

AGENDA

REGULAR CITY COUNCIL MEETING

July 22, 2013

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
  - A. Report by Chamber of Commerce Regarding Community Marketing Program
6. AUDIENCE PARTICIPATION
7. CITY MANAGER REPORT
8. CITY ATTORNEY REPORT
9. CITY COUNCIL REPORTS
10. CONSENT AGENDA

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.

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 8, 2013 Regular City Council Meeting Minutes
- B. Approval of July 2, 2013 Special City Council Meeting Minutes
- C. Approval to Declare a FAX Machine as Surplus Property
- D. Resolution No. 13-028 Concurring With the Mayor's Appointments to Various Commissions

11. PUBLIC HEARINGS

- A. Public Hearing to Receive Testimony Regarding Proposed Amendment to the Land Use Development Ordinance (LUDO) [**Agenda Staff Report #13-058**]

12. CONTRACT REVIEW BOARD ACTIONS

- A. Award Contract for Construction of Airport Taxiway Project [**Agenda Staff Report #13-059**]
- B. Authorization to Purchase Oil Emulsion for Chip Seal Projects on Mt. Hood Street and Dry Hollow Road [**Agenda Staff Report #13-056**]
- C. Authorization to Purchase a Skid-Steer Compact Loader [**Agenda Staff Report #13-057**]

13. ACTION ITEMS

- A. Resolution No. 13-026 Adopting the Final Report of the City Engineer, Proposing an Assessment and Providing for Notices and a Hearing for West First Street, Terminal Way and Bargeway Road Reconstruction, Phase II Project [**Agenda Staff Report #13-053**]
- B. Resolution No. 13-027 Adopting a Central Business Commercial Vertical Housing Development Zone [**Agenda Staff Report #13-060**]
- C. General Ordinance No. 13-1329 Providing for the Establishment and Administration of Rules Governing Cross Connection Control Measures for the City of The Dalles and Repealing General Ordinance No. 01-1240 [**Agenda Staff Report #13-055**]
- D. Special Ordinance No. 13-556 Authorizing Operation of All Terrain Vehicles Upon a Designated Street Located Within the Boundaries of the City of The Dalles [**Agenda Staff Report #13-052**]

- E. Special Ordinance No. 13-557 Renewing and Extending the Term of the Franchise Granted to Waste Connections (The Dalles Disposal) and Declaring an Emergency  
**[Agenda Staff Report #13-054]**

14. ADJOURNMENT

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**This meeting conducted in a handicap accessible room.**

Prepared by/  
Julie Krueger, MMC  
City Clerk

  
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**CITY of THE DALLES**

313 COURT STREET  
THE DALLES, OR 97058

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

**AGENDA STAFF REPORT**  
**CITY OF THE DALLES**

<b>MEETING DATE</b>	<b>AGENDA LOCATION</b>	<b>AGENDA REPORT #</b>
July 22, 2013	Consent Agenda 10, A - D	N/A

**TO:** Honorable Mayor and City Council

**FROM:** Julie Krueger, MMC, City Clerk 

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

**DATE:** July 11, 2013

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

A. **ITEM:** Approval of July 8, 2013 Regular City Council Meeting Minutes.

**BUDGET IMPLICATIONS:** None.

**SYNOPSIS:** The minutes of the July 8, 2013 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 8, 2013 regular City Council meeting.

B. **ITEM:** Approval of July 2, 2013 Special City Council Meeting Minutes.

**BUDGET IMPLICATIONS:** None.

**SYNOPSIS:** The minutes of the July 2, 2013 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 July 2, 2013 special City Council meeting.

C. **ITEM:** Approval to Declare a FAX Machine as Surplus Property.

**BUDGET IMPLICATIONS:** None.

**SYNOPSIS:** The Municipal Court FAX machine has been malfunctioning so a new machine was purchased to replace it. The old machine is proposed to be donated to the STRUT Program.

**RECOMMENDATION:** that City Council declare the equipment as surplus property and allow it to be donated to the STRUT program.

D. **ITEM:** Resolution No. 13-028 Concurring With the Mayor's Appointments to Various Commissions.

**BUDGET IMPLICATIONS:** None.

**SYNOPSIS:** The Mayor has selected Kathy McBride to fill a vacancy on the Museum Commission and Donna Lawrence to fill a vacancy on the Traffic Safety Commission.

**RECOMMENDATION:** That City Council adopt Resolution No. 13-028 concurring with the Mayor's appointments to various Commissions.

**MINUTES**

REGULAR COUNCIL MEETING  
OF  
JULY 8, 2013  
5:30 P.M.

THE DALLES CITY HALL  
313 COURT STREET  
THE DALLES, OREGON

**PRESIDING:** Mayor Steve Lawrence

**COUNCIL PRESENT:** Bill Dick, Carolyn Wood, Dan Spatz, Tim McGlothlin, Linda Miller

**COUNCIL ABSENT:** None

**STAFF PRESENT:** City Manager Nolan Young, City Attorney Gene Parker, City Clerk Julie Krueger, Public Works Director Dave Anderson, Police Chief Jay Waterbury, Finance Director Kate Mast, Planning Director Dick Gassman

**CALL TO ORDER**

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

**ROLL CALL**

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

**PLEDGE OF ALLEGIANCE**

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

**APPROVAL OF AGENDA**

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

## **PRESENTATIONS/PROCLAMATIONS**

### **Certificate of Recognition to Doug Leash**

Mayor Lawrence read a Certificate of Appreciation to Doug Leash, recognizing his work to preserve the St. Peter's Landmark.

### **Other Recognition**

Mayor Lawrence noted the passing of Allan Morrison, a hero to local veterans and coach to local baseball players. He said the funeral service would be Tuesday at 11:00 a.m. and encouraged attendance to honor Mr. Morrison's service to the community.

## **CITY MANAGER REPORT**

City Manager Young said the Urban Renewal Advisory Committee would hear a request from Rapoza Development for the 120 day extension allowed by the development agreement and a recommendation would be forwarded to the Urban Renewal Agency Board for consideration at their July 22 meeting.

Young said staff would be conducting interviews for the one year fellow position this week, and later in July interviews for the RARE position would be conducted. He said the RARE position would likely be filled in September.

## **CITY ATTORNEY REPORT**

City Attorney Parker said it had been brought to his attention that the franchise with The Dalles Disposal had lapsed. He said the ordinance to renew the franchise would be brought for Council action at the July 22 Council meeting.

Parker said he would be working with the Finance Director to make ordinance amendments to address recently passed legislation to collect room tax from on-line travel agencies.

## **CITY COUNCIL REPORTS**

Councilor Dick noted the QLife Agency had adopted their Strategic Plan, scheduled for approval by City Council at this meeting.

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Regular Council Meeting  
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### **CONSENT AGENDA**

It was moved by Wood and seconded by Spatz to approve the Consent Agenda as presented.

Mayor Lawrence said he had asked the City Attorney if there were any issues with approving the license for the Vault since OLCC was considering whether to renew their license. City Attorney Parker said the City's signing of the renewals was an endorsement to the State and they had the final approval authority. It was noted the Police Department had investigated the renewal applicants and recommended they be endorsed.

The motion to approve the consent agenda was voted on and carried unanimously.

Items approved by Consent Agenda were: 1) approval of June 24, 2013 regular City Council meeting minutes; 2) authorization for City Clerk to endorse annual OLCC license renewals; and 3) authorization to provide sanitary sewer service to properties owned by Cynthia Homberg located at 1061, 1061A, 1061B and 1061C Irving Street, outside city limits.

### **PUBLIC HEARINGS**

#### **Public Hearing to Receive Testimony Regarding Proposed Ballot Measure to Increase the Fuel Tax or County Service District Property Tax**

Mayor Lawrence reviewed the procedure to be followed for the public hearing.

City Manager Young reviewed the staff report. He reviewed the options being considered which were a three cent fuel tax and formation of a City/County Road District. Young recommended pursuing the fuel tax option, saying it had the best chance of success, revenue most closely charged the users of City streets, and the City tried to avoid property tax measures because of competition with other taxing entities who didn't have the same funding options as the City.

#### **Testimony**

Doug Hattenhauer, 201 West First Street, The Dalles, spoke in opposition of a fuel tax. He said it was a bad idea to go out for bonds because of the high amount of interest the City would have to repay. Hattenhauer said the best option would be for the State to increase the fuel tax so all communities would have the same tax, and not have a higher tax only in The Dalles. He said he believed the City had plenty of funds within its budget in various categories to make street improvements without a fuel tax increase. He questioned whether fuel trucks providing fuel for the ships were paying the local fuel tax. Hattenhauer said to be fair, the City could tax tire stores and auto parts stores.

In response to a question, Hattenhauer said the State fuel tax was currently 30 cents per gallon.

Hearing no further testimony, the public hearing was closed.

#### Council Deliberation

Councilor Miller said her preference would be to redirect urban renewal funds to pay for infrastructure because the Plan originally included that. She suggested amending the boundary to include the entire city limits.

Councilor Wood said the citizens voted in 1998 to change the Plan to its current format. She said the boundaries were also established in the Plan.

Miller said the Plan could be amended.

Mayor Lawrence said he recalled that the City Attorney said the Plan would require only a minor amendment to change the scope of the Plan to be used for infrastructure projects. City Attorney Parker said if he said that, he had mis-spoken as he believed it would require a major amendment to the Plan. Lawrence asked what would be required to complete a major amendment. Parker said it would require a public hearing and adoption of a resolution. He said boundary changes would be more complicated.

City Manager Young said the size of an urban renewal district was restricted by law and could not include the entire city limits. He said there would be additional concerns for other taxing districts if there was an expansion of the boundary.

Mayor Lawrence asked if the Plan was amended, whether urban renewal funds could pay for street improvements within the current boundary. City Manager Young said that could be done. Mayor Lawrence said use of the urban renewal funds for street improvements within the district would allow for more money within the Street Fund to be used for other street improvement projects outside the district.

Councilor Spatz said he was opposed to using urban renewal project funds for street improvements. He said he was not prepared to make a decision at this meeting regarding which option should be placed on a ballot for consideration and wanted to have a meeting with the County Commissioners prior to making a decision.

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City Manager Young said he had met with County staff to discuss the options. He said if the Council wished to have it on the November ballot, the measure would have to be filed by September 5 and there would need to be additional time to complete the process, so a resolution would need to be adopted by mid-August.

It was moved by Dick and seconded by Spatz to delay making a decision until the Council could meet with Wasco County Commissioners.

Councilor McGlothlin reminded the Council the approval to move forward was only to ask the voters to decide.

The motion to delay making a decision until the Council could meet with Wasco County Commissioners was voted on and carried unanimously.

### **ACTION ITEMS**

#### **Approval of QLife Broadband Strategic Plan**

City Manager Young reviewed the staff report.

Mayor Lawrence noted Goal 4 of the Plan had not copied correctly into the agenda packet and asked for a new copy. Lawrence said he continued to be impressed with QLife and the work it was accomplishing.

It was moved by McGlothlin and seconded by Wood to adopt the Wasco County and QLife Strategic Broadband Plan. The motion carried unanimously.

#### **Resolution No. 13-024 Accepting a Dedication of Property from Elk Horn Development LLC for Public Street Purposes**

City Attorney Parker reviewed the staff report.

It was moved by Spatz and seconded by Miller to adopt Resolution No. 13-024 accepting a dedication of property from Elk Horn Development LLC for public street purposes. The motion carried unanimously.

#### **Resolution No. 13-023 Adopting a Fraud Policy for the City of The Dalles**

Finance Director Mast reviewed the staff report.

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Mayor Lawrence asked if staff had considered including a citizen member on the review committee. Mast said she had not considered that. Lawrence said some of the words used in the policy were not well defined and were too subjective.

City Attorney Parker said the policy was intended to be a general guideline and noted it was recommended by the City's auditors to be adopted.

Lawrence asked what other policies were in place to protect employees from retaliation. City Attorney Parker said there were other policies and he would provide them to the Council.

It was moved by Wood and seconded by McGlothlin to adopt Resolution No. 13-023 adopting a Fraud Policy for the City of The Dalles. The motion carried unanimously.

### **DISCUSSION ITEMS**

#### Discussion Regarding Fluoridation of the City's Drinking Water Supply

Public Works Director Anderson reviewed the staff report, recommending the City continue the practice of adding fluoride to the City's water supply.

#### Public Comment

Jim Bickler addressed the Council, saying he was a dentist and orthodontist in The Dalles and Hood River. He said seeing children from both communities proved to him that those who received fluoride had much better teeth. Bickler said there was no real scientific study to show any detrimental affects of fluoride and he noted that the most benefitted people were those with a lower socioeconomic status who were not able to get regular dental and medical assistance.

Robert Boyett spoke in opposition to fluoride, saying it was not possible to control the dosage for infants and seniors. He said the fluoride used by municipalities was an industrial grade and was not a natural form of the mineral. Boyett said fluoride was detrimental to the brain and was a toxic waste in the environment. He said it would be nearly impossible to remove it from his water source.

Dr. Judy Richardson, 3515 Crestview, The Dalles, spoke in support of fluoride, saying physicians were concerned about dental decay because it led to medical problems.

Christie Wallen, 1524 East Ninth Street, The Dalles, spoke in opposition to fluoride. She said fluoride had not been found to be safe and effective and was considered an unapproved drug by the FDA. She spoke of the harmful effects of fluoride, including hypothyroidism patients. She

said she did not consent to being medicated through the water supply and did not want her child medicated either. She said fluoridated water had been linked to lowering of IQ in children. Wallen asked the Council to take the time to educate themselves and not follow the status quo.

Teri Thalhofer, Director of North Central Public Health District, spoke in support of fluoridation, thanked the City for adding fluoride to the water supply. She noted that while the poverty level was 10% greater in The Dalles, compared to Hood River, The Dalles dental decay was lower. She said it was important to support the most vulnerable in our community.

Tina Castanares, representing One Community Health, said she had noted a very dramatic difference in her practices in Hood River and The Dalles and asked that the Council continue the practice of fluoridation because it protected the community's most vulnerable citizens. She pointed out that local data indicated remarkably fewer operations done on children in The Dalles who drank fluoridated water, compared to Hood River and said it saved about half the total dental bills for children on the Oregon Health Plan. She said the lifetime economic benefit of an individual avoiding just one cavity was far greater than the cost of a lifetime of fluoridation.

Curt Farray, 3215 NE US Grant, Portland, said he was a dentist and had been involved in the politics of fluoride treatment for quite some time. He spoke in support of keeping fluoride in the water supply.

Dr. Miriam McDonald, The Dalles spoke in support of continuing the practice of fluoridating the City's water. She noted that the IQ studies discussed in previous testimony had been conducted in China where a much higher level of fluoride was used. She said arsenic in the water was extremely low, and said there was much more arsenic in bread, tuna and ice cream than in the water supply.

Dr. Mike Murat spoke in support of fluoridated water. He said it was the City's job to protect the public and this was one way to do so.

Daniel Seger, Snipes Street, The Dalles, said he believed topical applications of fluoride were acceptable, but it should not be added to the water supply and was not advised to be used in infant formula. He said the Physician's Desk Reference (PDR) warned not to give fluoride to children under the age of six.

Julie Gonzales, 760 Frankton Road, Hood River, said she was a dental hygienist and said there was a lot of science to prove the positive effects of fluoride in municipal water supplies. She said it was a benefit to the citizens and said there were many examples of patients in Hood River to see what happens without fluoride treatment.

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Garrett Wallen, 1524 East Ninth Street, The Dalles, said communities fluoridating water supplies were essentially practicing medicine without a license and that if citizens did such an act, would be arrested and tried as terrorists or felons practicing medicine without a license. He said medication could only be prescribed for those diagnosed with a medical need.

Dr. Charles Haynie, showed photographs of cavities in children who had not had the benefit of fluoridated water and said fluoridation was enormously beneficial. He said many professional organization supported fluoridation and that the Supreme Court had determined that adding fluoride to water supplies was not a medical practice.

Dr. Kathy Omer said she had not been able to find any reliable research that would indicate a risk to people from having fluoridated water supplies. She said it was important to dental health and also helped to prevent other health issues.

Jay Waterbury, 403 West Ninth Street, The Dalles, urged the City Council to continue the practice of fluoridating the water supply. He said it was beneficial to the entire community.

Public Works Director Anderson said the City used a grade of fluoride which was approved for drinking water and had to meet state and federal purity requirements.

It was the consensus of the City Council to continue the practice of adding fluoride to the City's drinking water supply.

**ADJOURNMENT**

Being no further business, the meeting adjourned at 7:35 p.m.

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Submitted by/  
Julie Krueger, MMC  
City Clerk

SIGNED:

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Stephen E. Lawrence, Mayor

ATTEST:

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Julie Krueger, MMC, City Clerk

**MINUTES**

SPECIAL COUNCIL MEETING  
OF  
JULY 2, 2013  
5:30 P.M.

CITY COUNCIL CHAMBER  
CITY HALL  
313 COURT STREET  
THE DALLES, OREGON

**PRESIDING:** Mayor Steve Lawrence

**COUNCIL PRESENT:** Bill Dick, Dan Spatz, Tim McGlothlin, Linda Miller

**COUNCIL ABSENT:** Carolyn Wood

**STAFF PRESENT:** City Manager Nolan Young, City Attorney Gene Parker,  
City Clerk Julie Krueger, Public Works Director Dave  
Anderson, Planning Director Dick Gassman

**CALL TO ORDER**

The meeting was called to order by Mayor Lawrence at 5:30 p.m.

**APPROVAL OF AGENDA**

It was moved by Dick and seconded McGlothlin to approve the agenda as presented. The motion carried unanimously, Wood absent.

**DISCUSSION ITEM**

Discussion Regarding the Effects of House Bill 3479

Mayor Lawrence explained he had called the special meeting to allow the City Council to have a

discussion regarding the possible effects of HB 3479. He said the City Council could only discuss matters in a public meeting and he believed it was important to have a discussion right away due to current applications that could be impacted by the Bill.

Mayor Lawrence provided a written document reviewing the history and provisions relating to partitions (attached at Exhibit A). He described the items included in his memo.

City Attorney Parker reviewed the staff report, noting the language in the Bill was very specific and clear. Parker discussed the Land Use Development Ordinance (LUDO) conditions that remained in effect and said staff had determined that Mr. Dennee would need to install the public improvements, or agree to install them in the future, to receive approval of his partition application.

Parker recommended the Council proceed with the scheduled work session with the Planning Commission to express their comments and concerns and to allow the process for LUDO amendments to take place. He said he could not advise the Council to follow alternative C to not require installation of the improvements, again saying the best option would be for the Council to have a discussion regarding their intentions with the Planning Commission.

Mayor Lawrence said if condition number 6 of Mr. Dennee's minor partition approval was no longer valid, due to the new law, it could not be amended now. City Attorney Parker said the LUDO required that the improvements be done and that condition could not be ignored.

Lawrence pointed out that the requirement for installing infrastructure improvements pertained to subdivisions, not minor partitions.

Councilor Spatz questioned why a task force had not been put in place, as recommended by the Planning Commission, to discuss standards, costs and methods of determining the cost of development fees. Spatz said it would be a good idea to have a special task force work on such a complex issue. He said he had thought the citizens were satisfied with the language developed and was surprised to hear special legislation had been developed to change it.

City Manager Young explained that in many ways, the Planning Commission did act as a task force and that they had the training, background and experience to work on development issues so a separate task force was not necessary. Young said with the passage of the House Bill, many of the issues that a task force would study were no longer pertinent.

Mayor Lawrence said he had thought the Council previously discussed and agreed that a partition was a line on the ground, and if there was no new development, the partition should be allowed.

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Councilor Dick agreed with the Mayor's statement and said he believed th Council had previously agreed that they did not consider a minor partition to be considered development. Dick said he was not in favor of requiring full improvements to approve a minor partition.

It was the consensus of the Council that simple partitions should be allowed without the burden of paying development fees and that those fees should be charged when a person applied for a building permit.

City Manager Young recommended the City Council delay any decision on the application by Mr. Dennee until they had an opportunity to meet with the Planning Commission on July 18. He agreed with City Attorney Parker that removal of condition #6 of Mr. Dennee's application did not invalidate the remaining conditions and said the City needed to work within its existing laws.

Councilor Spatz asked if there was a specific deadline Mr. Dennee was trying to meet in completing his partition. City Attorney Parker said he believed it was a property tax issue and that the deadline had been July 1.

Mayor Lawrence asked what repercussions would occur if the City Council allowed Mr. Dennee's partition to move forward.

City Attorney Parker said if the application didn't comply with the City's laws, it could be legally challenged. He again urged the City Council to delay any decisions until after their meeting with the Planning Commission and a final resolution on the LUDO amendments.

Councilor Spatz said there didn't seem to be any good options, but that Alternative C was the least bad option.

City Manager Young said to stay within the law, the Council should adopt the staff recommendation and delay a decision until after meeting with the Planning Commission and developing amendments to the LUDO.

It was moved by Spatz and seconded by McGlothlin to direct staff that the LUDO provisions were to be interpreted such that an applicant was not required to either install the improvements or enter into a deferred development agreement at the time of approval of a minor partition for the existing application of John Dennee.

Councilor Dick said he was in support of making amendments to the LUDO and asked how long the process would take to complete. Planning Director Gassman said, providing the required public notices and the Planning Commission and City Council hearings, it would most likely be approved in October.

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Councilor McGlothlin said he wanted to remove barriers for Mr. Dennee and that it was important to reduce infill costs to property owners to encourage development and to provide fairness to everyone.

The motion to direct staff that the LUDO provisions were to be interpreted such that an applicant was not required to either install the improvements or enter into a deferred development agreement at the time of approval of a minor partition for the existing application of John Dennee was voted on and carried; Miller abstaining, Wood absent.

**ADJOURNMENT**

Being no further business, the meeting adjourned at 6:30 p.m.

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Submitted by/  
Julie Krueger, MMC  
City Clerk

SIGNED:

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Stephen E. Lawrence, Mayor

ATTEST:

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Julie Krueger, MMC, City Clerk

REVIEW OF  
HISTORY AND PROVISIONS RELATING TO PARTITIONS

PREPARED BY MAYOR STEVE LAWRENCE

2007

**Resolution 07-007 - Implementation Policy for LIDs**

For Waivers of Local Improvement District Non-Remonstrance Agreements still in effect after review, a letter went to property owners offering them an opportunity to prepay to the City LID fund an amount equal to the cost of proposed improvements on a front footage basis, or participate in a later LID.

Annually, the City Council was to hold a public hearing to develop a five year Capital Improvement Plan for future residential LIDs. This never happened.

**The 2007 Task Force** recommended the City no longer use non-remonstrance agreements and recommended the City not initiate LIDs except in emergency or upon voluntary request of owners.

**LUBA provision 6.110 Waiver of Right to Remonstrate**  
(amended after resolution 07-007) Only eliminates waivers for dwelling building permits or single family accessory structures. Keeps them for planning actions or requires a payment into the City's local improvement fund. The entire provisions relate to LIDs. (a partition is a planning action)

2010

**Resolution 10-007** Sets street improvement guidelines for what streets. Recommendations or descriptions vary from full improvement to deferred, or status quo or partial or minimal.

2012

**9-14-2012 Staff Report on Infill Recommendations**

Describes current practice: Developer required to install 1/2 street for entire frontage or pay into LID fund. Includes someone who files for for a partition.  
(p. 3-4)

States “City has not expressly prohibited the City’s use of non-remonstrance agreements (p. 5)

Discusses **Resolution 07-1276** which proscribes requiring a non-remonstrance agreement prior to permitting or land use approval. Discusses when payment would be due.

**Recommendation of Staff :** Recommends the obligation to pay for improvements or install “attaches” upon filing a partition or any further development with payment due in lump sum at development; before sale, at sale, when there is an LID or 10 years after. (p9)

Suggests that the Council resume annual review of LID prioritization plans (11)

### **10-31-2012 Memo from Garrett Chrostok**

Again, proposes a staff recommendation for partitions that payment would be due upon the first occurrence of one of four alternatives. Council rejected this proposal at its meeting 11-14-2012.

Council directed staff to prepare a new ordinance that provided:

1. Fee attaches at partition but is not due until an LID or development is sought;
2. Landowners on corner lots be assessed only on 1 side;
3. Decks and small additions cause no assessment;
4. Any partition must waive right to object to LID.

### **1-30-2013 Staff Proposal submitted to Council 2-11-2013**

Makes proposal for partitions that if owner elects to defer payment at either time of approval of partition, building permit or formation of LID, they would have to sign a non-remonstrance agreement at the time of application approval (p.2)

Proposes adding sale to trigger for payment. (3)

Council instructs staff to bring back ordinance without sale in it. Never brought back.

### **3-15-2013 Dick Gassman Memo for LUDO Residential Partition Approval Amendment**

Relates history and states, “currently non-remonstrance agreements are prohibited by City Ordinances for all forms of residential planning actions.” “Currently --

minor partitions must fulfill their street improvement obligations at time of development application approval.” They either have to install themselves if an approved design is in place or pay into an LID fund.

Memo goes on to say that under the proposed LUDO amendment the property owner for a partition will not have to install improvements or pay into LID fund, prior to receiving approval for residential partition (p. 2)

“If the applicant elects to defer his/her obligation, he/she must sign a non-remonstrance agreement prior to receiving approval for the partition.”  
Could be due if owner applies for a building permit or formation of LID (p.3)

#### **4-4-13 Presentation to Planning Commission**

Dick Gassman submits proposal for minor partitions to pay if:

1. LID initiated or
2. development of dwelling on property, at which point the applicant would:
  - a. either put improvements in or;
  - b. put into development fund and
  - c. full property frontage would be “encumbered.”

The proposal was defeated and commission wanted joint meeting with City Council and suggested council needed to address all related issues.

#### **May 22, 2013 letter from Garrett to Senators**

States that current LUDO requires partitioners must bring entire frontage up to standards if an approved engineering design in place or make a payment in lieu. Adopted by council at recommendation of task force in 2007.

Also states that City Council directed staff to move forward with LUDO amendment. (Minutes of February 11, 2013 indicate council wanted proposal to come back to Council.)

#### **Undated letter to Sen. Ferrioli**

“...there are large portions of our community without an approved design in place - some developers only have the payment in lieu option, which sparked the controversy ...”

The proposed LUDO amendment requires signing non-remonstrance agreement and makes payment due on construction or LID.

**June 7, 2013 Letter to Kitzhaber from Nolan Young**

Asks for veto

States “Prior to 2007, developers ...satisfied their local improvement obligation through the signing of a non-remonstrance agreement.”

Community experimented with a somewhat unique approach ..to allow a fee in lieu.”

2007 policy did not prove successful - it became burdensome on large lot owners.

2012 work session developed LUDA amendment:

- to install - pay the fee - or sign non-remonstrance agreement - “to receive partition approval.”

**June 19, 2013 Memo to Mayor and City Council**

Removal of the “in lieu of payments” HB 3479 leaves the only option available to people who wish to partition is to install the improvements.

If there is no engineering and not willing to pay for engineering - no partition.

“We will be going to Planning Commission to propose amendments.”

**Memo by Garrett for 7-18-2013 meeting with Planning Commission.**

“This memo presents a new concept for residential infill development - compliant with HB 3479B while meeting City’s development objectives. Staff seeks comment and direction on this new approach.

Council had proposed an amendment which was submitted to DLCD in Feb. 2013, went through planning in April and scheduled for public hearing in May.

The new law ...prohibits The Dalles from requiring residential partitioners to make a payment in lieu or to sign non-remonstrance agreements as a condition of approval.

This proposal would allow developers to install improvements instead of the City. Responsibility to install or pay would attach at the partition stage. If engineering is in place, developer would pay or enter into “deferred development agreement.”

If no engineering, only option is “deferred development agreement.” To give owners notice that improvements required at permit.

## **June 20, 2013 Legal opinion to Nolan Young and Dick Gassman**

Opinion considers John Dennee partition filed and Administrative Decision issued 8-9-2009. It required street, sidewalk and storm improvements paid into fund for both 10th and Morton Streets. (Condition #6)

Since HB 3479, there cannot be a waiver of remonstrance or payment in lieu into fund but nothing in bill prevents City from requiring installation of the street improvements as a condition of approval.

### **Following LUDO provisions cited:**

#### **Ludo 9.030.030 (A) (8) Partition Applications**

The tentative plat shall include (8) Location of all existing and proposed streets - which shall meet requirements of Chapter 10 - construction detail required prior to issuance of permit.

#### **Ludo 9.030.050 9B)(2)**

Any required improvements not completed shall be subject to the Agreement of Improvement provisions 9.040.050(H)

(9.040.010 - refers to subdivisions or major replats only)

9.040.050 relates to subdivision application.

#### **Ludo 9.030.050 (C)(1) Final Plat Approval (for partitions)**

“The applicant has installed or agreed to install required improvements in accordance with Chapter 10, Improvements Required with Development.

(Definition of development includes dividing parcel into 2 or more lots.)

(This is copy attached to Memo which differs from LUDO book)

#### **Ludo 10.030(A) Timing of Improvements**

Refers to 9.040.060(H) which applies to subdivision plat review.

#### **Ludo 10.060 (C)(1) Street Requirements**

Where a development site abuts an existing public street not improved to City standards, the abutting street shall be improved to city standards along full frontage of the property concurrent with development or a non-remonstrance agreement for future street improvements (including Local Improvement Districts) shall be

signed by the property owner(s) and recorded with the deed, per the provisions of Section 6.110. (This is different than the book.)

**Final Opinion:** “Even with the invalidation of Condition #6, the 4 provisions of the LUDO cited are still valid.”

Memo states as follows:

John Dennee has three options?

1. improve the abutting street;
2. enter into delayed (deferred?) development agreement with city for full installation;
3. gain approval for LID without any provision for prepayment of assessments into a fund.

Question: Can a decision be amended after the fact?

What is the intent of HB 3479?

What is the spirit of the law?

How can we work to allow partitions to go forward without onerous provisions?

If development costs are required when someone wants to build a residence, why not just inform them at the time of getting a building permit?

**RESOLUTION NO. 13-028**

**A RESOLUTION CONCURRING WITH THE MAYOR'S  
APPOINTMENTS TO VARIOUS COMMISSIONS**

**WHEREAS**, there are vacancies on the Museum Commission and Traffic Safety Commission;  
and

**WHEREAS**, the Mayor has selected Donna Lawrence for appointment to the Traffic Safety  
Commission; and

**WHEREAS**, the Mayor has selected Kathy McBride for appointment to the Museum  
Commission;

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL AS FOLLOWS:**

Section 1. The City Council concurs with the appointment of Donna Lawrence to the Traffic  
Safety Commission, term to expire April 30, 2015.

Section 2. The City Council concurs with the appointment of Kathy McBride to the Museum  
Commission, terms to expire April 30, 2015.

Section 3. This Resolution shall be effective July 22, 2013.

**PASSED AND ADOPTED THIS 22nd DAY OF JULY, 2013**

Voting Yes, Councilors: \_\_\_\_\_

Voting No, Councilors: \_\_\_\_\_

Absent, Councilors: \_\_\_\_\_

Abstaining, Councilors: \_\_\_\_\_

**AND APPROVED BY THE MAYOR THIS 22nd DAY OF JULY, 2013**

SIGNED:

ATTEST:

\_\_\_\_\_  
Stephen E. Lawrence, Mayor

\_\_\_\_\_  
Julie Krueger, MMC, City Clerk



## AGENDA STAFF REPORT

MEETING DATE	AGENDA LOCATION	AGENDA REPORT #
July 22, 2013	Public Hearings 11, A	13-058

**TO:** Honorable Mayor and City Council

**FROM:** Richard Gassman, Planning Director

**THRU:** Nolan Young, City Manager 

**DATE:** July 22, 2013

**ISSUE:** Public hearing for Zoning Ordinance Amendment ZOA 83-13 for a change in the minimum setback for certain structures.

**RELATED CITY COUNCIL GOAL:** N/A

**PREVIOUS AGENDA REPORT NUMBERS:** N/A

**BACKGROUND:** This is a single proposed change in the Land Use and Development Ordinance (LUDO) as recommended by the Planning Commission. This issue first arose as part of a variance request, which was denied by the Planning Commission. The Planning Commission then recommended that this matter be reviewed for a possible LUDO amendment. Staff prepared language which has been recommended for approval.

**CHANGE:** The request would allow carports and other similar structures to be within 30 inches of a property line. The current code requires five feet. The proposed language is to amend LUDO Section 6.080 A. 2. By adding the following language: **“Structures that are open on three sides, with a minimal number of support beams, are subject only to the setback requirements of Section 6.080. A. 2., and are exempt from the provisions of Section 6.080. A. 3.**

**PROCESS:** A public hearing on the proposed Amendment was held by the Planning Commission on April 4, 2013. The Planning Commission recommended approval of the

proposed language. The Council will hold a legislative type public hearing for consideration and decision. If approved, staff will prepare an ordinance for Council consideration at a later meeting.

**NOTICE:** Notice of the proposed LUDO amendment was sent to the Department of Land Conservation and Development at least 35 days prior to the Planning Commission hearing. A notice was also published in the Chronicle prior to the Planning Commission hearing and prior to the Council hearing.

**DISCUSSION:** The proposed language would allow structures like carports to be closer to a property line than currently allowed. We currently allow ground level paving to go up to a property line, and we allow eaves to be within 30 inches of a property line, but a wall or support beams must be at least five feet from a property line. This effectively requires a carport to get a variance to be located closer than five feet from a property line. However, the variance criteria usually cause such a request to be denied. The Planning Commission, after hearing and denying a variance request, asked staff to review these situations with the intent of being more flexible. The proposed language is the result.

**RECOMMENDATION:** Staff recommends that the City Council follow the recommendation of the Planning Commission.

If the Council decides to approve this amendment, an appropriate motion would be:  
*Move to direct staff to prepare an ordinance approving ZOA 83-13, as approved by the Planning Commission, based upon appropriate findings of fact and conclusions of law, to be presented for adoption at a future City Council meeting.*

**SUGGESTED ALTERNATIVE MOTION:** If the Council decides not to approve these requests, an appropriate motion would be: Move to deny ZOA 83-13, and state the reasons for the denial.



## 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 #
July 22, 2013	Contract Review Board 12, A	13-059

**TO:** Honorable Mayor and City Council

**FROM:** Gene E. Parker, City Attorney  
Aeronautical Management, Inc.

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

**DATE:** July 10, 2013

**ISSUE:** Award of contract for Runway 31-13 Taxiway Rehabilitation Project.

**RELATED CITY COUNCIL GOAL:** None.

**PREVIOUS AGENDA REPORT NUMBERS:** None.

**BACKGROUND:** With the assistance of funding from the Federal Aviation Administration, the City and Klickitat County have awarded contracts for several recent projects to improve the runways at the Columbia Gorge Regional Airport. On July 3, 2013, the City and Klickitat County opened bids for a project to improve taxiways at the airport. The following is a summary of the two bids received:

<u>Contractor</u>	<u>Base Bid</u>	<u>Additive A</u>	<u>Additive B</u>	<u>Total Bid</u>
Crestline Construction	\$1,004,539.11	\$692,268.81	\$382,663.78	\$2,079,471.70
Granite Construction	\$888,182.60	\$749,603.48	\$387,063.46	\$2,024,849.54

Granite Construction appears to be the lowest responsible bidder. The Airport Management team will be meeting with the Regional Airport Board on July 12 to review the bids and make a recommendation to the City and Klickitat County concerning the award of the bid for the project. The balance of funding available for the 2013 taxiway construction project is \$1,200,658.77. The FAA has advised the Airport Management team to consider an award of the amount of the base bid, and either Additive A or B, subject to available funding. For any potential shortfall in funding for either of the bid Additives, the City and Klickitat County can request additional funds from the FAA. This type of request takes approximately three to five weeks to find out if additional funds are available. The recommendation from the Regional Airport Board will be presented during the City Council meeting.

**BUDGET IMPLICATIONS:** As noted above, the balance of funding available for the project is \$1,200,658.77.

**ALTERNATIVES:**

- A. ***Staff Recommendation. Move to award the bid for the 2013 taxiway construction project to Granite Construction in the amount recommended by the Regional Airport Board, and authorize the City Manager to execute the contract for the award, subject to approval of the award by Klickitat County and the FAA.***



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

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## **AGENDA STAFF REPORT**

### **CITY OF THE DALLES**

<b>MEETING DATE</b>	<b>AGENDA LOCATION</b>	<b>AGENDA REPORT #</b>
July 22, 2013	Contract Review Board 12, B	13-056

**TO:** Honorable Mayor and City Council

**FROM:** Dave Anderson, Public Works Director

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

**DATE:** July 8, 2013

**ISSUE:** Authorization to purchase emulsion for 2013 chip seal projects.

**CITY COUNCIL GOALS:** NA

**BACKGROUND:** Two street maintenance projects scheduled for this summer are to armor coat Dry Hollow Road from 9<sup>th</sup> Street to 19<sup>th</sup> Street and Mt. Hood Street from 10<sup>th</sup> to 23<sup>rd</sup>. An armor coat is a double-layer of chip seal. It is less expensive than overlaying with asphalt and works well on streets that have a sound surface to overlay and that experience limited vehicle turning movements. This is the same treatment that was completed last summer on Kelly Avenue from 10<sup>th</sup> Street to 19<sup>th</sup> Street.

Since the City does not have the equipment to perform chip seals, this is one of the types of projects for which we partner with the County to get the work done. The City purchases the rock and emulsion (oil) and pays for the County labor resources used in the project. Both City and County equipment will be used. Since the City and County trade with each other for use of equipment, there will be no equipment rental charges.

This year, due to the size of the two planned projects and the larger amount of product needed than in recent years past, the cost to purchase the emulsion requires City Council authorization. The purchase of the emulsion is proposed to occur using the County's annual process of obtaining quotes from various suppliers. The two projects combined will require the purchase of 136 tons of emulsion from Albina Fuels, delivered to The Dalles, at a total cost of \$82,280. Chip rock for the project will be purchased separately and can be obtained locally.

The projects are currently scheduled to be constructed August 21<sup>st</sup> and 22<sup>nd</sup> after harvest activities, weather permitting.

**BUDGET IMPLICATIONS:** Within Fund 5, the Street Fund, budget line 005-0500-431.75-10, a total of \$168,000 is budgeted for these two projects. The budgeted funds are adequate to complete both projects.

**RECOMMENDATIONS:**

1. Staff Recommendation: Move to authorize the purchase of emulsion for the Dry Hollow Road and Mt Hood Street chip seal projects in an amount not to exceed \$82,280.00.
2. Deny authorization to purchase the emulsion and provide additional direction to staff.



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

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## **AGENDA STAFF REPORT**

### **CITY OF THE DALLES**

<b>MEETING DATE</b>	<b>AGENDA LOCATION</b>	<b>AGENDA REPORT #</b>
July 22, 2013	Contract Review Board 12, C	13-057

**TO:** Honorable Mayor and City Council

**FROM:** Dave Anderson, Public Works Director

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

**DATE:** July 8, 2013

**ISSUE:** Authorization to purchase a new skid-steer compact loader with 24" planer.

**CITY COUNCIL GOALS:** NA

**BACKGROUND:** Funds were included in the current budget to purchase a new skid-steer compact loader. This unit is one of the small tracked loaders often generically referred to as a "Bobcat" loader, although Bobcat is a specific manufacturer of this type of equipment. This unit would be manufactured by Caterpillar. It would become the front-line unit taking over much of the work currently being done by a 28-year old Bobcat wheel loader that has no remote hydraulic capabilities.

The Caterpillar skid-steer loader is larger than the existing loader and will also be equipped with a 24-inch planer. The planer can grind up asphalt in a path 24 inches wide and will facilitate projects with narrow trenches such as water and sewer service renewals much faster than using an asphalt saw. It can be used in uneven surface conditions where an asphalt saw cannot. The primary use of the new loader is anticipated to be by the Wastewater Collection Division but it will also be used on street maintenance projects to remove asphalt next to existing concrete features and repair open seams in streets, and on water system service renewal projects.

The proposed local purchase would be from Peterson Cat through the National Joint Powers Alliance which is a federal bidding process. As a member, the City qualifies for a 22% discount on the retail purchase price of the unit, a savings of \$27,737.00. The total cash purchase price of the unit after the discount would be \$101,829.00. To ease the financial burden in a single fiscal year,

staff proposes to utilize a four-year finance agreement through Caterpillar Financial Services Corporation that requires four annual payments of \$27,525.66. The financing is provided at an interest rate of 3.2% and would result in the payment of \$8,273.64 in interest over the four years. This is similar to the purchasing procedure used to acquire the Asphalt Zipper.

**BUDGET IMPLICATIONS:** Within Fund 9, the Public Works Reserve Fund, budget line 009-9000-431.74-20, \$27,526 is budgeted for the first annual payment. If approved, three more equal payments would need to be budgeted in fiscal years 2014/15, 2015/16 and 2016/17.

**RECOMMENDATIONS:**

1. **Staff Recommendation:** Move to authorize the purchase of a Caterpillar skid-steer compact loader utilizing a 4-year payment schedule of \$27,525.66 per year.
2. Authorize purchase of a Caterpillar skid-steer compact loader for a one-time lump sum payment of \$101,829.00 in the current fiscal year and defer other budgeted expenditures.
3. Deny authorization to purchase a Caterpillar skid-steer compact loader.



**AGENDA STAFF REPORT**  
**CITY OF THE DALLES**

MEETING DATE	AGENDA LOCATION	AGENDA REPORT #
July 22, 2013	Action Items 13, A	13-053

**TO:** Honorable Mayor and City Council

**FROM:** Julie Krueger, MMC, City Clerk

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

**DATE:** July 3, 2013

**ISSUE:** Resolution No. 13-026 Adopting the Final Report of the City Engineer, Proposing an Assessment and Providing for Notices and a Hearing for the West First Street, Terminal Way and Bargeway Road Reconstruction, Phase II Project.

**BUDGET IMPLICATIONS:** The total project costs are included in the attached Engineer's Report. The total cost of the project is \$974,761.72 with the sum proposed for property owner assessments being \$944,518.89.

**SYNOPSIS:** The City Engineer has prepared the final report for the West First Street, Terminal Way and Bargeway Road Reconstruction, Phase II Project. The attached report is submitted to City Council for review and approval. Resolution No. 13-026 will direct the City Clerk to schedule a hearing to consider objections to the proposed assessments, provide property owner notification, and public notice. The hearing is tentatively set for the regular Council meeting of September 9, 2013.

**RECOMMENDATION:** That the City Council approve Resolution No. 13-026 Adopting the Final Report of the City Engineer, Proposing an Assessment and Providing for Notices and a Hearing for the West Sixth Street and Cherry Heights Road Signalization Project.

**RESOLUTION NO. 13-026**

**A RESOLUTION ADOPTING THE FINAL REPORT OF  
THE CITY ENGINEER, PROPOSING AN ASSESSMENT AND PROVIDING  
FOR NOTICES AND A HEARING FOR THE WEST FIRST STREET, TERMINAL  
WAY AND BARGEWAY ROAD RECONSTRUCTION, PHASE II PROJECT**

**WHEREAS**, the City Council heretofore approved the establishment of a local improvement district for the West First Street, Terminal Way and Bargeway Road Reconstruction, Phase II Project; and

**WHEREAS**, the City Engineer has prepared a final report giving the cost of the project, a proposed method of assessment and the proposed assessments for each lot of land benefitted by the improvement; **NOW, THEREFORE**,

**BE IT RESOLVED BY THE CITY COUNCIL AS FOLLOWS:**

Section 1. Report Accepted. The proposed final report of the City Engineer, concerning the West First Street, Terminal Way and Bargeway Road Reconstruction, Phase II Project, is hereby accepted.

Section 2. Notices of Proposed Assessments. The City Engineer shall file with the City Clerk a list of the properties within the district, the proposed assessment for each property, and the name and address of the property owners. The City Clerk shall cause notice of the proposed assessments to be mailed or personally delivered to the owner of each lot or tract of land.

Section 3. Content of Notice. The notice shall state:

- A. The amount of the proposed assessment;
- B. The property upon which the assessment is to be levied;

- C. The date and time by which objections to the assessment shall be filed with the City Clerk;
- D. That objections shall be in writing and shall contain a statement of the grounds for the objection; and
- E. The date, time, and place at which the City Council will consider objections and allow the petitioners to be heard concerning the objections.

Section 4. Hearing Date. A hearing shall be held at 5:30 p.m. on September 9, 2013, in conjunction with the regular City Council meeting. Persons who have filed objections to proposed assessments or the project shall have the right to be present and address the Council. The hearing will be held in the City Hall Council Chamber, 313 Court Street, The Dalles, Oregon. Objections to assessments shall be filed on or before 5:00 p.m., on August 16, 2013.

**PASSED AND ADOPTED THIS 22ND DAY OF JULY, 2013**

Voting Yes, Councilors: \_\_\_\_\_  
 Voting No, Councilors: \_\_\_\_\_  
 Absent, Councilors: \_\_\_\_\_  
 Abstaining, Councilors: \_\_\_\_\_

**AND APPROVED BY THE MAYOR THIS 22ND DAY OF JULY, 2013**

SIGNED: \_\_\_\_\_  
 Stephen E. Lawrence, Mayor

ATTEST: \_\_\_\_\_  
 Julie Krueger, MMC, City Clerk

**FINAL REPORT**

**WEST FIRST STREET, TERMINAL WAY, BARGEWAY ROAD RECONSTRUCTION,  
PHASE II**

**CONTRACT NO. 2013-004  
LOCAL IMPROVEMENT DISTRICT**

**PREPARED BY:**

**CITY OF THE DALLES  
DEPARTMENT OF PUBLIC WORKS  
1215 WEST FIRST STREET  
THE DALLES, OREGON 97058**

**JULY 10, 2013**

JULY 10, 2013

**Honorable Mayor and Members of City Council  
City of The Dalles  
313 Court Street  
The Dalles, OR 97058**

**FINAL REPORT: WEST FIRST STREET, TERMINAL WAY, BARGEWAY ROAD  
RECONSTRUCTION, PHASE II; CONTRACT NO. 2013-004**

**Councilmembers:**

The following is the Final Report for the Assessment District and Basis of Assessment to provide street improvements on West First Street and Bargeway Road in the City of The Dalles.

**DESCRIPTION OF PROJECT**

Improvements to project area consisted of the following elements:

- Reconstruction of the street including removal of the surface and base material, re-grading and compaction of the sub-base, placement of ten inches of base rock and six inches of asphalt. The projects widened Bargeway Road to two 16' lanes. West First Street was widened to two 14' lanes and a 14' center turn lane.
- Construction of a five foot wide sidewalk along the north side of West First Street.
- Construction of a twelve foot wide asphalt trail on the north side of Bargeway Road to connect to the existing Riverfront Trail on both ends of the Project.
- Construction of a five foot wide sidewalk along the north side of Bargeway Road west of the Riverfront Trail.
- Construction of City standard curb and gutter with concrete drive approaches along both streets.
- Construction of ADA ramps at all intersections and ADA bypasses at all drive approaches along the sidewalk and trail.
- Construction of a storm drain collection system, including catch basins and manholes, sized for build-out of the industrial area.
- Relocation of a short length of 12" water main to accommodate the up-sized storm water collection system.

These improvements were constructed on West First Street from Webber Road east to the western property line of 2N 13E 33DB Tax Lot 800 and on Bargeway Road from River Road east to the western property line of 2N 13E 33DB Tax Lot 800.

**METHOD OF ASSESSMENT**

The assessment for street improvements is based upon frontage length. Multi-frontage relief is provided to lots with frontage on more than one of the streets per City ordinance.

The assessment for storm water improvements is based upon acreage of the assessed lot plus half of the fronted right of way. There is no multi-frontage relief on this area assessment. In order to provide for a more equitable distribution of cost in the overall project that includes Phases 1 and 2, the total cost for the storm water system improvements for both phases will be used to calculate the assessment.

In an effort to reduce the amount of assessment to the property owners, the City contributed to the project from various funds. The following table shows the City financial contributions:

<b>Project Element</b>	<b>Funding Source</b>	<b>Amount</b>
First Street Center Turn Lane	Fund 13, Street Reserve	\$67,267.30
Water System Improvements	Fund 53, Water Reserve	\$4,443.67
Multi-Frontage Relief	Fund 36, Special Assessments	\$48,823.14
Properties That Pre-Paid into LID Fund	Fund 36, Special Assessments	\$55,010.59
Storm Drain System Credits	Fund 56, Sewer Special Reserve	\$64,750.36
Concrete Cap for Existing Storm Drain	Fund 56, Sewer Special Reserve	\$7,581.60
Replacement of 72" Dia. Storm Drain Manhole	Fund 56, Sewer Special Reserve	\$8,677.00
Riverfront Trail Improvements	Fund 13, Street Reserve	\$60,020.51
<b>Total</b>		<b>\$316,574.17</b>

## ENGINEER'S ESTIMATE

The original Engineer's Estimate [October 29, 2012 Engineer's Report] arrived at a project cost of \$1,058,811.50. The total frontage to be assessed to property owners for Phase 2 street improvements is 4,495.8 feet. The assessable area of the project for storm water improvements is 28.51 acres.

The cost for street improvements for Phase 2 is \$742,364.19. The cost is itemized in **Exhibit B**. The City is covering the cost of the center-turn lane, which gives a total street improvements assessment for Phase 2 of **\$675,096.89**. The proposed assessment for Phase 2 street improvements is **\$150.16** per front foot based on an assessable frontage of 4,495.8 feet.

The cost for storm water improvements in Phase 2 is **\$167,933.35**. This cost is itemized in **Exhibit B**. In order to provide for a more equitable distribution of cost in the overall project that includes Phases 1 and 2, both phases were assessed for the storm water improvements that were installed in Phase 1 since both Phases benefited from these improvements. The portion calculated to be assessed to Phase 2 was \$286,331.34 per the Final Engineer's Report for Phase 1 dated June 2, 2010. The City is paying \$16,258.60 of the Storm Drain Improvements which include the reconstruction of an existing manhole on the storm drain trunk line and a concrete cap over previously installed storm drain main. This would give a total storm water assessment for Phase 2 of **\$438,006.09**. The proposed assessment for Phase 2 would be **\$15,363.24** per assessed acre based on an assessable total acreage of 28.51 acres.

The total paid to NW Kodiak Construction by the City for the project is **\$974,761.72**. This cost is itemized in the attached **Exhibit B**. The property owners' contribution for the project is **\$944,518.89**. This is equal to the total project cost minus the City contributions listed above plus the costs assessed from the construction of storm water improvements in Phase 1. The proposed assessments to property owners for both stormwater and street system improvements are less than what was estimated in the accepted Preliminary Engineer's Report.

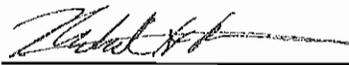
The breakdown and totals for the assessments are listed in attached **Table 2**. Payment of the assessment is flexible and property owners can take up to ten years to make full payment by entering into a loan agreement with the City.

## ASSESSMENT DISTRICT AND BOUNDARIES

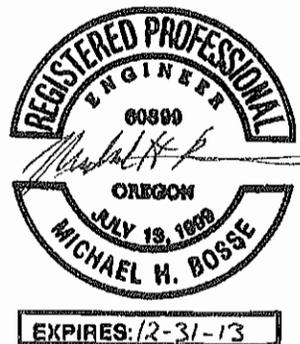
See attached **Table 1** for a listing of the properties in the Assessment District and the attached **Exhibit A** for a map that highlights the Assessment District.

The boundaries of the Assessment District include all of the properties that front on West First Street from Webber Road to the western property line of 2N 13E 33DB Tax Lot 800, and on Bargeway Road from River Road to the western property line of 2N 13E 33DB Tax Lot 800. Tax Lot 700 of 2N 13E 33A, Tax Lot 600 of 2N 13E 33A, and Tax Lot 601 of 2N 13E 33A will only be assessed for storm water improvements on half of their frontage right of way because they are served by a private storm drain system and will never discharge into the new system. Tax Lots 200 and 300 2N 13E 33DB both were assessed for storm drain improvements when they constructed a portion and connected to the City storm drain system at the time of their development. They will not be additionally assessed for the storm drain system upgrade as a part of this report. Tax Lot 400 of 2N 13E 33DB pre-paid for this local improvement district in 2008 and therefore will not be assessed again as part of this report. Tax Lot 100 of 2N 13E 33DB has frontage on both Bargeway Road and West First Street and is eligible for multi-frontage relief.

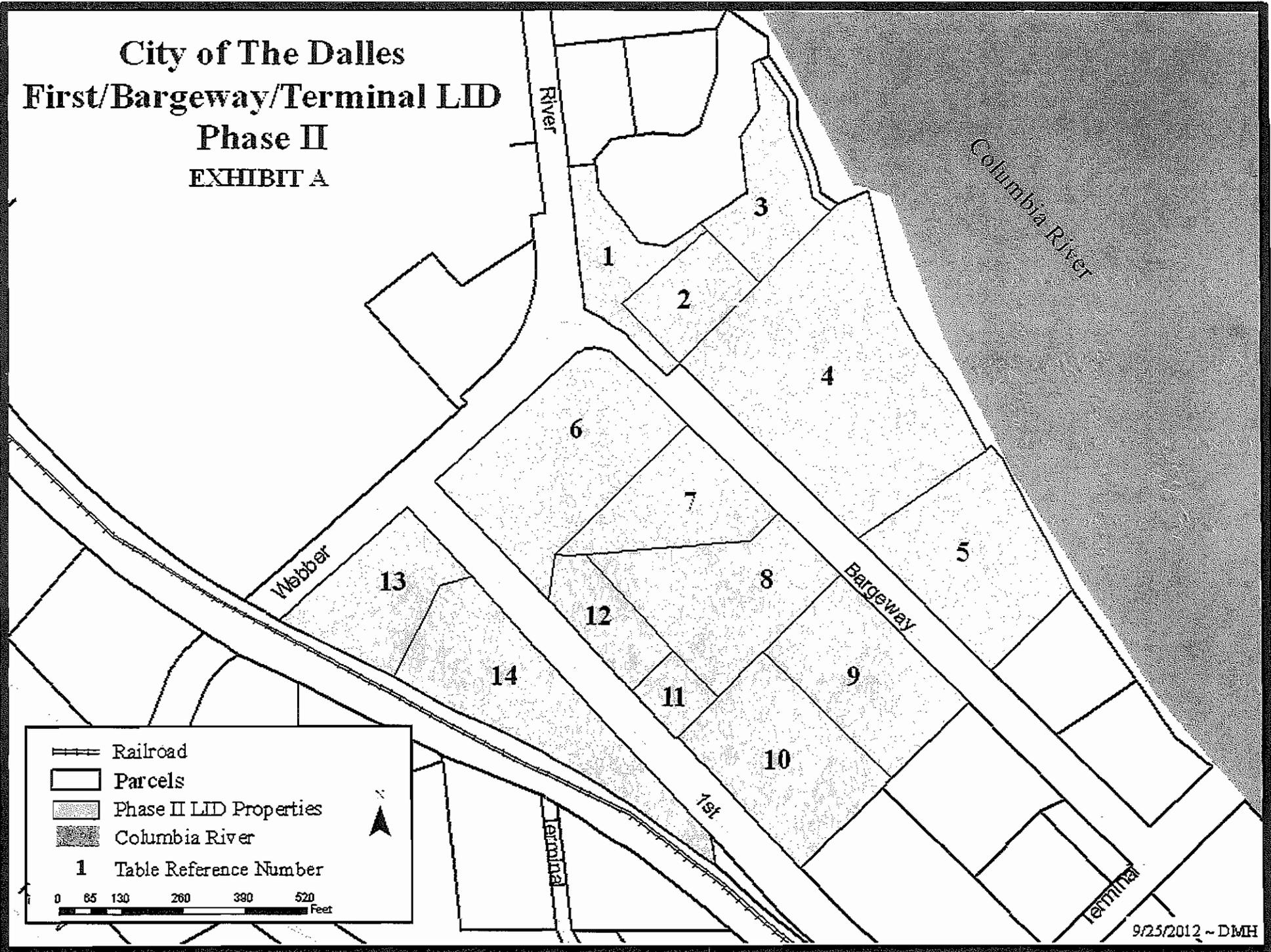
Respectively Submitted,



Michael H. Bosse, Project Engineer  
Department of Public Works  
1215 West First Street  
The Dalles, OR 97058



**City of The Dalles**  
**First/Bargeway/Terminal LID**  
**Phase II**  
**EXHIBIT A**



Legend:

- Railroad
- Parcels
- Phase II LID Properties
- Columbia River
- 1** Table Reference Number

Scale: 0 65 130 260 390 520 Feet



**TABLE 1**  
**PROPERTY OWNERSHIP - BARGEWAY/IST/TERMINAL LID PHASE II**

Map #	Map & Text Lot	County	Site Address	Owner	Mailing Address	Improved/Non-Improved	Acres	Frontage	Depth	Land Market Value	Improvements Market Value	Real Market Value	Assessed Value	PAID 2012 Taxes	Unpaid 2012 Taxes/Interest	PAID 2011 Taxes	Unpaid 2011 Taxes/Interest	Total Outstanding
1	2N113E33A601	17445	2321 River Rd	MK Properties LLC c/o KI Program LLC	1527 12th Street Wood River, OR 97031	Improved	220.7	1.02	85,600.00	\$ 501,900.00	\$ 511,344	\$ 1,081.07	\$ 1,039.37	\$ -	\$ -	\$ -	\$ -	\$ -
2	2N113E33A600	15407	1539 Bargeway Rd	Dev'Laminick, Edward & Jessica	The Dalles, OR 97028	Improved	50.0	0.91	101,420.00	182,780.00	284,200.00	\$ 515,900.00	\$ 558.42	\$ 3,727.63	\$ -	\$ -	\$ -	\$ -
3	2N113E33A700	15406	1535 Bargeway Rd	Bingham, Vera	PO Box 604 The Dalles, OR 97028	Improved	50.0	1.20	133,290.00	750,460.00	883,750.00	\$ 1,451,617.00	\$ -	\$ 14,319.71	\$ -	\$ 15,186.03	\$ 29,506.54	
4	2N113E33A900.1	15003	1475 Bargeway Rd	Port of The Dalles c/o M&E Columbia Products, Inc.	P.O. Box 344, New OR 97039	Improved	534.6	5.33	522,970.00	3,239,790.00	4,062,760.00	**	\$ -	\$ -	\$ -	\$ -	\$ -	
5	2N113E33D103	6809	1449 Bargeway Rd	M&E Columbia Products, Inc.	P.O. Box 344, New OR 97039	Improved	393.0	2.50	256,120.00	301,590.00	558,020.00	\$ 971,676	\$ 13,701.08	\$ -	\$ -	\$ -	\$ -	
6	2N113E33D8100	14809	1515 W 1st Street	BT Property LLC-Prop Tax Dept	PO BOX 28686 Atlanta GA 30389-0686	Improved	650.3	2.08	226,510.00	818,280.00	1,044,790.00	\$ 801,949.00	\$ 16,092.89	\$ -	\$ -	\$ -	\$ -	
7	2N113E33D8200	14810	1424 Bargeway Rd	Broad, James & Swamberg-Smith, Karen	318 W 12th Street, The Dalles, OR 97028	Improved	270.8	1.41	116,230.00	492,100.00	608,330.00	\$ 654,472	\$ 9,345.72	\$ -	\$ -	\$ -	\$ -	
8	2N113E33D8300	15018	1400 Bargeway Rd	Heritage Operating LP c/o Tom Ambrose	PO Box 6789 Helena, MT 59604	Improved	184.5	2.26	146,320.00	192,430.00	338,750.00	\$ 6,117.50	\$ 6,471.27	\$ -	\$ -	\$ -	\$ -	
9	2N113E33D8700	13605	1258 Bargeway Rd	ROS Remo LLC	806 SW Wernwood Dr, Portland, OR 97239	Improved	379.8	2.00	152,650.00	156,470.00	309,120.00	\$ 247,092.00	\$ 4,970.54	\$ -	\$ -	\$ -	\$ -	
10	2N113E33D8600	13609	1317 W 1st Street	Brown, Arthur V 19001 Woodloch Forest Dr, Suite #400, The Woodlands, TX 77380	Adm: Jeff Camp- Tax Dept, 19001 Woodloch Forest Dr, Suite #400, The Woodlands, TX 77380	Improved	367.8	2.27	163,890.00	414,820.00	578,710.00	\$ 10,451.63	\$ 13,364.32	\$ -	\$ -	\$ -	\$ -	
11	2N113E33D8500	13017	Wesair	Besse, Barb	801 W 2nd Street, The Dalles, OR 97028	Non-Improved	154.6	0.24	33,600.00	-	33,600.00	\$ 29,729.00	\$ 993.89	\$ -	\$ -	\$ -	\$ -	
12	2N113E33D8400	6814	1505 W 1st Street	IRAN Building c/o H&H, Heidi W	1505 West 1st Street The Dalles, OR 97028	Improved	240.1	0.82	71,040.00	201,850.00	272,890.00	\$ 306,201.00	\$ 6,144.59	\$ -	\$ -	\$ -	\$ -	
13	2N113E33D81200	6830	210 Webber	CNS 210 Webber LLC c/o DS 210 Webber LLC	6605 University Avenue Madison, WI 53762	Improved	200.2	1.50	114,930.00	332,850.00	447,780.00	\$ 340,057.00	\$ 7,151.49	\$ 6,844.40	\$ -	\$ -	\$ -	
14	2N113E33D81100	6831	1520 Bargeway Rd	Popai Cold Bottling The Dalles c/o Elaine Walsh	PO Box 1547 The Dalles, OR 97028	Improved	397.4	2.23	199,790.00	839,220.00	1,039,010.00	\$ 827,936.00	\$ 17,109.81	\$ -	\$ -	\$ -	\$ -	

Totals: 4,092.80 27.63 \$ 2,304,650.00 \$ 8,863,790.00 \$ 11,168,440.00 \$ 5,382,930.00 \$ 90,632.76 \$ 18,047.34 \$ 89,534.44 \$ 15,186.03 \$ 31,253.97

\* Property owned by Riverside Communities, only partially taxed. Maximum Taxable Value \$47,863.00, exempt amount is \$176,519.00 & property is listed "In Bargeway" or County

\*\* Property owned by Coughll, CLD Pacific Grain LLC & Mid-Columbia Products, Exempt "In Land" taxes.

Improved acres:	27.25	% Cash Accruals Improved:	99%
Non-improved acres:	0.38	% Cash Accruals Non-improved:	1%
Improved property's frontage:	4,359.20	% Frontage of Improved property:	97%
Non-improved property's frontage:	136.60	% Frontage Non-improved property:	3%

**TABLE 2**  
**PROPERTY OWNERSHIP - BARGEWAY/1ST/TERMINAL LID PHASE II**

Map #	Map & Tax Lot	County	Acct #	Site Address	Owner	Mailing Address	Improved/ Non-Improved	Assessed Frontage	Assessed Acreage	Street Assessment \$150.16/Ac.	SD Assessment \$15,363.24/AC	Multi-Frontage Relief	Assessments Pre-paid to City	Total Assessment
1	2N 13E 33 A 601		17445	2221 River Rd	MK Properties, LLC c/o KJ Morgan LLC	1402 12th Street Hood River, OR 97031	Improved	220.7	0.12	\$ 33,140.90	\$ 1,791.40	\$ -		\$ 34,932.31
2	2N 13E 33 A 600		15407	1539 Bargeway Rd	DevLaemnick, Edward & Jessica	P.O. Box 966 The Dalles, OR 97058	Improved	50.0	0.03	\$ 7,508.13	\$ 405.62	\$ -		\$ 7,913.76
3	2N 13E 33 A 700		15406	1535 Bargeway Rd	Bingman, Veta	P.O. Box 654 The Dalles, OR 97058	Improved	50.0	0.03	\$ 7,508.13	\$ 405.62	\$ -		\$ 7,913.76
4	2N 13E 33D 100 2N 13E 33 A 900 L 1		16439 13805	1475 Bargeway Rd	Port of The Dalles c/o Mid Columbia Producers, Inc.	P.O. Box 344, More OR 97039	Improved	534.6	5.87	\$ 80,276.97	\$ 90,213.26	\$ -		\$ 170,490.23
5	2N 13E 33 D 103		6809	1449 Bargeway Rd	Mid Columbia Producers, Inc.	P.O. Box 344, More OR 97039	Improved	393.0	2.88	\$ 59,013.95	\$ 44,302.17	\$ -		\$ 103,316.11
6	2N 13E 33 DB 100		14809	1515 W 1st Street	BT Property LLC-Prop Tax Dept	PO BOX 28606 Atlanta GA 30358-0606	Improved	650.3	3.52	\$ 97,646.29	\$ 54,097.65	\$ 48,823.14		\$ 102,920.80
7	2N 13E 33 DB 200		14810	1424 Bargeway Rd	Broehl, James & Svenberg-Broehl, Karen	318 W. 12th Street The Dalles, OR 97058	Improved	270.8	1.78	\$ 40,664.05	\$ 27,287.27	\$ -	\$ 27,287.27	\$ 40,664.05
8	2N 13E 33 DB 300		15018	1400 Bargeway Rd	Heritage Operating LP c/o Tom Ambruster	P.O. Box 6789 Helena, MT 59604	Improved	184.5	2.44	\$ 27,705.02	\$ 37,463.09	\$ -	\$ 37,463.09	\$ 27,705.02
9	2N 13E 33 DB 700		13605	1298 Bargeway Rd	RJS Rents LLC	806 SW Westwood Dr. Portland, OR 97239	Improved	379.8	2.37	\$ 57,031.79	\$ 36,417.51	\$ -		\$ 93,449.29
10	2N 13E 33 DB 600		13609	1317 W 1st Street	Braun, Arthur V c/o Wane Connections #2044	Attn: Judy Cano - Tax Dept, 10001 Woodloch Forest Dr. Suite #400, The Woodlands, TX 77380	Improved	367.8	2.61	\$ 55,229.84	\$ 40,066.28	\$ -		\$ 95,296.12
11	2N 13E 33 DB 500		15017	Vacant	Erace, Hank	801 W 2nd Street The Dalles, OR 97058	Non-Improved	136.6	0.51	\$ 20,512.23	\$ 7,784.14	\$ -		\$ 28,296.37
12	2N 13E 33 DB 400		6814	1505 W 1st Street	H&N Building c/o Hillis, Hewitt W	1505 West 1st Street The Dalles, OR 97058	Improved	260.1	1.04	\$ 39,057.31	\$ 15,953.28	\$ -	\$ 35,010.59	\$ -
13	2N 13E 33DB 1200		6850	210 Webber	CMS 210 Webber LLC c/o DS 210 Webber LLC	6605 University Avenue Middleton, WI 53562	Improved	200.2	1.69	\$ 30,062.57	\$ 26,012.33	\$ -		\$ 56,074.90
14	2N 13E 33DB 1100		6831	1520 Bargeway Rd	Pepsi Cola Bottling The Dalles c/o Elaine Walsh	PO Box 1547 The Dalles, OR 97058	Improved	797.4	3.63	\$ 119,739.72	\$ 55,806.45	\$ -		\$ 175,546.17

**Totals:** 4495.8 28.51 \$ 675,096.89 \$ 438,006.09 \$ 48,823.14 \$ 119,760.95 \$ 944,518.89

Improved acres:	27.25	% Cal'd Acreage Improved:	99%
Non-improved acres:	0.38	% Cal'd Acreage Non-improved:	1%
Improved property's frontage:	4,539.17	% Frontage of Improved property:	97%
Non-improved property's frontage:	136.60	% Frontage Non-improved property:	3%



## AGENDA STAFF REPORT

MEETING DATE	AGENDA LOCATION	AGENDA REPORT #
July 22, 2013	Action Items 13, B	13-060

**TO:** Honorable Mayor and City Council

**FROM:** Richard Gassman, Planning Director

**THRU:** Nolan Young, City Manager *ny*

**DATE:** July 22, 2013

**ISSUE:** Vertical Housing Development Zone for the Central Business Commercial District.

**RELATED CITY COUNCIL GOAL:** N/A

**PREVIOUS AGENDA REPORT NUMBERS:** 12-074, October 22, 2012.

**BACKGROUND:** A Vertical Housing Development Zone (VHDZ) is a program offered by the State of Oregon intended to encourage investment in and rehabilitation of properties in targeted areas of a city through the use of partial property tax exemption. Last October this matter was first heard by the Council when the Council determined that the geographical area for the VHDZ should be the entire downtown Central Business Commercial District.

**PROCESS:** The next step in the establishment of a VHDZ is to authorize staff to prepare and submit an application to the Oregon Housing and Community Services. A Resolution authorizing staff to do that is attached.

**DISCUSSION:** The VHDZ gives qualified developers a partial tax exemption for new or rehabilitated housing units within the geographical area of the zone. The VHDZ allows for a mix of commercial and residential uses, but the tax exemption is only for the residential component of development.

Approval of the Resolution by the Council starts a process, which in addition to the actual application, also requires notification of all taxing districts within the VHDZ and an opportunity for those taxing districts to opt out of the program. The application is approved or denied by the Oregon Housing and Community Services after reviewing the application and other criteria contained in state law and related Oregon Administrative Rules.

**RECOMMENDATION:** *Move to approve Resolution 13-027 directing staff to submit an application for a Vertical Housing Development Zone.*

**ALTERNATIVE MOTIONS:** If the Council decides not to seek approval of a VHDZ, an appropriate motion would be: Move to deny Resolution 13-027, and state the reasons for the denial.

**RESOLUTION NO. 13-027**

**A RESOLUTION ADOPTING A CENTRAL BUSINESS  
COMMERCIAL VERTICAL HOUSING DEVELOPMENT ZONE**

**WHEREAS**, the City of The Dalles Planning Department has recommended that The Dalles City Council consider applying for establishment of a Vertical Housing Development Zone (VHDZ) in the Central Business Commercial district in accordance with ORS 307.841 to 307.867; and

**WHEREAS**, the Housing and Community Services Department of the State of Oregon has authority to establish VHDZs within a core area of an urban center of the state; and

**WHEREAS**, the establishment of a VHDZ encourages vertical housing projects that combine commercial uses and residential units in the same building, and projects approved within a VHDZ may qualify for partial exemptions from certain property taxes for a period not to exceed ten consecutive years; and

**WHEREAS**, the proposed VHDZ includes all of the downtown area zoned Central Business Commercial as shown on the attached map, and this area meets the criteria in Oregon Administrative Rule 813-013-005 and ORS 307.841 to 307.867 for creation of a VHDZ; and

**WHEREAS**, establishment of a VHDZ will provide a tool designed to encourage construction of mixed-use projects in the downtown area, and such projects would provide housing opportunities that may stimulate economic, social, and cultural growth, and bring new energy and vitality to the downtown area; and

**WHEREAS**, the City Council has determined that a VHDZ should be established within the area identified on the attached map, and wishes to seek designation of the VHDZ as allowed by state law,

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

Section 1. The City Council of the City of The Dalles hereby authorizes the City of The Dalles Planning Department to submit an application to the State of Oregon Housing and Community Services Department to establish a Vertical Housing Development Zone in the area depicted in the attached map, and to carry out all responsibilities required of an applicant under ORS 307.841 to 307.867.

Section 2. The Director of the Planning Department shall provide a copy of this Resolution to the State of Oregon Housing and Community Services Department together with the VHDZ application and such other documents and information as the department may require.

Section 3. This resolution is effective immediately upon adoption.

**PASSED AND ADOPTED THIS 22nd DAY OF JULY, 2013**

Voting Yes, Councilors: \_\_\_\_\_

Voting No, Councilors: \_\_\_\_\_

Absent, Councilors: \_\_\_\_\_

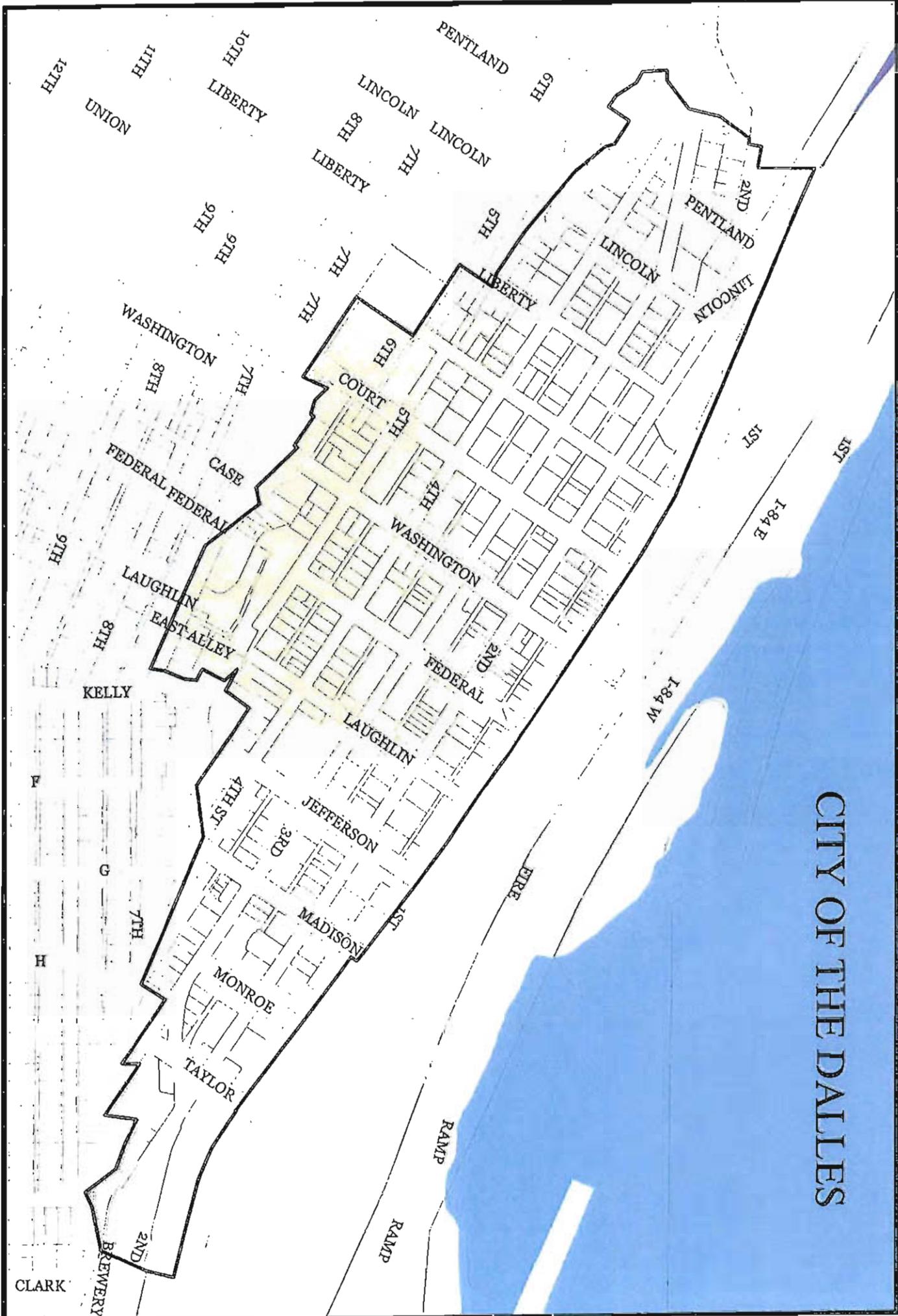
Abstaining, Councilors: \_\_\_\_\_

**AND APPROVED BY THE MAYOR THIS 22nd DAY OF JULY, 2013**

SIGNED: \_\_\_\_\_  
Stephen E. Lawrence, Mayor

ATTEST: \_\_\_\_\_  
Julie Krueger, MMC, City Clerk

# CITY OF THE DALLES



## PROPOSED VHDZ OPTION 1





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

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## **AGENDA STAFF REPORT**

### **CITY OF THE DALLES**

<b>MEETING DATE</b>	<b>AGENDA LOCATION</b>	<b>AGENDA REPORT #</b>
July 22, 2013	Action Item 13, C	13-055

**TO:** Honorable Mayor and City Council

**FROM:** Dave Anderson, Public Works Director

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

**DATE:** July 8, 2013

**ISSUE:** Adoption of revised Cross Connection Control Ordinance for the City Water System.

**CITY COUNCIL GOALS:** NA

**BACKGROUND:** The City is required by state drinking water regulations to “conduct an active program for systematically identifying and controlling cross connections.” This program is authorized through the City Cross Connection Control Ordinance. The purpose of this ordinance is to safeguard public health by protecting the City water supply from contamination or pollution due to cross connections. A cross connection is any connection or structural arrangement between the public drinking water system and any other source through which it is possible to introduce any used water, industrial fluid, gas, or substances into the drinking water supply. The process of contamination is also called “backflow” and the program is sometimes referred to as a Backflow Prevention Program.

The Program identifies the conditions under which certain types of devices must be installed to protect the water system from possible contamination. Permits are issued for installation of these devices through the City at no cost. Most of the devices have to be inspected and tested upon initial installation and annually thereafter. City staff tracks the testing of existing devices and sends reminder notices to property owners when testing is due. Certified testers must be used to do the testing and copies of the reports are sent to the City. State regulations mandate that the ordinance authorizes termination of water service for failure to test backflow prevention devices as required; termination of service will only occur after several reminders to the property owner.

The existing Cross Connection Control Ordinance, General Ordinance No. 01-1240, was adopted in January 2001. State regulations governing cross connection control measures have changed since that time and City staff determined that a new ordinance should be prepared to ensure that the City's cross connection control measures are up to date and in compliance with the applicable regulations. General Ordinance No. 13-1329 has been drafted to comply with the existing regulations.

Some of the notable changes in the proposed ordinance are:

- A device called an Atmospheric Vacuum Breaker will now be allowed to provide protection from residential irrigation systems, consistent with the Oregon Plumbing Specialty Code. This device is a lower cost option for home owners than other devices currently authorized under our existing ordinance. While allowed, use of AVBs will not be encouraged since they are not effective if any downstream valves are installed and are not testable.
- The City's Cross Connection Control Program will now focus primarily on providing protection at the property line rather than on-site at the point of potential contamination (point-of-use). This provision arises around the issue of jurisdiction. Under current state regulations, the City's authority normally ends at the water meter and State Plumbing Code has authority over plumbing activities on private property. While it is often less expensive for a property owner to install protection nearer the potential source of contamination than at the meter, there have been jurisdictional challenges under the existing ordinance attempting to enforce City requirements on private property. Under the proposed ordinance, there is still the flexibility to provide protection near the point-of-use if requested by the owner and agreed to by the State Plumbing Inspector.
- Some type of backflow prevention device will now be required on all new development with a water meter size of 2-inch or larger. The reason for this requirement is that these larger water services normally supply larger types of buildings or facilities, and with that comes more uncertainty around future activities, re-modeling, expansions, or modifications that could occur on site without any notice to the City or State Plumbing Inspector. This requirement has become quite common in water systems throughout the state as a prudent measure to protect public health.
- The proposed ordinance clarifies the educational and certification requirements of backflow prevention device testers consistent with state regulations.
- The current ordinance requires that backflow protection test results be submitted to the City within 3 days of testing. Compliance with this requirement has proven difficult for some testers. The proposed ordinance allows 10 days for submission of test results, consistent with state regulations.

Staff has met with the local State Plumbing Inspector and reviewed the proposed ordinance. He has indicated his support for the updated program. Attached is the proposed General Ordinance No.13-1329 for Council's consideration.

**BUDGET IMPLICATIONS:** There are no budgetary impacts of this ordinance.

**RECOMMENDATIONS:**

1. **Staff Recommendation:** Move to adopt General Ordinance No. 13-1329 providing for the establishment and administration of rules governing cross connection control measures for the City and repealing General Ordinance No. 01-1240.

2. Direct staff to provide additional direction and table the issue for further research.

**GENERAL ORDINANCE NO. 13-1329**

**AN ORDINANCE PROVIDING FOR THE ESTABLISHMENT  
AND ADMINISTRATION OF RULES GOVERNING  
CROSS CONNECTION CONTROL MEASURES FOR  
THE CITY OF THE DALLES AND REPEALING  
GENERAL ORDINANCE NO. 01-1240**

**WHEREAS**, on January 22, 2001, the City Council adopted General Ordinance No. 01-1240, providing for the establishment and administration of rules governing cross connection control measures for the City of The Dalles, and repealing General Ordinance No. 91-1146; and

**WHEREAS**, as a result of changes in the applicable regulations governing cross connection control measures, City staff determined that a new ordinance should be prepared to ensure that the City's cross connection control measures are up to date and in compliance with the applicable regulations; and

**WHEREAS**, General Ordinance No. 13-1329 includes several new provisions concerning cross connection control measures, including definitions, the type of cross connections regulated and the types of backflow prevention assembly requirements, installation requirements, testing and repairing of approved backflow assemblies, responsibilities of certified backflow assembly testers, and maintenance of backflow assemblies; and

**WHEREAS**, the City Council has reviewed the provisions of proposed General Ordinance No. 13-1329, and has determined that adoption of the proposed ordinance is in the best interest of the health, safety, and welfare of the citizens of The Dalles;

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

**Section 1. Purpose.** The purpose of this Ordinance is to safeguard public health by protecting the water supply of the City of The Dalles from contamination or pollution due to any existing or potential cross connections. Oregon Administrative Rules Chapter 333, Division 061, require water suppliers to "conduct an active program for systematically identifying and controlling cross connections." Through this Ordinance the City adopts OAR 333-061, as now constituted, by reference.

**Section 2. Definitions.** For the purposes of this Ordinance, the following definitions shall apply unless the context clearly indicates or requires a different meaning. If a word or term used in this Ordinance is not contained in the following list, its definition, or other technical terms used, shall have the meanings or definitions listed in OAR 333-061, as now constituted, or the most recent edition of the Manual of Cross Connection Control published by the Foundation for Cross Connection Control and Hydraulic Research, University of Southern California ("USC").

- A. Approved Air Gap (AG). A physical separation between the free-flowing discharge end of a potable supply pipeline and an open or non-pressurized receiving vessel. This separation must be at least twice the inside diameter of the supply pipe, measured vertically above the overflow rim of the vessel, and in no case less than one inch, and in accord with Oregon Plumbing Specialty Code, as now constituted.
- B. Approved Backflow Prevention Assembly or Backflow Assembly or Assembly. A Reduced Pressure Principle Backflow Prevention Assembly, Reduced Pressure Principle-Detector Backflow Prevention Assembly, Double Check Valve Backflow Prevention Assembly, Double Check-Detector Backflow Prevention Assembly, Pressure Vacuum Breaker Backsiphonage Prevention Assembly, or Spill-Resistant Pressure Vacuum Breaker Backsiphonage Prevention Assembly, of a make, model, orientation, and size approved by the Oregon Health Authority - Drinking Water Program (OHA). Assemblies listed in the currently approved backflow prevention assemblies list developed by the University of Southern California, Foundation for Cross-Connection Control and Hydraulic Research, or other testing laboratories using equivalent testing methods, are considered approved by OHA.
- C. Auxiliary Water Supply. Any supply of water used to augment the supply obtained from the City Water System, which serves the premise in question.
- D. Backflow. The flow of water or other liquids, mixtures, or substances into the distributing pipes of the City Water System from any sources other than its intended sources. Backflow is caused by backsiphonage or backpressure.
- E. Certified Backflow Assembly Tester. A person who has successfully completed and maintains all requirements to be a Tester in the state of Oregon, as established by the Oregon Health Authority (per OAR 333-061-0072), or, for Oregon-licensed Journeyman or Apprentice plumbers, as established by the Director of Consumer and Business Services.
- F. Certified Cross Connection Control Specialist. A person who has successfully completed and maintains all requirements as established by the Oregon Health Authority to be a Specialist in the state of Oregon.
- G. City. The City of The Dalles.
- H. City Water System. The City of The Dalles Water System, which shall include wells, treatment mechanisms or processes, pumping stations, reservoirs, supply trunk or feeder lines, service lines, meters and all other appurtenances, device lines and items necessary to provide the public with piped water for human consumption.
- I. Contaminant. Any physical, chemical, biological, or radiological substance or matter in water that creates a health hazard.
- J. Cross Connection. Any actual or potential unprotected connection or structural arrangement between the public potable water system and any other source or system

through which it is possible to introduce into any part of the potable system any used water, industrial fluid, gas, or substances other than the intended potable water with which the system is supplied. Bypass arrangements, jumper connections, removable sections, swivel or changeover devices, or other temporary or permanent devices through which, or because of which, backflow can occur are considered to be cross connections.

- K. Degree of Hazard. Either pollution (non-health hazard) or contamination (health hazard) as determined by an evaluation of hazardous conditions within a system.
- L. Director. The Director of the Public Works Department or his/her designee.
- M. Double Check Valve Backflow Prevention Assembly (DCVA or DC). An assembly of two independently acting approved check valves, including tightly closing resilient seated shutoff valves attached at each end of the assembly and fitted with properly located resilient seated test cocks. This assembly is designed to protect against a non-health hazard, under both backpressure and backsiphonage conditions.
- N. Double Check Detector Assembly (DCDA). A specially designed assembly composed of a line size approved double check valve assembly assembled with a bypass containing a specific water meter and an approved double check valve assembly. The meter shall register accurately for only very low rates of flow up to three gallons per minute and shall show a registration for all rates of flow. This assembly is designed to protect against a non-health hazard, under both backpressure and backsiphonage conditions.
- O. Health Hazard (Contamination). An impairment of the quality of the water that could create an actual hazard to the public health through poisoning or through the spread of disease by sewage, industrial fluids, waste, or other substances.
- P. Mobile Units. Units that are temporary in nature, connecting to the water system through a legally-permitted hydrant, hose bib, or other appurtenance of a permanent nature that is part of the City Water System or a permanent water service to a premise. Examples can include but are not limited to the following: water trucks, pesticide applicator vehicles, chemical mixing units or tanks, waste hauler's trucks or units, sewer cleaning equipment, carpet or steam cleaning equipment other than homeowner use, rock quarry or asphalt/concrete batch plants or any other mobile equipment or vessel that poses a threat of backflow in the City Water System.
- Q. Non-Health Hazard (Pollution). An impairment of the quality of the water to a degree that does not create a hazard to the public health, but does adversely affect the aesthetic qualities of such water for potable use.
- R. OAR. The Oregon Administrative Rules.
- S. OHA. The Oregon Health Authority – Drinking Water Program.

- T. Person. Any individual, corporation, association, firm, partnership, municipal, state or federal agency, or joint stock company, including any receiver, special master, trustee, assignee, or other similar representative thereof.
- U. Point of Use Isolation. The appropriate backflow prevention within the consumer's water system at or near the point at which the actual or potential cross connection exists.
- V. Pollutant. A substance that creates an impairment of the quality of the water to a degree which does not create a hazard to the public health, but which does adversely affect the aesthetic qualities of the water.
- W. Potable Water. Safe drinking water which has sufficiently low concentrations of microbiological, inorganic chemical, organic chemical, radiological or physical substances so that individuals drinking such water at normal levels of consumption, will not be exposed to disease organisms or other substances which may produce harmful physiological effects.
- X. Potential Cross Connection. A cross connection that would most likely occur, but may not be taking place at the time of inspection.
- Y. Premise. Real estate and the structures located on it.
- Z. Premise Isolation. The practice of protecting the public water supply from contamination or pollution by installing backflow prevention assemblies at, or near, the point of delivery where the water supply enters the premise. Premise isolation does not guarantee protection to persons on the premise.
- AA. Pressure Vacuum Breaker Backsiphonage Prevention Assembly (PVB). An assembly consisting of an independently operating, internally loaded check valve and an independently operating loaded air inlet valve located on the discharge side of the check valve. This assembly is to be equipped with properly located resilient seated test cocks and tightly closing resilient seated shutoff valves attached at each end of the assembly. This assembly is designed to protect against a non-health hazard or a health hazard under backsiphonage conditions only.
- BB. Reduced Pressure Principle Backflow Prevention Assembly (RPBA or RP). An assembly containing two independently-acting approved check valves together with a hydraulically-operated, mechanically-independent pressure differential relief valve located between the check valves, and at the same time, below the first check valve. The assembly shall include properly located test cocks and two tightly closing shut-off valves. This assembly is designed to protect against a non-health hazard or a health hazard, under both backpressure and backsiphonage conditions.
- CC. Reduced Pressure Detector Assembly (RPDA). A specifically designed assembly composed of a line size approved Reduced Pressure Principle Backflow Prevention

Assembly with a bypass containing a specific water meter and an approved Reduced Pressure Principle Backflow Prevention Assembly. The meter shall register accurately for only very low rates of flow up to three gallons per minute and shall show a registration for all rates of flow. This assembly is designed to protect against a non-health hazard or a health hazard, under both backpressure and backsiphonage conditions.

DD. Retrofit. To furnish a service connection with parts or equipment made available after the time of construction or assembly installation.

EE. Spill Resistant Pressure Vacuum Breaker Backsiphonage Prevention Assembly (SVB). An assembly containing an independently operating, internally loaded check valve and independently operating loaded air inlet valve located on the discharge side of the check valve. The assembly is to be equipped with a properly located resilient seated test cock, a properly located bleed/vent valve, and tightly closing resilient seated shutoff valves attached at each end of the assembly. This assembly is designed to protect against a non-health hazard or a health hazard under a backsiphonage condition only.

FF. Stand-alone Fire Suppression System. A piping system within a premise intended to only serve as a fire protection system separated from the potable water system.

GG. Thermal Expansion. The pressure increase due to a rise in water temperature that occurs in water piping systems when such systems become “closed” by the installation of a backflow prevention assembly or other means, and will not allow for expansion beyond that point of installation.

**Section 3. Application and Responsibilities.** This Ordinance applies throughout the City Water System and to every premise and property served by the City Water System. It applies to all premises, regardless of date of connection to the City Water System. Every owner, occupant or person in control of any concerned premise is responsible for compliance with the terms and provisions contained in this Ordinance.

**Section 4. Cross Connections Regulated.**

A. No cross connections shall be created, installed, used or maintained within the area served by the City Water System, except in accordance with this Ordinance.

B. The City Certified Cross Connection Control Specialist shall carry out or cause surveys to be carried out to determine if any actual or potential cross connection exists. If deemed necessary, an assembly commensurate with the degree of hazard shall be installed at the service connection.

C. The owner, occupant or person in control of any given premise is responsible for all cross connection control within the premise.

D. All premises found in Table 48 referenced in OAR 333-061-0070, as now constituted, shall have installed a Reduced Pressure Backflow Assembly (RPBA) or an

Approved Air Gap at the service connection for Premise Isolation in accordance with OAR 333-061-0070 and this Ordinance. In lieu of Premise Isolation, the RPBA or Air Gap may be installed as Point of Use Isolation, as approved by the City Cross Connection Control Specialist.

- E. It is the responsibility of the property owner/occupant to purchase, install, test, repair and maintain all backflow assemblies.
- F. If there is a change in ownership of any and all property within the City's service area, it shall be the responsibility of the new owner to determine that all assemblies are in compliance with this Ordinance.
- G. The owner, occupant or person in control of any given premise is responsible to notify the City Certified Cross Connection Control Specialist if any chemical or substance is added to the water at that premise.

**Section 5. Backflow Prevention Assembly Requirements.** A Certified Cross Connection Control Specialist employed by or under contract with the City shall determine the type of backflow assemblies to be installed within the City Water System. All assemblies shall be installed at the service connection unless it is determined by the Certified Cross Connection Control Specialist and approved by the Director that it should be installed at the point of use. An approved assembly shall be required in each of the following circumstances, but the Certified Cross Connection Control Specialist's authority is in no way limited to the following circumstances:

- A. In the case of any premises where there is any material dangerous to health which is handled in such a fashion as to permit entry into the potable water system, the potable water system shall be protected by an approved air gap separation or an approved reduced pressure principle backflow prevention assembly.
- B. When the nature and extent of any activity at a premise, or the materials used in connection with any activity at premises, or materials stored at a premise, could contaminate or pollute the potable water supply.
- C. When a premise has one or more cross connections, as that term is defined in Section 2.
- D. When internal cross connections are present which are not correctable.
- E. When intricate plumbing arrangements are present making it impractical to ascertain whether cross connections exist.
- F. When the premise has a repeated history of cross connections being established or re-established.

- G. When entry to the premises is restricted so that surveys for cross connections cannot be made with sufficient frequency to assure cross connections do not exist.
- H. When materials are being used such that, if backflow should occur, a health hazard could result.
- I. When an appropriate cross connection survey report form has not been filed with the City Public Works Department.
- J. If a point-of-use assembly has not been tested or repaired as required by this Ordinance, the installation of a Reduced Pressure Principle Assembly will be required at the service connection.
- K. There is piping or equipment for conveying liquids other than potable City water and that piping or other equipment is under pressure and installed and operated in a manner that could cause a cross connection.
- L. The use of any type of chemical spray attachment connected to the premises plumbing, including garden hose fertilizer and pesticide applicators, is not allowed within the City Water System without proper protection from the potential of backflow occurring.
- M. The use of any type of radiator flush kits attached to the premises plumbing is not allowed within the City Water System without proper protection from backflow occurring.
- N. Wherever reclaimed water, harvested rain water, storm water recovery systems, ground water recovery systems, treated wastewater re-use systems, used-water return systems or ditch water is used on the premises.
- O. When there is a premise with an auxiliary water supply which is interconnected or has the potential to be interconnected to the City Water System.
- P. Where there is a fire protection service or an irrigation service.

**Section 6. New Construction.**

- A. When a building is constructed on commercial premises, and the end use of the building is not determined or could change, a Reduced Pressure Principle Backflow Prevention Assembly (RPBA) shall be installed at the service connection to provide protection of the public water supply in the event of the most hazardous use of the building.

- B. A minimum of a Double Check Valve Assembly ( DCVA) is required to be installed at the service connection if:
- (1) The water meter is 2 inch or larger;
  - (2) The City Certified Cross Connection Control Specialist determines that the backflow potential warrants installation of such a device.

**Section 7. Retrofitting.** Retrofitting shall be required at all service connections where an actual or potential cross connection exists, and wherever else the Director or Certified Cross Connection Control Specialist deems retrofitting necessary to comply with OAR Chapter 333 Division 61, as now constituted, and this Ordinance. Prior to the installation of a retrofit Backflow Assembly, the assembly installer must obtain a State of Oregon Building Code plumbing permit and a City “Permit For Backflow Assembly Installation.” Failure to complete and submit to the City a “Permit For Backflow Assembly Installation” may result in penalties up to and including termination of water service.

**Section 8. Irrigation Systems.** All irrigation systems shall be protected according to the Oregon Plumbing Specialty Code, as now constituted. In the event any system is equipped with an injector system, a Reduced Pressure Principle Assembly (RPBA) will be required.

**Section 9. Thermal Expansion.** If a closed system has been created by the installation of a backflow prevention assembly, or other appurtenances, it is the responsibility of the property owner, the occupant, or person in control of the property to eliminate the possibility of damage from thermal expansion in accordance with the Oregon Plumbing Specialty Code, as now constituted.

**Section 10. Mobile Units.** Any mobile unit or apparatus, as defined in Section 2 of this Ordinance, which uses the water from any premises within the City Water System, shall first obtain a permit from the City and be inspected to assure that approved backflow protection is provided.

**Section 11. Installation Requirements.**

- A. All backflow prevention assembly installations shall follow the requirements as stipulated by the City and OAR Chapter 333, Division 061, as now constituted and the Oregon Plumbing Specialty Code, as now constituted.
- B. If the premise isolation assembly is allowed to be installed at an alternate location, per OAR 333-061-0070 (8), as now constituted, the City must have access to the assembly. No connections can be made between the meter and the backflow assembly.
- C. If a premise listed on Table 48 (OAR 333-061-0070), as now constituted, is allowed by the City to have the required RPBA or Approved Air Gap installed at an alternate location, the City may require a DCVA to be installed at the service connection.
- D. The type of backflow prevention assembly required shall be commensurate with the degree of hazard that exists and must, at all times, meet the standards of the Oregon

Health Authority. All backflow prevention assemblies required under this section shall be of a type and model approved by the OHA.

- E. Backflow assembly installations must be performed by a State of Oregon licensed plumber, a State of Oregon licensed landscape contractor with a “Limited Backflow Device Installation” endorsement, or private property owners performing work on their own property.
- F. All backflow assembly installers must obtain a State of Oregon Building Code plumbing permit and a City “Permit for Backflow Assembly Installation” prior to performing an installation. Failure of an installer to obtain a City permit prior to installation shall be considered a violation of this Ordinance and may result in penalties up to and including termination of water service.

**Section 12. Pressure Loss.** Any decrease in water pressure caused by the installation of a backflow assembly shall not be the responsibility of the City.

**Section 13. Fire Suppression Systems.**

- A. Stand-alone fire suppression systems shall be protected commensurate with the degree of hazard as determined by the Certified Cross Connection Control Specialist.
- B. An approved Double Check Detector Assembly (DCDA) shall be the minimum protection on all new fire suppression systems using piping material that is not approved for potable water use, and/or that does not provide for periodic flow-through.
- C. A Reduced Pressure Principle Detector Assembly (RPBA) must be installed, if any solution other than potable water can be introduced into the fire suppression system.
- D. Retrofitting on fire suppression systems will be required in each of the following circumstances:
  - (1) Where improper maintenance has occurred;
  - (2) On all high hazard systems;
  - (3) Wherever the Director or Certified Cross Connection Control Specialist deem it necessary; or
  - (4) Wherever required by OAR Chapter 333, Division 061, as now constituted.
- E. All Oregon Plumbing Specialty Code-approved residential multi-purpose fire suppression systems (13-D NFP) shall have backflow protection commensurate with the degree of hazard.

**Section 14. Temporary Meters and Hydrant Valves.** Backflow protection will be required on all temporary meters and fire hydrants used for construction water before any use. The type of assembly will be commensurate with the degree of hazard and will be determined on a case-by-case basis by the Director or the Certified Cross Connection Control Specialist. The Backflow Assembly shall be tested after each relocation.

**Section 15. Plumbing Code.** As a condition of water service, customers shall install, maintain, and operate their piping and plumbing systems in accordance with the current Oregon Plumbing Specialty Code, as now constituted.

**Section 16. Access to Premises.** Authorized personnel of the City, with proper identification and sufficient notice, shall have access during reasonable hours to all parts of a premise and within the structure to which water is supplied. However, if any owner, occupant or person in control refuses authorized personnel access to a premise, or to the interior of a structure, during reasonable hours for inspection, a Reduced Pressure Principle Assembly (RPBA) must be installed at the service connection to that premise. All associated installation costs will be the responsibility of the property owner.

**Section 17. Testing and Repairing Approved Backflow Assemblies.**

- A. Testing of all approved backflow prevention assemblies, and inspection of all approved air gaps, which are installed within the City service area shall be conducted:
- (1) At the time of installation, any repair or relocation;
  - (2) At least annually;
  - (3) More frequently than annually for approved backflow prevention assemblies that repeatedly fail, or are protecting health hazard cross connections, as determined by the Certified Cross Connection Control Specialist;
  - (4) After a backflow incident; or
  - (5) After an approved air gap is re-plumbed.
- B. When any approved air gap, approved device, or approved backflow prevention assembly is found to not be functioning properly, the water user or premise owner shall promptly arrange for its repair, replacement or re-plumbing.
- C. All repairs on backflow assemblies within the City service area must be performed according to all applicable State and other regulations. Backflow assembly repairs must be performed by a State of Oregon licensed plumber, a State of Oregon licensed landscape contractor with a "Limited Backflow Device Installation" endorsement, or private property owners performing work on their own property.

**Section 18. Maintenance of Assemblies.** Backflow prevention assemblies shall be maintained, tested and repaired in accordance with the requirements set out in this Ordinance, OAR 333, Division 61, as now constituted, the Oregon Plumbing Specialty Code, as now constituted, and any other applicable State agency regulations, as now constituted. Assembly owners are responsible for protecting their assemblies from freezing, vandalism or other damage. In the event an assembly is not properly tested and repaired, the City, at its discretion, may have the assembly tested and repaired and apply all costs associated with the testing and repair to the water bill of the assembly owner or person responsible for the water bill for the premises, or terminate water service as per OAR 333, Division 61, as now constituted.

**Section 19: Responsibilities of Certified Backflow Assembly Testers.**

- A. All Certified Backflow Assembly Testers operating within the City Water System service area shall be certified in accordance with all applicable regulations of the Oregon Health Authority and the Oregon Plumbing Specialty Code, as now constituted.
- B. All Certified Backflow Assembly Testers, including State of Oregon licensed journeyman and apprentice plumbers, operating within the City Water System service area shall submit to the City the following verifiable information:
  - (1) documentation of initial tester training;
  - (2) For OHA-certified Testers: documentation of satisfactory completion of a Tester Renewal course during each two year certification time period, in accordance with the regulations of the Oregon Health Authority; and
  - (3) documentation of yearly test gauge calibration reports.
- C. Certified Backflow Assembly Testers shall abide by all applicable requirements of the Oregon Occupational Safety and Health Administration (OR- OSHA) as set forth in ORS Chapter 654, as now constituted, and OAR Chapter 437, as now constituted.
- D. It is the responsibility of Certified Backflow Assembly Testers to submit a copy of all completed test reports to the City within 10 working days of completing the test. Test report forms must be complete, legible, and in a manner and form acceptable to the City.
- E. All Certified Backflow Assembly Testers not currently on the City's customer courtesy list of testers operating locally are encouraged to notify the City Certified Cross Connection Control Specialist at least 48 hours prior to performing their first test in the City service area.

**Section 20. Costs of Compliance.** All costs associated with purchase, installation, testing, replacement, maintenance and repair of the backflow prevention assembly are the financial responsibility of the property owner, occupant, or other person in control of the premises.

**Section 21. Recovery of Costs.** Any person violating any of the provisions of this Ordinance, and who causes damage to or impairs the City Water System, including, but not limited to, allowing contamination, pollution, any other solution or used water to enter the City Water System, shall be liable to the City for any expense, loss or damage caused by such violation. The City shall collect from the violator the cost incurred by the City for any cleaning, purifying, repair or replacement work or any other expenses caused by the violation. Refusal to pay the assessed costs shall constitute a violation of this Ordinance and shall result in the termination of service.

All costs associated with any water service termination and/or disconnection and/or reconnection fees resulting from the enforcement of this Ordinance are the sole responsibility of the water utility account holder and/or owner of the premises.

**Section 22. Termination of Service.**

- A. The City shall have the authority to discontinue water service to a premise for the following reasons, as required by OAR 333, Division 061, as now constituted:
- (1) Failure to remove or eliminate an existing unprotected or potential cross connection;
  - (2) Failure to install an approved backflow prevention assembly as required;
  - (3) Failure to maintain an approved backflow prevention assembly;
  - (4) Failure to conduct the required testing of an approved backflow prevention assembly;
- or
- (5) Failure to submit a City “Permit for Backflow Assembly Installation” prior to installing a Backflow Prevention Assembly.
- B. In the case of an extreme emergency or where an immediate threat to life or public health is found to exist, termination of water service to the premises shall be immediate.
- C. The City may, at the property owner's expense, in lieu of termination of service, provide for the installation of a Reduced Pressure Assembly (RPBA) at the meter. All future testing, freeze protection, maintenance and repair of the assembly will be the responsibility of the property owner.

**Section 23. Falsifying Information.** Any person who knowingly makes any false statement, representation, record, report or other document filed or required to be maintained pursuant to this Ordinance, or who falsifies, tampers with, or knowingly renders inaccurate any backflow assembly, device or method required under this Ordinance shall be subject to civil and/or criminal penalties as provided by state law.

**Section 24. Violations.** No person shall violate any of the provisions of this Ordinance. Any person who violates this ordinance shall be subject to a fine not to exceed the sum of \$2,000. If the violation is of a continuing nature, each day which the violation continues shall be deemed a separate offense.

**Section 25. Severability.** If any provision of this ordinance is invalidated by any court of competent jurisdiction, the remaining provisions shall not be affected and shall continue in full force and effect.

**Section 26. Conflicts.** All other ordinances and parts of other ordinances inconsistent or conflicting with any part of this ordinance, are hereby repealed to the extent of the inconsistency or conflict.

**Section 27. Effective Date.** This ordinance shall be in full force and effect thirty (30) days following passage.

**Section 28. Saving Clause.** General Ordinance No. 01-1240, repealed by this ordinance, shall remain in force to authorize the prosecution and enforcement of a violation of General Ordinance No. 01-1240 prior to the effective date of this ordinance.

**Section 29. Classification of fees.** The City Council finds that the fees and charges imposed in Sections 20 and 21 are not subject to the provisions of Article XI, Section 11(b) of the Oregon Constitution, because the charges are imposed after a property owner has failed to meet routine obligations of ownership, and action is deemed necessary to enforce regulations pertaining to health and safety.

**Section 30. Repeal.** General Ordinance No. 01-1240 is hereby repealed.

**PASSED AND ADOPTED THIS 22<sup>ND</sup> DAY OF JULY, 2013**

Voting Yes, Councilors: \_\_\_\_\_  
Voting No, Councilors: \_\_\_\_\_  
Absent, Councilors: \_\_\_\_\_  
Abstaining, Councilors: \_\_\_\_\_

**AND APPROVED BY THE MAYOR THIS 22<sup>ND</sup> DAY OF JULY, 2013**

SIGNED: \_\_\_\_\_  
Stephen E. Lawrence, Mayor

ATTEST: \_\_\_\_\_  
Julie Krueger, MMC, City Clerk



## AGENDA STAFF REPORT

### CITY OF THE DALLES

MEETING DATE:	AGENDA LOCATION:	AGENDA REPORT #
July 22, 2013	Action Items 13, D	13-052

**TO:** Honorable Mayor and City Council

**FROM:** Gene E. Parker, City Attorney

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

**DATE:** July 2, 2013

**ISSUE:** Special Ordinance No. 13-556, authorizing the operation of all-terrain vehicles upon a designated street located within the boundaries of the City of The Dalles.

**RELATED CITY COUNCIL GOAL:** None.

**PREVIOUS AGENDA REPORT NUMBERS:** None.

**BACKGROUND:** The owner of Fun Country Power Sports, a business located at 1318 West 2<sup>nd</sup> Street, which sells all-terrain vehicles (commonly referred to as "ATV's"), has for several years offered a service to its customers of filling up the gas tanks of the ATV's purchased by its customers. To provide this service, employees of the business would drive the ATV across West Second Street, and proceed along West Second Street to the fuel station located at 1433 West 2<sup>nd</sup> Street. The employee would then return the ATV to 1318 West 2<sup>nd</sup> using the same travel route.

As a result of a recent traffic stop conducted by a member of the Oregon State Police, the owner of Fun Country Power Sports learned that under the Oregon Motor Vehicle Code, all classes of ATV's are prohibited from operating upon any highway unless one of certain exemptions listed in the Vehicle Code apply. One of the exemptions specified in the Vehicle Code is where a municipality adopts an ordinance which specifically designates a route upon which ATV's can be operated, and the specific conditions under which such operation can occur.

The owner of Fun Country Power Sports contacted City staff and requested their assistance in preparing an ordinance that would specifically authorize the business to operate an ATV on the specified route of travel which the business had been previously using to take the vehicles to the fuel station. The owner advised City staff that he had considered alternative methods for the transportation of the ATV's, such as purchasing a trailer or installing a fuel tank on the business premises; however, the business owner believes that establishing a designated route for the limited purpose of transporting the ATV's a short distance for fueling is the most cost effective method available to enable the business to provide the customer service which the business desires to provide.

Enclosed with this staff report is Special Ordinance No. 13-556, which would establish a designated route specifically restricted for the use of employees of Fun Country Power Sports to transport ATV's to the fuel station located at 1433 West 2<sup>nd</sup>, and return the filled vehicles to the business located at 1318 West 2<sup>nd</sup>. The location of the proposed route is shown on the map attached as Exhibit "A. Section 3 of the ordinance sets forth the specific conditions which must be met in order for the operation of the ATV's on the designated route to be legal. Section 5 specifies the persons who will be eligible to operate the ATV's. Section 6 establishes the safety equipment requirements that must be met when the vehicles are being operated. Section 9 details the insurance requirements which must be satisfied. Section 10 contains provisions regulating the hours of operation of the ATV's. Pursuant to Section 11, the City will post signs designating the location of the route and specifying the restrictions on the use of the route. Pursuant to Section 12, Fun Country Power Sports assumes responsibility for the operation of the ATV's and agrees to hold the City harmless from any claims resulting from the operation of the ATV's.

**BUDGET IMPLICATIONS:** The City will be responsible for posting signs designating the approved route. The cost for those signs is estimated to be \$450.00.

**ALTERNATIVES:**

Staff Recommendation. *Move to adopt Special Ordinance No. 13-556 by title only.*

**SPECIAL ORDINANCE NO. 13-556**

**AN ORDINANCE AUTHORIZING THE OPERATION OF ALL-TERRAIN VEHICLES UPON A DESIGNATED STREET LOCATED WITHIN THE BOUNDARIES OF THE CITY OF THE DALLES, OREGON**

**WHEREAS**, ORS 801.040(1) provides that a city may not enact or enforce any rule or regulation which conflicts with the Oregon Vehicle Code; and

**WHEREAS**, ORS 801.040(3) provides that a city is not prohibited from regulating the operation of Class 1 all-terrain vehicles (“ATV’s) on streets or highways within its boundaries by adopting a regulation or ordinance, which is not inconsistent with the provisions of Oregon law; and

**WHEREAS**, under ORS 821.190(1) to (3), all classes of ATV’s are prohibited from operating upon any highway unless one of the exemptions specified in either ORS 821.191 or 821.200 applies; and

**WHEREAS**, ORS 821.200(1) provides for an exemption which allows an ATV to be used to cross a highway if certain requirements are met; and

**WHEREAS**, the owner of Fun Country Power Sports, a business located at 1318 West 2<sup>nd</sup> Street, submitted a request to City staff to prepare an ordinance to be presented to the City Council for review, which would authorize the crossing of a designated portion of West 2<sup>nd</sup> Street, and the use of a designated portion of the shoulder area adjacent to West 2<sup>nd</sup> Street, for the purpose of driving ATV’s to a fuel station located at 1433 West 2<sup>nd</sup> Street, to fill up the tank of the ATV’s and then return them to the dealership; and

**WHEREAS**, City staff has reviewed the proposed route to be used for the transportation of ATV’s by employees of Fun Country Power Sports, and has determined that the proposed route complies with the requirements set forth in ORS 821.200(1); and

**WHEREAS**, the City Council has reviewed the proposed route for the transportation of the ATV’s, and concurs with the staff’s determination that the proposed route complies with the provisions of ORS 821.200(1), and that adoption of an ordinance authorizing the designated route is in the best interest and welfare of the community, in that establishing the route will facilitate the sales of ATV’s by Fun Country Power Sports and contribute to the economic welfare of the community;

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

Section 1. Findings Incorporated. The findings in the above-stated “WHEREAS” clauses are hereby adopted and incorporated herein by this reference.

Section 2. Definitions. As used in this ordinance, the following terms have the meanings assigned to them below:

- A. “All-terrain vehicle(s)” and “ATV(s)” means Class I All-Terrain Vehicles, Class II All-Terrain Vehicles, and/or Class IV All-Terrain Vehicles.
- B. “Class I All-Terrain Vehicles” means a motorized, off-highway recreational vehicle that:
  - 1. Is 50 inches or less in width;
  - 2. Has a dry weight of 1,200 pounds or less;
  - 3. Travels on three or more pneumatic tires that are six inches or more in width and that are designed for use on wheels with a rim diameter of 14 inches or less;
  - 4. Uses handlebars for steering;
  - 5. Has a seat designed to be straddled for the operator; and
  - 6. Is designed for or capable of cross-country travel on or immediately over land, water, sand, snow, ice, marsh, swampland or other natural terrain.
- C. “Class II All-Terrain Vehicle(s)” means any motor vehicle that:
  - 1. Weighs more than or is wider than a Class I All-Terrain Vehicle;
  - 2. Is designed for or capable of cross-country travel on or immediately over land, water, sand, snow, ice, marsh, swampland or other natural terrain;
  - 3. Is actually being operated off a highway or is being operated on a highway for agricultural purposes under ORS 821.191, as now constituted; and
  - 4. Is not a Class IV All-Terrain Vehicle.
- D. “Class IV All-Terrain Vehicle(s)” means any motorized vehicle that:
  - 1. Travels on four or more pneumatic tires that are six inches or more in width and that are designed for use on wheels with a rim diameter of 14 inches or less;
  - 2. Is designed for or capable of cross-country travel on or immediately over land, water, sand, snow, ice, marsh, swampland or other natural terrain;
  - 3. Has nonstraddle seating;
  - 4. Has a steering wheel for steering control;
  - 5. Has a dry weight of 1,800 pounds or less; and
  - 6. Is 65 inches wide or less at its widest point.
- E. “Traffic law(s)” means any and all Oregon statutes and regulations relating in any way to the operation of motorized vehicles, including, without limitation, the Oregon Vehicle Code (ORS Chapters 801 to 826, as now constituted), and any regulations promulgated thereunder.

- F. “Street(s)”. The terms “highway”, “road” and “street” shall be considered synonymous, unless the context precludes such a construction. “Street” includes alleys.

Section 3. Operation of All-Terrain Vehicles on Designation Street Authorized. Any person listed in Section 5 of this ordinance is authorized to operate an ATV to cross the portion of West 2<sup>nd</sup> Street shown on the map attached hereto, which is labeled Exhibit “A” and incorporated herein by this reference, and to travel in the portion of the shoulder adjacent to West 2<sup>nd</sup> Street shown on Exhibit A. Operation of an ATV on the designated route shall comply with the following conditions:

- A. The crossing of West 2<sup>nd</sup> Street must be made at an angle of approximately 90 degrees to the direction of West 2<sup>nd</sup> Street.
- B. The crossing of West 2<sup>nd</sup> Street must be made at a place where no obstruction prevents a quick and safe crossing.
- C. The ATV vehicle must be brought to a complete stop before entering West 2<sup>nd</sup> Street.
- D. The operator of the ATV vehicle must yield the right of way to vehicles using West 2<sup>nd</sup> Street.
- E. The crossing of West 2<sup>nd</sup> Street must be made at a place that is more than 100 feet from any highway intersection.
- F. The operator of the ATV vehicle cannot travel upon the sidewalk adjacent to the shoulder adjacent to the proposed designated route.

Section 4. Regulations for Operation of All-Terrain Vehicles. All-Terrain Vehicles operated under this Ordinance must be operated in compliance with all applicable federal, state, and local laws, regulations, and ordinances, including, without limitation, all applicable Traffic Law requirements (including, without limitation, ORS 811.255, as now constituted), and all posted speed limits, and in a manner comporting with the public health, safety, and general welfare.

Section 5. Persons Eligible to Operate ATV’s on Designated Street. In order to be authorized to operate an ATV upon the designated route described in Section 3 of this Ordinance, a person must be an employee of Fun Country Power Sports, at least 18 years of age who has a valid driver’s license, who operates the ATV for the limited purpose of transporting the ATV to the fuel station located at 1433 West 2<sup>nd</sup> for the purpose of fueling the vehicle and returning the vehicle to the Fun Country dealership.

Section 6. Safety Equipment Requirements. A person must be properly secured with a safety belt or safety harness while operating or riding as a passenger on an ATV being operated under this Ordinance, if such ATV was required to be equipped with safety belts or a safety

harness at the time the ATV was manufactured, or safety belts or safety harnesses have been installed on the ATV.

Section 7. Speed Limits. All-Terrain Vehicles operated under this Ordinance must be operated in compliance with all posted speed limits and may not be operated at a rate of speed greater than reasonable and proper under the existing conditions, or in a negligent manner so as to endanger or cause injury, death, and/or damage to the operator or person or property of another.

Section 8. Prohibition on Operating All-Terrain Vehicles While Driving Privileges Suspended. A person may not operate an ATV under this Ordinance while the person's driving privileges are suspended or revoked.

Section 9. Financial Responsibility Requirements. All-Terrain Vehicles operated under this Ordinance must comply with the financial responsibility requirements of ORS 806.060, as now constituted. For purposes of this Section, "financial responsibility requirements" means the ability to respond in damages for liability, on account of accidents arising out of the ownership, operation, maintenance, and/or use of an ATV, in a manner provided under ORS 806.060, as now constituted.

Section 10. Hours of Operation. All-Terrain Vehicles operated under this Ordinance may be operated only during daylight hours. For purposes of this Section, "daylight hours" means one-half hour before sunrise to one-half hour after sunset. At any time from one-half hour before sunrise to one half hour after sunrise and from one-half hour before sunset to one-half hour after sunset, and during any time when limited visibility conditions exist, ATV's operated under this ordinance must be equipped with and display headlights and taillights.

Section 11. Posting. The City will post signs giving notice that the operation of ATV's is permitted upon the designated portion of West 2<sup>nd</sup> and the designated portion of the shoulder adjacent to West 2<sup>nd</sup> described in Section 3 of this Ordinance. The City will post such signs at locations necessary to inform the public that ATV's are permitted upon the designated portion of the streets described in Section 3, which sign locations will be determined by the City in its sole discretion.

Section 12, Liability and Indemnification. The operation of an ATV under this Ordinance will be undertaken at the sole risk and responsibility of Fun Country Power Sports, and its authorized employees. The City, by adoption of this Ordinance, assumes no responsibility for the operation of such ATV's and will be held harmless in any action arising from the operation of such ATV's on or off the designated route described in Section 3.

Section 13. Penalties. Violation of, or failure to comply with, any provision of this Ordinance, including, without limitation, the operation of an ATV where such ATV is prohibited, is punishable by a fine not to exceed the sum of \$500.00. Each violation of this ordinance will be considered a separate offense. The penalties imposed by this Section are not exclusive and are in addition to any other remedies, civil or criminal, available to the City under applicable law.

Section 14. Severability. If any section, subsection, sentence, clause, phrase, or portion of this Ordinance is for any reason held invalid or unconstitutional by any court or board of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions thereof.

Section 15. Effective Date. This Ordinance shall become effective 30 days after its passage by the City Council and approval by the Mayor.

**PASSED AND ADOPTED THIS 22ND DAY OF JULY, 2013**

Voting Yes, Councilors: \_\_\_\_\_

Voting No, Councilors: \_\_\_\_\_

Absent, Councilors: \_\_\_\_\_

Abstaining, Councilors: \_\_\_\_\_

**AND APPROVED BY THE MAYOR THIS 22ND DAY OF JULY, 2013**

\_\_\_\_\_  
Stephen E. Lawrence, Mayor

**ATTEST:**

\_\_\_\_\_  
Julie Krueger, MMC, City Clerk



## AGENDA STAFF REPORT

### CITY OF THE DALLES

MEETING DATE:	AGENDA LOCATION:	AGENDA REPORT #
July 22, 2013	Action Items 13, E	13-054

**TO:** Honorable Mayor and City Council

**FROM:** Gene E. Parker, City Attorney

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

**DATE:** July 5, 2013

**ISSUE:** Special Ordinance No. 13-557, extending the term of the franchise granted to Waste Connections of Oregon, Inc., dba The Dalles Disposal Service, Inc., for the business of collecting and hauling solid waste materials in the City of The Dalles, and declaring an emergency.

**RELATED CITY COUNCIL GOAL:** None.

**PREVIOUS AGENDA REPORT NUMBERS:** None.

**BACKGROUND:** The City Council granted the initial franchise for the collection and hauling of solid waste and recyclable materials to The Dalles Disposal Service, Inc., through adoption of Special Ordinance No. 93-412. That ordinance provided that the initial term of the franchise would continue until April 5, 2003, unless terminated by the City. The City Council authorized a ten year extension of the franchise by adoption of Special Ordinance No. 99-466, which extended the term of the franchise until April 5, 2013.

On February 28, 2000, the Council adopted Resolution No. 00-006, which approved a transfer of the franchise from The Dalles Disposal Service, Inc. to Sweet Home Sanitation, Inc. Sweet Home continued to operate the franchise under the assumed business name of The Dalles Disposal, Inc. In 2010, Waste Connections of Oregon, Inc. effectively assumed the business

operations for Sweet Home Sanitation, Inc., including the operation of The Dalles Disposal Service, Inc.

Representatives of Waste Connections, Inc. recently contacted City staff and noted that the current franchise had expired on April 5, 2013, before a request could be submitted to the City Council to extend the franchise. Waste Connections of Oregon, Inc. has requested that the current franchise be extended for another ten year period. Special Ordinance No. 13-557 would grant that requested extension. The terms of the existing franchise would continue to remain in full force and effect, including provisions for collection of a franchise fee and the City's right to terminate the franchise if the City determined the franchisee was not providing the services required under the franchise ordinance.

**BUDGET IMPLICATIONS:** The City will continue to collect an annual license fee of \$100 per vehicle used to collect and haul recyclable material, and the franchise fee calculated at three percent (3%) of the franchisee's gross revenue from the collection of solid waste.

**ALTERNATIVES:**

- A. Staff Recommendation. *Move to adopt Special Ordinance No. 13-557 by title only.*

**SPECIAL ORDINANCE NO. 13-557**

**AN ORDINANCE EXTENDING THE TERM OF THE FRANCHISE GRANTED TO WASTE CONNECTIONS OF OREGON, INC. DBA THE DALLES DISPOSAL SERVICE, INC., FOR THE BUSINESS OF COLLECTING AND HAULING SOLID WASTE MATERIALS IN THE CITY OF THE DALLES, AND DECLARING AN EMERGENCY**

**WHEREAS**, the City Council granted a franchise to The Dalles Disposal Service, Inc., on April 5, 1993, through adoption of Special Ordinance No. 93-412, which ordinance provided the term of the franchise shall continue for ten years until April 5, 2003, unless terminated by the City; and

**WHEREAS**, the City Council authorized an extension of the franchise granted to The Dalles Disposal, Inc. for a period of ten years by adoption of Special Ordinance No. 99-466, which extended the term of the franchise until April 5, 2013; and

**WHEREAS**, on February 28, 2000, the City Council adopted Resolution No. 00-006 which approved a transfer of the franchise for The Dalles Disposal Inc., to Sweet Home Sanitation, Inc., and

**WHEREAS**, in 2010, Waste Connections of Oregon, Inc. effectively assumed the business operations for Sweet Home Sanitation, Inc., and Waste Connections has been providing the solid waste and recyclable collection of materials for the City, under the business name of The Dalles Disposal Service, Inc.; and

**WHEREAS**, representatives of Waste Connections of Oregon, Inc., and City staff recently discovered that as result of an oversight, the existing franchise for The Dalles Disposal Service, Inc. expired on April 5, 2013, and Waste Connections contacted City staff and requested that an ordinance be presented to the City Council for their consideration to provide for a ten year extension of the existing franchise; and

**WHEREAS**, The Dalles Disposal Service, Inc., has an established record of providing quality, cost-efficient service to the citizens of The Dalles, and the Council believes an extension of the term of the existing franchise would be in the public interest;

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

Section 1. Term Extended. The term of the franchise granted to Waste Connections of Oregon, Inc., doing business as The Dalles Disposal Service, Inc., initially granted by Special Ordinance No. 93-412, and extended for a ten year term by Special Ordinance No. 99-466, which franchise expired on April 5, 2013, shall be extended for an additional period of ten (10) years, so that the new expiration date shall be April 5, 2023. All other terms of the franchise

agreement, as set forth in Special Ordinance No. 93-412, including the City's right to terminate the franchise, shall remain in full force and effect.

Section 2. Emergency Declared. Whereas, Waste Connections of Oregon, Inc., dba The Dalles Disposal Service, Inc., has continued to operate a solid waste collection and hauling business under a franchise which expired on April 5, 2013, and the City Council believes it is in the best interests and welfare of the citizens of The Dalles that the franchise awarded to Waste Connections of Oregon, Inc., dba The Dalles Disposal continue in effect for an additional period of ten (10) years; NOW, THEREFORE, an emergency is declared to exist and this ordinance shall go into effect immediately upon its passage and approval.

**PASSED AND ADOPTED THIS 22ND DAY OF JULY, 2013**

Voting Yes, Councilors: \_\_\_\_\_  
Voting No, Councilors: \_\_\_\_\_  
Absent, Councilors: \_\_\_\_\_  
Abstaining, Councilors: \_\_\_\_\_

**AND APPROVED BY THE MAYOR THIS 22ND DAY OF JULY, 2013.**

\_\_\_\_\_  
Stephen E. Lawrence, Mayor

ATTEST:

\_\_\_\_\_  
Julie Krueger, MMC, City Clerk