

AGENDA

REGULAR CITY COUNCIL MEETING

September 10, 2012

5:30 p.m.

CITY HALL COUNCIL CHAMBER
313 COURT STREET
THE DALLES, OREGON

1. CALL TO ORDER
2. ROLL CALL OF COUNCIL
3. PLEDGE OF ALLEGIANCE
4. APPROVAL OF AGENDA
5. PRESENTATIONS/PROCLAMATIONS
6. AUDIENCE PARTICIPATION

During this portion of the meeting, anyone may speak on any subject which does not later appear on the agenda. Five minutes per person will be allowed. If a response by the City is requested, the speaker will be referred to the City Manager for further action. The issue may appear on a future meeting agenda for City Council consideration.

7. CITY MANAGER REPORT
8. CITY ATTORNEY REPORT
9. CITY COUNCIL REPORTS
10. CONSENT AGENDA

Items of a routine and non-controversial nature are placed on the Consent Agenda to allow the City Council to spend its time and energy on the important items and issues. Any Councilor may request an item be "pulled" from the Consent Agenda and be considered separately. Items pulled from the Consent Agenda will be placed on the Agenda at the end of the "Action Items" section.

CITY OF THE DALLES

"By working together, we will provide services that enhance the vitality of The Dalles"

- A. Approval of July 23, 2012 Regular City Council Meeting Minutes
- B. Approval of August 13, 2012 Special City Council Meeting Minutes

11. CONTRACT REVIEW BOARD ACTIONS

- A. Authorization to Purchase Two Pre-Fabricated Sanitary Sewer Lift Stations from Romtec Utilities to Replace the Meadows and Jordan Street Lift Stations [**Agenda Staff Report #12-056**]
- B. Award Contract for Installation of Two Pre-Fabricated Sanitary Sewer Lift Stations to Replace Meadows and Jordan Street Lift Stations [**Agenda Staff Report #12-057**]

12. ACTION ITEMS

- A. Approval to Move the City's Non-Public Safety Retirement Plan [**Agenda Staff Report #12-054**]
- B. Approval to Enter into Agreement With Oregon Department of Transportation to Receive Surface Transportation Program Funds for the East 19th Street Reconstruction Project [**Agenda Staff Report #12-055**]
- C. General Ordinance No. 12-1317 Regulating the Conduct and Business of Second Hand Dealers and Certain Sales of Used Property; Requiring Records; Requiring a License for Second Hand Dealers; Providing Penalties; and Repealing General Ordinance No. 83-1048 [**Agenda Staff Report #12-058**]
- D. General Ordinance No. 12-1325 Amending Land Use Development Ordinance [**Agenda Staff Report #12-059**]
- E. General Ordinance No. 12-1326 Amending General Ordinance No. 97-1216 Concerning Regulation of Food Carts and Other Transient Merchant Vendors on City Owned or Leased Real Property [**Agenda Staff Report #12-060**]

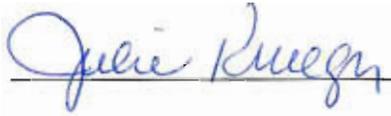
13. DISCUSSION ITEMS

- A. Discussion Regarding Main Street Steering Committee's Economic Improvement District Plan [**Agenda Staff Report #12-061**]
- B. Discussion Regarding an Opportunity to Enter into a Ground Lease for Construction and Operation of an Electric Vehicle Charging Station [**Agenda Staff Report #12-062**]

14. ADJOURNMENT

This meeting conducted in a handicap accessible room.

Prepared by/
Julie Krueger, MMC
City Clerk

A handwritten signature in blue ink that reads "Julie Krueger". The signature is written in a cursive style and is positioned above a horizontal line.



AGENDA STAFF REPORT CITY OF THE DALLES

MEETING DATE	AGENDA LOCATION	AGENDA REPORT #
September 10, 2012	Consent Agenda 10, A - B	N/A

TO: Honorable Mayor and City Council

FROM: Julie Krueger, MMC, City Clerk

THRU: Nolan K. Young, City Manager

DATE: August 28, 2012

ISSUE: Approving items on the Consent Agenda and authorizing City staff to sign contract documents.

A. **ITEM:** Approval of July 23, 2012 Regular City Council Meeting Minutes.

BUDGET IMPLICATIONS: None.

SYNOPSIS: The minutes of the July 23, 2012 regular City Council meeting have been prepared and are submitted for review and approval.

RECOMMENDATION: That City Council review and approve the minutes of the July 23, 2012 regular City Council meeting.

B. **ITEM:** Approval of August 13, 2012 Special City Council Meeting Minutes.

BUDGET IMPLICATIONS: None.

SYNOPSIS: The minutes of the August 13, 2012 special City Council meeting have been prepared and are submitted for review and approval.

RECOMMENDATION: That City Council review and approve the minutes of the August 13, 201 special City Council meeting.

MINUTES

REGULAR COUNCIL MEETING
OF
JULY 23, 2012
5:30 P.M.
THE DALLES CITY HALL
313 COURT STREET
THE DALLES, OREGON

PRESIDING: Mayor Jim Wilcox

COUNCIL PRESENT: Carolyn Wood, Dan Spatz, Brian Ahier, Tim McGlothlin

COUNCIL ABSENT: Bill Dick

STAFF PRESENT: City Manager Nolan Young, City Attorney Gene Parker, City Clerk Julie Krueger, Police Chief Jay Waterbury, Community Development Director Dan Durow, Public Works Director Dave Anderson, Senior Planner Dick Gassman

CALL TO ORDER

Mayor Wilcox called the meeting to order at 5:31 p.m.

ROLL CALL

Roll call was conducted by City Clerk Krueger; Councilor Dick absent.

PLEDGE OF ALLEGIANCE

Mayor Wilcox invited the audience to join in the Pledge of Allegiance.

APPROVAL OF AGENDA

Mayor Wilcox asked the Council to add approval of an OLCC change in privilege application for Celilo Inn to the Consent Agenda.

MINUTES (Continued)
Regular Council Meeting
July 23, 2012
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It was moved by Wood and seconded by Spatz to approve the agenda as amended. The motion carried unanimously, Dick absent.

PRESENTATIONS/PROCLAMATIONS

Mayor Wilcox introduce Angela Schultze, who had painted a picture of the Sister City garden, to present to the Mayor of Myoshi City on an upcoming visitation. Wilcox said Ms. Schultze would be the chaperone for the student delegation visiting Myoshi City in August.

Americans With Disabilities Anniversary Proclamation

Mayor Wilcox read a Proclamation, declaring July 26, 2012 as the 22nd anniversary of the Americans With Disabilities Act.

School District 21 Report

School District Superintendent Candy Armstrong provided an update regarding summer school activities. She said there had been good participation in the programs, noting that students had to pay for the classes which was an incentive to achieve their goals. She reported the migrant program had been very successful this summer and the nutrition services had provided meals for all the summer programs.

AUDIENCE PARTICIPATION

Daniel, 845 Snipes Street, The Dalles, said he had questioned the City's authority to act outside of the US and Oregon constitutions at the last Council meeting, but had not received an answer from the City Council.

Mayor Wilcox said the City Council did follow the constitutions. City Attorney Parker said he would provide a written reply to the citizen.

CITY MANAGER REPORT

City Manager Young announced that Community Development Director Dan Durow would be retiring from his position effective November 1. Young said Durow left a legacy of accomplishments that would have a lasting influence on the community, including his work in Urban Renewal programs and projects, downtown and riverfront projects, Enterprise Zone work, and Riverfront Trail work.

Young said he planned to reorganize the Department and asked for budget approval from the Council to establish a contract with Durow to work eight to twelve hours per week on urban renewal, enterprise zone, and riverfront projects, at a rate of \$40 per hour with no benefits. Young further requested funding approval to change the intern position to a fellowship, paying \$20 per hour instead of the current \$15. He said that position would be able to assist with economic development projects and then the current Economic Development Department would be able to function as a Planning Department. Young said there would be a savings of at least \$20,000 in the budget with these changes. Young said the funds included in the budget from urban renewal to pay a portion of Durow's salary would then be used to pay a portion of the City Manager's salary when working on economic development projects.

It was moved by Wood and seconded by Spatz to approve the changes proposed by the City Manager, including a contract with Durow at \$40 per hour, changing the Intern position to a fellowship and paying \$20 per hour, and using urban renewal funds dedicated toward Durow's salary, to be charged for City Manager's salary, not to exceed current budgeted figures. The motion carried unanimously, Dick absent.

City Manager Young was directed to provide detailed budget information to the City Council regarding all the salary impacts.

City Manager Young reminded the City Council the dedication ceremony for the Commercial Dock Facility and Lewis and Clark Festival Park would be held on September 6, 2012 at 10:00 a.m.

CITY ATTORNEY REPORT

City Attorney Parker reported he was meeting with the Municipal Judge and Prosecutor regarding the concept of a mental health court. He said he was working on the dog control and second hand dealer ordinances which would be brought to Council for consideration in September.

CITY COUNCIL REPORTS

Councilor McGlothlin reported on the recent Traffic Safety Committee meeting, noting the discussion regarding the walkability assessment had been postponed and said traffic signage issues had been discussed. He said the Committee was considering a recommendation to fund a Bicycle Master Plan.

Councilor Spatz reported the Strong Economy Program would be concluding, but a bi-state legislative forum was being planned for December to focus on issues for the Gorge communities.

He said there would be three areas of focus for the forum including business, public policy, and education. Spatz said a regional tourism summit was also planned for October.

Mayor Wilcox said he had participated in the Fort Dalles Rodeo parade on Saturday and said he would be attending the Oregon Mayor's Conference later in the week. Wilcox said the registration forms for the League of Oregon Cities conference had been sent out and he encouraged the City Council to attend the conference.

CONSENT AGENDA

It was moved by Ahier and seconded by McGlothlin to approve the amended Consent Agenda. The motion carried unanimously, Dick absent.

Items approved by Consent Agenda were: 1) approval of the July 9, 2012 regular City Council meeting minutes; and 2) authorization for City Clerk to endorse OLCC change in privilege application for Celilo Inn.

PUBLIC HEARINGS

Public Hearing to Receive Testimony Regarding Proposed Amendments to the Land Use Development Ordinance

Mayor Wilcox reviewed the procedures to be followed for the public hearing. City Manager Young said the language was not intended to be more or less restrictive, but to clarify what would be allowed. He said staff would work on the language.

Senior Planner Gassman reviewed the staff report, noting most of the proposed changes were very minor in nature. He reviewed Sections 5, 7, 10, and 19, which were more substantive.

Mayor Wilcox asked that Section 13 regarding accessory dwelling unit size be clarified so it was easier to understand.

There was a discussion regarding the definition of mobile home, compared to manufactured home. Senior Planner Gassman explained a mobile home would have been manufactured prior to 1976 and they were no longer considered suitable due to their age. He said they would no longer be permitted in the City.

MINUTES (Continued)
Regular Council Meeting
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Testimony

Bob McNary, 1525 East Ninth Street, The Dalles, asked if permits were currently required to build any fence. He said the City rarely knew about new fences being built and therefore they were not inspected.

Senior Planner Gassman said permits would be required for fences over four feet in height, but would not have a fee unless the fence was over six feet in height. He said the staff needed to educate the public regarding the need to get permits to build fences.

Councilor Ahier expressed opposition to regulating hedges in front of homes.

Community Development Director Durow said the purpose was for aesthetics and to address safety concerns. He said public safety departments needed to be able to see house numbers when responding to emergencies.

Mayor Wilcox said he thought the 100 foot setback requirement for structures over 40 feet in height, in overlay zones, seemed excessive.

Hearing no further testimony, the public hearing was closed.

Council Deliberation

It was moved by Wood and seconded by Spatz to direct staff to prepare an ordinance approving amendments to the Land Use Development Ordinance as recommended by the Planning Commission, including any changes approved by the City Council, based on appropriate findings of fact and conclusions of law, and including alternative language for Section 13, for adoption at a future Council meeting.

There was continued discussion regarding fences and hedges. Councilor Spatz said he understood the need for vision clearance on corner lots, but did not agree with regulating hedges on interior lots.

The motion to direct staff to prepare an ordinance approving amendments to the Land Use Development Ordinance as recommended by the Planning Commission, including any changes approved by the City Council, based on appropriate findings of fact and conclusions of law, and including alternative language for Section 13, for adoption at a future Council meeting was voted on and carried unanimously, Dick absent.

ACTION ITEMS

Approval of Agreement With US Army Corps of Engineers for Operation of the Shuttles at The Dalles Dam

City Manager Young reviewed the staff report.

It was moved by Wood and seconded by McGlothlin to authorize the City Manager to sign the agreement with the US Army Corps of Engineers for operation of the shuttles for access to Patterson Park and tours at The Dalles Dam.

Councilor Spatz asked if the Chamber would take over the operation of this program in the future. City Manager Young said the City would operate the program for this brief season and would work with the Chamber to have them operate it next year from May through September.

The motion to authorize the City Manager to sign the agreement with the US Army Corps of Engineers for operation of the shuttles for access to Patterson Park and tours at The Dalles Dam was voted on and carried unanimously, Dick absent.

DISCUSSION ITEMS

Update Regarding Revenue Impacts from Water Rate Adjustments Implemented in December, 2011

Public Works Director Anderson reviewed the staff report.

Councilor Ahier said he believed the City Council had selected an appropriate plan and capital projects list. He said they now needed to determine how to achieve the correct revenue to complete the projects.

Councilor Spatz agreed that all the projects included in the Plan were vital to complete. He said there had been no rate increases for a period of 12 years and now rates had to increase to keep the infrastructure working.

Ahier said the City's water rates were high compared to other cities, but the base volume amount was also high compared to other cities. He said he supported postponing the matter to September to all staff to compile more data regarding summer usage.

MINUTES (Continued)
Regular Council Meeting
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Councilor Wood said she didn't think it was wise to compare The Dalles with other cities regarding water rates. She said each community is different based on the type of water system they operate and their delivery systems.

It was moved by Ahier and seconded by Wood to direct staff to delay a residential water rate increase until November and on September 24, 2012, bring to City Council a review of the summer use impact of the 2011 water rate increase and rate plan options that maintain the Option 2B rate plan revenue and Capital Improvement Plan. The motion carried unanimously, Dick absent.

ADJOURNMENT

Being no further business, the meeting adjourned at 7:24 p.m.

Submitted by/
Julie Krueger, MMC
City Clerk

SIGNED:

James L. Wilcox, Mayor

ATTEST:

Julie Krueger, MMC, City Clerk

MINUTES

SPECIAL COUNCIL MEETING
OF
AUGUST 13, 2012
5:30 P.M.
THE DALLES CITY HALL
313 COURT STREET
THE DALLES, OREGON

PRESIDING: Mayor Jim Wilcox

COUNCIL PRESENT: Bill Dick, Carolyn Wood, Dan Spatz, Brian Ahier, Tim McGlothlin

COUNCIL ABSENT: None

STAFF PRESENT: City Manager Nolan Young, City Attorney Gene Parker, City Clerk Julie Krueger, Community Development Director Dan Durow, Airport Managers Chuck Covert and Rolf Anderson, Finance Director Kate Mast

CALL TO ORDER

Mayor Wilcox called the meeting to order at 5:30 p.m.

ROLL CALL

Roll call was conducted by City Clerk Krueger; all Councilors present.

APPROVAL OF AGENDA

It was moved by Spatz and seconded by Wood to approve the agenda as presented. The motion carried unanimously.

CITY MANAGER REPORT

City Manager Young introduced new Fellow Garrett Chrostek. Young reported he had appointed Dick Gassman as the new Planning Director, effective November 1, 2012. He congratulated Police Chief Waterbury who celebrated 37 years of employment with the City on August 11.

Mayor Wilcox reported that he had learned the issue of containing brake dust at the Wal-Mart site had been resolved and they would now be moving forward with the project.

ACTION ITEMS

Resolution No. 12-012 Approving a Joint Resolution With Klickitat County for a \$250,000 Loan for Construction of an Airport Maintenance Hangar

City Attorney Parker reviewed the staff report.

Councilor Spatz asked if the only change in the information was to update the specific dates. Parker said the dates had been corrected and that the City would now receive a check from Klickitat County instead of having the funds deposited into a special account with the County.

It was moved by Wood and seconded by Ahier to adopt Resolution No. 12-012 approving a joint resolution with Klickitat County for a \$250,000 loan for construction of an airport maintenance hangar. The motion carried unanimously.

ADJOURNMENT

Being no further business, the meeting adjourned at 5:38 p.m.

Submitted by/
Julie Krueger, MMC
City Clerk

SIGNED:

James L. Wilcox, Mayor

ATTEST:

Julie Krueger, MMC, City Clerk



CITY OF THE DALLES
Department of Public Works
1215 West First Street
The Dalles, Oregon 97058

AGENDA STAFF REPORT

CITY OF THE DALLES

MEETING DATE	AGENDA LOCATION	AGENDA REPORT #
September 10, 2012	Contract Review Board 11, A	12-056

TO: Honorable Mayor and City Council

FROM: Dave Anderson, Public Works Director

THRU: Nolan K. Young, City Manager *nky*

DATE: August 27, 2012

ISSUE: Authorization for Expenditure of Funds to Purchase Two Pre-Fabricated Sanitary Sewer Lift Stations from Romtec Industries.

RELATED CITY COUNCIL GOALS: Goal 1 – Provide Public Works infrastructure that will ensure safe and well maintained streets and reliable utility systems for the citizens of The Dalles.

BACKGROUND: The current year's budget identifies funding for the replacement of two sanitary sewer lift stations – the Jordan Street and Meadows Lift Stations. In 2009, the City Manager had to declare an emergency for the expedited replacement of the Eastside Lift Station when it suffered end-of-life structural failure. The Jordan Street Lift Station is of the same design and age as was the Eastside Lift Station and although it hasn't yet failed, it is showing signs of similar deterioration. The Meadows Lift Station is not quite as old as the other two, but the wet well is failing structurally and has been patched as much as is feasible. This lift station is also experiencing capacity challenges with the development that has occurred in its service area.

In September 2010, City Council adopted Resolution No. 10-021 allowing for the sole-source procurement of pre-fabricated sanitary sewer lift stations from Romtec Industries based upon the City's experience with the Eastside Lift Station replacement project. The purchase of these two pre-fabricated lift stations from Romtec Industries requires authorization from City Council due to the amount of funds proposed to be expended.

Quotes have been received from Romtec Industries for the purchase of two new pre-fabricated sanitary sewer lift stations as follows:

Jordan St LS	\$199,605.09
Meadows LS	\$187,595.42

It may be worth noting that all new sanitary sewer lift stations that the City installs must include the provision of emergency back-up generators to comply with Oregon DEQ regulations. The costs presented above include adding emergency back-up generators at each site, as was done with the Eastside Lift Station replacement.

In addition to the costs to purchase the pre-fabricated lift stations, a contract will need to be awarded that will provide for the installation of both stations. The award of that contract will be a separate issue for Council’s consideration based upon a competitive bidding process. There will also be about \$20,000 of costs per station to integrate the new monitoring and control systems into our existing SCADA system; this work will be done by our existing contractual SCADA integration contractor, CH2M Hill.

BUDGET ALLOCATION: Funding for this project has been budgeted in Fund 57, the Sewer Plant Construction/Debt Service Fund, line 057-5700-550.73-50. The 2012-13 budget identifies \$680,000 for the replacement of these two lift stations. The total projected cost of this project is projected to be within the budgeted funds available.

ALTERNATIVES:

- A. Staff Recommendation: *Move to authorize the expenditure of funds to purchase two pre-fabricated sanitary sewer lift stations from Romtec Industries for an amount not to exceed \$387,200.51.*

- B. Deny authorization to expend these funds and provide direction to staff.



CITY OF THE DALLES
Department of Public Works
1900 West Sixth Street
The Dalles, Oregon 97058

AGENDA STAFF REPORT

CITY OF THE DALLES

MEETING DATE	AGENDA LOCATION	AGENDA REPORT #
September 10, 2012	Contract Review Board 11, B	12-057

TO: Honorable Mayor and City Council

FROM: Dale S. McCabe, City Engineer

THRU: Nolan K. Young, City Manager *ncj*

DATE: August 29, 2012

ISSUE: Award Contract for Meadows and Jordan Street Lift Station Replacement Contract No. 13-001.

RELATED CITY COUNCIL GOAL: Goal 1 - Provide Public Works infrastructure that will ensure safe and well maintained streets and reliable utility systems for the citizens of The Dalles.

BACKGROUND: The City of The Dalles Public Works Department advertised for bids for the Meadows and Jordan Street Lift Station Replacement Project, Contract No. 2013- 001. The scope of work for the project was stated as follows: "The work to be performed shall consist of furnishing all materials, labor, and equipment necessary in the installation of two pre-packaged Romtec Utilities sanitary sewer lift stations supplied by the city and the associated force main connections. All work will be conducted in accordance with the contract documents."

The current year's budget identifies funding for the replacement of two sanitary sewer lift stations - the Jordan Street and Meadows Lift Stations. In 2009, the City Manager had to declare an emergency for the expedited replacement of the Eastside Lift Station when it suffered end-of-life structural failure. The Jordan Street Lift Station is of the same design and age as the Eastside Lift Station and although it hasn't yet failed, it is showing signs of similar deterioration. The Meadows Lift Station is not quite as old as the other two, but the wet well is failing structurally

and has been patched as much as is feasible. This lift station is also experiencing capacity challenges with the development that has occurred in its service area.

The bid opening for the contract to install the two lift stations was held on August 28th at 2:00 p.m. for which we received three bids. The three construction companies that submitted bids had all submitted the proper pre-qualification information and had pre-qualified to bid on the project. The bids received were as follows.

1. Crestline Construction Co. LLC, in the amount of \$236,183.00.
2. Triad Mechanical, Inc., in the amount of \$256,241.50.
3. Clackamas Construction, Inc., in the amount of \$409,737.00.

The bids were reviewed by City staff to make sure that the proper material was submitted and the bids were deemed complete.

BUDGET IMPLICATIONS: Funding for this project has been budgeted in Fund 57, the Sewer Plant Construction/Debt Service Fund, line 057-5700-550.73-50. The 2012-13 budget identifies \$680,000 for replacement of these two lift stations. The total projected cost of the entire project is \$663,383.51 (\$236,183.00 for installation of lift stations, \$387,200.51 for purchase of lift stations, and \$40,000.00 to integrate each lift station into our existing SCADA system) and is within the budgeted funds available.

ALTERNATIVES:

- a. **Staff Recommendation: *Move to authorize the City Manager to enter into contract with Crestline Construction Co. LLC, in an amount not to exceed \$236,183.00.***
- b. Provide additional research in response to questions raised by City Council.
- c. Not to proceed with the contract.



CITY of THE DALLES
313 COURT STREET
THE DALLES, OREGON 97058

(541) 296-5481
FAX (541) 296-6906

AGENDA STAFF REPORT CITY OF THE DALLES

MEETING DATE	AGENDA LOCATION	AGENDA REPORT #
September 10, 2012	Action Items 12, A	12-054

TO: Honorable Mayor and City Council

FROM: Julie Krueger, MMC, City Clerk 

THRU: Nolan K. Young, City Manager 

DATE: August 10, 2012

ISSUE: Approval to Move the City's Non-Public Safety Retirement Plan.

BACKGROUND: City staff has been working with our benefits Agent of Record, BCI Group, to review our current retirement plan for the non-public safety employees. The non-public safety employees have been in the Nationwide Plan since 1998. Over recent years, the funds have not been as successful as those in the public safety employees' Standard Insurance Plan. Also, the third party administrator for Nationwide Plan has been sold and the service provided has declined to a level that is not acceptable.

We have an opportunity to move our non-public safety employees into the Standard Plan which is currently in place for the public safety employees. Standard Insurance has a very well managed and proven line of funds and does not use a third party administrator service. They are offering to reduce the asset management fees if we place all our employees under one plan. The cost savings in asset fees would be approximately \$32,000 per year and having all employees in one plan would allow for better administrative consistency. Standard has been providing excellent service and has also offered to establish a deferred compensation (457 Plan) for employees who want an additional mechanism to save on their own.

BUDGET IMPLICATIONS: The only cost would be a discontinuance charge from National Associates of \$500, which can be paid from the plan fees. Costs associated with administration of the Plan are normally paid through asset management fees by the employees.

ALTERNATIVES:

- A. **Staff Recommendation:** *Move to authorize the City Manager to proceed with moving the City's non-public safety retirement plan to Standard Insurance.*
- B. Council could decline to approve the proposal and leave the non-public safety retirement plan with Nationwide.
- C. Ask for additional plan options to be presented.



CITY OF THE DALLES
Department of Public Works
1215 West First Street
The Dalles, Oregon 97058

AGENDA STAFF REPORT

CITY OF THE DALLES

MEETING DATE	AGENDA LOCATION	AGENDA REPORT #
September 10, 2012	Action Item 12, B	12-055

TO: Honorable Mayor and City Council

FROM: Dave Anderson, Public Works Director

THRU: Nolan K. Young, City Manager 

DATE: August 6, 2012

ISSUE: Authorization to enter into agreement with ODOT to receive Surface Transportation Program funds for East 19TH Street Reconstruction Project

RELATED CITY COUNCIL GOALS: N.A.

BACKGROUND: The Oregon Department of Transportation (ODOT) enters into agreements with cities to provide for roadway improvements under the Surface Transportation Program (STP). These agreements allow ODOT to reimburse cities for the work performed. Funds are allocated to cities annually under the program and funds can be “banked” for up to four years to help fund larger projects. These funds originate as federal funds that the state can “exchange” into state funds thereby eliminating federal requirements from projects that don’t involve other federal funding. The Exchange Agreements pass 94% of the original allocations to the cities without federal contract restrictions.

Staff submitted a project prospectus to ODOT requesting use of STP funds for the reconstruction of East 19th Street from Dry Hollow Road to just short of Oakwood Drive. The project will not involve any other federal monies so exchange of the STP funds was requested.

The City has been accruing STP funds since 2009 for projects. These funds were previously planned to be used for the extension of East 19th Street and the Thompson Street improvements. Since both of those projects have been delayed, and the 2009 allocations need to be spent this year, staff has planned to use the funds for a high-priority maintenance project - the reconstruction of East 19th Street. Council had previously been notified that the funding for the East 19th Reconstruction project were funds originally allocated for the East 19th Street Extension and Thompson Street Improvement projects.

The proposed exchange agreement (copy attached) would authorize up to \$425,000 for the project on a reimbursement basis. If the project costs are less than the total STP funds available, unused funds can be carried over to the next project.

BUDGET ALLOCATION: Funds received from the STP are budgeted within Fund 13, the Bridge Replacement Reserve fund, line 013-0000-331.11-00. The 2012-13 budget identifies \$454,732 in anticipated STP funds being received. The budget also identifies \$1,219,342 available for Capital Projects, \$454,742 of which was anticipated to come from the STP funds. The estimated cost of the East 19th Street Reconstruction Project is within the budgeted funds available.

ALTERNATIVES:

- A. Staff Recommendation: Authorize Agreement No. 28661 with ODOT to accept funds exchanged under the Surface Transportation Program for the East 19th Street Reconstruction Project in an amount not to exceed \$425,000.
- B. Deny authorization of an agreement with ODOT and provide direction to staff.

2012 FUND EXCHANGE AGREEMENT
E 19th Street Dry Hollow to Oakwood
City of The Dalles

THIS AGREEMENT is made and entered into by and between the STATE OF OREGON, acting by and through its Department of Transportation, hereinafter referred to as "State"; and THE CITY OF THE DALLES, acting by and through its elected officials, hereinafter referred to as "Agency," both herein referred to individually or collectively as "Party" or "Parties."

RECITALS

1. By the authority granted in Oregon Revised Statute (ORS) 190.110, 366.572 and 366.576, ODOT may enter into cooperative agreements with counties, cities and units of local governments for the performance of work on certain types of improvement projects with the allocation of costs on terms and conditions mutually agreeable to the contracting parties.
2. E. 19th Street from Dry Hollow to Oakwood Street is suffering from severely deteriorated pavements and compound base failure.

NOW THEREFORE, the premises being in general as stated in the foregoing Recitals, it is agreed by and between the Parties hereto as follows:

TERMS OF AGREEMENT

1. Agency has submitted a completed and signed Part 1 of the Project Prospectus, or a similar document agreed to by State, outlining the schedule and costs associated with all phases of the resurfacing of E. 19th Street, hereinafter referred to as "Project."
2. State has reviewed Agency's prospectus and considered Agency's request for the Fund Exchange. State has determined that Agency's Project is eligible for the exchange of funds.
3. To assist in funding the Project, Agency has requested State to exchange 2012 federal funds, which have been allocated to Agency, for state funds based on the following ratio:

\$94 state for \$100 federal

4. Based on this ratio, Agency wishes to trade \$452,128 federal funds for \$425,000 state funds.

5. The term of this Agreement will begin upon execution and will terminate 2 years from the date that all required signatures are obtained unless extended by an executed amendment.
6. The Parties agree that the exchange is subject to the following conditions:
 - a. The federal funds transferred to State may be used by State at its discretion.
 - b. State funds transferred to Agency must be used for the Project. This Fund Exchange will provide funding for specific roadway projects and may also be used for the following maintenance purposes:
 - i. Purchase or Production of Aggregate. Agency shall ensure the purchase or production of aggregate will be highway related and used exclusively for highway work.
 - ii. Purchase of Equipment. Agency shall clearly describe how it plans to use said equipment on highways. Agency shall demonstrate that the equipment will only be used for highway purposes.
 - c. State funds may be used for all phases of the Project, including preliminary engineering, right of way, utility relocations and construction. Said use shall be consistent with the Oregon Constitution and statutes (Section 3a of Article IX Oregon Constitution). Agency shall be responsible to account for expenditure of state funds.
 - d. This Fund Exchange shall be on a reimbursement basis, with state funds limited to a maximum amount of \$425,000. All costs incurred in excess of the Fund Exchange amount will be the sole responsibility of Agency.
 - e. State certifies, at the time this Agreement is executed, that sufficient funds are available and authorized for expenditure to finance costs of this Agreement within State's current appropriation or limitation of the current biennial budget.
 - f. Agency and any contractors, shall perform the work as an independent contractor and will be exclusively responsible for all costs and expenses related to its employment of individuals to perform the work including, but not limited to, retirement contributions, workers compensation, unemployment taxes, and state and federal income tax withholdings.
 - g. Agency shall comply with all federal, state, and local laws, regulations, executive orders and ordinances applicable to the work under this Agreement, including, without limitation, the provisions of ORS 279C.505, 279C.515, 279C.520, 279C.530 and 279B.270 incorporated herein by reference and made a part hereof. Without limiting the generality of the foregoing, Agency expressly agrees

to comply with (i) Title VI of Civil Rights Act of 1964; (ii) Title V and Section 504 of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990 and ORS 659A.142; (iv) all regulations and administrative rules established pursuant to the foregoing laws; and (v) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.

- h. Agency, or its consultant, shall conduct the necessary preliminary engineering and design work required to produce final plans, specifications and cost estimates; purchase all necessary right of way in accordance with current state and federal laws and regulations; obtain all required permits; be responsible for all utility relocations; advertise for bid proposals; award all contracts; perform all construction engineering; and make all contractor payments required to complete the Project.
- i. Agency shall submit invoices to State on a quarterly basis, for actual costs incurred by Agency on behalf of the Project directly to State's Project Manager for review and approval. Such invoices will be in a form identifying the Project, the agreement number, the invoice number or account number or both, and will itemize all expenses for which reimbursement is claimed. Under no conditions shall State's obligations exceed \$425,000, including all expenses. Travel expenses will not be reimbursed.
- j. Agency shall, at its own expense, maintain and operate the Project upon completion at a minimum level that is consistent with normal depreciation and service demand.
- k. All employers, including Agency, that employ subject workers in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage unless such employers are exempt under ORS 656.126. Employers Liability insurance with coverage limits of not less than \$500,000 must be included. Agency shall ensure that each of its subcontractors complies with these requirements.
- l. This Agreement may be terminated by either Party upon thirty (30) days' notice, in writing and delivered by certified mail or in person.
 - i. State may terminate this Agreement effective upon delivery of written notice to Agency, or at such later date as may be established by State, under any of the following conditions:
 - A. If Agency fails to provide services called for by this Agreement within the time specified herein or any extension thereof.
 - B. If Agency fails to perform any of the other provisions of this Agreement, or so fails to pursue the work as to endanger performance of this Agreement

in accordance with its terms, and after receipt of written notice from State fails to correct such failures within ten (10) days or such longer period as State may authorize.

- ii. Either Party may terminate this Agreement effective upon delivery of written notice to the other Party, or at such later date as may be established by the terminating Party, under any of the following conditions:
 - A. If either Party fails to receive funding, appropriations, limitations or other expenditure authority sufficient to allow either Party, in the exercise of their reasonable administrative discretion, to continue to make payments for performance of this Agreement.
 - B. If federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the work under this Agreement is prohibited or either Party is prohibited from paying for such work from the planned funding source.
 - iii. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.
 - m. State and Agency agree that if any term or provision of this Agreement is declared by a court of competent jurisdiction to be invalid, unenforceable, 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 the Agreement did not contain the particular term or provision held to be invalid.
7. Agency acknowledges and agrees that State, the Oregon Secretary of State's Office, the federal government, and their duly authorized representatives shall have access to the books, documents, papers, and records of Agency which are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts, and transcripts for a period of six (6) years after final payment. Copies of applicable records shall be made available upon request. Payment for costs of copies is reimbursable by State.
8. Agency certifies and represents that the individual(s) signing this Agreement has been authorized to enter into and execute this Agreement on behalf of Agency, under the direction or approval of its governing body, commission, board, officers, members or representatives, and to legally bind Agency.
9. This Agreement may be executed in several counterparts (facsimile or otherwise) all of which when taken together shall constitute one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of this Agreement so executed shall constitute an original.

10. This Agreement and attached exhibits constitute the entire agreement between the Parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind either Party unless in writing and signed by both Parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of State to enforce any provision of this Agreement shall not constitute a waiver by State of that or any other provision.

THE PARTIES, by execution of this Agreement, hereby acknowledge that their signing representatives have read this Agreement, understand it, and agree to be bound by its terms and conditions.

The funding for this Fund Exchange program was approved by the Oregon Transportation Commission on September 22, 2010, as a part of the 2010-2013 Statewide Transportation Improvement Program (STIP).

The Program and Funding Services Manager approved the Fund Exchange on June, 28, 2012.

CITY OF THE DALLES, by and through
its elected officials

By _____
Mayor

Date _____

**APPROVED AS TO LEGAL
SUFFICIENCY**

By _____
Counsel

Date _____

Agency Contact:
Dave Anderson – Director of Public
Works
313 Court Street
The Dalles, OR 97058
(541) 296-5401
danderson@ci.the-dalles.or

State Contact:
Darrell Newton – Local Agency Liaison
60303 O.B. Riley Road
Bend, OR 97701
(541) 388-6272
Darrell.r.newton@odot.state.or.us

STATE OF OREGON, by and through
its Department of Transportation

By _____
Region 4 Manager

Date _____

**APPROVED AS TO LEGAL
SUFFICIENCY**

By _____
Assistant Attorney General

Date _____



CITY of THE DALLES

313 COURT STREET
THE DALLES, OREGON 97058

(541) 296-5481 ext. 1122
FAX: (541) 296-6906

AGENDA STAFF REPORT

CITY OF THE DALLES

MEETING DATE:	AGENDA LOCATION:	AGENDA REPORT #
September 10, 2012	Action Items 12, C	12-058

TO: Honorable Mayor and City Council

FROM: Gene E. Parker, City Attorney

THRU: Nolan K. Young, City Manager. *nyj*

DATE: August 28, 2012

ISSUE: Adoption of General Ordinance No. 12-1317, regulating the conduct and business of secondhand dealers and certain sales of used property, requiring records, and requiring a license for secondhand dealers, providing penalties, and repealing General Ordinance No. 83-1048.

RELATED CITY COUNCIL GOAL: None.

PREVIOUS AGENDA REPORT NUMBERS: #11-066 & 12-012

BACKGROUND: This subject has been the subject of two prior discussions occurring on July 11, 2011 and February 13, 2012. Following the discussion on February 13, 2012, City staff, including the City Attorney, Police Chief Jay Waterbury, and Officer Sean Lundry, met with the secondhand dealers, and with a small subcommittee of business owners representing the secondhand dealers (the subcommittee members included Mark Thomas, Mel Mendez, and Eric Stovall) in an effort to resolve certain issues concerning the proposed ordinance. Staff believes that many of the secondhand dealer's concerns have been addressed in the final version of the ordinance which is being presented for the Council's review. The following is a summary of the significant provisions in the proposed ordinance.

1. Section 2 of the ordinance, which begins on page 1, containing language for the definitions in the ordinance, contains several new provisions as well as certain existing provisions:
 - A. Subsection (A) defines the types of “acceptable identification” which a secondhand dealer will be required to obtain from a customer selling the dealer used property.
 - B. Subsection (M), which begins on page 2, provides a very detailed list of the type of used property which is regulated by the ordinance. Property which is exempt from regulation is defined in Section 2(M)(B), on page 4 of the ordinance.
 - C. Subsection (O), provides a new definition for the term “Secondhand Business” to clarify the ordinance is intended to regulate businesses which purchase regulated property at any business location for resale.
 - D. Subsection (P) on page 4, which defines the term “Secondhand Dealer” has been revised to delete the exemption for merchants who deal primarily in new, unused merchandise, who occasionally engage in transactions involving used goods, which transactions account for less than 50% of the merchant’s gross sales
 - E. Subsection (V) on page 6, which defines the term “Transactions” retains a provision from the current ordinance providing that the ordinance does not regulate a transaction including the purchase or acquisition of regulated property from a single customer by a dealer where the total amount of the property purchased does not exceed the sum of \$25.00.
2. Section 4(B) on page 5, concerning permits, includes provisions concerning existing secondhand dealers who have a license under the current license. They will be required to apply for a license when their current license expires, and they will be subject to the provisions of the new ordinance upon its adoption. When they apply for renewal of a license under the new ordinance, they will not have to pay the application or investigation fees established by the new ordinance. Thereafter, they will pay the annual license fee, which is currently established at \$25.00.
3. Section 5, on page 6, concerning fees, will include a \$10 investigation fee and a \$25.00 application fee to be paid for new applications for a secondhand dealer license.
5. Section 6, on page 6, concerning the application process, will require that applicants for a new license provide certain information concerning the operation of similar secondhand businesses which they have operated, and also information concerning prior criminal convictions for the applicant, any co-owner, or a

manager or operator of the proposed secondhand business, which has occurred within 15 years of the date of the application.

6. Section 7, on pages 6 and 7, concerning denial or revocation of a permit, provides the City Attorney's office will be responsible for making the determination whether a permit application should be denied, or an existing permit should be revoked. Section 7(A)(2) includes new language providing a basis for a denial of an application or revocation of an existing permit, when there is evidence that the applicant, a co-owner, or manager or operator of the secondhand business, has been convicted of a felony or any crime involving a false statement or dishonesty within 15 years prior to the application date. Section 7(B) of the ordinance includes a new provision allowing for some discretion for the City Attorney not to proceed with a denial or revocation, if certain specified circumstances exist.
7. Section 8, on pages 7 and 8, which includes provisions concerning reporting requirements, has been revised to provide for weekly, rather than daily reports. A provision has been added to allow the Police Department to arrange to obtain the reports sooner if the department determines that they need such reports. The reports can be physically delivered to the police department during regular business hours, or sent by electronic or digital methods. The reports are required to include a copy of the required identification to be provided by the seller of the used property. A copy of the transaction reporting form is included with this staff report.
8. Section 9, pages 8 and 9, includes new provisions establishing a holding period of 7 days before property can be sold by a secondhand dealer.
9. Section 10, on page 10, includes a new provision requiring the secondhand dealers to affix tags to the used merchandise to facilitate identification of items that are sold.
10. Section 12, on page 9, includes new provisions concerning the sale of used property to minors. The current ordinance prohibits sales to anyone under the age of 18, and the new ordinance would allow sales to minors 16 years or older, provided they can show the dealer a valid government issued photo identification.
11. Section 15, on page 10, providing for a review of the ordinance upon two years after adoption of the ordinance, was added at the request of the secondhand dealers.

Concerning the request of the dealers for the police department to issue what is sometimes referred to as a "hot list", which is a list of recently stolen property, which the dealers have indicated would assist them in identifying stolen property, before it is purchased by an innocent dealer, the Police Department has determined that creation of such a list would not be in the interests of public safety, and the proposed ordinance does not address this issue.

Notice of adoption of General Ordinance No. 12-1317 has been posted in accordance with the provisions of the City Charter. The Council can choose to adopt the ordinance by title only.

BUDGET IMPLICATIONS: The proposed ordinance will continue to keep the current application fees, which are \$10 for the investigation fee, and \$25 for the permit fee.

ALTERNATIVES:

- A. Staff Recommendation. *Move to adopt General Ordinance No. 12-1317 by title only.*

GENERAL ORDINANCE NO. 12-1317

**AN ORDINANCE REGULATING THE CONDUCT AND BUSINESS OF
SECONDHAND DEALERS AND CERTAIN SALES OF USED PROPERTY;
REQUIRING RECORDS; REQUIRING A LICENSE FOR SECONDHAND
DEALERS; PROVIDING PENALTIES; AND REPEALING GENERAL
ORDINANCE NO. 83-1048**

**THE CITY COUNCIL OF THE CITY OF THE DALLES ORDAINS AS
FOLLOWS:**

Section 1. Purpose

This ordinance regulates the purchase of used property by certain businesses. This activity presents an extraordinary risk of misuse to conceal criminal conduct involving the theft of personal property. The risk of misuse is present despite the best efforts of legitimate businesses to otherwise control the risk.

Section 2. Definitions

For purposes of this ordinance, the following mean:

- A. Acceptable Identification. Either a current driver's license that includes the date of birth, photograph, and physical description of the person offering the identification; or two other pieces of current identification, at least one of which is issued by a governmental agency or subdivision and includes the date of birth, photograph and physical description of the person offering the identification.
- B. Application Date. The date the City receives the required application fee from an applicant for a secondhand dealer permit.
- C. Business. A shop, store, enterprise, profession, activity, establishment or undertaking of any nature conducted directly or indirectly for private profit or benefit and as a substantial means of a person's livelihood. The term is not meant to include the activity of any federal, state or local government or government subdivision or agency, or any organization exempt from taxation under Section 501 (c)(3) of the Internal Revenue Code.
- D. Business Location. Any physical location where the Dealer conducts business within the city limits of The Dalles.
- E. Investment Purposes. The purchase of personal property by businesses and the retention of that property in the same form as purchased, for resale to persons who are purchasing the property primarily as an investment.
- F. New. Anything conspicuously not used.

G. Owner. A person who has a right of possession to an item of property superior to that of the seller.

H. Person. Any individual, partnership, corporation, or association.

I. Personal Property. Any article, substance or thing of value, including, but not limited to, money, tangible and intangible personal property, chose in action, and evidence of debt or of contract.

J. Police Chief. The Chief of Police of the City of The Dalles or the Police Chief's designee.

K. Purchase. The acquisition of or the act of acquiring title to property by a buyer in exchange for valuable consideration given to the seller. For purposes of this ordinance, the term "buyer" refers to a Secondhand Business, and the term "seller" refers to a customer selling regulated property to the Secondhand Business. The term is not meant to include the following:

1. A bailment for sale, by which a seller consigns property to another for sale.
2. A pledge loan, by which a pawnbroker licensed by the State of Oregon lends money secured by a pledge.
3. The acquisition of a security interest, by which a person acquires an interest in property to secure payment or performance of an obligation.

L. Receive. To take property into the inventory, possession, or control of a Dealer.

M. Regulated property.

A. The following used property:

1. Precious metals. Examples include: any metal that is valued for its character, rarity, beauty or quality, including gold, silver, platinum, or any other such metals, whether as a separate item or in combination as a piece of jewelry; and/or jewelry containing precious metals or precious gems including but not limited to rings, necklaces, pendants, earrings, brooches, bracelets, or chains.
2. Precious gems. Examples include: any gem that is valued for its character, rarity, beauty or quality, including diamonds, rubies, emeralds, sapphires or pearls, or any other such precious or semi-precious gems or stones, whether as a separate item or in combination as a piece of jewelry.
3. Watches.
4. Sterling silver. Examples include: flatware, candleholders, coffee and tea sets, ornamental objects, champagne flutes, wineglasses, or serving pieces such as: platters, bowls, trays, water pitchers, open bakets, ice buckets, shell dishes, or salt and pepper shakers.

5. Electronic equipment and items of entertainment.

Examples include:

- a. Audio equipment including but not limited to: tape players, tape decks or players, compact/digital disc players, sound metering devices, tuners, amplifiers, speakers, transceivers, equalizers, receivers, phonographs, turntables, stereos, radios, car stereos, car speakers, microphones, broadcasting equipment, citizen band radios/transceivers, digital audio recorders or players.
 - b. Video equipment including but not limited to: televisions, videotape or videodisc recorders, videotape or videodisc players, video cameras, video projectors, video monitors, digital video recorders or players.
 - c. Electrical office equipment including but not limited to: telefax machines, laser printers, copiers, duplicators, typewriters, calculators, cash registers, transcribers, dictaphones, computers, home computers, modems, monitors, any computer equipment or accessories having uniquely identifiable parts, or identifiable software.
 - d. Telephones or telephone equipment including but not limited to answering machines, cellular telephones, or satellite telephones.
 - e. Video games including games that are handheld, console or played on a computer.
 - f. Other electronic equipment including but not limited to: global positioning systems, electronic navigation devices or radar detectors.
 - g. DVD's, DVD boxed sets, compact discs, and record albums
6. Photographic and optical equipment and any accompanying bags including but not limited to: cameras, camera lenses, camera filters, camera motor drives, light meters, flash equipment, movie projectors, slide projectors, photography processing equipment, photography enlarging equipment, binoculars, telescopes, opera glasses, microscopes, surveying equipment both optical and electronic, rifle scopes, spotting scopes, electronic sighting equipment, tripods, accessories and components, digital image recorders or display devices.
7. Power yard and garden tools including but not limited to: garden tractors, lawn mowers, rototillers, lawn sweepers, weed or brush cutters, edgers, trimmers, blowers, chippers, shredders, or ladders.
8. Power equipment and tools including but not limited to: air hammers, air tools, nail guns, power staplers, power saws, power sanders, chainsaws, power planers, power drills, routers, lathes, joiners, shop vacuums, paint sprayers and accessory equipment, generators, air compressors, pressure washers, logging equipment, welding or cutting equipment or components, measuring devices and gauges, or construction equipment.

9. Automotive and hand tools including but not limited to: wrench sets, socket sets, screw driver sets, pliers, vise grips, tool boxes, auto body hammers, jacks, timing lights, testing and analyzing equipment or components.

10. Musical instruments and any accompanying cases or bags including but not limited to: pianos, organs, guitars, violins, cellos, trumpets, trombones, saxophones, flutes, drums, percussion instruments, electronic synthesizers, or mixing boards.

11. Firearms including but not limited to: rifles, shotguns, handguns, revolvers, pellet guns, or BB guns.

12. Sporting equipment including, but not limited to kayaks, bicycles, golf clubs and bags, pool cues or cases, snow or water skis, hard plastic ski boots, snow or water boards, fishing rods or reels, skates, saddles or tack.

13. Outboard motors and boating accessories limited to outdrives, props, inboard engines, boat covers, tops, or unlicensed boat trailers.

14. Household appliances, including but not limited to microwave ovens, sewing machines, vacuums, mixing and food preparation equipment.

15. Property that is not purchased by a bona fide business for investment purposes, limited to:

a. Gold bullion bars (0.995 fine or better);

b. Silver bullion bars (0.995 fine or better);

c. All tokens, coins, or money, whether commemorative or an actual medium of exchange adopted by a domestic or foreign government as part of its currency whose intrinsic, market or collector value is greater than the apparent legal or face value; or

d. Postage stamps, stamp collections and philatelic items whose intrinsic, market or collector value is greater than the apparent legal or face value.

B. Regulated property does not include any of the following property:

1. Vehicles required to be registered with the Oregon Motor Vehicles Division;

2. Boats required to be certified by the Oregon Marine Board;

3. Glassware and objects of art;

4. Furniture;

5. Refrigerators, freezers, stoves, ovens, dishwashers, washer, and dryers;

6. Computer software, excluding any video games;

7. Clothing;

8. Firearms for which the business selling the firearm has a Federal Firearms License.

N. Remanufactured. An item has been altered to the degree that the main components are no longer identifiable as the original item.

O. Secondhand Business. A business that purchases used regulated property at any business location for resale.

P. Secondhand Dealer.

1. A secondhand dealer includes any sole proprietorship, partnership, limited partnership, family limited partnership, joint venture, association, cooperative, trust, estate, corporation, personal holding company, limited liability company, limited liability partnership or any other form of organization, which operates, manages, or owns a secondhand business.

2. A secondhand dealer does not include:

a. A business whose acquisitions of regulated property consist exclusively of donated items and /or purchases from 501©(3) organizations; or

b. A person whose only business transactions with regulated property in the City of The Dalles consist of a display space, booth, or table maintained for displaying or selling merchandise at any trade show, convention, festival, fair, circus, market, flea market, swap meet or similar event for less than 14 days in any calendar year.

Q. Secondhand Dealer Permit. The permit issued to a secondhand dealer pursuant to this ordinance.

R. Trade Show. An event open to the public, held in a venue other than a Dealer's business location, at which vendors of a specific type of merchandise may exhibit, buy, sell, or trade items that may include regulated property. Events commonly known as flea markets or swap meets, in which goods of many types are exhibited, sold or traded, are not considered trade shows for the purpose of this Ordinance.

S. Transaction. The purchase of regulated property. For purposes of this ordinance, a transaction shall not include the purchase or acquisition of regulated property from a single customer by a dealer where the total amount of property purchased does not exceed the sum of \$25.00.

T. Transaction Report. Record of the information required by this Ordinance, transmitted to the City Police Department by the means required in this Ordinance.

U. Used. Previously owned, consumed, or put into service by a person other than the manufacturer or the manufacturer's dealer or agency.

Section 3. Unauthorized Sale of Property

A. No person shall sell or attempt to sell personal property to a secondhand dealer without the consent of the property's owner.

Section 4. Permit Required

A. No secondhand dealer shall carry on a secondhand business without a secondhand dealer's permit.

B. A secondhand dealer engaged in a secondhand business on or before the effective date of this ordinance who intends to continue that business after the effective date of this ordinance shall apply for a secondhand dealer permit pursuant to this ordinance, upon the expiration of their current license. During the period of time when this ordinance takes effect, until a currently licensed secondhand dealer applies for a permit under this ordinance, they shall operate their business in accordance with the provisions of this ordinance. When a currently licensed secondhand dealer applies for a permit for the first time under this ordinance, the applicant shall not have to pay any application or investigation fees for an application submitted pursuant to this subsection. Thereafter, such currently licensed secondhand dealers shall pay the annual application fee to renew their licenses.

C. The sale of regulated property at events commonly known as "garage sales," "yard sales," or "estate sales," is exempt from these regulations if all of the following are present:

1. No sale exceeds a period of 72 consecutive hours; and
2. No more than four sales are held at the same location in any twelve-month period.

Section 5. Fee

Every applicant for a secondhand dealer permit shall pay the appropriate fees, including an application fee and investigation fee, in the amount established by Council resolution, subject to the exception for currently licensed second hand dealers applying for a permit upon the expiration of their current license in Section 4(B).

Section 6. Application Process

A secondhand dealer shall apply for a secondhand dealer permit in the following manner:

- A. The City shall make available an application form for secondhand dealer permits.
- B. The application form may require all secondhand dealers to supply the following information:

1. The name, address, telephone number, social security number and date of birth of the person applying for the permit.
2. The name of the secondhand business in whose name the permit should be issued if the application is approved.
3. The mailing address of the secondhand business and, if different from its mailing address, the location where the business is to be conducted in the City.
4. Whether the applicant or any other person who helps own, manage or operate the secondhand business ever has been engaged in a similar business; whether any permit similar to the one applicant seeks pursuant to this ordinance ever has been issued to the applicant or any person who helps own, manage or operate the secondhand business; whether any such permit so issued has been suspended or revoked.

5. Any criminal arrest or conviction the applicant or any other person who helps own, manage, or operate the secondhand business has had in the past 15 years. The applicant may be required to disclose where, when, and the nature of any arrest or conviction.

C. The applicant shall complete the relevant portions of the application form and return it to the City Finance Department for processing. At the time the applicant submits the completed application, the applicant shall pay the investigation fee established by Section 5 of this Ordinance. Upon notice of approval of the application, the applicant shall pay the application fee established by Section 5 of this Ordinance.

Section 7. Denial or Issuance of Permit; Revocation of Permit; Appeal Process

A. The City Attorney shall deny an application for a permit or revoke an issued permit if the City Attorney has probable cause to believe that any of the following conditions exist:

1. The applicant, or any person who helps own, manage or operate the secondhand business, has owned or operated a secondhand business regulated under this ordinance or any substantially similar ordinance and within the five years prior to the application date:

a. Has had a secondhand business permit revoked for a reason that would be grounds for a denial or revocation pursuant to this ordinance; or

b. The secondhand business has been found to constitute a public nuisance.

2. The applicant, or any person who will help own, manage or operate the secondhand business, has been convicted of a felony or any crime involving a false statement or dishonesty within 15 years prior to the application date.

3. The applicant has knowingly made a false statement in the application; or knowingly omitted information requested to be disclosed in the application; or completed the application with reckless disregard for the truth or accuracy of the statements made therein.

4. A lawful inspection of the secondhand business premises by the Police Department has been unjustifiably refused by a person who helps own, manage, or operate the business.

5. The secondhand dealer has been convicted in Municipal Court for a violation of this Ordinance.

B. Notwithstanding the requirements of subsection (A) of this section, the City Attorney may grant or not revoke a secondhand dealer permit despite grounds for denial or revocation if the City Attorney concludes that the applicant has established more likely than not that the basis for the denial or revocation:

1. Is unlikely to recur;

2. Is remote in time; or

3. Is not reasonably related to the purpose of this ordinance.

C. Upon approval of an application for a secondhand dealer permit and payment of the application fee established by Section 5 of this Ordinance, a permit shall be issued in the name of the secondhand business for the location specified by the applicant in the application form. The permit shall be non-transferable and valid until January 31st of the year following the issuance of the permit. Annual statements will be sent to secondhand dealers who can renew their permit by paying the application fee established by Section 5 of this Ordinance. The permit shall be clearly displayed at the secondhand business in a manner readily visible to the business's customers.

D. If the City Attorney denies an application for a second hand dealer permit or orders the revocation of an issued secondhand dealer permit, the City Attorney shall serve a written notice by regular mail to the address, which the applicant furnished on the application, stating the reasons for the denial or the revocation. The notice shall advise the applicant of their right to file an appeal. Notice of the appeal shall be filed in writing and shall contain a brief statement by the applicant of the grounds for the appeal. The appeal shall be heard by the City Council at a regular City Council meeting. The appeal shall be treated as a contested case, and the Council shall have the authority to determine the applicable issues to be considered, and what testimony and evidence is relevant. The Council's decision shall be reduced to writing.

E. A revocation of an issued permit for a secondhand dealer, which is not appealed, or which is affirmed by the Council following an appeal, shall be for a period of five years, from either the date of issuance of the City Attorney's notice or the issuance of the Council's written decision on the appeal.

Section 8. Reporting of Regulated Property Transactions

A. If paper forms are approved for use by the Police Chief, the Police Department will provide all Dealers with a form for reporting transactions. The Police Chief may specify the size, shape and color of the transaction report. The Police Chief may require the transaction reports to include any information relating to the regulations of this Ordinance. The Declaration of Proof of Ownership is considered to be included in references in this Ordinance to the transaction reports, as appropriate.

B. When receiving regulated property, the Dealer must obtain acceptable identification from the seller. The Dealer must verify that the photograph is a photograph of the seller. The Dealer must record the seller's current residential address on the transaction report and have the seller complete the Declaration of Proof of Ownership.

1. At the time of the transaction, the Dealer must write on the transaction report a complete, legible and accurate description of the regulated property of sufficient detail to distinguish like objects one from the other.

a. The Dealer must complete the transaction report in its entirety and the individual completing the report must sign the release form.

b. Transaction reports must be completed in legible printed English.

c. The seller must legibly complete the Declaration of Proof of Ownership. The seller must, at the time of the transaction, certify in writing that the seller has the legal right to pledge or sell the property that is the subject of the transaction and is competent to do so, and that the property is not rented or leased. The information on the Declaration of Proof of Ownership may be produced using a digital format with prior approval of the process from the Police Chief.

d. A Dealer may provide a description of any motor vehicle (including license number) identified as used in the delivery of regulated property and record the description and license number.

2. Dealers must make a copy of the acceptable identification presented by the seller. All information on the copy must be legible and may be made by photostatic copying, computerized scanning or any other photographic, electronic, digital or other process that preserves and retains an image of the document, and which can be subsequently produced or reproduced for viewing of the image. Copied identification must be submitted with the transaction report.

C. Transaction reports shall be mailed or delivered to the Police Department on a weekly basis, with the original of all transaction reports for the weekly period of Sunday through Saturday of each week, to be received by the Police Department by no later than 5:00 PM on the Tuesday following the week during which the reported transactions occurred. The Police Chief shall have the ability to obtain copies of any transaction reports by making arrangements with the dealer to pick up requested reports from the dealer's place of business, prior to the normal Tuesday deadline.

D. The City Police Department will destroy transaction reports and the Declaration of Proof of Ownership forms immediately after the statute of limitations for the suspected crime(s) has expired unless the report is needed as evidence in a pending criminal prosecution.

Section 9. Sale of Property

A. No property purchased by any regulated Secondhand Dealer, shall be sold for a period of seven full days after purchase. Property may be displayed for sale during the seven-day holding period.

B. Such property shall be maintained in substantially the same form as purchased during this seven-day holding period. Notwithstanding this requirement, the Police Chief, may authorize in cases in which it is shown that extreme financial hardship will result from holding an item for the seven-day period, the sale or transfer of such item before the expiration of this period.

C. Whenever the Police Chief, upon reasonable belief that the specific property is the subject of theft, notifies a Secondhand Dealer in writing not to dispose of any specifically described property, the property shall be retained in substantially the same form, and shall not be sold, exchanged, dismantled or otherwise disposed of for a period of time, not to exceed thirty days, as determined by the Police Chief.

Section 10. Articles to be Tagged

Any Secondhand Dealer receiving used merchandise shall affix to the used merchandise a tag, upon which identification shall correspond with the identified form required to be kept as provided in Section 8 of this ordinance.

Section 11. Inspection by City

A. All persons licensed to do business as Secondhand Dealers, or any persons employed by such Secondhand Dealers, shall permit any officer of the City Police Department, upon presentation of official identification, entry to such business premises for the limited purpose of inspecting any articles purchased in the business as regulated by this ordinance.

B. Any such inspection shall only be authorized during normal business hours.

Section 12. Transactions Involving Minors

Second hand dealers can engage in transactions involving regulated property with minors who are 16 years of age or older, provided the minor can provide the Second hand dealer with valid government issued photo identification.

Section 13. Penalties

A. Violation of any provision of this ordinance is an infraction, punishable upon conviction by a fine of up to five hundred dollars (\$500).

B. Upon a second or subsequent conviction of any violation of any provision of this ordinance, the Municipal Court may impose a fine not to exceed one thousand dollars (\$1,000).

Section 14. Severability Clause

Should any article, section, subsection, paragraph, sentence, clause, or phrase of this ordinance be declared invalid, such declaration shall not affect the validity of any other article, section, subsection, paragraph, sentence, clause or phrase; and if this ordinance or any portion thereof should be held to be invalid on one ground, but valid on another, it shall be construed that the valid ground is the one upon which said ordinance or portion thereof was enacted.

Section 15. Review of Ordinance

Upon the passage of two years from the effective date of this ordinance, the City Council shall schedule a public hearing to provide for public comment and testimony concerning the provisions of the ordinance. Following the public hearing, the City Council will determine whether any provisions of the ordinance should be amended, or whether the ordinance should be repealed.

Section 16. Repeal

General Ordinance No 83-1048, adopted on November 21, 1983, and amended by General Ordinance No 08-1290, adopted on April 28, 2008, is hereby repealed.

PASSED AND ADOPTED THIS 10th DAY OF SEPTEMBER, 2012

Voting Yes, Councilors: _____

Voting No, Councilors: _____

Absent, Councilors: _____

Abstaining, Councilors: _____

AND APPROVED BY THE MAYOR THIS 10th DAY OF SEPTEMBER, 2012

SIGNED: _____
James L. Wilcox, Mayor

ATTEST: _____
Julie Krueger, MMC, City Clerk



AGENDA STAFF REPORT

CITY OF THE DALLES

MEETING DATE:	AGENDA LOCATION:	AGENDA REPORT #
September 10, 2012	Action Items 12, D	12-059

TO: Honorable Mayor and City Council

FROM: Gene E. Parker, City Attorney

THRU: Nolan K. Young, City Manager 

DATE: August 28, 2012

ISSUE: Adoption of General Ordinance No. 12-1325, amending certain provisions of the City's Land Use and Development Ordinance, General Ordinance No. 98-1222.

RELATED CITY COUNCIL GOAL: None.

PREVIOUS AGENDA REPORT NUMBERS: 12-052.

BACKGROUND: On July 23, 2012, the City Council conducted a public hearing to consider the Planning Commission's recommendation to approve Zoning Ordinance Amendment #82-12. The Council voted to approve the Planning Commission's recommendation, and directed staff to prepare an ordinance setting forth the appropriate findings of fact and conclusions of law, and include proposed alternative language for the revision to Section 6.030.030(F) of the Ordinance, which regulates Accessory Use Size. General Ordinance No. 12-1325 sets forth two potential options for the Council to consider for this section.

Notice of adoption of the proposed ordinance has been posted in accordance with the provisions of the City Charter, and the Council can choose to adopt the ordinance by title only.

BUDGET IMPLICATIONS: None.

ALTERNATIVES: *Move to adopt General Ordinance No. 12-1325 by title only, with the designated option as selected by the Council for Section 1(M) of the ordinance concerning Accessory Use Size.*

GENERAL ORDINANCE NO. 12-1325

**AN ORDINANCE AMENDING CERTAIN PROVISIONS
OF THE CITY'S LAND USE & DEVELOPMENT ORDINANCE,
GENERAL ORDINANCE NO. 98-1222**

WHEREAS, the City of The Dalles Planning Commission conducted a hearing on June 21, 2012 to consider certain proposed revisions to the City's Land Use and Development Ordinance, which were assigned Zoning Ordinance Amendment #82-12; and

WHEREAS, following the public hearing on June 21, 2012, the Planning Commission voted unanimously to adopt Resolution No. P.C. 523-12, recommending that the City Council approve Zoning Ordinance Amendment #82-12; and

WHEREAS, on July 23, 2012, the City Council conducted a public hearing to consider the Planning Commission's recommendation to approve Zoning Ordinance Amendment #82-12; and

WHEREAS, following the close of the public hearing, the City Council voted 4 to 0 to approve the Planning Commission's recommendation to approve Zoning Ordinance Amendment #82-12, and directed staff to prepare an ordinance setting forth the appropriate findings of fact and conclusions of law, and with proposed alternative language for the revision to Section 6.030.030(F) of General Ordinance No. 98-1222; and

WHEREAS, the City Council has reviewed the proposed findings of fact and conclusions of law, attached to this Ordinance as Exhibit "A", which Exhibit is incorporated herein by this reference; and

WHEREAS, the City Council has selected Option # ____, as set forth in Section 1(M) below, for the revision to Section 6.030.030(F);

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF THE DALLES
ORDAINS AS FOLLOWS:**

Section 1. The City Council hereby adopts and approves the findings of fact and conclusions of law set forth in Exhibit "A". Based upon these findings of fact and conclusions of law, the following amendments to General Ordinance No. 98-1222 are hereby approved:

- A. Amend Section 3.020.040 Administrative Actions B. Decision Types, by deleting number 8. Recreational Vehicle Parks (Chapter 12), and renumbering Section 3.020.040(B)(9) and (10) and (8) and (9) respectively.

B. Amend Section 3.020.050 Quasi-Judicial Actions A. Decision Types, by adding a new 9. Recreational Vehicle Parks (Chapter 12), and renumbering Section 3.020.050(A)(9) as 3.020.050(A)(10).

C.. Amend Section 5.010.020 A 2 b, Single Family Detached (Zero Lot Line.) by adding the following at the end of the sentence: “when used in cluster of zero lot line lots or when a 10 foot easement is obtained from the owner of the property adjacent to the zero foot setback. If a zero lot line is used, the opposite side yard setback is a minimum of 8 feet unless the entire yard is used, as in a cluster of townhouses.”

D. Amend Section 5.060.020 Permitted Uses by adding a new A. 21. Recreational Vehicle Parks, in accordance with Chapter 12-Recreational Vehicle Parks, and renumbering Section 5.060.020(A)(21) through (25) as Section 5.060.020(A)(22) through (26).

E.. Amend Section 5.100.040 Development Standards. Building Height, by adding after the words “Limited to the requirements of the underlying zone,” the following: “except 40 ft. maximum within 100 feet of a residential zone. In measuring the height of the structure adjacent to the residential zone, the provisions of LUDO Section 6.070.050 do not apply.”

F. Amend Section 6.010.030 by adding new language as follows: “L. Fences. All fences over 4 feet in height shall require a permit. Permits for fences 6 feet or under in height shall not require a permit fee.”

G.. Amend Section 6.010.050 E. 1. Residential Areas. by adding after “a) Hedges, fences, and walls shall not exceed 4 feet in height within a required front yard”, the words: “or in an exterior side yard within a 10 foot triangle adjacent to an alley or driveway.”

H.. Amend Section 6.020.040 I. Other Laws, Ordinances, and Regulations, by adding the following: “An existing violation of any rule, regulation, ordinance, or other law is grounds to deny or conditionally approve a Home Business Permit Application.”

I. Amend Section 6.020.050. C. Permit Revocation, subparagraph 3 to read as follows: 3. Evidence establishing a violation of any provision of this Section, a condition of approval, or any other rule, regulation, ordinance or law, whether local, state or federal.

J. Amend Section 6.030.020 C. Location by adding to subparagraph 1 after the words “A required side or rear yard setback may be reduced to 3 feet for detached accessory buildings or structures,” the following language: “that do not require a building permit, except as allowed in subsection C. 3. below.”

K. Amend Section 6.030.020 C. by adding a new subparagraph 4 as follows: “No rear yard setback is required for detached accessory buildings if the rear yard abuts an alley that has at least a 20 foot right of way. If the alley right of way is less than 20 feet in

width, detached accessory structures may be located up to 10 feet from the centerline of the right of way.”

L. Amend Section 6.030.020 C. Location, subparagraph 3, by adding the words “or side yard” after the words “rear yard”.

M. Amend Section 6.030.030 F. Accessory Use Size, by adding the following language: OPTION #1: “The 600 square foot limitation on floor area includes all areas that are not used as garages, even if originally built or planned for a garage.” OPTION #2: All areas being used as living space shall be counted toward the maximum allowance of 600 square foot, whether or not those areas were originally built or intended to be used for habitation.

N Amend Section 6.060.020. B. Residential Local Streets and Alleys, by adding the following language: “4. Nonconforming Driveways. With approval of the Director, existing nonconforming driveways that cannot practically meet current driveway standards can be approved for a 3 foot wing and reduced minimum width.”

O. Amend Section 6.060.020 C. by renumbering existing language as subparagraph 1 and adding a new subparagraph 2 as follows: Residential lots on Arterial and Collector Streets. Direct access onto arterial and collector streets in residential zones is discouraged. The preferred order of access is as follows: 1. Access from a side street or other existing access point; 2. A forward in, forward out arrangement including two driveways, regardless of the size of frontage as stated in Paragraph B above; 3. All other possibilities, including backing out, subject to approval by the City Engineer.

P. Amend Section 6.120.040 B 2. by deleting the following language: “If the home is placed on a basement, the 12 inch limitation shall not apply.”

Q. Amend Section 8.020.010 A. Physical Constraints Permit, so that subparagraph 3 reads as follows: “3. In areas of the 2010 Geologic Hazards Study prepared by Mark Yinger designated within zones 1 and 4, or land in zone 3 which is located in areas of groundwater discharge.”

R. Amend Section 10.120. Mail Delivery Facilities, by adding a new paragraph as follows: “E. Cluster Mailboxes. Cluster Mailbox installations must be consistent with the standards of those in Section 1111 of the Oregon State Structural Specialty Code.”

S. Amend Section 11.020. Permitted Structures by deleting in Paragraph A the words “and Mobile” in the heading and in the body, and adding the language: “Mobile homes are not allowed”.

T. Amend Section 11.060 by deleting the following: “F. Play Areas. A separate play area shall be provided in all manufactured dwelling parks that accommodate children under 14 years of age unless each manufactured dwelling space has a minimum size of 4,000 square feet. A required play area shall not be less than 2,500 square feet in area

with no dimension less than 30 feet. There shall be at least 100 square feet of play area provided for each manufactured dwelling space occupied by children.”

U. Amend Section 12.020 Development Standards to read as follows: “C. Area Requirements. 1. Park Size. RV Parks shall be a minimum of one acre and a maximum of 15 acres in size.”

V. Amend Section 12.050 Length of Stay, to read as follows: “No recreational vehicle shall remain in the park for more than 30 days in any 60 day period. Exceptions shall include one space of unlimited duration for a park manager, and up to one-third of the spaces for stays up to 6 months. Spaces for extended stays shall be marked as such.”

W.. Amend Chapter 12 by adding a new provision as follows: “12.060 Review Process. Recreational Vehicle Parks shall be reviewed as conditional uses per the provisions of Section 3.050: Conditional Use Permits.”

Section 2. This Ordinance shall be effective 30 days after its passage and approval.

PASSED AND ADOPTED THIS 10TH DAY OF SEPTEMBER, 2012

Voting Yes, Councilors: _____

Voting No, Councilors: _____

Absent, Councilors: _____

Abstaining, Councilors: _____

AND APPROVED BY THE MAYOR THIS 10TH DAY OF SEPTEMBER, 2012

James L. Wilcox, Mayor

ATTEST:

Julie Krueger, MMC, City Clerk

EXHIBIT "A"

FINDINGS OF FACT AND CONCLUSIONS OF LAW FOR ZONING ORDINANCE AMENDMENT #82-12

1. BACKGROUND INFORMATION

The City Community Development Department has established a practice of conducting an annual review of the City's Land Use and Development Ordinance ("LUDO") to determine if any amendments to the LUDO should be proposed. On June 21, 2012, the City Planning Commission conducted a hearing upon Zoning Ordinance Amendment #82-12. The amendment proposed to revise various sections of the LUDO. Following the public hearing, the Planning Commission voted to adopt Resolution No. P.C. 523-12, approving Zoning Ordinance Amendment #82-12.

On July 23, 2012, the City Council conducted a public hearing upon the Planning Commission's recommendation to approve Zoning Ordinance Amendment #82-12. Following the public hearing, the City Council voted to approve the amendment as recommended by the Planning Commission, and directed staff to prepare an ordinance setting forth appropriate findings of fact and conclusions of law, with proposed alternative language for the revision to Section 6.030.030(F).

2. EVALUATION OF CRITERIA

2.1 LAND USE AND DEVELOPMENT ORDINANCE

Section 3.010.040(F). Applications for Legislative Actions. A legislative action may be initiated by the Director, the Historic Landmarks Commission, the Planning Commission, the Council, or at the request of an applicant or resident of the City.

Findings of Fact: This application was initiated by the Director pursuant to the provisions of Section 3.010.040(F).

Conclusions of Law: The criteria in Section 3.010.040(F) have been satisfied.

Section 3.020.060 Legislative Actions.

A. *Decisions Types. Legislative actions include, but are not limited to, the following:*

2. *Ordinance Amendments*

B. *Public Hearings.*

1. *The Commission shall hold at least one legislative public hearing to review applications for legislative actions, and, by duly adopted*

resolution, make a recommendation to the Council to approve, approve with conditions, or deny the request.

2. *The Council shall hold a legislative hearing on applications for legislative actions within 30 days of the date of the Planning Commission or, where appropriate, the Historic Landmarks Commission resolution recommending approval, conditional approval, or denial of the request.*

C. *Notice of Hearing. At least 10 days before the legislative hearings of the Historic Landmarks Commission, the Planning Commission, or the Council, notice of the hearing shall be published in a newspaper of general circulation. Subsections (1) through (5) set forth the required elements for the notice of the hearing.*

Notice of Hearing as Required by ORS 227.186. ORS 227.186 requires that all property owners whose property is rezoned must be provided notice at least 20 days but not more than 40 days prior to the date of the first hearing. For purposes of this provision, a “rezone” includes any change that limits or prohibits uses previously allowed in a zone.

Findings of Fact: The application was for a series of proposed amendments to the LUDO in accordance with Section 3.110. The Planning Commission conducted a hearing upon Zoning Ordinance Amendment #82-12 on June 21, 2012. Notice of this hearing was published in The Dalles Chronicle on June 10, 2012. Following the Planning Commission’s public hearing, the Commission voted to recommend approval of Zoning Ordinance Amendment #82-12 by adoption of Resolution No. P.C. 523-12. The City Council conducted a public hearing upon the Planning Commission proposed recommendation on July 23, 2012. Notice of the City Council hearing was published in The Dalles Chronicle on July 13, 2012. The notices for the Planning Commission and City Council hearings explained the proposed zoning ordinance amendment and changes to the LUDO; listed the applicable ordinance standards and criteria, Comprehensive Plan Policies, Oregon Planning Goals and Guidelines, Oregon Administrative Rules, and Oregon Revised Statutes which were relevant to the application; set forth the geographical reference to the subject area; explained the LUBA appeal rights; and included the name and address of the Planning Director to contact for additional information.

Concerning the provisions of ORS 227.186, the Council finds and concludes that none of the proposed amendments proposed to change the base zoning classification for any property, or to amend the LUDO in such a manner as to limit or prohibit land uses previously allowed in any of the affected zoning districts. The Council concludes the proposed amendments did not involve any “rezoning” for the purposes of the notice required to be mailed to affected property owners under ORS 227.186.

Conclusions of Law: The criteria in Section 3.020.060(A), (B), (C), and ORS 227.186 have been satisfied.

Section 3.020.060(B)(3). Legislative Hearings shall be conducted per the procedures of Section 3.020,070: Public Hearings.

Section 3.020.070(3) Staff Report. A staff report shall be presented which identifies the criteria and standards applying to the application and summarizes the basic findings of fact. The staff report may also include a recommendation for approval, approval with conditions, or denial.

Findings of Fact: Staff reports were prepared for both of the hearings held before the Planning Commission and the City Council, which identified the criteria and standards as they related to the application, and summarized the basic findings of fact. The staff reports included a recommendation of approval of the proposed amendment.

Conclusions of Law: The criteria in Section 3.020.060(B)(3) and 3.020.070(A)(3) have been satisfied.

Section 3.110.030 Review Criteria. Proposed Text Amendments shall be consistent with the Comprehensive Plan, and State Laws and Administrative Rules.

COMPREHENSIVE PLAN

Goal #1: Citizen Involvement. To develop a citizen involvement program that ensures the opportunity for citizens to be involved in all phases of the planning process.

Policy #3. The land-use planning process and policy framework shall include opportunity for citizen input as a part of the basis for all decisions and actions related to the use of land.

Findings of Fact: This proposal is consistent with Goal #1 of the Comprehensive Plan. Notices of the public hearings were published and the public has had an opportunity to provide testimony on the proposed change before the Planning Commission and the City Council. No public testimony was offered during either hearing in opposition to the proposed amendment.

Conclusions of Law: The provisions of Goal #1 of the Comprehensive Plan been satisfied.

Goal #2: Land Use Planning. To establish a land use planning process and policy framework as a basis for all decisions and actions related to use of land and to assure an adequate factual basis for such decisions and actions.

Policy #6. Implement this Plan through appropriate ordinances and action. Implementing measures shall be developed to allow administrative review and approval authority.

Findings of Fact: The record of the discussion before the Planning Commission and the City Council establishes that the majority of the proposed amendments were “housekeeping” in nature, and that they helped clarify the intent of the various provisions, to assist the Community and Economic Development Department in implementing the provisions of the LUDO, and ultimately make the land use and development process more efficient.

Conclusions of Law: The provisions of Goal #2 of the Comprehensive Plan been satisfied.



AGENDA STAFF REPORT

CITY OF THE DALLES

MEETING DATE:	AGENDA LOCATION:	AGENDA REPORT #
September 10, 2012	Action Items 12, E	12-060

TO: Honorable Mayor and City Council

FROM: Gene E. Parker, City Attorney

THRU: Nolan K. Young, City Manager *NKY*

DATE: August 29, 2012

ISSUE: Adoption of General Ordinance No. 12-1326 amending General Ordinance No. 97-1216 concerning the regulation of food carts and other transient merchant vendors on City-owned or leased real property.

RELATED CITY COUNCIL GOAL: None.

PREVIOUS AGENDA REPORT NUMBERS: None.

BACKGROUND: The recently completed construction of the Lewis and Clark Festival Area includes facilities designed in part for temporary commercial activities such as food carts or other types of transient merchant activities. City staff has been working on establishing policies and procedures for the use of space in the Festival Area. City staff determined it would be appropriate to prepare an ordinance for the Council's review concerning proposed regulations for transient merchants who desire to engage in commercial activity in the Festival Park area, and upon real property owned or leased by the City.

City staff obtained examples from other cities concerning regulations for food carts and other similar types of transient merchants. City staff determined the most efficient method to establish such regulations would be to amend the City's existing ordinance concerning transient merchants. The following is a summary of the significant provisions which would apply to a

transient merchant who wants to engage in commercial activity upon City-owned or leased real property, including the Festival Area:

1. The merchant will have to submit an application for a transient merchant license, and pay the applicable application fees, and be subject to all of the other applicable provisions of General Ordinance No. 97-1217.
2. The ordinance includes an indemnification provision whereby the transient merchant agrees to indemnify the City against claims for injury, loss or damage that arise out or are in any way related to the operation of the transient merchant's business.
3. The ordinance provides for the ability of an event coordinator to obtain a single "umbrella license" for an event that will feature multiple transient merchants.

Notice of adoption of the ordinance has been posted in accordance with the City Charter, and the Council can choose to adopt the ordinance by title only.

BUDGET IMPLICATIONS: Applicants will pay the required application fee, which is as follows: for a daily license, and a monthly license - \$25.00; for an annual license - \$50.00.

ALTERNATIVES:

- A. Staff Recommendation. *Move to adopt General Ordinance No. 12-1326 by title only.*

GENERAL ORDINANCE NO. 12-1326

**AN ORDINANCE AMENDING GENERAL ORDINANCE
NO. 97-1216 CONCERNING THE REGULATION OF FOOD
CARTS AND OTHER TRANSIENT MERCHANT VENDORS
ON CITY-OWNED OR LEASED REAL PROPERTY**

WHEREAS, the City has recently completed construction of the Lewis and Clark Festival Area, which area includes facilities designed in part for temporary commercial activities such as food carts or other types of transient merchant activities; and

WHEREAS, the City Council has determined it is in the best interests of the public health, welfare, and safety for the City to adopt regulations concerning transient merchants who desire to engage in commercial activity in the Lewis and Clark Festival Area, and upon other real property owned or leased by the City;

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF THE DALLES
ORDAINS AS FOLLOWS:**

Section 1. General Ordinance No. 97-1216 shall be amended by inserting a new section 1(A), Transient Merchants operating on City-owned or leased property, which section shall read as follows:

Section 1(A). Transient Merchants operating on City-owned or leased property. The following provisions shall apply to a transient merchant operating on City-owned or leased real property:

1. A “transient merchant” shall include any person who offers food, beverages, produce, merchandise, a service, or other thing of value for sale on a temporary or seasonal basis.
2. No person shall engage in the business as a transient merchant on City-owned or leased property, including but not limited to the Lewis and Clark Festival Area, without first obtaining a license as required by this ordinance. Any person seeking to operate a transient merchant business on City-owned or leased real property shall submit an application and pay the application fee as set forth in Section 3 of this ordinance.
3. Applicants for a transient merchant license will also be required to complete all necessary applications to reserve a space in the Lewis and Clark Festival area, and to comply with all rules and regulations adopted by the City governing activities in the Lewis and Clark Festival Area.

4. All waste must be disposed of in compliance with all city, county, and state standards, and may not be poured into storm sewers or onto the ground.
5. Any structures, carts, vending units, tents, tables or other appurtenances used by the transient merchant may not be located or relocated on public property until commencement of the license term, and shall be removed from the property promptly upon expiration of the license term.
6. The activities of the transient merchant shall not impair or impede the proper flow of pedestrian or vehicular traffic on public or private property.
7. Transient merchants issued a license by the City shall indemnify and hold the City and its officers, agents, and employees harmless from and against all claims for injury, loss or damage arising out of or in any way related to the operation of the transient merchant's business. This agreement to indemnify or defend shall survive the termination or revocation of the transient merchant's license.
8. Applicants for a transient merchant ordinance on City-owned or leased property shall be subject to and comply with all other applicable provisions of this ordinance.
9. For an event at the Lewis and Clark Festival Area which will include several vendors, the event coordinator may apply for one transient merchant license which may serve as an "umbrella license" for all of the vendors for that event during the term of the license.

PASSED AND ADOPTED THIS 10TH DAY OF SEPTEMBER, 2012

Voting Yes, Councilors: _____
 Voting No, Councilors: _____
 Abstaining, Councilors: _____
 Absent, Councilors: _____

AND APPROVED BY THE MAYOR THIS 10TH DAY OF SEPTEMBER, 2012

 James L. Wilcox, Mayor

ATTEST:

 Julie Krueger, MMC, City Clerk



CITY of THE DALLES

313 COURT STREET
THE DALLES, OREGON 97058

(541) 296-5481
FAX (541) 296-6906

AGENDA STAFF REPORT
CITY OF THE DALLES

MEETING DATE	AGENDA LOCATION	AGENDA REPORT #
September 10, 2012	Discussion Item 13, A	12-061

TO: Mayor and City Council

FROM: Nolan K. Young, City Manager *nyd*

DATE: August 28, 2012

ISSUE: Discussion of The Dalles Main Street Economic Improvement Plan for the Formation of an Economic Improvement District

BACKGROUND: For the last couple of years the City has been working with the Historic Downtown and The Dalles Area Chamber of Commerce on the implementation of the Main Street Program. Committees have been formed and have been working on various activities. In April the City Council adopted General Ordinance No. 12-1324 Establishing Procedures for the Formation of Economic Improvement Districts For the Levying and Collection of Special Assessments.

Attached is The Dalles Main Street Economic Improvement Plan as submitted by the Main Street Steering Committee for discussion by the City Council. This plan is in the format required by the ordinance. It identifies the \$126,000 that would come from assessments each year. There are two primary purposes;

1. To hire an Executive Director for the Main Street Program; and
2. To provide resources for The Dalles Main Street's five committees to carry out their objectives and programs.

As proposed the district would be established for five years with annual assessments typically in the range of \$250 to \$500 per property based on an assessment of five cents per square foot. We have attached a copy of the proposed timeline for the establishment of the Economic Improvement District.

The City Council can request the Main Street Steering Committee revise the plan and bring it back to them for discussion or move the plan forward, directing the City Attorney to prepare an Ordinance and send out the required 30 day notification to the businesses that are proposed to be assessed. Attached is a map that identifies the area where assessments will be levied.

BUDGET IMPLICATIONS: The City has budgeted \$30,000 this year as match for the Economic Improvement District, with a proposal to budget \$20,000 in year two, and \$10,000 in year three. There will be some additional costs to the City as we collect the assessments for the district.

COUNCIL ALTERNATIVES:

1. ***Staff recommendation: Direct the City Attorney to publish a 30 day notice for the first public hearing on October 22, 2012; and prepare the EID ordinance for Council consideration.***
2. Direct the Main Street Steering Committee to consider amendments to the proposed Economic Improvement Plan and bring it back to City Council for further discussion.

The Dalles Main Street Economic Improvement Plan

1. **Planned Economic Improvements:** Main Street Inc. is proposing to use funds raised by the proposed Economic Improvement District for two primary purposes:

- a. To hire an Executive Director for The Dalles Main Street Program
- b. To provide resources to TDMS's five committees to carry out their objectives and programs

a. **Executive Director:** Main Street Inc. will hire an executive director from funds raised through the Economic Improvement District assessment and from funds committed by the City, in the amount of \$30,000 the first year; \$20,000 in the second year; and \$10,000 in the third year. The primary duties of the executive director will be:

1. The executive director is the principal on-site staff person responsible for coordinating all programs and initiatives as well as representing TDMS at all local, regional and state levels.
2. Responsible for the development, conduct, execution and documentation of the downtown program under the direction of the Board of Directors.
3. Coordinate and assist TDMS's Organization, Promotion, Design and Business Committees perform their respective duties, responsibilities and projects. Attend all committee, board and special meetings regarding TDMS.
4. Research funding opportunities and assist in preparing grant proposals and help develop, along with the board of directors, fund raising projects.
5. Develop and conduct on-going public awareness and educational programs designed to enhance appreciation of The Dalles downtown's assets and foster an understanding of the Main Street Program's goals and objectives. Work closely with local businesses, property owners, Chamber of Commerce, city management and other business partners in supporting the downtown business community and promote investment and development through TDMS program.
6. Maintain accurate data to track the progress and effectiveness of TDMS and report this information to the board of directors at their regular scheduled meetings.
7. Manage and perform other projects, functions and tasks as determined by the board of directors. Maintain regular communication with the Oregon Main Street Program Director.

b. **Main Street Committee Objectives:** Below is a listing of the overall goals and objectives of each of the Main Street Committees. These objectives may change from year to year as the committees pursue economic improvements to the downtown area including:

1. Planning and managing the development of activities
2. Landscaping or maintenance of public areas
3. Promotion of commercial activity or public events
4. Activities in support of business recruitment and development
5. Improvements in parking systems or parking enforcement

6. Any other economic improvement activity that will specifically benefit properties in the downtown Economic Improvement District.

Business Committee:

Overall Goal: Build economic stability by supporting and attracting small businesses to the downtown.

Objectives: Expand the mix of business downtown.

Encourage businesses to expand hours.

Develop a plan to utilize upper floors.

Number One priority is to get the Old Elks Building on Third Street filled with a viable and vibrant business or businesses.

Number Two priority is to encourage the redevelopment of the upper floors of the downtown area for residential use.

Promotion Committee:

Overall Goal: Promote downtown as the center of The Dalles—a great place to live, work, play and do business.

Objectives: Identify reasons to bring people downtown. Create a main Street signature event for downtown. Provide more activities to bring families downtown. Increase the level of promotional education in downtown.

Number One priority is to raise funds to fund the Jamin in July event to bring more people downtown. Further priorities will be to continue to put on signature events for the downtown community.

Number Two priority is to fill the downtown empty building spaces with art, thus improving the image of empty buildings.

Design Committee:

Overall Goal: Create a vibrant and welcoming downtown by continuing to improve buildings and enhancing the overall pedestrian environment.

Objectives:

Create a more pedestrian-friendly environment.

Encourage improved maintenance of buildings, facades and the street scape.

Improve visual impact from the highway.

Promote design collaboration within the downtown community.

Number One Priority is to encourage façade improvement, focusing on, but not limited to bringing transom windows back, encourage general maintenance of buildings and streetscapes.

Number Two priority is to create more pedestrian-friendly environment—creating small park-like vignettes in areas downtown providing some green space as well as additional seating areas.

Steering Committee:

Unify stakeholders, build partnerships and focus on building sustainable, volunteer-based downtown revitalization organization.

Objectives:

Broaden the volunteer base.

Ensure collaboration with/among various stakeholder groups

Develop a funding plan for Main Street

Ensure communication/collaboration within The Dalles Main Street Program.

Number One Priority: To implement and get the Economic Improvement District passed and hire a full-time Main Street Coordinator.

Number Two Priority: Form the Organization Committee under the new non-profit entity.

Organization Committee:

Number One priority: form the organization committee, implement policies and procedures, hire the new Full-time Main Street Coordinator.

Number Two priority: secure additional volunteers for all other committees.

2. **Length of Economic Improvement District** will be 5 years.
3. **Estimated cost** of the plan will be \$126,000 for 5 years = \$630,000
4. **District Boundary** (see map) essentially from the west end of 2nd Street and Pentland, to the east end of the round-about, to the North end on 1st Street, to the South end from 4th Street to Court, then around the courthouse on 5th, back to 4th Street, then 3rd Street at Jefferson, then around the alley on 3rd, back to the round-about.
5. **Assessment Formula:** .05 cents per square foot of **commercial lots** within the proposed district. Government owned buildings and residences will be excluded from this district. Buildings owned by The Dalles Urban Renewal District will be excluded until such time as they changes hands to private owners.
6. **Organization info on The Dalles Main Street Program:** The Dalles Main Street Program (TDMS) is currently a registered non-profit organization in the State of Oregon. The organization has applied

for a 501(c)(3) status with the U.S. Department of Revenue. The organization consists of 37 volunteers. Most are business owners and building owners in the downtown region.

TDMS Mission Statement is: *"The Dalles Main Street Program provides leadership to preserve and enhance our community identity and heritage, build economic stability and make The Dalles an excellent place to live, work, play, and do business."*

The Dalles Main Street Program is a volunteer driven organization, through four committees: Promotion, Design, Business and Organization (currently Steering Committee).

TDMS is affiliated with the Oregon Main Street Program. The Main Street Approach is a proven comprehensive approach to commercial historic district revitalization. This approach has been implemented in more than 2,200 cities and towns in 40 states across the nation with the help of the National Main Street Center and statewide downtown revitalization programs.

The Main Street Approach is based on a comprehensive, four point strategy:

Organization

Promotion

Design

Economic Restructuring (Business)

Oregon Main Street provides assistance to all communities no matter where they are in the process. The Dalles Main Street program is currently in the Transforming Downtown phase.

7. **Justification for district:** Two years ago the downtown region had 20 empty storefronts in it, one year later the count was up to 39. Some of the buildings have been empty for years, or under-utilized. There are upper floors that could be utilized. There are areas where pocket parks could be installed. The turnover of local retailers in the downtown region continues due to several factors. With some focused attention and work with building owners and businesses, the downtown businesses can access some resources and expertise to stem the tide of failing businesses.

8. **The anticipated agreements** with the City of The Dalles:
 - a. Provide office space, filing cabinet, desk and chair; telephone and copy machine use to The Dalles Main Street Program.
 - b. Provide \$30,000 in FY 12-13, \$20,000 in FY 13-14, \$10,000 in FY 14-15 if the EID passes. Collect the EID funds for 5 years at no administrative fee.

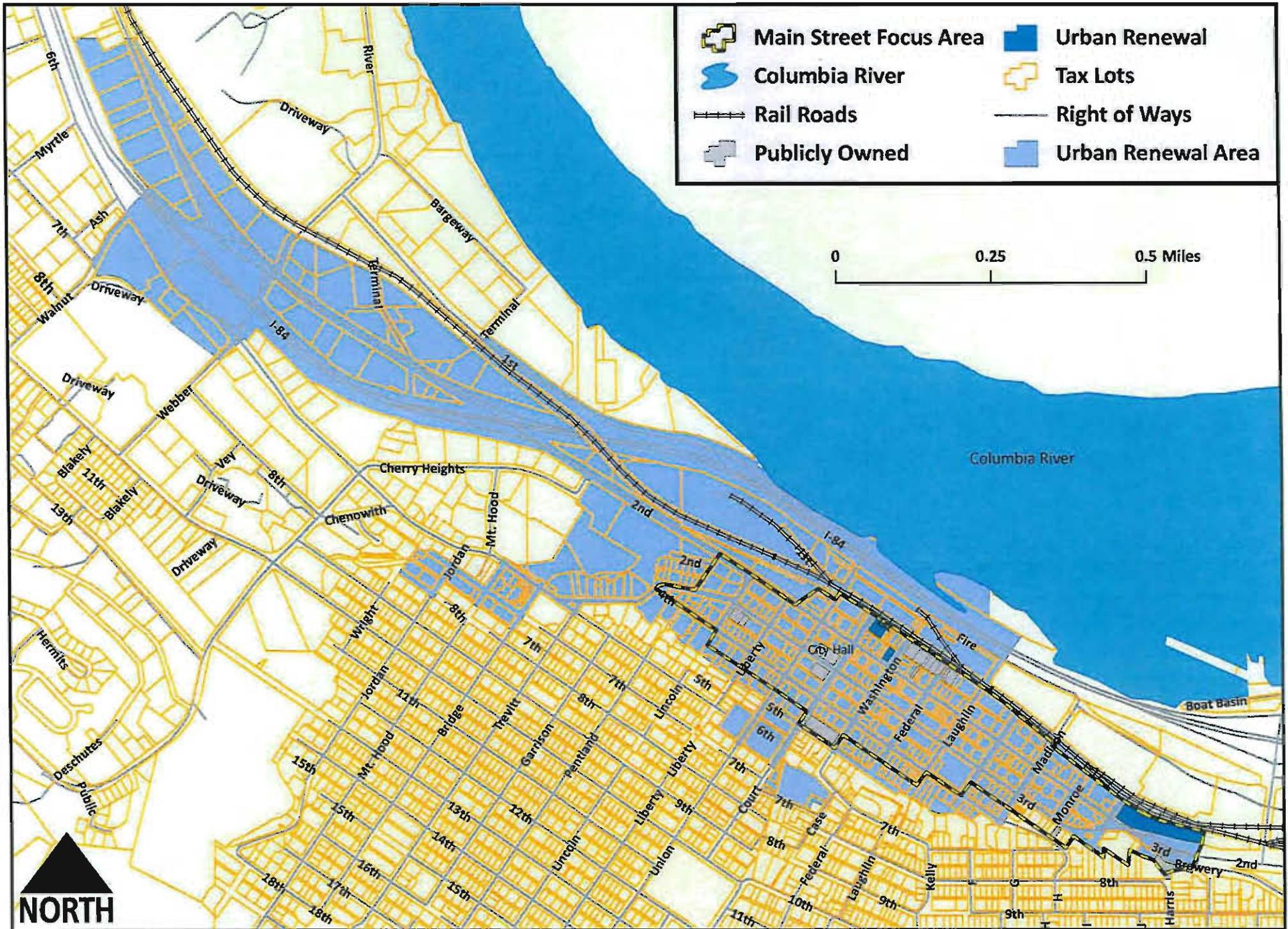
9. **Administration Fee:** None. The City has agreed to not charge any fee for administration of the Economic Improvement District.



2012 Economic Improvement District (EID) Timeline

Date by	Action	By Whom	Completed
May 2012	EID enabling ordinance adopted	City Council	x
May 16, 2012	Elements of EID plan identified and started	Steering Committee	x
Aug 15, 2012	Draft EID Plan Prepared	Steering Committee	
Aug 16, 2012	Draft EID sent to City Attorney to formalize	Steering Committee	
Aug 29, 2012	Final EID Plan commented and submitted to City Council with request	City Attorney	
Sept 10, 2012	Council reviews plan and determine if 1st Public Hearing should be held	City Council	
Sept 15, 2012	Notice sent out for 1st Public Hearing	City Council	
Oct 5, 2012	EID Ordinance prepared if Council supports plan	City Attorney	
Oct 22, 2012	First Public Hearing	City Council	
Oct 25, 2012	Public Notice and Potential Assessment mail to Property Owners	City Clerk	
Nov 26, 2012	2nd Public Hearing If remonstrance less than 33%	City Council	
Nov 26, 2012	Adopt Ordinance	City Council	
Dec 7, 2012	Assessment mailed to property owners	City Clerk	
Jan 7, 2013	Assessment due	Finance Directors	

Main Street Area and Urban Renewal Area





CITY OF THE DALLES
Department of Public Works
1215 West First Street
The Dalles, Oregon 97058

AGENDA STAFF REPORT

CITY OF THE DALLES

MEETING DATE	AGENDA LOCATION	AGENDA REPORT #
September 10, 2012	Discussion Item 13, B	12-062

TO: Honorable Mayor and City Council

FROM: Dave Anderson, Public Works Director

THRU: Nolan K. Young, City Manager *nky*

DATE: August 27, 2012

ISSUE: Discussion Regarding Potential Agreement for Construction and Operation of an Electric Vehicle Charging Station.

RELATED CITY COUNCIL GOALS: N.A.

BACKGROUND: The City has been approached with an opportunity to construct an Electric-Vehicle (EV) charging station at no cost to the City by a company called EV4 Oregon LLC. The general concept of the proposal is that the City would enter into a ground lease of a parcel of property to allow the construction and operation of a charging station. The lease would be at the rate of \$1/year for five years, and renewable for future 5-year extensions. Once the station is operational, the City would receive 5% of the revenues generated from the station.

EV4 Oregon would serve as a “liaison” and “project manager” between the City and an investor who would fund the construction of the station. EV4 Oregon would complete all the necessary permitting. Under the current conditions, the total cost to construct a station is about \$240,000 with about \$200,000 in tax incentives available to the investor if constructed before December 31, 2012.

The station itself would take up about 3 parking spaces in a parking lot. It consists of a 17' x 17' canopy of solar panels and can accommodate two EVs charging at a time. The station has one “fast-charging” (DC2DC) system that can charge an electric car in about 25 minutes, two “medium-charging” (Level 2) systems that can charge an EV in about 6-7 hours, and two “slow-charging” (Level 1) systems that are used to charge smaller units like electric bicycles. The

station has a battery system that is charged by the solar panels and a connection to the electrical grid for trickle charging of the batteries when the solar is not enough. The incorporation of a battery system allows for a normal 120/240-Volt AC single-phase connection to the electrical grid rather than the more costly 480-Volt AC 3-phase connection required by other systems.

The primary source of revenue from the station is the sale of power to charge EVs with the DC2DC (\$0.50/minute) and Level 2 systems (\$2.00/hour). The station can also generate surplus power from the solar panels back into the grid as may be allowed by the electrical utility, a secondary potential source of revenue. The canopy can be constructed to accommodate electronic message signs on its face which could be used for advertising if allowed by land use regulations, a potential third source of revenue.

A possible location of an EV charging station is the parking lot at 3rd and Lincoln, east of St. Peter's Landmark. This site is owned by the City, has good sun exposure, and is fairly close to downtown businesses for people to visit while their cars are charging.

Consideration of a station in The Dalles is timely. Work has begun on a State project to construct the Electric Highway. The initial scope of that project will construct EV charging stations along the I-5 corridor, approximately 25 miles apart, and on I-84 as far east as Hood River. A station in The Dalles is not planned as part of that project. EV4 Oregon is working with several communities not part of the Electric Highway project to construct stations further east along I-84 as well as in the Willamette Valley and along the Oregon Coast. They are currently working with Tillamook, Tualatin, Arlington and Umatilla as well as the Oregon Department of Administrative Services (DAS) for a fleet charging station. EV4 Oregon is not the contractor selected for the primary Electric Highway project.

Staff is seeking direction from Council about whether to enter into negotiations with EV4 Oregon for the construction and operation of an EV charging station.

BUDGET IMPLICATIONS: None at this time.

ALTERNATIVES:

- A. Staff Recommendation: None. Discussion Item only.