property and has the effect of reducing the value of the Property. The reference shall identify by number or section the law, rule, ordinance, resolution, goal or other enforceable enactment, or a copy of the regulation for which claim is submitted; and
 - b. A statement whether the claim is based on adoption, first enforcement, or application of the regulation. If based on adoption of the regulation, the date of adoption of the regulation. If based on first enforcement of the regulation, the date and manner of first enforcement and any documentation establishing the date and manner of first enforcement. If based on application of the regulation, the date and manner of application and any documentation establishing the date and manner of application.

6. A written description addressing the approval criteria, including without limitation the impact of each and every City regulation on the subject property and the reason(s) why under Measure 37 such regulation restricts the use of the property and impacts the value of the property. The claimant shall describe the greatest degree of development that would be permitted if the identified regulation were waived by the City;

7. Amount of Claim.
 - a. A statement of the amount of the claim in dollars based on Claimant's alleged reduction in fair market value resulting from application of the City regulation; and
 - b. An appraisal of the subject property showing the reduction in the fair market value of the property as that reduction is defined under Measure 37. To the extent practicable, the opinion of compensable reduction in fair market value shall be apportioned among each regulation such that the City may separately consider the alleged impact on fair market value of each regulation. The appraisal shall be prepared and signed by a certified general appraiser, licensed by the Oregon Appraiser Certification and Licensing Board and shall conform with Uniform Standards for Professional Appraisal Practice. The appraisal shall address the market feasibility of the use for which compensation is sought, taking into account all relevant factors, including the potential impact of Measure 37 on other properties, the availability of necessary public services, probability of obtaining necessary approvals from other governmental bodies and other constraints;
 - c. An itemization of any prior payments made to the Property Owner relating to a claim on the property, including any contiguous parcels under substantially the same ownership;
 - d. Any other relief sought by the claimant from other governments;
 - e. Copies of all appraisals, market studies, economic feasibility studies, development schemes, environmental assessments or similar studies related to the property prepared within the 2-year period prior to submittal of the claim.

8. A waiver of any claims for regulations not identified;

9. Exemptions. A statement, including analysis, as to why the regulations are not exempt from application for compensation under Measure 37, including:
 - a. Adoption or enforcement of a nuisance;
 - b. Imposition to the extent required, of a regulation to implement a federal requirement;
 - c. Regulation prohibiting the use of the Property for the purpose of selling pornography or performing nude dancing;

10. A copy of all enforcement actions taken by any governmental body as regards the Property;
11. All other documents, information or argument to be relied upon by the claimant in support of the application;
12. An Application Fee as established by resolution and amended from time to time by the City Council. The City shall refund the application fee if it is determined by the City or by a court that the applicant is entitled to compensation under Measure 37 or that the City cannot make payment of an application fee a condition of acceptance of filing of an application under Measure 37. If the applicant refuses to submit a fee and the claim is processed by the City and it is determined that claim is not valid, the City may submit a bill for the cost to the claimant. If the bill is not paid within 30 days, the City may pursue collection efforts including filing a lien on the property;
13. A sworn statement that the information submitted is true and complete to the best knowledge and belief of the claimant.

2.07.020 Notice of Application for Claim.

- A. Upon receipt of a complete application, the Director shall cause notice of the filing of the claim to be given as follows, within 7 days from the date of determination of completeness.
 1. The Applicant and to owners of record of property on the most recent property tax assessment roll within 500 feet of where such property is located;
 2. The Chair of the Neighborhood Association Committee in which the Property is located;
 3. The Directors of the following Departments of Washington County: Land Use and Transportation and Assessment and Taxation;
 4. The Director of Metro's Growth Management Services;
 5. The Director of the Oregon Department of Land Conservation and Development;
 6. Such other persons or entities who have expressed an interest in or requested notice of possible waiver of enforcement of regulations under Measure 37; and
 7. Any local, state or federal agency, which the Director believes would be affected by a waiver of the regulation from the Property.
- B. Notice of the hearing under this ordinance shall be made by regular first-class mail to:

The failure of the Director to give notice as provided in this subsection, or the failure of any person to receive notice given under this subsection, shall not invalidate any action of the City Council under this section. The notice provisions of this subsection shall not restrict the giving

of notice by other means, including the posting in public places, newspaper publication, radio, television or by posting on the City's web site.

- C. The notice provided by this subsection shall:
1. Explain the nature of the application, including the name of the Claimant and the amount of the Claim;
 2. List the applicable criteria from this ordinance;
 3. List the regulation(s) that is the subject of the claim;
 4. Set forth the street address, if available, or other easily understood geographical reference to the claimant's property;
 5. State the date, time and location of the hearing at which the City Council will consider the claim as well as evidence bearing on such claim and determine whether compensation should be paid under this section or the subject regulation(s) should be waived as to the claimant;
 6. State that failure of an issue to be raised in a hearing, in person or by letter, or failure to provide statements or evidence sufficient to afford the decision maker an opportunity to respond to the issue precludes appeal to the Land Use Board of Appeals or other appropriate appeal tribunal based on that issue;
 7. Be mailed at least 20 days before the hearing unless the Director determines that a shorter notice period is required in order to assure that the City Council may make a written decision upon the claim and provide for adequate time for payment of any determined just compensation or license waiving enforcement of a City regulation(s) within the 180-day period required by Measure 37;
 8. Include the name of the City staff to contact and the telephone number where additional information may be obtained;
 9. State that a copy of the application, all documents and evidence submitted by or on behalf of the applicant and applicable criteria are available for inspection at no cost and will be provided at a reasonable cost;
 10. State that a copy of the staff report will be available for inspection at no cost at least seven days prior to the hearing (unless reduced in time pursuant to paragraph 7 of this subsection), and will be provided at a reasonable cost;
 11. Include a general explanation of the requirements for submission of testimony and the procedure for conduct of hearings.
- D. All documents or evidence relied upon by the applicant shall be submitted to the City and be made available to the public. Any staff report shall be made available at least 7 days in advance of the hearing (unless reduced in time pursuant to paragraph 7 of subsection C), except that any appraisal prepared on behalf of the City, which may be submitted at the hearing.
- E. The claimant may request an extension for filing a complete application, for a continuance of the City's review of such application. A request for extension or

continuance shall be deemed a waiver of the 180-day time frame for responding to the application by the amount of any requested extension or continuance.

2.07.025 Review of Application.

The Director, following filing of an application under this section that is deemed complete, and following consideration of the information included in the application and any other evidence, shall determine whether a waiver of enforcement of the regulation may be necessary to avoid the owner or owners being entitled to compensation under Measure 37, and, if so, the extent of the waiver needed and the amount of compensation to which the owner or owners would be entitled without a waiver. If the Director determines that a waiver of enforcement of the regulation is or may be needed to avoid the owner being entitled to compensation, the Director, under the advice of the Finance Director and City Attorney, shall compare the public benefits from application of the regulation to the owner's private real property to the public burden of paying the required compensation if a waiver of enforcement of the regulation is not granted, taking into consideration the financial resources of the City for the payment of such claims. Based on this comparison, the Director shall prepare a written report stating the result of its comparison. If the Director has determined that a waiver of enforcement of the regulation may be needed, the report also shall make a recommendation either to grant a waiver that will avoid the owner being entitled to compensation; grant a license waiving enforcement of the regulation that will either avoid compensation or not avoid compensation but will reduce the compensation to which the owner is entitled and pay the amount of reduced compensation to which the Director believes the owner is entitled; deny a waiver of enforcement of the regulation and pay the amount of compensation to which the Director believes the owner is entitled; or take some other appropriate action, such as acquiring the entire private real property or any portion thereof by condemnation.

2.07.030 City Council Hearing.

- A. Except as otherwise provided in this subsection, the hearing shall be conducted by the City Council in accordance with the Council rules for the conduct of administrative and quasi-judicial hearings.
- B. At the beginning of the public hearing under this section, the presiding officer or a member of City staff shall state:
 - 1. The applicable substantive criteria;
 - 2. That the hearing will proceed in the following general order: staff report, applicant's presentation, testimony in favor of the application, testimony in opposition to the application, rebuttal, record closes, deliberation, decision;
 - 3. That all testimony and evidence submitted, orally or in writing, must be directed toward the applicable approval criteria. If any person believes that other criteria apply in addition to those addressed in the staff report, those criteria must be listed and discussed on the record. The Mayor may reasonably limit oral presentations in length or content depending upon time constraints. Either the City or the claimant may require that the appraiser or other person relied on by the other party attend the hearing

with all relevant materials and be available for questioning by the Council. If the person is not available, the Council may strike from the record any information provided by the person at any stage. Any party may submit written materials of any length while the public record is open;

4. Failure to raise an issue on the record, with sufficient specificity and accompanied by statements or evidence sufficient to afford the City and all parties to respond to the issue, may preclude appeal on that issue to the appropriate appellate tribunal;
 5. Any party wishing a continuance or to keep open the record must make that request while the record is still open;
 6. The City Councilors (and the Mayor, if a decision maker) must disclose any ex parte contacts, conflicts of interest or bias before the beginning of each hearing item and provide an opportunity for challenge. Advised parties must raise challenges to the procedures of the hearing at the hearing and raise any issue relative to ex parte contacts, conflicts of interest or bias, prior to the start of the hearing.
- C. Any request made for an opportunity to continue the hearing, to present additional evidence or testimony or to make final written argument shall be subject to restriction or elimination, as the City Council determines convenient or necessary to assure that a written decision is made and sufficient administrative time remains thereafter to cause payment of compensation or waiving enforcement of the regulation within the required 180-days from the date of filing a claim. The Council shall have sole discretion as to whether to admit evidence, but material required to be submitted as part of the application or that the Director should have received and considered at the time of making its review and recommendation shall not be admitted unless the Council finds that extraordinary circumstances beyond the control of the offering party prevented earlier submittal. The Council may condition receipt of new information from the claimant on the claimant stipulating to an extension of time for consideration of the material and a waiver of the 180-day deadline provided for under Measure 37.
- D. The Council shall determine whether the following criteria have been met:
1. The Application is complete;
 2. The claimant is a qualifying Property Owner under Measure 37 as follows:
 - a. The subject property is located within the City and is subject to the ordinance or regulation, which is the basis of the application for claim;
 - b. The use which the claimant alleges is restricted under a City regulation and does not constitute a nuisance;
 - c. The City regulation is not required as part of any federal requirement and is not an exempt regulation;
 - d. The owner of the property as shown on the application was the owner of the property prior to the date the regulation was adopted, first enforced or applied;

- e. There is substantial evidence to support the claim of reduction in the fair market value of the subject property;
 - f. The amount of compensation claimed or determined to be potentially due;
 - g. The availability of public financial resources to pay the claim in consideration of competing priorities in the public interest;
 - h. The impact of waiving enforcement of the regulation(s) or otherwise permitting the use on other properties and the public interest; and
 - i. Such other factors as are determined to be in the interest of the property owner and the public to consider to adjudicate the claim.
3. The cited regulation(s) reduce the fair market value of the property and entitle the Owner to compensation or waiver of enforcement of the regulation pursuant to Measure 37.

E. At the conclusion of the hearing the City Council shall announce its decision orally. Such decision shall not be considered the final City decision until the City Council has adopted written findings in support of its decision. The City Council shall determine whether the applying owner may be entitled to compensation under Measure 37 unless the City grants a license waiving enforcement of the regulation and, if so, the amount of compensation that may be due and shall compare the public benefits from application of the regulation to the owner's private real property to the public burden of paying the required compensation to the owner if a license waiving enforcement of the regulation is not granted, taking into consideration the financial resources of the City for the payment of such claims. If the City Council has determined that either compensation or a waiver is or may be required, then based on this comparison:

- 1. If the City Council finds that the public burden of paying the required compensation, taking into consideration the City's financial resources for the payment of such claims, is sufficient to justify denying the public benefit from application of the regulation to the owner's private real property, the City Council may grant a license waiving enforcement of the regulation to the extent necessary to avoid the owner or owners being entitled to compensation;
- 2. If the City Council finds that the public benefit from application of the regulation to the owner's or owners' private real property is sufficient to justify the public burden of paying the required compensation, taking into consideration the City's financial resources for the payment of such claims, the City Council may deny a license waiving enforcement of the regulation and identify a specified amount of compensation to be paid;
- 3. The City Council may find that the public benefit from application of the regulation to the owner's private real property is sufficient to justify the public burden of paying some of the required compensation, taking into

consideration the City's financial resources for the payment of such claims, but that other of the public benefits are not sufficient to justify the public burden of paying the balance of the required compensation. If so, the City Council may grant a license waiving enforcement of the regulation to the limited extent necessary to avoid the owner being entitled to compensation as to that part of the specified regulation providing public benefit and identify a specified amount of compensation to be paid as to that part of the regulation as to which a waiver from enforcement is not granted; or

4. The City Council may take some other appropriate action, including a resolution of intent to acquire an interest in the property by condemnation;
 5. The City Council, in its discretion, may impose a condition that its decision will be effective only if the owner or owners of the private real property sign an agreement, in a form acceptable to the City, that waives any further claims in relation to application of the subject regulation to the private real property as to which a license or compensation is sought;
 6. The City Council may take other appropriate action conditional on the City receiving a defined amount of contributions from others, such as persons who believe they would be negatively affected by an exemption, by a specified date. In the event the City Council makes such a conditional decision, then the Finance Department shall establish an account into which it shall deposit all contributions the City has received for the payment of compensation. On the date specified for receipt of the defined amount of contributions, the Finance Department shall certify whether the defined amount of contributions has been received. If the defined amount of contributions has been certified as received, then the compensation shall be paid and the license deemed denied or granted only to the limited extent approved by the City Council, as of the payment date. If the defined amount of contributions has been certified as not received, then the license shall be deemed granted as of the certification date and all contributions received by the City shall be returned to the persons who made the contributions.
- F. If the Council finds the criteria set forth in subsection 2.07.030D have been met, the Council shall adopt a written Order (which may be combined with the written findings and conclusion) either directing that payment of just compensation be made to the Property Owner and to any other persons holding an interest in the Property, in such manner as approved by the City Attorney, or issuing a license waiving enforcement of the regulation in accordance with subsection 2.07.045 of this section. The City Council may delay, withhold or condition the entry of its written Order (including placement of just compensation funds in escrow) depending upon whether and at what time Measure 37 became effective.

- G. A copy of the findings, conclusion and Order shall be mailed by first-class mail to:
1. The claimant and to all other interested persons who both submitted written testimony or testified before the City Council;
 2. The government agencies that were provided notice of the Claim pursuant to subsection 2.07.020.B.3-5.

2.07.035 Burden of Proof.

The burden of proof of any material element shall be upon the claimant for all matters required to show that the claimant is a qualifying Property Owner under Measure 37 and the amount of compensation for reduced property value caused by the cited regulation or regulations. The burden shall be upon the City to establish that the regulation is exempt from the obligation to pay compensation.

2.07.040 Standards for Interpretation.

- A. Applications for claims shall be interpreted consistently with statutory laws and judicial decisions under Oregon Revised Statute, Chapter 197.
- B. This section is not intended in any way to expand the rights or remedies available to property owners under Measure 37 or any other law. Neither shall it be construed so as to contravene the express terms of Measure 37.
- C. Any City decision on a claim which is inconsistent with any appellate court ruling under Measure 37 issued after the City's decision may be the subject of a revocation proceeding instituted by the City under subsection 2.05.050 et. seq. of the Beaverton City Code or any other appropriate remedy available by law. If the City Council has taken an action under subsection 2.07.030 and the owner nevertheless files a court action seeking compensation or additional compensation from the City in relation to the specified regulation as it affects the owner's private real property, and if a final court decision determines that the extent of the license provided in the City Council's final order was not sufficient to avoid the owner(s) being entitled to compensation or additional compensation, then the extent of any license granted by the City shall be deemed to be the extent of any license necessary to avoid the owner(s) being entitled to compensation or additional compensation, effective as of the date of the City Council's decision.

2.07.045 License Waiving Enforcement of City Regulation.

- A. There is hereby established a City license, which waives City enforcement of one or more specified City regulations found by the Council to reduce the value of a Claimant's Real Property. Such license shall have the following characteristics:
1. It shall be signed by the Director on behalf of the City and issued only to a claimant pursuant to the process set forth in this section;
 2. It shall be personal to the owner and nontransferable. The license shall expire upon the licensee's death or in the case of non-natural persons its expiration or termination;

3. It shall remain effective so long as the claimant owns the property to the same extent as at the time the claim was allowed;
 4. Such license shall be presented to the City as part of any application for development of the subject property for which a waiver of the subject regulation is sought;
 5. The City may record the license of a memorandum of the license in the deed records of the County.
- B. Issuance of a license under this subsection shall not cause the repeal of the regulation(s) being challenged.
- C. The City Attorney is authorized to prepare an appropriate form of license under this subsection.

2.07.050 Payment of Claim.

- A. If the Council determines that a valid claim has been presented and established under this section and sufficient funds are available and appropriated therefor, the Council may authorize payment to the claimant. The amount of payment shall be based on the Council's determination of the diminution in property value attributed to the City regulation.
- B. Payment shall be tendered upon Claimant's recordation in the Washington County Department of Records and Elections of a notice, covenant, or declaration in a form approved by the City Attorney that the cited regulation(s) are applicable to the Property.
- C. Any City payment of compensation under this section shall be to the owner or owners in proportion to their ownership interests in the private real property as to which a waiver of the regulation or compensation was applied for. If there is a dispute among owners as to their proportional interests in the private real property, or if the City otherwise deems it appropriate, the City shall make the payment to an escrow agent in trust for the benefit of the owners, or may interplead the payment in a legal action, for distribution to the owners based on their proportional interests as soon as the owners have resolved their dispute or agreed on the appropriate distribution. The City Council may make a decision to pay compensation under this section conditional on the owner providing title insurance to the City, insuring the City as to the identities of the current owners of all legal, equitable, and security interests in the private real property.
- D. If the Council grants the claim and provides for compensation as the remedy, the claimant shall be entitled to reasonable costs and attorney's fees if compensation is not paid within 180 days of receipt of the complete application. The claimant shall have 14 days after the decision to submit a detailed statement which shall be reviewed and, if approved, paid within 14 days of receipt of the statement by the City.

2.07.055 Record.

- A. The City Recorder shall maintain records of all monies paid and licenses issued pursuant to this section.
- B. The Director shall cause a copy of any license issued under this section to be mailed to the Washington County Director of Assessment and Taxation with a request that such information be considered in determining the assessed value of the subject property.

2.07.060 Conditions Related to Future Court Decisions.

- A. If the City Council grants a license or limited license as a means to avoid having to compensate, or as a means to limit compensation to, an owner or owners under Measure 37, and if, based on a subsequent appellate court interpretation or invalidation of Measure 37, in the same or another case, the applying owner was not entitled to compensation in relation to the regulation from which the license waiving the regulation was granted, then the waiver or limited waiver shall be deemed to have been invalid and ineffective as of and after the date of the City Council's order granting the waiver or limited waiver. Any such invalidity and ineffectiveness shall be limited as necessary to avoid the City being required to compensate the owner under Measure 37.
- B. The City Council may make a decision to pay compensation under this section conditional on the owner or owners signing an agreement, in a form acceptable to the City, that, if an appellate court subsequently interprets or invalidates Measure 37, in the same or another case, in a manner such that the owner was or owners were not entitled to compensation in relation to the subject regulation, then the owner or owners will repay the compensation received by the owner or owners to the City, with the repayment obligation being a lien against the subject private real property until paid. Whether or not the owner or owners sign such an agreement, if an appellate court subsequently interprets or invalidates Measure 37, in the same or another case, in a manner such that the owner was or owners were not entitled to compensation in relation to the subject regulation, then the owner or owners shall repay the compensation received by the owner or owners to the City, with the repayment obligation being a lien against the subject private real property until paid. Any such repayment obligation and lien shall be limited as necessary to avoid the City being required to compensate the owner under Measure 37.

2.07.065 No Reapplication.

If an application is denied or withdrawn prior to the issuance of a final written order by the City Council, no application for the same or substantially similar compensation claim may be made by the owner of the subject property.

2.07.070 Validity of City Council Action.

No failure of any person or body to comply with a procedural requirement set out in this section shall invalidate any action of the City Council under this section.

2.07.075 Private Cause of Action. If the Council's approval of a claim by waiving or granting a license to waive the enforcement of a regulation causes a reduction in value of other property located in the vicinity of the Claimant, these property owners shall have a cause of action in state circuit court to recover from the Claimant the amount of the reduction, and shall be also entitled to attorney fees.

2.07.080 Attorney Fees on Delayed Compensation. If a demand made under Measure 37 and this ordinance is denied or not fully paid within 180 days of the date of filing a completed demand, the owner's reasonable attorney fees and expenses necessary to collect compensation will be added as additional compensation, provided compensation is awarded to the owner. If such demand is denied, not fully paid, or other action taken under Measure 37, within 180 days of the date of filing the completed demand, and the owner commences suit or action to collect compensation, if the City is the prevailing party in such action, then the City shall be entitled to any sum which a court, including any appellate court, may adjudge reasonable attorney's fees. In the event the City is the prevailing party and is represented by in-house counsel, the prevailing party shall nevertheless be entitled to recover reasonable attorney fees based upon the attorney fee rates and charges reasonably and generally accepted in Beaverton, Oregon for the type of legal services performed.

Section 2. Severability. It shall be the legislative intent that if any part of this ordinance shall be held invalid or unconstitutional, including without limitation compliance with statewide planning goals, the remaining parts of this ordinance shall remain in force and effect.

Section 3. Emergency Clause. The Council finds that immediate adoption of this ordinance is necessary to implement a new state law, which is anticipated to take effect on December 2, 2004. The Council therefore declares an emergency to exist, and this ordinance shall take effect immediately on its passage.

First reading this ___ day of _____, 2004.

Passed by the Council this ___ day of _____, 2004.

Approved by the Mayor this ___ day of _____, 2004.

ATTEST:

APPROVED:

SUE NELSON, City Recorder

ROB DRAKE, Mayor

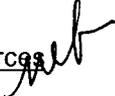
AGENDA BILL

**Beaverton City Council
Beaverton, Oregon**

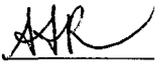
SUBJECT: An Ordinance Amending Chapter 5 of the Beaverton Code to Add a New Section 5.16 Relating to Civil Rights.

11/15/04
FOR AGENDA OF: ~~11/08/04~~ **BILL NO:** 04228

Mayor's Approval: 

DEPARTMENT OF ORIGIN: Human Resources 

DATE SUBMITTED: 10/27/04

CLEARANCES: City Attorney 

PROCEEDING: ~~ORDINANCE-FIRST-READING~~
Second Reading & Passage

EXHIBITS: Beaverton Civil Rights Ordinance

BUDGET IMPACT

EXPENDITURE REQUIRED \$0	AMOUNT BUDGETED \$0	APPROPRIATION REQUIRED \$0
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HISTORICAL PERSPECTIVE:

On October 11, 2004, the Human Rights Advisory Commission presented to the City Council a proposed Civil Rights Ordinance for the City of Beaverton that would make it unlawful to discriminate on the basis of sexual orientation and gender identity. Following the presentation was a work session for initial discussion of the draft proposals. The Mayor and City Council supported conducting a public hearing because the Council desires to have citizens comment on this important public issue. The public hearing shall follow the City Council rules and procedures of Section 2.11 of the Beaverton Code.

INFORMATION FOR CONSIDERATION:

Oregon statutory law explicitly prohibits discrimination in employment, housing, and public accommodations based on many factors, including race, religion, color, sex, marital status, national origin, age, disability and source of income. Additionally, since 1998, Oregon case law has prohibited state and local governments from discriminating on the basis of sexual orientation.

Among the Oregon cities and counties that have passed ordinances prohibiting discrimination based on both sexual orientation and gender identify are Benton County, Multnomah County, and the cities of Portland, Salem, Lake Oswego, and Bend. The cities of Ashland and Eugene have passed ordinances prohibiting discrimination based on sexual orientation.

In October 2003, the HRAC approached the Mayor and asked about passing a Civil Rights Ordinance to protect citizens from discrimination on the basis of sexual orientation and gender discrimination. The Mayor asked that the Commission work with the City Attorney's Office to produce a draft ordinance. The ordinance prepared by the City Attorney's Office and approved by the HRAC is attached. The draft ordinance is modeled from the ordinances passed by the jurisdictions listed above.

RECOMMENDED ACTION:

~~First-reading-~~
Second Reading & Passage

ORDINANCE NO. 4330

AN ORDINANCE AMENDING CHAPTER 5 OF THE
BEAVERTON CODE TO ADD A NEW SECTION 5.16
RELATING TO CIVIL RIGHTS.

WHEREAS, the City Council received a draft Civil Rights Ordinance from the Human Rights Advisory Commission at a Council work session with a recommendation that the City adopt this ordinance to fight discrimination in the City of Beaverton; and

WHEREAS, the City Council believes that discrimination exists in the City of Beaverton and that all forms of discrimination are detrimental to the well being and productivity of the citizens of Beaverton and the State of Oregon; and

WHEREAS, adoption of the proposed addition to the Beaverton Code attached as Exhibit "1", demonstrates the City's resolve to combat discrimination where it exists in the City of Beaverton. Now, therefore,

THE CITY OF BEAVERTON ORDAINS AS FOLLOWS:

Chapter 5 of the Beaverton Code is amended to include a new Section 5.16, attached hereto as Exhibit "1".

First reading this 8th day of November, 2004.

Passed by the Council this ___ day of _____, 2004.

Approved by the Mayor this ___ day of _____, 2004.

ATTEST:

APPROVED:

SUE NELSON, City Recorder

ROB DRAKE, Mayor

CIVIL RIGHTS

5.16.005 Short Title. BC 5.16.005 - .060 shall be known and may be cited as the "Civil Rights Ordinance" and may also be referred to herein as "Section 5.16."

5.16.010 Policy. It is the policy of the City of Beaverton to eliminate discrimination based on race, religion, color, sex, marital status, familial status, national origin, age, mental or physical disability, sexual orientation, gender identity and source of income. Such discrimination threatens not only the rights and privileges of Beaverton citizens, but menaces the institutions and foundation of our community. Furthermore, the Mayor and City Council find that discrimination on the basis of sexual orientation and gender identity exists in the City of Beaverton and that state law does not clearly prohibit such discrimination. It is the intent of the Mayor and Council, in the exercise of their powers for the protection of the public health, safety, and general welfare and for the maintenance of peace and good government, that every individual shall have an equal opportunity to participate fully in the life of the City and that discriminatory barriers to equal participation in employment, housing, and public accommodation be removed.

5.16.015 Definitions. As used in Section 5.16, except where the context otherwise requires:

Gender Identity - A person's actual or perceived sex, including a person's identity, appearance, expression, or behavior with respect to actual or perceived sex, whether or not that identity, appearance, expression or behavior is different from that traditionally associated with the person's sex at birth.

Sexual Orientation - Actual or perceived heterosexuality, homosexuality, or bisexuality.

Any term used but not defined in Section 5.16 shall be interpreted consistently with definitions provided in Oregon Revised Statutes, Chapter 659A (2003).

5.16.020 Unlawful Employment Practices. It shall be an unlawful employment practice for any employer to discriminate on the basis of an individual's race, religion, color, sex, marital status, familial status, national origin, age (if the individual is 18 years of age or older), mental or physical disability, sexual orientation or gender identity by committing against any such individual any of the acts made unlawful under ORS 659A.030, 659A.100 to 659A.142.

5.16.025 Unlawful Real Property Transactions Practices. It shall be an unlawful real property transaction practice for any person to discriminate on the basis of race, religion, color, sex, marital status, familial status, national origin, age, mental or physical disability, sexual orientation, gender identity or source of income

EXHIBIT 1

by committing against any such individual any of the acts made unlawful under ORS 659A.145 or 659A.421.

5.16.030 Unlawful Public Accommodation Practices. It shall be an unlawful public accommodation practice for a person to discriminate on the basis of an individual's race, religion, color, sex, marital status, familial status, national origin, age, mental or physical disability, sexual orientation, gender identity or source of income, by committing against any such individual any of the acts made unlawful under ORS 659A.142 or ORS 659A.400 to 659A.409.

5.16.040 Exceptions.

A. The prohibitions in Section 5.16 against discriminating on the basis of sexual orientation and gender identity do not apply to:

1. The leasing or renting of space within a church, temple, synagogue, religious school, or other facility used primarily for religious purposes.
2. The leasing or renting of a room or rooms within an individual living unit which is owned by the lessor as his or her primary residence.

B. The prohibitions in Section 5.16 against discriminating on the basis of source of income do not prohibit:

1. Inquiry into and verification of a source or amount of income.
2. Inquiry into, evaluation of, and decisions based on the amount, stability, security, or creditworthiness of any source of income.
3. Screening prospective purchasers and tenants on bases not specifically prohibited by this chapter or by state or federal law.
4. Refusal to contract with a governmental agency under 42 U.S.C. §1437f(a) "Section 8."

C. The prohibitions in subsection 5.16.025 against discriminating on the basis of age do not apply to housing for older persons, as defined in ORS 659A.421(7)(b) and (c).

D. The prohibitions in subsection 5.16.030 against discriminating on the basis of age or familial status do not apply to the use of special rates or services or to the promotion of business through the issuance of special rates for families with children, or persons 55 years of age or older.

E. Reasonable and appropriate accommodations shall be made to permit all persons access to restrooms consistent with their expressed gender. However, the prohibitions in Section 5.16 against discriminating on the basis of gender identity do not prohibit:

1. Health or athletic clubs or other entities that operate gender-specific facilities involving public nudity such as showers and locker rooms, from requiring an individual to document their gender or transitional status. Such documentation can include but is not limited to a court order, letter from a physician, birth certificate, passport, or driver's license.
2. Valid employer dress codes or policies, so long as the employer provides, on a case-by-case basis, for reasonable accommodation based on the health and safety needs of persons protected on the basis of gender identity.

EXHIBIT 1

5.16.050 Administration and Enforcement.

A. Enforcement of all or any part of Section 5.16 shall be governed by the procedures established in ORS Chapter 659A. The Mayor may adopt rules pursuant to BC 1.02.010 to implement enforcement and administration of this section.

B. Any person claiming to be aggrieved by an unlawful employment practice under subsection 5.16.020 or any person claiming to be aggrieved by an unlawful practice under subsections 5.16.025 or 5.16.030 relating to selling, renting or leasing real estate or discrimination in public accommodations, may file a complaint with the Commissioner under procedures established in ORS 659A.820.

C. The Commissioner may then proceed and shall have the same enforcement powers under Section 5.16, and if the complaint is found to be justified the complainant shall be entitled to the same remedies, as those provided under ORS 659A.835 to 659A.865.

D. Any order issued by the Commissioner of the Bureau of Labor and Industries under Section 5.16 shall be deemed as one issued by a municipal judge and shall be fully enforceable by the City.

E. Any person claiming to be aggrieved by an unlawful discriminatory act under the provisions of Section 5.16 shall have a cause of action in any court of competent jurisdiction for damages and such other remedies as may be appropriate. Election of remedies and other procedural issues relating to the interplay between administrative proceedings and private rights of action shall be decided as provided for in ORS 659A.870 to 659A.890. The court may grant such relief as it deems appropriate, including, but not limited to, such relief as is provided in ORS 659A.885.

5.16.060 Severability. The invalidity or lack of enforceability of any terms or provisions of this Ordinance or any part thereof shall not impair or otherwise affect in any manner the validity, enforceability or effect of the remaining terms of this Ordinance.

AGENDA BILL

**Beaverton City Council
Beaverton, Oregon**

SUBJECT: An Ordinance Amending Provisions of Chapters Four and Five of the Beaverton City Code Relating to Nuisances Affecting the Public Health

11/15/04
FOR AGENDA OF: ~~44-08-04~~ **BILL NO:** 04229

Mayor's Approval: 

DEPARTMENT OF ORIGIN: Code Services 

DATE SUBMITTED: 11-02-04

CLEARANCES: City Attorney IBK
Solid Waste SK

PROCEEDING: ~~First Reading~~
Second Reading & Passage

EXHIBITS: Ordinance

BUDGET IMPACT

EXPENDITURE REQUIRED \$0	AMOUNT BUDGETED \$0	APPROPRIATION REQUIRED \$0
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HISTORICAL PERSPECTIVE:

The city has the legal authority to enact and enforce reasonable regulations to preserve and protect the public safety and health. This authority derives from city's police power, which relates to the authority a government has to enact and enforce regulations intended to safeguard the health, safety, welfare and aesthetics of a community.

INFORMATION FOR CONSIDERATION:

The proposed ordinance changes four sections of the Beaverton Code dealing with rubbish and solid waste. The first change is to the description of rubbish contained in Beaverton Code section 5.05.095, paragraph A. The description of rubbish has been expanded to include carpet, upholstered furniture, and household appliances stored out-of-doors for more than 72 hours. This change is intended to make it abundantly clear that it is not acceptable to store these types of items outdoors for any extended period. (No change to paragraph B of section 5.05.095 is proposed - it reads the same as it did before.)

The remainder of proposed changes are to the Solid Waste and Recycling Ordinance of the Beaverton Code -- Chapter 4.08. This ordinance establishes the framework for the city's franchise system for the collection of refuse, yard debris and recycling, and was most recently revised in May of 2002. Administrative rules were also adopted in conjunction with the May 2002 revision of the Solid Waste and Recycling Ordinance. The administrative rules took effect July 1, 2002.

Now that we have had some time to work with the new ordinance and rules, some opportunities for improvements have become apparent. In particular, the rules described "Customer Responsibilities," but neither the ordinance nor the rules contained any enforcement or penalty provisions for customers who violated the rules.

The proposed ordinance improves the existing Solid Waste and Recycling Ordinance by:

A. Adding section 4.08.205 “Rulemaking Authority for Administration and Enforcement.” This section clarifies that the Mayor’s rulemaking authority regarding solid waste and recycling applies to both city franchisees and their customers.

B. Amending section 4.08.210 “Enforcement of Standards: Customers.” This section establishes that violation of the ordinance or the rules by a customer constitutes a Class 1 Civil Infraction, and that each new day of violation by a customer constitutes a separate civil infraction.

C. Adding section 4.08.215 “Enforcement of Standards: Franchisees.” This section restates the enforcement provisions for franchisees previously contained in section 4.08.210.

After the adoption of this proposed ordinance, the promulgation of new rules will be recommended to make the language of the rules consistent with the language of this ordinance. The proposed new rules for customers have been drafted and will be finalized through the rulemaking process. Until then, section five of the proposed ordinance provides that the city’s existing administrative rules regarding solid waste and recycling remain in full force and effect.

RECOMMENDED ACTION:

~~First reading.~~

Second Reading & Passage

AN ORDINANCE AMENDING PROVISIONS OF
CHAPTERS FOUR AND FIVE OF THE BEAVERTON CITY CODE
RELATING TO NUISANCES AFFECTING THE PUBLIC HEALTH.

WHEREAS, the City has the legal authority to and currently does regulate rubbish and solid waste collection; and

WHEREAS, the City seeks to amend the code prohibition against rubbish to include, without limitation, household appliances and upholstered furniture, carpet or cardboard stored out-of-doors for more than 72 hours; and

WHEREAS, the City seeks to require that all residents dispose of their rubbish and solid waste in an appropriate and timely fashion. Now therefore,

THE CITY OF BEAVERTON ORDAINS AS FOLLOWS:

Section 1. BC 5.05.095 is amended by striking the existing text and inserting:

“5.05.095 Rubbish.

A. No person shall cause to be placed upon public or private property any kind of rubbish, trash, debris, refuse, or other substance that mars the property’s appearance, creates a stench or a fire hazard, detracts from the cleanliness or safety of the property, or constitutes an unreasonable danger to human life or property. Substances that mar the appearance of property, create a stench or a fire hazard, detract from the cleanliness or safety of property, or constitute an unreasonable danger to human life or property include, but are not limited to, the following items stored out-of-doors for more than 72 hours:

1. carpet,
2. upholstered furniture (unless designed and manufactured for outdoor use and impervious to rain), and
3. household appliances (including, but not limited to, clothes dryers, washing machines, ovens and stoves).

B. No person shall cause rubbish, trash, debris, or refuse to be placed in a dumpster, dropbox, garbage can, or other container unless the person either owns or has authority to use the container.”

Section 2. BC 4.08.205 is enacted to read:

“4.08.205 Rulemaking Authority for Administration and Enforcement. The Mayor may promulgate such rules and regulations to promote recycling and proper disposal of solid waste as are necessary for the administration and enforcement of this ordinance, including but not limited to additional definitions, fee collection requirements, service standards, franchisee responsibilities, customer responsibilities, forms and procedures to implement the provisions of

this ordinance, and a process for notice and comment regarding such rules and regulations prior to their adoption.”

Section 3. BC 4.08.210 is amended by striking the existing text and inserting:

“4.08.210 Enforcement of Standards: Customers.

A. A violation of a provision of this ordinance or of a rule duly promulgated under authority of this ordinance by a franchise customer shall constitute a Class I Civil Infraction and shall be processed according to the procedure set forth in BC 2.10.010 - 2.10.050.

B. Each violation of this ordinance or of a rule duly promulgated under authority of this ordinance relating to the responsibilities of a franchise customer shall constitute a separate civil infraction. Each day that a violation of a provision of this ordinance or of a rule promulgated under authority of this ordinance is committed or is permitted to continue shall constitute a separate civil infraction.

C. Any penalty imposed pursuant to this ordinance or a rule duly promulgated under authority of this ordinance is in addition to, and not in lieu of, any other civil, criminal or administrative penalty or sanction otherwise authorized by law.”

Section 4. BC 4.08.215 is enacted to read:

“4.08.215 Enforcement of Standards: Franchisees.

A. A violation by a franchisee of a provision of this ordinance or of a rule duly promulgated under authority of this ordinance shall constitute an infraction and shall be processed according to the procedure set forth in this ordinance.

B. Infractions under this ordinance and under any rules duly promulgated under authority of this ordinance are classified by an Enforcement Code consisting of two letters.

1. The first letter identifies the severity of the infraction (“A” being the most severe, “B” being the second most severe, “C” being the third most severe and “D” being the least severe).

2. The second letter identifies whether the infraction is measured “Per Day” (referred to as D), “Per Class” (referred to as C), or “Per Incident” (referred to as I).

C. Violation of this ordinance or of a rule duly promulgated under authority of this ordinance by a franchisee is punishable as provided in BC 4.08.420.

D. Any penalty imposed pursuant to this ordinance or a rule duly promulgated under authority of this ordinance is in addition to, and not in lieu of, any other civil, criminal or administrative penalty or sanction otherwise authorized by law.

E. Upon recommendation of the Mayor, the Council may declare a franchisee who fails to abide by the rules to be in default.”

Section 5. Those administrative rules duly promulgated under authority of Ordinance No. 4203 and now in effect shall survive the enactment of this ordinance and remain in full force and effect until otherwise repealed or amended.

First reading this 8th day of November, 2004.

Passed by the Council this day of _____, 2004.

Approved by the Mayor this day of _____, 2004.

ATTEST:

APPROVED:

SUE NELSON, City Recorder

ROB DRAKE, Mayor

AGENDA BILL

**Beaverton City Council
Beaverton, Oregon**

SUBJECT: Design Review Update Project (TA 2003-0005)

11/15/04
FOR AGENDA OF: ~~44-8-04~~ **BILL NO:** 04230

Mayor's Approval: *Linda A. Godland*
Mayor Pro Tem

DEPARTMENT OF ORIGIN: CDD

DATE SUBMITTED: 11-3-04

CLEARANCES: City Attorney *MR*
Devel. Serv. *FS*

PROCEEDING: ~~First Reading~~
Second Reading & Passage

EXHIBITS: 1. Draft Ordinance

BUDGET IMPACT

EXPENDITURE REQUIRED \$0	AMOUNT BUDGETED \$0	APPROPRIATION REQUIRED \$0
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HISTORICAL PERSPECTIVE:

Beginning in December 2002, the Community Development Department began meeting with the Code Review Advisory Committee to discuss a comprehensive revision to the City's existing Design Review process. The Committee met 13 times between December 2002 and June 2003 and forwarded a consensus proposal to the Planning Commission for their consideration. On August 27, 2003, the Planning Commission held their first public hearing to consider the proposed text amendment (TA 2003-0005) of the Design Review process contained within the City's Development Code. After the August 27, 2003 meeting, the Commission met to deliberate the text on October 22, 2003, July 7, 2004, and August 18, 2004. At the August 18, 2004 public meeting, the Commission voted 7-0 to recommend approval of the proposed text amendment as summarized in Land Use Order 1736. On November 1, 2004, the City Council consented to the Planning Commission's recommendation to approve TA 2003-0005.

INFORMATION FOR CONSIDERATION:

Attached to this Agenda Bill is a draft ordinance which would enact the Planning Commission recommendation of approval of the Development Code text amendment. Due to the extensive Planning Commission record, the entire record has not been attached to this Agenda Bill, but is available upon request.

RECOMMENDED ACTION:

Staff recommend that the City Council conduct a first reading of the draft Ordinance and direct staff to schedule a second reading of the Ordinance at the next available Council meeting date.

ORDINANCE NO. 4332

AN ORDINANCE AMENDING ORDINANCE NO. 2050, THE DEVELOPMENT CODE.

WHEREAS, in 2002, the City of Beaverton identified a need to conduct a comprehensive review of the City's Design review application procedures; and

WHEREAS, a Code Review Advisory Committee (CRAC) was appointed to assist City staff with the comprehensive review and the preparation of text to amend the Development Code; and

WHEREAS, the CRAC represented a wide range of community perspectives and interests;

WHEREAS, the CRAC met at thirteen (13) public meetings, between December 2002 and June 2003 at the conclusion of which a series of amendments to Chapter 20 (Land Uses), Chapter 40 (Applications), Chapter 50 (Procedures), Chapter 60 (Special Regulations), and Chapter 90 (Definitions) of the Development Code were agreed upon by the CRAC to forward to the Planning Commission for public hearing; and

WHEREAS, on August 27, 2003 the Planning Commission opened the first of four public hearings to consider a series of the text amendments known as the Design Review Update Project but more specifically identified as text amendment application number TA 2003-0005; and

WHEREAS, on October 22, 2003, July 7, 2004 and August 18, 2004 the Planning Commission conducted public hearings at the conclusion of which the Planning Commission reached a determination to recommend that the Beaverton City Council adopt the proposed amendments to the Development Code as summarized in Planning Commission Land Use Order No. 1736; and

WHEREAS, on September 6, 2004 the appeal period for Land Use Order No. 1736 for TA 2003-0005 expired without the filing of an appeal; and

WHEREAS, on November 1, 2004 the City Council conducted a work session with staff to discuss the changes to the Design Review process as contained in TA 2003-0005 and directed staff to prepare an ordinance to adopt the Planning Commission's recommendation as summarized in Land Use Order No. 1736; and

WHEREAS, specific to the amendment of Development Code Chapter 20 (Land Uses), Chapter 40 (Applications), Chapter 50 (Procedures), Chapter 60 (Special Regulations) and Chapter 90 (Definitions) in TA 2003-0005, the Council adopts as to facts and findings for this ordinance the materials described in Land Use Order No. 1736 dated August 26, 2004 and the Planning Commission record, all of which the Council incorporates by their reference herein and finds constitute an adequate factual basis for this ordinance; and now, therefore,

THE CITY OF BEAVERTON ORDAINS AS FOLLOWS:

Section 1. Ordinance No. 2050, the Development Code Chapter 20, is amended to read as set out in Appendix "A" to this Ordinance attached to and incorporated herein by this reference.

Section 2. Ordinance No. 2050, the Development Code Chapter 40, is amended to read as set out in Appendix "B" to this Ordinance attached to and incorporated herein by this reference.

Section 3. Ordinance No. 2050, the Development Code Chapter 50, is amended to read as set out in Appendix "C" to this Ordinance attached to and incorporated herein by this reference.

Section 4. Ordinance No. 2050, the Development Code Chapter 60, is amended to read as set out in Appendix "D" to this Ordinance attached to and incorporated herein by this reference.

Section 5. Ordinance No. 2050, the Development Code Chapter 90, is amended to read as set out in Appendix "E" to this Ordinance attached to and incorporated herein by this reference.

Section 8. Severance Clause.

The invalidity or lack of enforceability of any terms or provisions of this Ordinance or any appendix or part thereof shall not impair or otherwise affect in any manner the validity, enforceability or effect of the remaining terms of this Ordinance and appendices and said remaining terms and provisions shall be construed and enforced in such a manner as to effect the evident intent and purposes taken as a whole insofar as reasonably possible under all of the relevant circumstances and facts.

First reading this 8th day of November, 2004.

Passed by the Council this day of _____, 2004.

Approved by the Mayor this day of _____, 2004.

ATTEST:

APPROVED:

SUE NELSON, City Recorder

ROB DRAKE, Mayor