

AGENDA

REGULAR CITY COUNCIL MEETING

July 25 2016

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. Randy Haines and Nolan Hare: Report on July 3 Concert
 - B. Michelle Harmon, Chamber of Commerce Tourism Report

6. AUDIENCE PARTICIPATION

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

7. CITY MANAGER REPORT

8. CITY ATTORNEY REPORT

9. CITY COUNCIL REPORTS

10. CONSENT AGENDA

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

- A. Approval of July 11, 2016 Regular City Council Meeting Minutes

CITY OF THE DALLES

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

B. Approval of Police Contract for Fiscal Year 2016-17 through Fiscal Year 2018-19

C. Approval of Setting Minimum Wage to \$9.75 per hour as per State Law, Effective July 1, 2016

11. ACTION ITEMS

A. Request from Harvest Foursquare Church for Wastewater SDC Credit

B. Adoption of General Ordinance No. 16-1343 Regulating the Time, Place and Manner of Sales of Marijuana in the City of The Dalles

12. DISCUSSION ITEMS

A. Special Ordinance No. 16-573 Granting a Non-Exclusive Gas Utility Franchise to Northwest Natural Gas Company

13. ADJOURNMENT

This meeting conducted in a handicap accessible room.

Prepared by/
Izetta Grossman
City Clerk



Nolan Hare
541-980-3997
nolan@forddallesfourth.com

Randy Haines
541-993-3198
randyhproductions@gmail.com

Honorable Mayor and Members of the Council:

Please review the attached Dallas Smith Concert Report.

While we didn't reach our full financial goal for this first show we are still on target to have a successful outcome for the full Summer Celebration Series. We are very please with the overall outcome of the Dallas Smith event. The concert received great reviews from numerous community members and has created quite the buzz around town. This positive response will be very beneficial to the promotion and sales of the next event in the Summer Celebration series.

Thank you again for your ongoing support. We look forward to continuing our work with City of The Dalles, The Dalles Chamber and The Dalles Mainstreet, as well as our media partners, sponsors, vendors, volunteers, and supporters to deliver successful Summer Celebration events on August 13th and September 10th.

Respectfully,

Nolan Hare & Randy Haines

Dallas Smith Concert Report

Projected Expenses	\$40,000.00
Drawdown Request	\$28,236.52
Actual Expenses	\$26,531.62
Drawdown Surplus	\$1,704.90
Ticket Sales	\$17,135.00
Contribution from Promoters	\$4,500.00
Total Amount below Goal:	-\$4,896.62

Ticketed Guests	942
Paid Staff	21
Vendors	30
Volunteers	34
Bands	22
Total Attendance	1049

Expense Report

Item	Amount	To	Payment
Dallas Smith Deposit	\$3,125.00	Nolan Hare	Transferred Reimbursement
Dallas Smith Balance	\$9,375.00	Maybe this Productions	Cashiers Check
Dallas Smith Dinner Buyout	\$200.00	Cash	Paid from Gate, Reimb. from Drawdown
Dallas Smith Lodging	\$1,565.52	The Dalles Inn	Cashiers Check
Dallas Smith Hospitality	\$59.13	Nolan Hare	Transferred Reimbursement
Staff/Crew Hospitality	\$58.92	Nolan Hare	Transferred Reimbursement
Dallas Smith Agent Fee	\$1,000.00	Deni Herrmann	Cashiers Check
Stage/Sound/Lights Package	\$4,435.00	Tech Audio	Cashiers Check
Monitor Board Rental	\$100.00	Brewer's Grade	Check
Event Security	\$455.00	Jess Groves	Check
Staff - Operations	\$200.00	Alan Hare	Check
Staff - Hospitality	\$100.00	Holly Williams	Check
Staff - Traffic & Crowd Mgmt.	\$492.50	ACTS	Check
Opening Act	\$1,000.00	Britnee Kellogg	Cashiers Check
Opening Act	\$600.00	Brewer's Grade	Cashiers Check
Backline	\$600.00	Allied Music Services	Check
Printing - Tickets	\$96.25	Optimist Printers	Check
Printing - Poster	\$93.00	Optimist Printers	Check
Printing - Badges	\$16.30	Optimist Printers	Check
Equipment Rental	\$1,696.00	Discover Rentals	Cashiers Check
Equipment Rental	\$1,264.00	Discover Rentals	Check
Total Expenses	\$26,531.62		

Second Quarter 2016 Tourism Report

Overview

This quarterly report covers the four committees dedicated to the Tourism Coordinator position, The Dalles Area Chamber of Commerce. The Cycling, Cruise Ships, History/Heritage, and Food, Wine, and Art focus groups were created after the disbandment of the Tourism Committee in 2014. A large amount of the Tourism Coordinator's time is spent writing, reviewing and creating FAM Tours for travel writers, media for Travel Oregon and PR marketing. This position also works within the Visitor's Center at The Dalles Area Chamber of Commerce welcoming and providing information to visitors in The Dalles.

History/Heritage Focus Group

Goal: Education and preservation of The Dalles History
This committee consists of six members

Action Items:

- Update the "Places of Historic Interest" Brochure
- Apply for grant funding for printing of said brochure
- Decision to combine Places of Historic Interest, Mid-1990's The Dalles Historic Walking Tours, and Oregon Main Street Conference 2015 Historic Walking Tour
- Apply for grant funding for printing of said brochure
- Estimated completion date January 2018

Food, Wine, and Art Focus Group

Goal: Promoting Agritourism by hosting events showcasing local food, wine, and art
This committee consists of 11 members

Action Items:

Farm 2 Fork Event

- Date of event and site confirmed
- Price set. Price based upon last year's proceeds and projected revenue for this year
- Obtained rental equipment donations totaling \$843.20
- Secured Columbia Gorge Discovery Center's Raptor Program for event
- Secured discounted rates at local hotels
- Farmers and wineries confirmed for event
- Menu set
- Posters and media release sent to Weinstein PR and Portland and Seattle based publications
- Currently selling tickets online on the Chamber website

Cycling Focus Group

Goal: To create/prepare The Dalles as the cycling destination of the Gorge

This committee consists of four members, one from the Chamber's Board of Directors

Action Items:

- Updating cycle map
- Group is currently the advisor for the cycling portion for The Dalles Transportation System Plan
- Working on getting the Kiosk at Lewis and Clark Festival Park up and running

Ship Focus Group

Goal: Promote The Dalles to passengers while providing support to cruise ship staff

This committee consists of eight members, two from the Chamber's Board of Directors

Group Action Items:

- Work in cooperation with Main Street regarding coupons for the River Crew New Newsletter
- Work in cooperation with the Fort Dalles Floozies to greet the cruise ship passengers
- Polling the local businesses to determine interest in a window cling to welcome all visitors to The Dalles
- In discussions with Mid-Columbia Council of Governments regarding the Link bus and any local agencies regarding public transportation

Individual Action Items:

- River Crew News, a bi-weekly publication sent to crew members to promote local businesses
- Work with City Clerk regarding vendor issues the City Dock
- Submit weekly ship notifications to interested businesses
- Submit weekly ship schedule to newspaper for publication
- Create cruise ship itineraries for interested parties
- Work with City Planning on permanent signage for the Fire Museum
- Work closely with cruise ship staff to maintain a professional relationship
- Granted access for two school group tours on two different cruise lines
- In the process of assembling excursions from local businesses to present to all cruise ship companies

FAM Tours, Meetings with Travel Writers, and PR Marketing

Meetings and Conferences:

- Travel Oregon's Road Rally, April 8 – 9, 2016, Mount Hood, Oregon
- Governor's Tourism Conference, April 24 – 26, 2016, Pendleton, Oregon
- Meet with Travel Writer, May 31, 2016, The Dalles, Oregon
- Meet with Tour Operator, June 21, 2016, The Dalles, Oregon
- PR Tour with Travel Oregon Representative, June 23, 2016, The Dalles, Oregon

FAM Tour Itineraries:

- Let's Travel, Tim R., in the Hood/Gorge region, April 2016
- Travel Oregon RDMO FAM, in the Hood/Gorge region, April 2016
- Brand USA Mega FAM, in the Hood/Gorge region, May 2016
- David McGonigal, travel writer, Hood/Gorge region, May 2016
- Manuela Duebler, tour operator, in Hood/Gorge region, June 2016
- Requests for information received on a daily basis, response sent out by deadlines

Printed Publications Regarding The Dalles:

- Western Journey, the AAA member magazine for WA & ID, Gorge-ous, April 2016
- Web Article - http://www.pdxmonthly.com/articles/2016/4/19/five-spring-hikes-for-soaking-up-the-sun?utm_source=Sailthru&utm_medium=email&utm_campaign=Tripster%204-19-16&utm_term=Tripster, April 2016
- 1859 Oregon's Magazine, The Dalles, Carmen Toll, May-June 2016
- Web Article - <http://industry.traveloregon.com/press-room/whats-new/>, May 2016
- Web Article <http://redtri.com/portland/guide-to-family-fun-in-the-dalles/>, June 2016

Visitor Center Statistics

Average Daily Rate (ADR)	\$83.00
Occupancy % (Average)	55.23%
Guest Count	1,506
Relocation Packets	17
Ship Packets	2,389
Tourism Postage	\$176.09
Travel Oregon Welcome Center Brochures	43
Phone Calls	999



AGENDA STAFF REPORT

AGENDA LOCATION: Item #10 A-C

MEETING DATE: July 25, 2016

TO: Honorable Mayor and City Council

FROM: Izetta Grossman, City Clerk

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

- A. **ITEM:** Approval of the July 11, 2016 Regular City Council Meeting Minutes.

BUDGET IMPLICATIONS: None.

SYNOPSIS: The minutes of the July 11, 2016 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 11, 2016 City Council meeting.

- B. **ITEM:** Approval of Police Contract for Fiscal Year 2016-17 through Fiscal Year 2018-19

BUDGET IMPLICATIONS: The approved budget for fiscal year 2016-17 includes the wages and benefits reflected in the contract.

SYNOPSIS: The Dalles Police Association and City have completed negotiations for a three-year collective bargaining agreement. The union has ratified the agreement and the City Council can approve it to complete the process.

RECOMMENDATION: That City Council approve the Collective Bargaining agreement between City of The Dalles and The Dalles Police Association for fiscal year 2016-17 through 2018-19.

C. **ITEM:** Authorization to Increase the Exempt Wage Table Range for Library Page Positions to Comply with Oregon Minimum Wage

BUDGET IMPLICATIONS: There are only two paid pages at the Library at this time. If they were both at the top of the wage range the additional cost would be less than \$650 for the year. This small amount should not require any budget adjustments.

SYNOPSIS: Currently, with the 2% COLA approved by the City Council for Exempt Employees for FY16/17, the base step and step 1 for Library Page positions are below the new Oregon Minimum Wage of \$9.75 per hour (see below).

Hourly Employees	Base	Step 1	Step 2	Step 3	Step 4	Step 5	Step 6	Step 7
Library Page	9.39	9.67	9.96	10.26	10.57	10.88	11.21	11.55

Each step in the range is 3%. If we increase the base step to \$9.75 per hour, the new range would be as follows:

Library Page	9.75	10.04	10.34	10.65	10.97	11.30	11.64	11.99
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RECOMMENDATION: That City Council authorize an increase to the exempt wage table range for Library Page position to comply with the Oregon Minimum Wage.

MINUTES
REGULAR COUNCIL MEETING
OF
July 11, 2016
5:30 p.m.

THE DALLES CITY HALL
313 COURT STREET
THE DALLES, OREGON

PRESIDING: Mayor Stephen Lawrence

COUNCIL PRESENT: Russ Brown, Taner Elliott, Linda Miller, Dan Spatz

COUNCIL ABSENT: Tim McGlothlin

STAFF PRESENT: City Manager Julie Krueger, City Attorney Gene Parker, City Clerk Izetta Grossman, Planning Director Richard Gassman, Finance Director Kate Mast, Public Works Director Dave Anderson, Interim Police Chief Steve Baska, Project Coordinator Daniel Hunter

CALL TO ORDER

The meeting was called to order by Mayor Lawrence at 5:32 p.m.

ROLL CALL

Roll call was conducted by City Clerk Grossman, McGlothlin absent.

PLEDGE OF ALLEGIANCE

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

APPROVAL OF AGENDA

Mayor Lawrence removed items 5-A; 10-E; and 11-A from the agenda. It was moved by Elliott and seconded by Miller to approve the agenda as amended. The motion carried, McGlothlin absent.

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CITY MANAGER REPORT

City Manager Julie Krueger passed around a thank you card from the family of Darrell Hill thanking city staff and City Council for the flowers.

Krueger reported on Public Works projects on 12th Street and Dry Hollow that would be completed on Tuesday. She also said utility work was being done on Thompson Street and Trevitt Street.

She said she had met with representatives from SAIF and they would make a presentation to Council in September.

CITY ATTORNEY REPORT

City Attorney Gene Parker said he was working on the Northwest Natural Gas franchise agreement and would bring a draft to Council for discussion at the next meeting.

CITY COUNCIL REPORTS

Dan Spatz reported that the Sister City Delegation would be leaving Tuesday morning, and would return on July 19.

Spatz said three middle school students from Miyoshi City would be spending a month here during the school year.

He thanked Corliss Marsh for her service as treasurer for the Sister City Group.

Taner Elliott reported attending the QLife meeting. He said the Maupin project was moving along, and they were experiencing some growing pains from the transfer of the administration duties to Wasco County.

Linda Miller reported attending the Fourth of July events saying the weather was good this year.

Mayor Lawrence reported that the Mid Columbia Council of Governments meeting was postponed due to lack of quorum. He said they were looking at finalizing the Executive Director's contract and long term restructuring. He said they were scheduling a special meeting, and would be looking into allowing members to call into the meetings to make it easier to attend and have a quorum.

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CONSENT AGENDA

Mayor Lawrence noted that item 5 had been removed from the Consent Agenda. It was moved by Miller and seconded by Elliott to approve the Consent Agenda as amended. The motion carried, McGlothlin absent.

Items approved by Consent Agenda were: 1) Approval of the June 20, 2016 Work Session Minutes; 2) Approval of the June 24, 2016 Special Meeting Evaluation Minutes; 3) Approval of the June 27, 2016 Regular City Council Meeting Minutes; 4) Approval of Resolution No. 16-023 Concurring with Mayor's Appointments to Various Committees.

ACTION ITEMS

Approval to Proceed with Study Regarding Gap Analysis of Public Works Department

City Manager Krueger reviewed the staff report. She said timing of the analysis had been discussed with the Public Works Director, and she recommended delaying the start until after the Human Resources Director had started to assist. She noted it would also be a slower time for Public Works staff.

It was moved by Brown and seconded by Miller to authorize the City Manager to enter into an agreement with TKW in an amount not to exceed \$25,000 for the purpose of a gap analysis study of the Public Works Department. The motion carried, McGlothlin absent.

ADJOURNMENT

Being no further business, the meeting adjourned at 5:47 p.m.

Submitted by/
Izetta Grossman
City Clerk

SIGNED:

Stephen E. Lawrence, Mayor

ATTEST:

Izetta Grossman, City Clerk



AGENDA STAFF REPORT

AGENDA LOCATION: Action Item #11- A

MEETING DATE: July 25, 2016

TO: Honorable Mayor and City Council

FROM: Dave Anderson, Public Works Director

ISSUE: Request from Harvest Foursquare Church for Wastewater SDC Credit

BACKGROUND: The Harvest Foursquare Church is located at 2500 Old Dufur Road and has historically had a septic tank. That private septic system has failed and the church desires to connect to the City sewer system. The System Development Charge (SDC) for the church to connect would normally be \$1789.00. The church has submitted the attached letter requesting up to a 50% reduction in the sewer SDC assessed.

General Ordinance No. 06-1266, Section 11, G provides that “The City Council shall have the right to grant a credit not to exceed fifty percent (50%) of the applicable system development charge, for any development project submitted by a nonprofit corporation or any agency or subdivision of the federal, state or local government. Only development occurring upon property located within the City limits shall be eligible for this credit.” Harvest Foursquare Church, as a 501(c)3 non-profit organization located inside the City, is requesting a waiver of up to 50% for the Sewer SDC that would be charged to connect to the City sewer system, a value of up to \$894.50.

The Council has authorized some requests for SDC reductions under this provision in the past. The most recent was in 2015 when Mid-Columbia Council of Governments was granted a 50% reduction in SDCs as an agency of local government.

BUDGET IMPLICATIONS: If a Sewer SDC credit is authorized, up to \$894.50 less in Sewer SDCs will be collected from Harvest Foursquare Church.

COUNCIL ALTERNATIVES:

1. Staff Recommendation: *That City Council authorize a 50% credit toward the Sewer SDC to be assessed to Harvest Foursquare Church.*
2. City Council authorize a 25% credit toward the Sewer SDC to be assessed to Harvest Foursquare Church.
3. City Council deny the request for a credit for the Sewer SDC to be assessed to Harvest Foursquare Church.

HARVEST FOURSQUARE CHURCH



Wednesday, May 25, 2016

The Dalles City Council:
Attn: Julie Krueger, City Manager

Harvest Foursquare is a local church in The Dalles, located at 2500 Old Dufur Road, established in 1958, and operates as a 501(c)3, EIN 93-0732124.

Some time ago, we noticed slow drainage in one of our buildings indicating possible septic failure. Research and finally digging up our current septic tank, in fact, determined failure, requiring we connect to city sewer.

We are aware there is a fee of \$1789.00 to connect to the city line plus any fees incurred for city to provide access to the existing sewer line.

According to the Dalles City Ordinance Section 3-8.11 G, states:
"The City Council shall have the right to grant a credit not to exceed fifty (50%) of the applicable system development charge, for any development project submitted by a nonprofit corporation or any agency or subdivision of the federal, state or local government. Only development occurring upon property located within the City limits shall be eligible for this credit."

We are a small church facing a considerable fee to have a 90-foot line installed between our building and the city's located entry point. We are asking The Dalles City Council to consider our eligibility for a waiver of up to 50% of the sewer system development charge in order to help keep our cost to a minimum.

Fortunately, years ago, the city prepared for our eventual hookup when the sewer line was installed on Old Dufur Road by providing an access point.

I am aware that this information must go before the City Council before a decision is rendered. Would you please notify me of the date of that council meeting so I can be in attendance to answer any questions the council may have.

Respectfully Submitted,

A handwritten signature in blue ink, appearing to read 'Matthew Rotter', is written over a white background.

Reverend Matthew Rotter
Sr. Pastor, Harvest Foursquare Church



AGENDA STAFF REPORT

AGENDA LOCATION: Action Item #11-B

MEETING DATE: July 25, 2016

TO: Honorable Mayor and City Council

FROM: Gene E. Parker, City Attorney
Richard Gassman, Planning Director

ISSUE: Adoption of General Ordinance No. 16-1343, amending General Ordinance No. 98-1222, establishing time, place, and manner regulations of facilities for processing, production, retailing, and wholesaling of recreational marijuana

BACKGROUND: On June 27, 2016, the Council continued their deliberations on proposed General Ordinance No. 16-1343. The Council voted 4 to 0 to modify the Planning Commission's recommendations by eliminating licensed day care facilities and established churches from proposed buffer zones around recreational marijuana facilities; allowing production, processing, storage, and wholesaling of recreational marijuana in the Commercial Light/Industrial zoning district as a conditional use with a 500 foot buffer from schools; and extending the hours of operation for recreational marijuana facilities from 10:00 AM to 8:00 PM.

The following is a summary of the provisions of General Ordinance No. 16-1343, with references to pages in the proposed ordinance:

1. Page 3, Section 3, include new definitions for the terms Marijuana, Marijuana Items, Recreational Marijuana Processing, Recreational Marijuana Production, Recreational Marijuana Retailing, and Recreational Marijuana Wholesaling.
2. Pages 3 and 4 include a new section entitled "Prohibited Uses", which would not allow production, processing, wholesaling, and retailing of recreational marijuana in the Residential Low Density (Section 4), Residential High Density (Section 5), Residential Medium High Density (Section 6), and Neighborhood Center Overlay (Section 7) zoning districts.

3. Pages 4, 5, and 6, contain the regulations for the CBC – Central Business Commercial District set forth in Section 8. The proposed regulations for retail marijuana dispensaries incorporate the provisions which the City Council adopted for medical marijuana dispensaries, and include the following additional provisions:
 - a. The facility must have a license or authority in good standing with the Oregon Liquor Control Commission (OLCC) or Oregon Health Authority (OHA), and comply with all applicable laws and regulations administered by the respective state authority, including without limitation those rules that relate to labeling, packaging, testing, security, waste management, food handling, and labeling.
 - b. The hours of operation for the retail facility have been revised to be no earlier than 10:00 AM and no later than 8:00 PM.
 - c. The facility must use an air filtration system and ventilation system which, to the greatest extent feasible, contains all marijuana-related odors within the facility rather than allowing the odors to escape outside.
 - d. Persons under the age of 21 are not allowed to be present within the building occupied by the marijuana retailer, except as provided by state law.
 - e. Restrictions are imposed upon the smoking of marijuana or tobacco products upon the premises, and the co-location of a marijuana retailer with either a marijuana social club or marijuana smoking club upon the same lot of record is not allowed.
 - f. A licensed retail facility will have the option to register with the OLCC to engage in the same retail activity for specified medical marijuana purposes, as allowed by the OLCC.
 - g. Production, processing, and wholesaling of recreational marijuana are prohibited uses in the Central Business Commercial District.
4. Pages 6, 7, and 8 contain the proposed regulations for the CG – General Commercial District in Section 9. The proposed regulations include the same provisions for retail marijuana facilities, and the other prohibited uses as recommended for the Central Business Commercial District.
5. Pages 8, 9, and 10 contain the proposed regulations for the CLI – Commercial Light Industrial District. Section 10, on pages 8 and 9, provides for permitted use for retail marijuana facilities with the same provisions recommended for the General Commercial and Central Business Commercial Districts. Pages 9 and 10 include a provision for allowing production, processing, storage, and wholesaling of recreational marijuana as a conditional use, subject to a variety of conditions, including that the activity must be conducted in a completely

enclosed building; a carbon filtration odor control system meeting required specifications, or an approved alternative odor control system must be installed; the facility's state licensing or authority must be in good standing with the Oregon Health Authority or the Oregon Liquor Control Commission, and the business must comply with all applicable rules and regulations administered by the respective state agency; and the facility cannot be located within 500 feet from a public elementary or secondary school, or a private or parochial elementary or secondary school as defined in the ordinance.

6. Page 10 includes the proposed regulations for the CR – Recreational Commercial District in Section 11. The regulations would prohibit production, processing, wholesaling, and retailing of recreational marijuana within the district.
7. Pages 10 and 11 include the proposed regulations for the I – Industrial District in Section 12. The regulations propose a new conditional use for the production, storage and wholesaling of recreational marijuana, including provisions that the use be in a building which includes a carbon filtration system for odor control or an approved alternative based upon a report from a licensed mechanical engineer. Retail marijuana facilities would not be allowed in the Industrial District.
8. Pages 11 and 12 also includes the proposed regulations for the CFO – Community Facilities Overlay District in Section 13. The regulations would prohibit production, processing, wholesaling, and retailing of recreational marijuana within the district.
9. Page 12 also includes the proposed regulations for the P/OS – Parks and Open Space District in Section 14. The regulations would prohibit production, processing, wholesaling, and retailing of recreational marijuana within the district.
10. Page 12 includes new language for prohibited uses for home occupations, by providing that production, processing, wholesaling, and retailing of recreational marijuana would not be allowed as a home occupation in any zoning district.

Notice of adoption of General Ordinance 16-1343 has been posted in accordance with the City Charter and can be adopted by title only, as explained below in the Council alternatives.

BUDGET IMPLICATIONS: The City Council has voted to refer a measure which will be on the November 8, 2016 ballot to allow the voters to decide whether a three percent tax will be placed upon the retail sale of marijuana.

COUNCIL ALTERNATIVES:

1. Staff recommendation: *Move to adopt General Ordinance No. 16-1343 by title only.* In order for the ordinance to be adopted by title only at a single meeting,

the vote to adopt the ordinance by title only must be a unanimous vote of all the Council members present.

2. If the vote to adopt the ordinance by title only is not unanimous, the ordinance will have to be read in full twice at separate meetings. The first reading can occur during the July 25th meeting, and after the ordinance is read in full, the Council can make a motion to approve the first reading of the ordinance. The second reading of the ordinance in full would occur at the September 12th Council meeting, and after the second reading of the ordinance, the Council could make a motion to adopt General Ordinance No. 16-1343.

GENERAL ORDINANCE NO. 16-1343

**AN ORDINANCE AMENDING GENERAL ORDINANCE NO. 98-1222,
ESTABLISHING TIME, PLACE, AND MANNER REGULATIONS OF
FACILITIES FOR PROCESSING, PRODUCTION, RETAILING,
AND WHOLESALING OF RECREATIONAL MARIJUANA**

WHEREAS, in November, 2014, Oregon voters approved Ballot Measure 91, which decriminalized the personal growing and use of certain amounts of recreational marijuana by persons 21 years of age or older; and

WHEREAS, ORS 475B.340 provides that local governments may impose reasonable regulations on the time, place, and manner of operation of marijuana facilities; and

WHEREAS, on May 5 and May 25, 2016, the City Planning Commission conducted public hearings upon proposed amendments to the City's Land Use and Development Ordinance to establish time, place, and manner regulations for facilities for the production, processing, retailing, and wholesaling of marijuana, and voted to adopt Resolution No. P.C. 551-16 for Zoning Ordinance Amendment #92-16; and

WHEREAS, the City Council conducted a public hearing on June 13, 2016 to consider the Planning Commission's recommendations, and following the close of the public hearing, the City Council conducted deliberations on June 13th and June 27th, and the Council members voted 4 to 0 to modify the Planning Commission's recommendations by eliminating licensed day care facilities and established churches from proposed buffer zones around recreational marijuana facilities; allowing marijuana production, processing, storage, and wholesaling in the Commercial/Light Industrial zoning district as a conditional use with a 500 foot buffer from schools; and extending the hours of operation for recreational marijuana facilities from 10:00 AM to 8:00 PM;

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

Section 1. Findings. In support of the adoption of General Ordinance No. 16-1343, the City Council makes the following findings:

- A. State law authorizes the operation of recreational marijuana businesses and provides these businesses with immunity from state criminal prosecution.
- B. Although the State of Oregon has passed legislation authorizing marijuana businesses and providing criminal immunity under state law, the operation of those businesses remains illegal under federal law.
- C. The City Council has home rule authority to decide whether, and under what conditions, certain commercial conduct should be regulated within the City and subject to the general and police powers of the City, except when local action has been clearly and unambiguously preempted by state statute.

- D. Whether a certain business should operate within a local jurisdiction is a local government decision, and local governments may enforce that decision through the general and police powers of that jurisdiction.
- E. The City Council wants to regulate the operation of marijuana businesses in the City in ways that protect and benefit the public health, safety and welfare of existing and future residents and businesses in the City.
- F. This ordinance is intended to impose restrictions, not provide authorizations.
- G. This ordinance is intended to apply only to recreational marijuana businesses, and not to medical marijuana businesses or to personal possession, growing or use of marijuana as authorized by the state in ORS 475B.245 to ORS 475B.255.
- H. Upon approval of City voters, the City shall impose a local sales tax of three percent (3%) on the sales of recreational marijuana by marijuana retailers.
- I. The operation of a marijuana business without proper authority from either the Oregon Liquor Control Commission or the Oregon Health Authority is prohibited within the City.

Section 2. Criteria for Amendment Satisfied. Section 3.110.030 of the City's Land Use and Development Ordinance provides that text amendments to the Ordinance shall be consistent with the City's Comprehensive Plan, and State laws and administrative rules. Concerning the Comprehensive Plan, Goal #9, Economic Development is stated as follows: "To provide adequate opportunities throughout the state for a variety of economic activities vital to the health, welfare, and prosperity of Oregon's citizens". The proposed amendments provide specific locations where the commercial activity associated with the operation of retail marijuana dispensaries can occur. Requiring the retail marijuana facilities to comply with the same area restrictions which are intended to prevent such businesses from being located adjacent to residential zoning districts, public or private schools attended primarily by minors, public libraries, public parks, and recreational facilities, will protect the safety and welfare of the community. In addition to the commercial activities associated with the operation of the retail facilities, the proposed amendment also provides opportunities, under restricted conditions, for economic activity associated with recreational marijuana production, processing, storage, and wholesaling, within the commercial light industrial and industrial zoning district. The Council finds and concludes that the proposed text amendments are consistent with the City's Comprehensive Plan.

Regarding the criteria of compliance with State laws and administrative rules, ORS 475B.340 provides that local governments may impose reasonable regulations on the time, place, and manner of operation of recreational marijuana facilities. Consistent with state law, this ordinance includes provisions regulating the hours of operation for retail marijuana facilities. State law permits the City to include additional restrictions upon the location of marijuana producers, processors, wholesalers, and retailers. The additional location restrictions proposed in this ordinance do not reduce the size of the location restrictions provided by state law. State law and administrative rules adopted by the Oregon Liquor Control Commission and the Oregon Health Authority include a significant volume of provisions which regulate the manner of operation of recreational producers, processors, wholesalers, and retailers. The additional restrictions on the operation of these types of businesses imposed by this ordinance do not lessen the provisions or

regulations adopted by State law and administrative rules. The Council finds and concludes that the proposed text amendments comply with State laws and administrative rules.

Section 3. New Definitions. Section 2.030 shall be amended to add the following new definitions for Marijuana, Marijuana Items, Recreational Marijuana Processing, Recreational Marijuana Production, Recreational Marijuana Retailing, and Recreational Marijuana Wholesaling

Marijuana - Means all parts of the plant cannabis family moraceae, whether growing or not; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture or preparation of the plant or its resin. It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil or cake, or the sterilized seed of the plant which is incapable of germination.

Marijuana Items – Means marijuana, cannabinoid products, cannabinoid concentrates and cannabinoid extracts.

Recreational Marijuana Processing – The processing, compounding, or conversion of marijuana into cannabinoid products, cannabinoid concentrates, or cannabinoid extracts, provided that the marijuana processor is licensed by the Oregon Liquor Control Commission.

Recreational Marijuana Production – The manufacture, planting, cultivation, growing, trimming, harvesting, or drying of marijuana, provided that the marijuana producer is licensed by the Oregon Liquor Control Commission.

Recreational Marijuana Retailing - The sale of marijuana items to a consumer, provided the marijuana retailer is licensed by the Oregon Liquor Control Commission or registered with the Oregon Health Authority.

Recreational Marijuana Wholesaling - The purchase of marijuana items for resale to a person other than a consumer, provided the marijuana wholesaler is licensed by the Oregon Liquor Control Commission.

Section 4. RL – Residential Low Density District. The provisions in this district shall be amended as follows:

RL – Residential Low Density District

Section 5.010.040 would be renamed Prohibited Uses and would read as follows:

Section 5.010.040 Prohibited Uses

The production, processing, wholesaling, and retailing of recreational marijuana are prohibited uses in all RL – Residential Low Density districts.

Section 5.010.040 through 5.010.070 would be renumbered 5.010.050 through 5.010.080, with 5.010.050 being renamed Neighborhood Compatibility, 5.010.060 Development Standards, 5.010.070 Design Standards, and 5.010.080 being renamed Exceptions to Standards.

Section 5. RH – Residential High Density District. The provisions in this district shall be amended as follows:

RH – Residential High Density District

Section 5.020.040 would be renamed Prohibited Uses and would read as follows:

Section 5.020.040 Prohibited Uses

The production, processing, wholesaling, and retailing of recreational marijuana are prohibited uses in all RH – Residential High Density districts.

Section 5.020.040 through 5.020.080 would be renumbered 5.020.050 through 5.010.090, with 5.020.050 being renamed Neighborhood Compatibility, 5.020.060 Development Standards, 5.020.070, Design Standards, 5.020.080, Open Spaces, and 5.020.090 being renamed Exceptions to Standards.

Section 6. RM – Residential Medium Density District. The provisions in this district shall be amended as follows:

Section 5.030.040 would be renamed Prohibited Uses and would read as follows:

Section 5.030.040 Prohibited Uses

The production, processing, wholesaling, and retailing of recreational marijuana are prohibited uses in all RM – Residential Medium Density districts.

Section 5.030.040 through 5.030.070 would be renumbered 5.030.050 through 5.010.080, with 5.030.050 being renamed Development Standards, 5.030.060 Design Standards, 5.030.070 Open Area, and 5.020.080 being renamed Exceptions to Standards.

Section 7. NC – Neighborhood Center Overlay District. The provisions in this district shall be amended as follows:

Section 5.040.040 would be renamed Prohibited Uses and would read as follows:

Section 5.040.040 Prohibited Uses

The production, processing, wholesaling, and retailing of medical marijuana are prohibited uses in all NC Neighborhood Center overlay zones.

Section 5.040.040 through 5.040.070 would be renumbered 5.040.050 through 5.040.080, with 5.040.050 being renamed Development Standards, 5.040.060 Design Standards, 5.040.070, Neighborhood Compatibility, and 5.040.080 being renamed Exceptions to Standards.

Section 8. CBC – Central Business Commercial District. The provisions in this district shall be amended as follows:

Section 5.050.030(A)(23) would be revised for a new permitted use concerning retail marijuana facilities, which would read as follows:

23. Recreational Marijuana Facilities. An application for a retail marijuana facility shall also comply with the following criteria:
- a) The retail facility must be located more than 500 feet from any RL, RH, or RM Residential District, measured in a straight line from the closest edge of the property line on which the retail facility is located to the closest edge of the property in the RL, RH, or RM Residential District.
 - b) The retail facility must be located more than 1,000 feet from all of the following facilities, measured in a straight line from the closest edge of the property on which the other facility is located:
 - 1. A public elementary or secondary school for which attendance is compulsory under ORS 339.020, or a private or parochial elementary or secondary school, teaching children as described in ORS 339.030(1)(a).
 - 2. A public library.
 - 3. A public park.
 - 4. A recreational facility, which has facilities such as a playground, swimming pool, baseball field, football field, soccer field, tennis court, basketball court, or volleyball court.
 - 5. Any other recreational marijuana retailer registered with the Oregon Liquor Control Commission.
 - c) The retail facility must be located in a building and may not be located in an intermodal cargo container, motor vehicle, recreational vehicle or residential trailer. Outdoor storage of merchandise, raw materials, or other material associated with the retail facility is prohibited.
 - d) The retail facility shall not have a drive-up use.
 - e) The retail facility shall provide for secure disposal of marijuana remnants or by-products; such remnants or by-products shall not be placed in the retail facility's exterior refuse containers.
 - f) The retail facility's license or authority must be in good standing with the Oregon Health Authority or Oregon Liquor Control Commission, and the retail facility must comply with all applicable laws and regulations administered by the respective state agency, including, without limitation those rules that relate to labeling, packaging, testing, security, waste management, food handling, and training.
 - g) The hours of operation for the retail facility shall be no earlier than 10:00 AM and no later than 8:00 P.M.
 - h) The retail facility must use an air filtration and ventilation system which, to the greatest extent feasible, contains all marijuana-related odors within the facility rather than allowing such odors to escape outside. Sufficient measures and means of

preventing odors, debris, fluids and other substances from exiting the facility must be in effect at all times.

- i) No one under the age of 21 shall be permitted to be present in the building space occupied by a marijuana retailer, except as allowed by state law.
- j) Marijuana and tobacco products shall not be smoked, ingested, or otherwise consumed in the building space occupied by a marijuana retailer. In addition, marijuana retailing shall not be co-located on the same lot of record or within the same building with any marijuana social club or marijuana smoking club.
- k) A licensed retail facility may register with the Oregon Liquor Control Commission (OLCC) to engage in the same retail license activity for specified medical marijuana purposes, as allowed by the OLCC.

Section 5.050.030(A)(23) would be renumbered (A)(24).

Section 5.050.050 would be renamed Prohibited Uses and would read as follows:

Section 5.050.050 Prohibited Uses

The production, processing, and wholesaling of recreational marijuana are prohibited uses in all CBC – Central Business Commercial districts.

Section 5.050.050 through 5.050.080 would be renumbered 5.050.060 through 5.050.090, with 5.050.060 being renamed Development Standards, 5.050.070 Design Standards-All Development, 5.050.080 Design Standards-Sub-Districts and 5.050.090 being renamed Exceptions to Standards.

Section 9. CG – General Commercial District. The provisions in this district shall be amended as follows:

CG – General Commercial District

Section 5.060.020(A)(26) would be revised for a new permitted use concerning retail marijuana facilities, which would read as follows:

- 26. **Recreational Marijuana Facilities.** An application for a retail marijuana facility shall also comply with the following criteria:
 - a) The retail facility must be located more than 500 feet from any RL, RH, or RM Residential District, measured in a straight line from the closest edge of the property line on which the retail facility is located to the closest edge of the property in the RL, RH, or RM Residential District.
 - b) The retail facility must be located more than 1,000 feet from all of the following facilities, measured in a straight line from the closest edge of the property on which the other facility is located:
 - 1. A public elementary or secondary school for which attendance is compulsory under ORS 339.020, or a private or parochial elementary or secondary school, teaching children as described in ORS 339.030(1)(a).

2. A public library.
 3. A public park.
 4. A recreational facility, which has facilities such as a playground, swimming pool, baseball field, football field, soccer field, tennis court, basketball court, or volleyball court.
 5. Any other recreational marijuana retailer registered with the Oregon Liquor Control Commission.
- c) The retail facility must be located in a building and may not be located in an intermodal cargo container, motor vehicle, recreational vehicle or residential trailer. Outdoor storage of merchandise, raw materials, or other material associated with the retail facility is prohibited.
 - d) The retail facility shall not have a drive-up use.
 - e) The retail facility shall provide for secure disposal of marijuana remnants or by-products; such remnants or by-products shall not be placed in the retail facility's exterior refuse containers.
 - f) The retail facility's license or authority must be in good standing with the Oregon Health Authority or Oregon Liquor Control Commission, and the retail facility must comply with all applicable laws and regulations administered by the respective state agency, including, without limitation those rules that relate to labeling, packaging, testing, security, waste management, food handling, and training.
 - g) The hours of operation for the retail facility shall be no earlier than 10:00 AM and no later than 8:00 P.M.
 - h) The retail facility must use an air filtration and ventilation system which, to the greatest extent feasible, contains all marijuana-related odors within the facility rather than allowing such odors to escape outside. Sufficient measures and means of preventing odors, debris, fluids and other substances from exiting the facility must be in effect at all times.
 - i) No one under the age of 21 shall be permitted to be present in the building space occupied by a marijuana retailer, except as allowed by state law.
 - j) Marijuana and tobacco products shall not be smoked, ingested, or otherwise consumed in the building space occupied by a marijuana retailer. In addition, marijuana retailing shall not be co-located on the same lot of record or within the same building with any marijuana social club or marijuana smoking club.
 - k) A licensed retail facility may register with the Oregon Liquor Control Commission (OLCC) to engage in the same retail license activity for specified medical marijuana purposes, as allowed by the OLCC.

Section 5.060.020(A)(26) would be renumbered (A)(27)

Section 5.060.040 would be renamed Prohibited Uses and would read as follows:

Section 5.060.040 Prohibited Uses

The production, processing, and wholesaling of recreational marijuana are prohibited uses in all CG – General Commercial districts.

Section 5.060.050 through 5.060.060 would be renumbered 5.060.060 through 5.060.070, with 5.060.050 being renamed Development Standards, 5.060.060 Design Standards, and 5.060.070 being renamed Exceptions to Standards.

Section 10. CLI – Commercial/Light Industrial District. The provisions in this district shall be amended as follows:

Section 5.070.020(A)(27) would be revised for a new permitted use concerning retail marijuana facilities, which would read as follows:

27. Recreational Marijuana Facilities. An application for a retail marijuana facility shall also comply with the following criteria:
- a) The retail facility must be located more than 500 feet from any RL, RH, or RM Residential District, measured in a straight line from the closest edge of the property line on which the retail facility is located to the closest edge of the property in the RL, RH, or RM Residential District.
 - b) The retail facility must be located more than 1,000 feet from all of the following facilities, measured in a straight line from the closest edge of the property on which the other facility is located:
 1. A public elementary or secondary school for which attendance is compulsory under ORS 339.020, or a private or parochial elementary or secondary school, teaching children as described in ORS 339.030(1)(a).
 2. A public library.
 3. A public park.
 4. A recreational facility, which has facilities such as a playground, swimming pool, baseball field, football field, soccer field, tennis court, basketball court, or volleyball court.
 5. Any other recreational marijuana retailer registered with the Oregon Liquor Control Commission.
 - c) The retail facility must be located in a building and may not be located in an intermodal cargo container, motor vehicle, recreational vehicle or residential trailer. Outdoor storage of merchandise, raw materials, or other material associated with the retail facility is prohibited.
 - d) The retail facility shall not have a drive-up use.

- e) The retail facility shall provide for secure disposal of marijuana remnants or by-products; such remnants or by-products shall not be placed in the retail facility's exterior refuse containers.
- f) The retail facility's license or authority must be in good standing with the Oregon Health Authority or Oregon Liquor Control Commission, and the retail facility must comply with all applicable laws and regulations administered by the respective state agency, including, without limitation those rules that relate to labeling, packaging, testing, security, waste management, food handling, and training.
- g) The hours of operation for the retail facility shall be no earlier than 10:00 AM and no later than 8:00 P.M.
- h) The retail facility must use an air filtration and ventilation system which, to the greatest extent feasible, contains all marijuana-related odors within the facility rather than allowing such odors to escape outside. Sufficient measures and means of preventing odors, debris, fluids and other substances from exiting the facility must be in effect at all times.
- i) No one under the age of 21 shall be permitted to be present in the building space occupied by a marijuana retailer, except as allowed by state law.
- j) Marijuana and tobacco products shall not be smoked, ingested, or otherwise consumed in the building space occupied by a marijuana retailer. In addition, marijuana retailing shall not be co-located on the same lot of record or within the same building with any marijuana social club or marijuana smoking club.
- k) A licensed retail facility may register with the Oregon Liquor Control Commission (OLCC) to engage in the same retail license activity for specified medical marijuana purposes, as allowed by the OLCC.

Section 5.070.020(A)(27) would be renumbered (A)(28).

Section 5.070.030 would be revised by adding a new section B and would read as follows:

- B. The production, processing, storage, and wholesaling of recreational marijuana, subject to the following additional provisions:
 - 1. Activity shall occur only in a completely enclosed building. Greenhouses are not allowed.
 - 2. A building used for marijuana production, processing, storage, or wholesaling shall be equipped with a carbon filtration system for odor control.
 - a. The system shall consist of one or more fans and filters.
 - b. At a minimum, the fan(s) shall be sized for cubic feet per minute (CFM) equivalent to the square footage of the building floor space (i.e., one CFM per square feet of building floor space).

- c. The filter(s) shall be rated for the required CFM.
 - d. The filtration system shall be maintained in working order and shall be in use.
 - e. An alternative odor control system is permitted if the applicant submits a report by a mechanical engineer licensed in the State of Oregon demonstrating that the alternative system will control odor as well or better than the carbon filtration system otherwise required.
3. The marijuana production, processing, storage, or wholesaling business's state licensing or authority must be in good standing with the Oregon Health Authority or the Oregon Liquor Control Commission, and the business must comply with all applicable rules and regulations administered by the respective state agency, including, without limitation those rules that relate to labeling, packaging, testing, security, waste management, food handling, and training.
 4. The recreational marijuana production, processing, storage, or wholesaling business must be located more than 500 feet from a public elementary or secondary school for which attendance is compulsory under ORS 339.020, or a private or parochial elementary or secondary school, teaching children as described in ORS 339.030(1)(a).

Sections 5.070.030 B through F would be renumbered C through G.

Section 11. CR – Recreational Commercial District. The provisions in this district shall be amended as follows:

Section 5.080.040 Development Standards would be renamed Prohibited Uses and would read as follows:

Section 5.080.040 Prohibited Uses

The production, processing, wholesaling and retailing of recreational marijuana are prohibited uses in all CR – Recreational Commercial districts.

Section 5.080.040 through 5.080.060 would be renumbered 5.080.050 through 5.080.070, with 5.080.050 being renamed Development Standards, 5.080.060 Design Standards, and 5.080.070 being renamed Exceptions to Standards.

Section 12. I – Industrial District. The provisions in this district shall be amended as follows:

Section 5.090.030 would be revised for a new conditional use concerning marijuana facilities, which would read as follows:

- J. The production, processing, storage, and wholesaling of recreational marijuana. An application for a marijuana production, processing, storage, or wholesaling facility shall also comply with the following criteria:

- 1) The facility must be located in a building and may not be located in an intermodal cargo container, motor vehicle, recreational vehicle or residential trailer. Outdoor storage of merchandise, raw materials, or other material associated with the production, processing, storage, or wholesaling facility is prohibited.
- 2) The facility shall provide for secure disposal of marijuana remnants or by-products; such remnants or by-products shall not be placed in the facility's exterior refuse containers.
- 3) The production, processing, storage, or wholesaling facility shall be licensed by the Oregon Liquor Control Commission and comply with the requirements of any applicable administrative rule adopted by the Oregon Liquor Control Commission.
- 4) A building used for marijuana production, processing, storage, or wholesaling shall be equipped with a carbon filtration system for odor control.
 - a. The system shall consist of one or more fans and filters.
 - b. At a minimum, the fan(s) shall be sized for cubic feet per minute (CFM) equivalent to the square footage of the building floor space (i.e., one CFM per square feet of building floor space).
 - c. The filter(s) shall be rated for the required CFM.
 - d. The filtration system shall be maintained in working order and shall be in use.
 - e. An alternative odor control system is permitted if the applicant submits a report by a mechanical engineer licensed in the State of Oregon demonstrating that the alternative system will control odor as well or better than the carbon filtration system otherwise required.
- 5) The recreational marijuana production, processing, storage, or wholesaling business's state licensing or authority must be in good standing with the Oregon Health Authority or the Oregon Liquor Control Commission, and the business must comply with all applicable rules and regulations administered by the respective state agency, including, without limitation those rules that relate to labeling, packaging, testing, security, waste management, food handling, and training.

Section 13. CFO - Community Facilities Overlay District. The provisions in this district shall be amended as follows:

Section 5.100.030 Review Procedures would be renamed Prohibited Uses and would read as follows:

Section 5.100.030 Prohibited Uses

The production, processing, wholesaling, and retailing of recreational marijuana are prohibited uses in all CFO - Community Facilities Overlay zones.

Section 5.100.030 through 5.100.050 would be renumbered 5.100.040 through 5.100.060, with 5.100.040 being renamed Review Procedures, 5.100.050 Development Standards, and 5.100.060 being renamed Master Plans.

Section 14. P/OS Parks and Open Space District. The provisions in this district shall be amended as follows:

Section 5.110.040 Review Procedures would be renamed Prohibited Uses and would read as follows:

Section 5.110.040 Prohibited Uses

The production, processing, wholesaling, and retailing of recreational marijuana, are prohibited uses in all P/OS - Parks and Open Space zones.

Section 5.110.040 through 5.110.050 would be renumbered 5.110.050 through 5.110.060, with 5.110.050 being renamed Review Procedures, and 5.110.060 being renamed Development Standards.

Section 15. Section 6.020.020(D) – Prohibited Uses shall be amended to read as follows:

D. Prohibited Uses. Vehicle sales, vehicle repair, and any use where the vehicle is the focus of the work, or is a significant part of the home business, is prohibited unless the owner obtains a conditional use permit. The production, processing, wholesaling, and retailing of recreational marijuana, are prohibited as a home occupation in any zoning district.

PASSED AND ADOPTED THIS 25TH DAY OF JUNE, 2016.

Voting Yes, Councilors: _____

Voting No, Councilors: _____

Abstaining, Councilors: _____

Absent, Councilors: _____

AND APPROVED BY THE MAYOR THIS 25TH DAY OF JUNE, 2016.

Stephen E. Lawrence, Mayor

Attest:

Izetta Grossman, City Clerk



AGENDA STAFF REPORT

AGENDA LOCATION: Discussion Item #12-A

MEETING DATE: July 25, 2016

TO: Honorable Mayor and City Council

FROM: Gene Parker, City Attorney

ISSUE: Discussion of Special Ordinance No. 16-573, granting a non-exclusive gas utility franchise to Northwest Natural Gas Company, and fixing terms, conditions and compensation of such franchise

BACKGROUND: The City granted a gas utility franchise to Northwest Natural Gas Company in 1996 by adoption of Special Ordinance No. 96-442. The franchise was initially scheduled to expire on April 1, 2016, and the term of the franchise was extended by adoption of Special Ordinance No. 16-572 to October 1, 2016, or until a new franchise agreement was negotiated, whichever came first. City staff engaged in negotiations with representatives from Northwest Natural Gas, and the terms of a proposed new franchise agreement are set forth in Special Ordinance No. 16-573.

During the course of the negotiations, there were multiple drafts of the proposed franchise agreement which were exchanged between City staff and representatives of NW Natural Gas. The parties did not create a single document which showed every word which had been deleted by a strikethrough, or every new word that was proposed as an amendment. Trying to create this type of document would be difficult at this point, and could result in a document which could be very difficult to read. To assist the City Council, I have enclosed a copy of Special Ordinance No. 96-442 which contains the provisions of the current franchise agreement. In this staff report, I will discuss the provisions of General Ordinance No. 16-573, and highlight the significant changes that have been made to the language which was included in General Ordinance No. 96-442.

1. Section 1. Definitions and Explanations. The proposed franchise agreement includes many of the existing definitions and explanation of terms. There are two primary changes to the terms in this section under General Ordinance No. 16-573. This first change is to the term "public place", which includes a new reference to

trails and walkways. The second change is a new definition for the term “Gross Revenue”. The new definition is based upon a definition from an administrative rule used by the Oregon Public Utilities Commission, which regulates rates charged by NW Natural Gas Company, and many cities have agreed that this definition is appropriate to include in a franchise agreement for NW Natural. The previous definition for “Gross Revenue” can be found in Section 4(1) of Special Ordinance No. 96-442.

2. Section 4. Franchise Fee. The franchise fee of 3.25% set forth in Special Ordinance No. 96-442 has been amended to reflect the current rate of 4.25%. Special Ordinance No. 16-573 deletes the requirement for a sworn statement of the Gross Revenue earned by NW Natural, due to the fact that the statements are produced by the Customer Account billing department of NW Natural, and are not prepared in the form of a sworn statement. The proposed franchise includes a provision that written statement will be provided to the City showing the basis for the computation in accordance with the definition of Gross Revenue contained in the franchise ordinance. The proposed provision is one that NW Natural uses in agreements with many other cities.

If the City has concerns as to the accuracy of these statements, the City has the right to inspect the books of account maintained by NW Natural at any time during business hours, and may audit the books from time to time under Section 13 of Special Ordinance No. 16-573. NW Natural also has internal controls related to the payments of Gross Revenue to ensure accuracy, including a SOX (Sarbanes Oxley) based controls which relate to their required financial reporting to make sure it is accurate with no material mistakes or discrepancies. SOX critical or key controls are ones that directly relate to the ability of NW Natural’s financial reporting to make sure matters such as their revenue reporting are accurate.

3. Section 6. Public Works and Improvements Not Affected by Franchise. Subsection 4 of the proposed new franchise agreement includes a provision whereby the City would provide 90 days advance written notice to NW Natural of any proposed excavation or work which may disturb the company’s gas mains, pipes or appurtenances.
4. Section 9. Control of Construction. The proposed new franchise agreement included a reference to alleys, bridges, or public places that would be filed with maps showing the location of any construction, extension or relocation of NW Natural’s gas mains. The proposed new franchise agreement also removes the requirement for a permit prior to construction, extension or relocation of gas mains for work performed under emergency conditions.
5. Section 10. Street Excavation and Restorations. Subsection 1 of Special Ordinance No. 16-573 includes new language allowing the City to consider a request for permission to cut a street prior to the expiration of the ten year moratorium, in the event that moling, boring, or shoulder work are not feasible to repair a system failure or construct system improvements.

6. Section 12. Term and Review of Franchise Fee and Expiration of the Franchise Term. The proposed 20 year term for the new franchise is equivalent to the term of the franchise granted by Special Ordinance No. 96-442. Special Ordinance No. 16-573 provides for periodic review of the franchise fee of 4.25%. The provision in Special Ordinance No. 96-442, which allowed for retroactive collection of any increase in the franchise fee, has been deleted as NW Natural cannot bill their customers on a retroactive basis for any increase in the franchise fee. The proposed new franchise agreement includes a provision that at the end of the twenty year term, if the City and NW Natural are still negotiating the terms of another new franchise, the parties will effectively have a period of six (6) months to complete the negotiations for a new franchise agreement.
7. Section 13. Books of Accounts and Records. Special Ordinance No. 16-573 provides that any audit or financial review of NW Natural's books will cover a period of three years prior to the date that the City notifies NW Natural of its intent to perform an audit or financial review, as NW Natural only maintains three years of customer records concerning payments in their system. The new franchise agreement includes a provision which is common in many other franchise agreements which NW Natural has with other cities concerning the non-disclosure of customer information which identifies, or can be attributed to, specific customers, under state public records law. The requirement in the existing franchise agreement that NW Natural provide the City with a copy of its annual financial statement has been deleted, since a copy of the annual report can be obtained from the company's website.
8. The existing franchise agreement included a provision in Section 14 of Special Ordinance No. 96-442 which required NW Natural maintain facilities in the City where customers could pay their bills. This provision has been deleted since NW Natural no longer maintains such a facility in the City, and most customers pay their bills by mail, or online or other electronic bill pay system.
9. Section 16. Assignment of Franchise. Section 16 of Special Ordinance No. 16-573 contains provisions which replace the provisions concerning assignment in Section 17 of Special Ordinance No. 96-422. The language in Special Ordinance No. 16-573 is consistent with the language used by other cities in their franchise agreements with NW Natural. The Oregon Public Utilities Commission (PUC) has to review any proposed assignment by NW Natural to an entity which does not control, or is not controlled by, or is not under the common control of NW Natural. If the PUC approves this type of proposed assignment, the proposed language would provide that the City would accept the PUC's approval of the assignment as conclusive evidence of the technical, legal and financial qualifications of the prospective party regarding the operation of gas facilities for the purposes of the City's approval of any transfer of the franchise. The City would not be required to give its consent for any sale, lease, mortgage, assignment, merger, or other transfer to entities that are control, are controlled by, or are under the common control of NW Natural.

BUDGET IMPLICATIONS: The proposed franchise agreement provides for a franchise fee of 4.25% of gross revenue received by NW Natural, with provisions for periodic review of the franchise fee.

COUNCIL ALTERNATIVES:

1. *Staff recommendation:* As this a discussion of a proposed franchise agreement, staff is seeking input from the Council concerning any potential changes in the proposed franchise agreement. If the proposed ordinance is acceptable as drafted, staff will post notice of adoption of the ordinance for the September 12th Council meeting.

2. If the Council identifies any provision in the proposed ordinance which they desire to revise, that revised language will be included in the proposed franchise agreement which will be posted for adoption at the September 12th Council meeting.

SPECIAL ORDINANCE NO. 16-573

**AN ORDINANCE GRANTING A NON-EXCLUSIVE GAS UTILITY FRANCHISE
TO NORTHWEST NATURAL GAS COMPANY, AND FIXING TERMS,
CONDITIONS AND COMPENSATION OF SUCH FRANCHISE, AND
DECLARING AN EMERGENCY**

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

Section 1: Definitions and Explanations.

- (1) As used in this ordinance.
 - (a) “Bridge” includes a structure erected within the City to facilitate the crossing of river, stream, ditch, ravine or other place, but does not include a culvert.
 - (b) “City” means the City of The Dalles and the area within its boundaries, including its boundaries as extended in the future.
 - (c) “Council” means the City Council of The Dalles.
 - (d) “Gas Mains” includes all gas transmission and distribution facilities located on or under any street, alley, bridge or public place within the City.
 - (e) “Grantee” means the corporation referred to in Section 2 of this ordinance.
 - (f) “Gross Revenue” means revenue received from the use of the gas utility system within the City limits less related net uncollectibles. Gross revenues shall include revenues from the use, rental or lease of the gas utility system, except when those revenues have been paid to Grantee by another franchisee of the City and the paid revenues are used in the calculation of the franchise fee for the operation of the other franchisee within the City limits. Gross revenues shall not include proceeds from the sale of bonds, mortgage, or other evidence of indebtedness, securities, or stocks, or sales at wholesale by Grantee to any public utility or public agency when the public utility or public agency purchasing the gas is not the ultimate customer. Gross revenues also shall not include public purpose charges, provided that such charges or surcharges are required or authorized by federal or state statute, administrative rule, or by tariff approved by the OPUC and raised revenue is used solely for the public purpose and not to compensate Grantee for the sale or

use of natural gas or for the use, rental, or lease of Grantee's utility system within the City. Public purpose activities include, but are not limited to, energy efficiency programs, market transformation programs, low-income energy efficiency programs, and carbon offset programs designed to benefit residential and commercial customers within Grantee's service territory in Oregon. Gross revenues also shall not include revenues derived from the sale or transportation of gas supplied under an interruptible tariff schedule or revenues paid directly by the United States of America or any of its agencies.

- (g) "Person" includes an individual, corporation, association, firm, partnership and joint stock company.
 - (h) "Public Place" includes any city-owned property, right-of-way, trail, walkway, place or grounds within the City that is open to the public but does not include a street or bridge.
 - (i) "Street" includes a street, alley, avenue, road, boulevard, thoroughfare or public highway within the City, but does not include a bridge.
- (2) As used in this ordinance, the singular number may include the plural, and the plural number may include the singular.
 - (3) Unless otherwise specified in this ordinance, any action authorized or required to be taken by the City may be taken by the Council or by an official or agent designated by the Council.

Section 2: Rights Granted.

Subject to the conditions and reservations contained in this ordinance, the City hereby grants to NORTHWEST NATURAL GAS COMPANY, a corporation, the right, privilege and franchise to:

- (1) Construct, maintain and operate a gas utility system within the City.
- (2) Install, maintain and operate on and under the streets and bridges and public places of the City, facilities for the transmission and distribution of gas to the City and its inhabitants and to other customers and territory beyond the limits of the City; and
- (3) Transmit, distribute and sell gas.

Section 3: Use of Street, Bridges and Public Places by Grantee.

- (1) Before the Grantee may use or occupy any street, bridge or public place, the Grantee shall first obtain a permit from the City to do so and shall comply with any special conditions the City desires to impose on such use or occupation.
- (2) The compensation paid by the Grantee for this franchise includes compensation for the use of streets, bridges and public places located within the City as authorized.

Section 4: Franchise Fee.

- (1) In consideration of the rights, privileges and franchise hereby granted, the Grantee shall pay the City, from and after the effective date of this franchise and until its expiration, on a quarterly basis, an amount equal to four and a quarter percent (4.25%) of the Gross revenue collected by the Grantee from its customers for gas consumed within the City.
- (2) The Grantee shall furnish to the City Finance Director with each payment of compensation required by this section a written statement showing the amount of Gross revenue of the Grantee within the City for the period covered by the payment on or before the 25th day of the month following each calendar quarter, and payment of the franchise fee shall be made on or before the 25th day of the month following each calendar quarter. This written statement will show the basis for the computation in accordance with the definition of Gross revenues contained in this franchise. Within sixty (60) days after the termination of this franchise, the franchise fee shall be paid for the period elapsing since the close of the last calendar quarter for which the franchise fee has been paid.
- (3) The compensation for the period covered by the statement shall be computed on the basis of the Gross revenue so reported. If the Grantee fails to pay the entire amount of the franchise fee due the City through error or otherwise, the difference due the City shall be paid by the Grantee within fifteen (15) days from discovery of the error or determination of the correct amount. Any overpayment to the City through error or otherwise, shall be offset against the next payment due from the Grantee.
- (4) The payments made by the Grantee will be accepted by the City in payment of any license, privilege or occupation tax or fee for revenue or regulation, or for any other purpose now or hereafter imposed by the City upon the Grantee during the term of this franchise, except permit fees for excavation and similar work as required by City ordinance. Acceptance by the City of any payment due under this section shall not be deemed to be a waiver by the City of any breach of this franchise occurring prior thereto,

nor shall the acceptance by the City of any such payments preclude the City from later establishing that a larger amount was actually due, or from collecting any balance due to the City.

Section 5: Franchise Not Exclusive.

This franchise is not exclusive, and shall not be construed as a limitation on the City in:

- (1) Granting rights, privileges and authority to other persons similar to or different from those granted by this ordinance.
- (2) Constructing, installing, maintaining or operating any City-owned public utility.

Section 6: Public Works and Improvements Not Affected by Franchise.

The City reserves the right to:

- (1) Construct, install, maintain and operate any public improvement, work or facility;
- (2) Do any work that the City may find desirable on, over or under any street, bridge or public place.
- (3) Vacate, alter or close any street, bridge or public place.
- (4) Whenever the City shall excavate or perform any work in any of the present and future streets, alleys, bridges and public places of the City, or shall contract, or issue permits, for such excavation or work where such excavation or work may disturb Grantee's gas mains, pipes and appurtenances, the City shall, in writing, notify the Grantee ninety (90) days in advance of such contemplated excavation or work to enable Grantee to take such measures as may be deemed necessary to protect such gas mains, pipes and appurtenances from damage and possible inconvenience or injury to the public. In any such case, the Grantee, upon request, shall furnish maps or drawings to the City or contractor, as the case may be, showing the approximate location of all its structures in the area involved in such proposed excavation or other work.
- (5) Whenever the City shall vacate any street or public place for the convenience or benefit of any person or governmental agency and instrumentality other than the City, Grantee's rights shall be preserved as to any of its facilities then existing in such street or public place.

Section 7: Continuous Service.

The Grantee shall maintain and operate an adequate system for the distribution of natural gas in the City. The Grantee shall use due diligence to maintain continuous and uninterrupted 24 hour a day service which shall at all times conform at least to the standards common in the business and to the standards adopted by state authorities and to standards of the City which are not in conflict with those adopted by the state authorities. Under no circumstances shall the Grantee be liable for an interruption or failure of service caused by act of God, unavoidable accident or other circumstances beyond the control of the Grantee through no fault of its own.

Section 8: Safety Standards and Work Specifications.

- (1) The facilities of the Grantee shall at all times be maintained in a safe, substantial and workmanlike manner.
- (2) For the purpose of carrying out the provisions of this section, the City may provide such specifications relating thereto as may be necessary or convenient for public safety or the orderly development of the City. The City may amend and add to such specifications from time to time.

Section 9: Control of Construction.

The Grantee shall file with the City maps showing the location of any construction, extension or relocation of its gas mains in the streets, alleys, bridges or public places of the City within 90 days of approval of this franchise agreement, and shall obtain from the City approval of the location and plans prior to commencement of the work. The City shall require the Grantee to obtain a permit before commencing the construction, extension or relocation of any of its gas mains, except for work performed under emergency conditions as provided for in this franchise.

Section 10: Street Excavation and Restorations.

- (1) Subject to the provisions of this ordinance, the Grantee may make necessary excavations for the purpose of constructing, installing, maintaining and operating its facilities. Except in emergencies, in the performance of routine service connections and ordinary maintenance, and when on private property, prior to making an excavation in the right-of-way of any street, bridge or public place and when required by the City, in any untraveled portion of any street, bridge, or any public place, the Grantee shall obtain a permit from the City for the proposed excavation and approval of its location. Grantee shall give notice to the City by telephone, electronic data transmittal or other appropriate means prior to the commencement of service or maintenance work, no later than seven days

before the work begins, and as soon as is practicable after the commencement of work performed under emergency conditions. Grantee shall not be allowed to cut any newly installed pavement for a period of ten years. In the event that moling, boring, or shoulder work are not feasible to repair a system failure or construct system improvements, at Grantee's request the City will consider approval of a street cut prior to the ten (10) year moratorium described in this section.

- (2) Excavations shall result in the placement of distribution pipelines within a minimum depth of 30 inches. When any excavation is made by the Grantee, the Grantee shall promptly restore the affected portion of the street, bridge or public place to the same condition in which it was prior to the excavation. Upon notification from the City that a street cut performed by the Grantee is in need of additional repair or maintenance, Grantee agrees to perform such repair or maintenance work on the street cut at its own cost. The restoration shall be in compliance with specifications, requirements and regulations of the City in effect at the time of such restoration. If the Grantee fails to restore promptly the affected portion of a street, bridge or public place to the same condition in which it was prior to the excavation, the City may make the restoration, and the cost thereof shall be paid by the Grantee.

Section 11: Location and Relocation of Facilities.

- (1) All facilities of the Grantee shall be placed so that they do not interfere unreasonably with the use by the City and the public of the streets, bridges and public places and in accordance with any specifications adopted by the City governing the location of facilities.
- (2) The City may require, in the public interest, the removal or relocation of facilities maintained by the Grantee in the streets of the City, and the Grantee shall remove and relocate such facilities within a reasonable time after receiving notice to do so from the City. The cost of such removal or relocation of its facilities shall be paid by the Grantee, but when such removal or relocation is required for the convenience or benefit of any Person, governmental agency or instrumentality other than the City, Grantee shall be entitled to reimbursement for the reasonable cost thereof from such person, agency or instrumentality.
- (3) Upon notification from the City, Grantee shall place in any new project area, appropriate utility services to accommodate future growth, at the time of construction.

Section 12: Term and Review of Franchise Fee and Expiration of the Franchise Term.

The rights, privileges, and franchise granted herein shall continue and be in force for a period of twenty (20) years from and after August 1, 2016; provided, however, that the franchise rate of four and a quarter percent (4.25%) shall be reviewed as of August 1, 2021, August 1, 2026 and August 1, 2031. Any increase in the franchise fee negotiated between the parties shall be effective as of the next calendar quarter following approval by the parties of the new franchise fee. If, at the end of the term of this franchise, the City and Grantee are negotiating another franchise and have not yet concluded their negotiations, Grantee's rights and responsibilities shall be controlled by this franchise until the City grants a new franchise and Grantee accepts it, or for a period of not less than 6 months, whichever comes first.

Section 13: Books of Account and Reports.

The Grantee shall keep accurate books of account at an office in Oregon for the purpose of determining the amounts due to the City under Section 12 of this ordinance. The City may inspect the books of account at any time during business hours and may audit the books from time to time, provided that only payments that occurred or should have occurred during a period of thirty-six (36) months prior to the date the City notifies the Grantee of its intent to perform an audit or financial review will be included. The Grantee will not provide the City with records containing customer information that identifies or can be attributed to a specific customer, without a written legal opinion by the City to the Grantee's reasonable satisfaction that such records will not be subject to public disclosure under state law, and that the City will inform NW Natural and oppose their disclosure should a public disclosure request be made. The Council may require periodic reports from the Grantee relating to its operations and revenues within the City.

Section 14: Supplying Maps Upon Request

The Grantee shall maintain on file, at an office in Oregon, maps and operational data pertaining to its operations in the City. The City may inspect the maps and data at any time during business hours. The Grantee shall furnish to the City, within 90 days of the approval of this franchise agreement, without charge and on a current basis, maps showing the location of the Gas Mains of the Grantee in the City.

Section 15: Indemnification.

The Grantee shall indemnify, defend and save harmless the City and its officers, agents and employees from any and all loss, cost and expense arising from damage to property and/or injury

to, or death of, persons due to any wrongful or negligent act or omission of the Grantee, its agents or employees in exercising the rights, privileges and franchise hereby granted.

Section 16: Assignment of Franchise.

This franchise shall be binding upon and inure to the benefit of the successors, legal representatives and assigns of the Grantee; but no transfer of this franchise or any rights thereunder by merger, consolidation, sale, assignment or otherwise shall be made unless the Council first consents by resolution, which consent shall not be unreasonably withheld. If a sale, lease, mortgage, assignment, merger, or transfer to an entity or entities which do not control, or are not controlled by, or are not under common control with Grantee, of Grantee's gas facilities located within the rights-of-way by authority of this franchise is subject to review and approval by the Oregon Public Utilities Commission, the City shall accept final approval by the OPUC of the sale, lease, mortgage, assignment, merger, or transfer as conclusive evidence of the technical, legal, and financial qualifications of the prospective party regarding operation of the gas facilities for the purposes of City approval of the transfer. Nothing in this franchise requires the City's consent for any sale, lease, mortgage, assignment, merger, or other transfer to entities that control, are controlled by, or are under common control with Grantee. Nothing contained in this franchise shall be deemed to prohibit the mortgage, pledge, or assignment of tangible assets of Grantee's gas facilities for the purposes of financing the acquisition of equipment for or the construction or operation of Grantee's gas facilities, within or outside the City, without the City's consent, but any such mortgage, pledge, or assignment with respect to Grantee's gas facilities shall be subject to the City's other rights contained in this franchise. Whenever Northwest Natural Gas Company shall be mentioned in this ordinance, it shall be understood to include such successors or assigns in interest of Northwest Natural Gas Company as shall have been so consented to by the City Council.

Section 17: Termination of Franchise for Cause.

Upon the willful failure of the Grantee, after sixty (60) days' notice and demand in writing, to perform promptly and completely each and every term, condition or obligation imposed upon it under or pursuant to this ordinance, the City may terminate this franchise, subject to Grantee's right to a court review of the reasonableness of such action,

Section 18: Remedies Not Exclusive, When Requirement Waived.

All remedies and penalties under this ordinance, including termination of the franchise, are cumulative, and the recovery or enforcement of one is not a bar to the recovery or enforcement of any other such remedy or penalty. The remedies and penalties contained in this ordinance, including termination of the franchise, are not exclusive and the City reserves the right to enforce

the penal provisions of any ordinance or resolution and to avail itself of any and all remedies available at law or in equity. Failure to enforce shall not be construed as a waiver of a breach of any term, condition or obligation imposed upon the Grantee by or pursuant to this ordinance. A specific waiver of a particular breach of any term, condition or obligation imposed upon the Grantee by or pursuant to this ordinance shall not be a waiver of any other or subsequent or future breach of the same or of any other term, condition or obligation, or a waiver of the term, condition or obligation itself.

Section 19: Acceptance and Effective Date.

The Grantee shall, within thirty (30) days from the date the City Council passes an ordinance approving this franchise, file with the City its written unconditional acceptance of this franchise. This franchise shall be effective upon Grantee’s written unconditional acceptance, and if the Grantee fails to do so, this ordinance shall be void.

Section 20: Emergency. Whereas, on March 28, 2016, the City Council adopted Special Ordinance No. 16-572 temporarily extending the term of the non-exclusive gas utility franchise granted to Northwest Natural Gas by Special Ordinance No. 96-442 until October 1, 2016 or until a new Franchise Agreement is negotiated, and it is in the interest of public health and safety that the ordinance approving a new Franchise Agreement take effect immediately to allow for Northwest Natural Gas to continuing providing service to its customers;

NOW, THEREFORE, an emergency is declared to exist, and this ordinance shall go into full force and effect immediately upon its passage and approval.

PASSED AND ADOPTED THIS 12th DAY OF SEPTEMBER _____, 2016.

Voting Yes, council members _____
Voting No, council members _____
Absent, council members _____
Abstaining, council members _____

AND APPROVED BY THE MAYOR THIS 12th DAY OF SEPTEMBER, 2016.

Stephen E. Lawrence, Mayor

ATTEST:

Izetta Grossman, City Clerk

ACCEPTANCE

City of The Dalles
City Clerk
313 Court Street
The Dalles, OR 97058

This is to advise the City of The Dalles, Oregon (the "City") that Northwest Natural Gas Company (the "Grantee") hereby accepts the terms and provisions of Ordinance No. _____ passed by The Dalles City Council on _____, 2016 (the "Franchise") granting a Franchise for twenty (20) years to Grantee. The Grantee agrees to abide by each and every term of the Franchise, and shall become effective upon acceptance of said agreement by NW Natural Gas Company (the "Grantee").

(Name)
BY _____

TITLE Senior Vice President & General Counsel

DATE _____

This Acceptance was received by the City of _____ on _____, 2016.

City Clerk

SPECIAL ORDINANCE NO. 96-442

AN ORDINANCE GRANTING A NON-EXCLUSIVE GAS UTILITY FRANCHISE TO NORTHWEST NATURAL GAS COMPANY, AND FIXING TERMS, CONDITIONS AND COMPENSATION OF SUCH FRANCHISE.

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

Section 1: Definitions and Explanations.

- (1) As used in this ordinance.
 - (a) "Bridge" includes a structure erected within the City to facilitate the crossing of a river, stream, ditch, ravine or other place, but does not include a culvert.
 - (b) "City" means the City of The Dalles and the area within its boundaries, including its boundaries as extended in the future.
 - (c) "Council" means the City Council of The Dalles.
 - (d) "Grantee" means the corporation referred to in Section 2 of this ordinance.
 - (e) "Gas mains" includes all gas transmission and distribution facilities located on or under any street, alley, bridge or public place within the City.
 - (f) "Person" includes an individual, corporation, association, firm, partnership and joint stock company.
 - (g) "Public place" includes any city-owned property, right-of-way, place or grounds within the City that is open to the public but does not include a street or bridge.
 - (h) "Street" includes a street, alley, avenue, road, boulevard, thoroughfare or public highway within the City, but does not include a bridge.
- (2) As used in this ordinance, the singular number may include the plural and the plural number may include the singular.
- (3) Unless otherwise specified in this ordinance, any action authorized or required to be taken by the City, may be taken by the Council or by an official or agent designated by the Council.



Section 2: Rights Granted.

Subject to the conditions and reservations contained in this ordinance, the City hereby grants to NORTHWEST NATURAL GAS COMPANY, a corporation, the right, privilege and franchise to:

- (1) Construct, maintain and operate a gas utility system within the City.
- (2) Install, maintain and operate on and under the streets and bridges and public places of the City, facilities for the transmission and distribution of gas to the City and its inhabitants and to other customers and territory beyond the limits of the City; and
- (3) Transmit, distribute and sell gas.

Section 3: Use of Streets, Bridges and Public Places by Grantee.

- (1) Before the Grantee may use or occupy any street, bridge or public place, the Grantee shall first obtain a permit from the City to do so and shall comply with any special conditions the City desires to impose on such use or occupation.
- (2) The compensation paid by the Grantee for this franchise includes compensation for the use of streets, bridges and public places located within the City as authorized.

Section 4: Franchise Fee.

- (1) In consideration of the rights, privileges and franchise hereby granted, the Grantee shall pay to the City, from and after the effective date of this franchise and until its expiration, on a quarterly basis, an amount equal to three and a quarter percent (3.25%) of the gross revenue collected by Grantee from its customers for gas consumed within the City. Gross revenue shall be computed by deducting from the total billings of the Grantee, the total net writeoff of uncollectible accounts, revenues derived from the sale or transportation of gas supplied under an interruptible tariff schedule, revenues paid directly by the United States of America or any of its agencies, and sales of gas at wholesale by the Grantee to any public utility or public agency where the public utility or public agency purchasing such gas is not the ultimate consumer.
- (2) A sworn statement of the gross local service receipts of the Grantee derived from services within the corporate limits of the City shall be filed with the City Clerk by the Grantee

on or before the 25th day of the month following each calendar quarter, and payment of the franchise fee shall be made on or before the 25th day of the month following each calendar quarter. Within sixty (60) days after the termination of this franchise, the franchise fee shall be paid for the period elapsing since the close of the last calendar quarter for which the franchise fee has been paid.

- (3) The compensation for the period covered by the sworn statement shall be computed on the basis of the gross revenue so reported. If the Grantee fails to pay the entire amount of the franchise fee due the City through error or otherwise, the difference due the City shall be paid by the Grantee within fifteen (15) days from discovery of the error or determination of the correct amount. Any overpayment to the City through error or otherwise, shall be offset against the next payment due from the Grantee.
- (4) The payments made by the Grantee will be accepted by the City in payment of any license, privilege or occupation tax or fee for revenue or regulation, or for any other purpose now or hereafter imposed by the City upon the Grantee during the term of this franchise, except permit fees for excavation and similar work as required by City ordinance. Acceptance by the City of any payment due under this section shall not be deemed to be a waiver by the City of any breach of this franchise occurring prior thereto, nor shall acceptance by the City of any such payments preclude the City from later establishing that a larger amount was actually due, or from collecting any balance due to the City.

Section 5: Franchise Not Exclusive.

This franchise is not exclusive, and shall not be construed as a limitation on the City in:

- (1) Granting rights, privileges and authority to other persons similar to or different from those granted by this ordinance.
- (2) Constructing, installing, maintaining or operating any City-owned public utility.

Section 6: Public Works and Improvements Not Affected by Franchise.

The City reserves the right to:

- (1) Construct, install, maintain and operate any public improvement, work or facility;
- (2) Do any work that the City may find desirable on, over or under any street, bridge or public place.
- (3) Vacate, alter or close any street, bridge or public place.
- (4) Whenever the City shall excavate or perform any work in any of the present and future streets, alleys and public places of the City, or shall contract, or issue permits, for such excavation or work where such excavation or work may disturb Grantee's gas mains, pipes and appurtenances, the City shall notify the Oregon Utilities Notification Center to enable Grantee to take such measures as may be deemed necessary to protect such gas mains, pipes and appurtenances from damage and possible inconvenience or injury to the public. In any such case, the Grantee, upon request, shall furnish maps or drawings to the City or contractor, as the case may be, showing the approximate location of all its structures in the area involved in such proposed excavation or other work.
- (5) Whenever the City shall vacate any street or public place for the convenience or benefit of any person or governmental agency and instrumentality other than the City, Grantee's rights shall be preserved as to any of its facilities then existing in such street or public place.

Section 7: Continuous Service.

The Grantee shall maintain and operate an adequate system for the distribution of natural gas in the City. The Grantee shall use due diligence to maintain continuous and uninterrupted 24 hour a day service which shall at all times conform at least to the standards common in the business and to the standards adopted by state authorities and to standards of the City which are not in conflict with those adopted by the state authorities. Under no circumstances shall the Grantee be liable for an interruption or failure of service caused by act of God, unavoidable accident or other circumstances beyond the control of the Grantee through no fault of its own.

Section 8: Safety Standards and Work Specifications.

- (1) The facilities of the Grantee shall at all times be maintained in a safe, substantial and workmanlike manner.
- (2) For the purpose of carrying out the provisions of this section, the City may provide such specifications relating thereto as may be necessary or convenient for public safety

or the orderly development of the City. The City may amend and add to such specifications from time to time.

Section 9: Control of Construction.

The Grantee shall file with the City maps showing the location of any construction, extension or relocation of its gas mains in the streets of the City within 90 days of approval of this franchise agreement, and shall obtain from the City approval of the location and plans prior to commencement of the work. The City shall require the Grantee to obtain a permit before commencing the construction, extension or relocation of any of its gas mains.

Section 10: Street Excavations and Restorations.

- (1) Subject to the provisions of this ordinance, the Grantee may make necessary excavations for the purpose of constructing, installing, maintaining and operating its facilities. Except in emergencies, and in the performance of routine service connections and ordinary maintenance, on private property, prior to making an excavation in the right-of-way of any street, bridge or public place, and, when required by the City, in any untraveled portion of any street, bridge, or any public place, the Grantee shall obtain a permit from the City for the proposed excavation and approval of its location. Grantee shall give notice to the City by telephone, electronic data transmittal or other appropriate means prior to the commencement of service or maintenance work, no later than seven days before the work begins, and as soon as is practicable after the commencement of work performed under emergency conditions. Grantee shall not be allowed to cut any newly installed pavement for a period of ten years.
- (2) Excavations shall result in the placement of pipeline with a minimum depth of 30 inches. When any excavation is made by the Grantee, the Grantee shall promptly restore the affected portion of the street, bridge or public place to the same condition in which it was prior to the excavation. Upon notification from the City that a street cut performed by Grantee is in need of additional repair or maintenance, Grantee agrees to perform such repair or maintenance work on the street cut at its own cost. The restoration shall be in compliance with specifications, requirements and regulations of the City in effect at the time of such restoration. If the Grantee fails to restore promptly the affected portion of a street, bridge or public place to the same condition in which it was prior to the excavation, the City may make the

restoration, and the cost thereof shall be paid by the Grantee.

Section 11: Location and Relocation of Facilities.

- (1) All facilities of the Grantee shall be placed so that they do not interfere unreasonably with the use by the City and the public of the streets, bridges and public places and in accordance with any specifications adopted by the City governing the location of facilities.
- (2) The City may require, in the public interest, the removal or relocation of facilities maintained by the Grantee in the streets of the City, and the Grantee shall remove and relocate such facilities within a reasonable time after receiving notice so to do from the City. The cost of such removal or relocation of its facilities shall be paid by the Grantee, but when such removal or relocation is required for the convenience or benefit of any person, governmental agency or instrumentality other than the City, Grantee shall be entitled to reimbursement for the reasonable cost thereof from such person, agency or instrumentality.
- (3) Upon notification from the City, Grantee shall place in any new project area, appropriate utility services to accommodate future growth, at the time of construction.

Section 12: Term; Review of Franchise Fee.

The rights, privileges, and franchise granted herein shall continue and be in force for a period of twenty (20) years from and after April 1, 1996; provided, however, that the franchise fee rate of three and a quarter percent (3.25%) shall be reviewed as of April 1, 2001, April 1, 2006, and April 1, 2011. Any increase in the franchise fee negotiated between the parties shall be retroactive to each of those dates. If the parties are unable to mutually agree on the renegotiated franchise fee rate within six (6) months after April 1, 2001, April 1, 2006, and April 1, 2011, then either party may terminate this franchise agreement at the end of the six (6) month period.

Section 13: Books of Account and Reports.

The Grantee shall keep accurate books of account at an office in Oregon for the purpose of determining the amounts due to the City under section 12 of this ordinance. The City may inspect the books of account at any time during business hours and may audit the books from time to time. The Council may require periodic reports from the Grantee relating to its operations and revenues

within the City. Grantee shall provide the City with a copy of its annual financial statement.

Section 14: Collection Facilities.

The Grantee shall maintain a facility in the City where its customers may pay their bills for gas service during normal business hours.

Section 15: Supplying Maps Upon Request.

The Grantee shall maintain on file, at an office in Oregon, maps and operational data pertaining to its operations in the City. The City may inspect the maps and data at any time during business hours. The Grantee shall furnish to the City, within 90 days of the approval of this franchise agreement, without charge and on a current basis, maps showing the location of the gas mains of the Grantee in the City.

Section 16: Indemnification.

The Grantee shall indemnify and save harmless the City and its officers, agents and employees from any and all loss, cost and expense arising from damage to property and/or injury to, or death of, persons due to any wrongful or negligent act or omission of the Grantee, its agents or employees in exercising the rights, privileges and franchise hereby granted.

Section 17: Assignment of Franchise.

This franchise shall be binding upon and inure to the benefit of the successors, legal representatives and assigns of the Grantee; but no transfer of this franchise or any rights thereunder by merger, consolidation, sale, assignment or otherwise shall be made unless the Council first consents by resolution.

Section 18: Termination of Franchise for Cause.

Upon the willful failure of the Grantee, after sixty (60) days' notice and demand in writing, to perform promptly and completely each and every term, condition or obligation imposed upon it under or pursuant to this ordinance, the City may terminate this franchise, subject to Grantee's right to a court review of the reasonableness of such action.

Section 19: Remedies Not Exclusive, When Requirement Waived.

All remedies and penalties under this ordinance, including termination of the franchise, are cumulative, and the recovery or enforcement of one is not a bar to the recovery or enforcement of any other such remedy or penalty. The remedies and penalties contained in this ordinance, including termination of the franchise, are not exclusive and the City reserves the right to enforce the penal provisions of any ordinance or resolution and to avail itself of any and all remedies available at law or in equity. Failure to enforce shall not be construed as a waiver of a breach of any term, condition or obligation imposed upon the Grantee by or pursuant to this ordinance. A specific waiver of a particular breach of any term, condition or obligation imposed upon the Grantee by or pursuant to this ordinance shall not be a waiver of any other or subsequent or future breach of the same or of any other term, condition or obligation, or a waiver of the term, condition or obligation itself.

Section 20: Acceptance.

The Grantee shall, within thirty (30) days from the date this ordinance takes effect, file with the City its written unconditional acceptance of this franchise, and if the Grantee fails so to do, this ordinance shall be void.

PASSED AND ADOPTED THIS 8TH DAY OF APRIL, 1996.

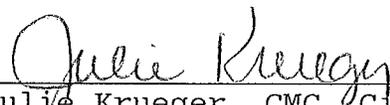
Voting Yes, Councilmembers: Koch, Briggs, Davis, Hill, Van Cleave
Voting No, Councilmembers: None
Absent, Councilmembers: None
Abstaining, Councilmembers: None

AND APPROVED BY THE MAYOR THIS 8TH DAY OF APRIL, 1996.



David R. Beckley, Mayor

Attest:



Julie Krueger, CMC, City Clerk