

AGENDA

REGULAR CITY COUNCIL MEETING

July 28, 2014

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. Certificate of Recognition to Doug Kirchofer and Nolan Hare for Fort Dalles Fourth Celebration
 - B. Presentation of Medal of Valor to Jamie Carrico
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

CITY OF THE DALLES

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

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 June 30, 2014 Work Session Minutes
- B. Approval of July 14, 2014 Regular City Council Meeting Minutes
- C. Resolution No. 14-023 Concurring With the Mayor's Appointments to Various Commissions

11. PUBLIC HEARINGS

- A. Public Hearing to Receive Testimony Regarding Appeal of Planning Commission Decision Conditions of Approval for Minor Partition by Randy Hager [**Agenda Staff Report #14-057**]

12. ACTION ITEMS

- A. Resolution No. 14-021 Calling for Engineer's Report for West 7th Street Local Improvement District [**Agenda Staff Report #14-059**]
- B. Resolution No. 14-022 Approving a Ballot Measure to Increase the Local Fuel Tax [**Agenda Staff Report #14-058**]
- C. Approval of Downtown Street Tree and Riverfront Trail Maintenance Program [**Agenda Staff Report #14-060**]

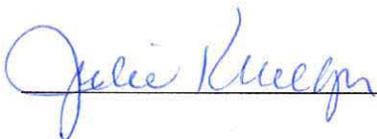
13. DISCUSSION ITEMS

- A. Discussion Regarding General Ordinance No. 14-1335 Amending Sections 2, 9, and 11 through 19 and Repealing Section 10 of General Ordinance No. 06-1266 Concerning Systems Development Charges [**Agenda Staff Report #14-056**]

14. ADJOURNMENT

This meeting conducted in a handicap accessible room.

Prepared by/
Julie Krueger, MMC
City Clerk



CERTIFICATE OF RECOGNITION

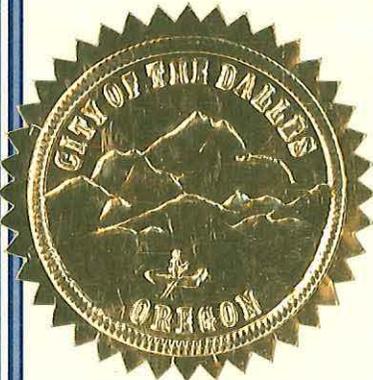
issued to

DOUG AND MELISSA KIRCHHOFER
and
NOLAN HARE

This certificate is issued in grateful appreciation for your bold, courageous and audacious leadership and your energy putting together the first Independence Day fireworks display and community celebration in decades.

Your willingness to be the kind of activists that make a community successful is inspiring. Your positive attitudes and “can do” approach inspired others to be involved and created an excitement all could share in.

Please accept our sincere appreciation and thanks for your dedication and commitment to our community.



Signed:

Stephen E. Lawrence, Mayor

Attest:

Julie Krueger, MMC, City Clerk



CITY of THE DALLES

313 COURT STREET
THE DALLES, OR 97058

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

AGENDA STAFF REPORT
CITY OF THE DALLES

MEETING DATE	AGENDA LOCATION	AGENDA REPORT #
July 28, 2014	Consent Agenda 10, A - C	N/A

TO: Honorable Mayor and City Council

FROM: Julie Krueger, MMC, City Clerk

THRU: Nolan K. Young, City Manager

DATE: July 17, 2014

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

A. **ITEM:** Approval of June 30, 2014 City Council Work Session Minutes.

BUDGET IMPLICATIONS: None.

SYNOPSIS: The minutes of the June 30, 2014 City Council work session have been prepared and are submitted for review and approval.

RECOMMENDATION: That City Council review and approve the minutes of the June 30, 2014 City Council work session.

B. **ITEM:** Approval of July 14, 2014 Regular City Council Meeting Minutes.

BUDGET IMPLICATIONS: None.

SYNOPSIS: The minutes of the July 14, 2014 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 14, 2014 regular City Council meeting.

C. **ITEM:** Resolution No. 14-023 Concurring With the Mayor's Appointments to Various Commissions.

BUDGET IMPLICATIONS: None.

SYNOPSIS: The Mayor has selected Fred Davis for appointment to the Traffic Safety Commission and Atha Lincoln for appointment to the Urban Renewal Advisory Committee.

RECOMMENDATION: That City Council adopt Resolution No. 14-023 concurring with the Mayor's appointments to various Commissions.

MINUTES

COUNCIL WORK SESSION
OF
JUNE 30, 2014
5:30 P.M.

THE DALLES CITY HALL
313 COURT STREET
THE DALLES, OREGON

PRESIDING: Mayor Steve Lawrence

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

COUNCIL ABSENT: Carolyn Wood

STAFF PRESENT: City Manager Nolan Young, City Attorney Gene Parker, City Clerk Julie Krueger, Public Works Director Dave Anderson, Planning Director Dick Gassman, Police Sergeant Jeff Halter, Engineer Dale McCabe, Intern Rich Wachter

CALL TO ORDER

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

DISCUSSION REGARDING PLANNING COMMISSION CONCEPTS FOR RESIDENTIAL INFILL

Planning Director Gassman reviewed the staff report and noted most of the Planning Commissioners were in attendance to hear the discussion and answer questions of the Council.

It was noted that the staff report discussed a map of the street system, but the map had not been provided. Copies of the map were made and distributed. Gassman said the map was an illustration of City-wide collector and arterial streets. He said the Planning Commission would further analyze the street classifications if the Council decided to pursue the option of the network street proposal.

There was discussion regarding coordination of developing the network concept and work on the Transportation System Plan. Public Works Director Anderson said if a decision was made to focus on collector and arterial streets as a network, the Transportation System Plan (TSP) would be focused on that concept. He said the TSP would include bike and pedestrian needs, and the goal of the update was to incorporate the Land Use Development Ordinance (LUDO) regulations to be consistent with standards.

Mayor Lawrence asked about the traffic counters located at the intersection of 10th and Thompson Streets. Public Works Director Anderson said it was time for the ten-year update of functional classifications of streets and that traffic counters were placed in several areas of the City to collect the data needed for the update.

Planning Director Gassman noted the greatest concern of the public was the expense of installing the required public improvements. He said the network street proposal could eliminate improvements on those streets that were determined to be local. He said another suggestion was to shift some of the cost away from property owners, such as the cost of engineering. Gassman said there was strong interest in eliminating the requirement of Waivers of Remonstrance and Delayed Development Agreements (DDA).

Mayor Lawrence said the City Council had previously decided to eliminate the requirement for Waivers of Remonstrance. He asked if the Delayed Development Agreements had taken the place of the waivers.

Planning Director Gassman said the purpose of a Waiver of Remonstrance was to include that property in a future local improvement district, while the Delayed Development Agreements were simply saying the property owner would be responsible for future street, sidewalk, and utility improvements.

Councilor Spatz said he could support Option 3, DDA with triggers.

Mayor Lawrence asked what criteria would be applied to Number 2 in Option 2, if improvements couldn't be installed for whatever reason, the owner could proceed with building. There was discussion regarding the term full improvement and whether there was a middle ground of partial improvements.

Gassman said full improvements would include providing access to pedestrians and bikes, which was required by Oregon law. Planning Commissioner Zukin said having a sidewalk on just one side of a street would comply with the law, but could be considered a partial improvement.

It was the consensus of the City Council to ask the Planning Commission to explore the network concept further and bring back more information and/or recommendations to the Council.

There was discussion regarding Option 1, use of increased tax revenue to pay for improvements. City Manager Young said it would take a long period of time to pay for the improvements and during that time period, the tax revenue would not be able to be used to provide services, such as police protection, which placed the burden on other property owners to pay for those services.

There was discussion regarding the overall storm sewer system. Public Works Director Anderson said there was a \$2.00 per month charge on water bills, which generated approximately \$242,000 per year toward storm sewer projects. He said to complete all the projects in the Master Plan, the cost would be approximately \$20 million. In response to a question, City Manager Young said staff could analyze the feasibility of a revenue bond to complete the entire storm sewer system, but the current fee of \$2.00 would not be adequate for bond collateral.

Staff was directed to bring an amendment to the LUDO to remove the language about Waivers of Remonstrance to Council for action.

There was discussion regarding a previous Council decision that a partition was not considered development and that no fees should be required until the time something was built on the property.

City Manager Young summarized for the Council the items to be returned to the Planning Commission for further consideration and analysis: develop more information for the network system; develop criteria for Option 2 (no DDA-no improvements) including partial development; develop criteria for Option 3 (DDA with triggers); further develop option for a cap on development charges; and cancel existing Waivers of Remonstrance.

It was the consensus of the City Council to support hiring an additional Engineer position if necessary and that the cost of storm sewer infrastructure should be the responsibility of the City.

MINUTES (Continued)
Council Work Session
June 30, 2014
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ADJOURNMENT

Being no further business, the meeting adjourned at 7:37 p.m.

Submitted by/
Julie Krueger, MMC
City Clerk

SIGNED:

Stephen E. Lawrence, Mayor

ATTEST:

Julie Krueger, MMC, City Clerk

MINUTES

REGULAR COUNCIL MEETING
OF
JULY 14, 2014
5:30 P.M.

THE DALLES CITY HALL
313 COURT STREET
THE DALLES, OREGON

PRESIDING: Mayor Steve Lawrence

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

COUNCIL ABSENT: None

STAFF PRESENT: City Manager Nolan Young, City Attorney Gene Parker, City Clerk Julie Krueger, Public Works Director Dave Anderson, Administrative Intern Rich Wachter, Finance Director Kate Mast, Police Chief Jay Waterbury, Airport Managers Rolf Anderson and Chuck Covert

CALL TO ORDER

Mayor Lawrence called the meeting to order at 5:32 p.m.

ROLL CALL

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

PLEDGE OF ALLEGIANCE

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

APPROVAL OF AGENDA

Councilor Spatz asked the City Council to add an item to discuss concerns regarding the City's website. It was moved by Wood and seconded by Spatz to approve the agenda as amended. The motion carried unanimously.

AUDIENCE PARTICIPATION

Russ Brown, PO Box 1002, The Dalles, expressed concern that the revenue generated by an increase in the fuel tax would not be used for street maintenance. He said the money should be dedicated for maintenance only and not be used for expensive projects and said it was important for the City Council to explain that in a ballot measure. Brown said when the funds were used for projects, the general maintenance of streets would fall farther behind.

Brown said he had spoken with a former Oregon Department of Transportation (ODOT) employee and was told there were other chip seal products that worked very well for similar cities, such as Bend and Redmond. He said Andy Anderson would be happy to make a presentation to City Council regarding various methods used for maintenance.

CITY MANAGER REPORT

City Manager Young reported that Matthew Klebes had accepted an offer to serve as the Main Street Program Executive Director. Young said the Main Street fund raising program was underway and they were confident they could raise the funds needed to match the City's contribution by October.

Young noted the Chamber's Tourism Coordinator position would be filled by July 22.

Public Works Director Anderson reported a small fire in the watershed was being managed by the US Forest Service. He said ground forces were being used and air support was standing by, but that the fire had only burned approximately 20 acres.

City Manager Young said the Urban Renewal Advisory Committee would be hearing a proposal for a possible project at the historic Elks Club building. He said it may be brought forward to the Agency at a later time.

CITY ATTORNEY REPORT

City Attorney Parker said he continued to monitor what other cities were doing regarding procedures for medical marijuana facilities.

CITY COUNCIL REPORTS

Councilor Wood said the Historic Landmarks Commission had approved placement of a garage.

MINUTES (Continued)
Regular Council Meeting
July 14, 2014
Page 3

She said the Commission was hoping to find a site where the basalt rocks from the Lewis and Clark monument could be stored for future use on historic projects and wanted to know if the City could help with relocation of the rocks.

City Manager Young said if they secured a site, the Public Works Department may be able to help with moving of the rocks.

Councilor McGlothlin said the Traffic Safety Commission would be meeting on July 16 and the Airport Board meeting was scheduled for July 18.

Councilor Dick said the QLife Agency had adopted its annual budget.

Councilor Spatz said he would be attending a Bike Hub meeting and a meeting of the Regional Solutions Team and MCEDD.

Councilor Miller said the Urban Renewal Advisory Committee meeting was scheduled for July 15.

Mayor Lawrence said the next Bicycle Interest Group meeting was scheduled for July 24. Lawrence said he had an opportunity to tour the airport facilities and was very impressed with the improvements, including programs such as pilot training. He said the Fort Dalles Fourth celebration had been very successful.

Recommendation for League of Oregon Cities Legislative Priorities

Following discussion, it was moved by Wood and seconded by Spatz to recommend priorities H, K, M, and S to submit to the League of Oregon Cities. The motion carried unanimously.

- H. Improve the fairness of how new and improved property is added to the tax roll.
- K. Allow for price comparison when procuring architects and engineers.
- M. Enhanced mental health services.
- S. Pass a comprehensive transportation funding and policy package.

CONSENT AGENDA

It was moved by Miller and seconded by Wood to approve the Consent Agenda as presented. The motion carried unanimously. The item approved by Consent Agenda was approval of June 23, 2014 regular City Council meeting.

PUBLIC HEARINGS

Public Hearing to Receive Testimony Regarding a Re-Zone and Comprehensive Plan Amendment Request by Wasco County

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

City Attorney Parker asked if any Councilors had any bias or conflict of interest with the request. No bias or conflicts were declared.

Planning Director Gassman reviewed the staff report, noting that no public comment had been received and the Planning Commission recommended the request be approved.

Councilor Miller asked if the property was included in the urban renewal district boundary. City Manager Young said when the Plan was amended in the 1990's, the area of the old armory and former public works site had been left in the plan due to the commercial value of the properties.

Councilor McGlothlin said he hoped a bike path would be considered in any future development of the property.

Testimony

Darci Rudzinski, Angelo Planning, 921 SW Washington, Portland, Oregon, spoke in support of the application on behalf of Wasco County. She said the change would make a much better use of the property and that while zoned for park/open space, it had never been used for that purpose. Rudzinski said the application was consistent with economic development policies and there would be no impact to Kramer Field.

Mayor Lawrence noted that a question was asked at the Planning Commission hearing whether an area taken out of parks/open space was required to be replaced with an equal amount of property. He asked if that question had been answered.

Ms. Rudzinski said she hadn't researched that question.

Councilor Spatz asked if the proposal would have any impact on the future Interchange Area Management Plan proposed for the Webber Street area. Planning Director Gassman said it would not have an impact on that study.

Jerry Johnson, 3102 East 13th Street, The Dalles, Oregon, said he understood there was a condition in the deed of the property that if open space was taken away, it had to be replaced with another property.

Councilor Dick said the re-zone application would have no effect on any deed restrictions.

Hearing no further testimony, the public hearing was closed.

Council Deliberation

It was moved by McGlothlin and seconded by Wood to approve the zoning ordinance and comprehensive plan map changes as requested and direct staff to prepare and ordinance for later Council action. The motion carried unanimously.

ACTION ITEMS

Approval of Amendment to Airport Water Supply Agreement and Agreement With Klickitat County and Dallesport Water District to Construct Water Storage and Pumping Improvements

City Attorney Parker reviewed the staff report for both agreements.

Mayor Lawrence questioned the section in the agreements regarding a 15 year reimbursement period and asked if that was a reasonable standard. City Attorney Parker said it was written according to Washington State law, but that he would check with the staff to ensure an extension would not be unreasonably withheld.

It was moved by Dick and seconded by McGlothlin to approve the first amendment for the water supply agreement and authorize the City Manager, City Clerk and City Attorney to execute the first amendment, contingent on possible additional language to address the 15 year reimbursement standard. The motion carried unanimously.

It was moved by Dick and seconded by Spatz to approve the first amendment for agreement to construct water storage and pumping improvements and authorize the City Manager, City Clerk and City Attorney to execute the first amendment, contingent on possible additional language to address the 15 year reimbursement standard. The motion carried unanimously.

City Website

Councilor Spatz expressed concern regarding the current status of the City's website, saying he believed it was a denial of service attack. He said the City should hire an outside consulting firm to evaluate the situation and provide guidance. Spatz said in addition to the immediate security concerns, the website seemed outdated and did not reflect the image the City should project in terms of business recruitment and tourism.

It was moved by Spatz and seconded by McGlothlin to direct staff to proceed immediately to contract with a professional network security firm to evaluate all factors leading to current loss of the City's website and to provide guidance to Council and staff on resolution of the problem.

City Manager Young said hiring an outside firm would only delay getting the website operational. He said it was expected to be back on-line tomorrow and said it had not been a specific attack, rather a random demand of inquiries. He said the IT staff was getting help from Trend Micro and had a plan to reduce the demand. Young said the website didn't crash, but was shut down because it was stagnant from the demand.

Mayor Lawrence questioned why staff believed there was no attack. City Manager Young said it was not specific to the City's website, but that a vulnerability had been found.

Councilor Spatz said he didn't want to delay correcting the problem. He questioned whether the City had adequate staff to manage the problem and said once it was restored, it was still important to have a second opinion regarding the security.

Councilor McGlothlin said Trend Micro was an anti-virus program, not a security company. He suggested calling ESD to get additional assistance.

City Manager Young said the website would be functional by tomorrow. In response to a question, he said staff had also been working with the City's internet provider, Trend Micro and CISCO.

The motion and second to direct staff to proceed immediately to contract with a professional network security firm to evaluate all factors leading to current loss of the City's website and to provide guidance to Council and staff on resolution of the problem were withdrawn.

It was moved by Spatz and seconded by McGlothlin to direct staff to prepare a recommendation to Council for a process to redesign the City's website, including budget analysis, time line, web hosting, security, and selection of a web design firm. The motion carried unanimously.

DISCUSSION ITEMS

Discussion Regarding Proposed Ballot Measure to Increase the Local Fuel Tax

City Manager Young reviewed the staff report.

Public Works Director Anderson said if the fuel tax was increased, that portion of funding could be used to work on the backlog of projects, while the current amount of funding could be dedicated to maintenance projects. Anderson said the proposed list of projects had been prioritized using specific criteria.

City Manager Young pointed out that the State funding had been phased in and the City was now receiving the full amount, but was trying to catch up with the backlog of work.

Mayor Lawrence asked if there was a list of maintenance projects. Public Works Director Anderson said a list had not been developed for maintenance projects. He said maintenance, such as crack sealing, had started in the downtown area this season and crews were now working beyond that area. He said they would continue that work as funds were available. Mayor Lawrence asked staff to develop a list of needed maintenance.

There was a discussion regarding the products used for chip seal projects. Public Works Director Anderson said there may be other products available, but one of the main problems was that chip seal was not a treatment intended for high use streets.

In response to a question, Anderson said Cherry Heights Road from Second to Sixth Street was scheduled for maintenance this year.

City Manager Young discussed the possibility of an alternative ballot measure for a general obligation bond to address specific projects. He said it was not preferred because it made better sense to use fuel tax funds so those who use the streets are paying for their upkeep and said the City tried not to use the method of general obligation bonds because other taxing districts needed that method of funding. Young said an advantage of using the bond was the ability to complete more improvements in a shorter period of time.

Public Comments

Alex Hattenhauer, 122 West 17th Street, The Dalles, spoke in opposition to the proposed fuel tax increase, saying he would prefer to see a State tax increase so it was fair to everyone. He said it was unfair to place the burden on the citizens of just one community. Hattenhauer said The Dalles was the only city in eastern Oregon that used a fuel tax.

Hattenhauer said fuel sales had increased, but the City's budget indicated no increase in fuel tax revenues.

City Manager Young said staff would review the sales, compared to budgeted fuel tax revenues.

Mr. Hattenhauer said the ships that fueled at the dock didn't have to pay the tax but ships fueling at the marina were required to pay the tax. He said he believed the problem was over-spending, not the amount of revenues received.

Bob McNary said he supported a fuel tax increase, noting it would cost approximately 90 cents per month for him because he had an economical vehicle.

Steve Stroud, 3004 East 12th Street, The Dalles, said he agreed with the comments made by Mr. Hattenhauer and said the City needed to be more prudent with their spending.

Verne Beito, The Dalles, said the streets were an embarrassment. He said the City needed to state how the proposed tax revenue would be used and said it should be used for maintenance projects only. Beito said the funds should not be allowed to be used for studies or bike lanes, or big projects.

City Manager Young said three other eastern Oregon cities did have a local fuel tax, but agreed that the State fuel tax program would be the best way to fund transportation issues. He said it had taken 10 years to get the last program implemented and didn't expect to see a new program completed for a long time.

Mayor Lawrence said he had asked the Budget Committee to consider cuts to help fund street maintenance. He said he would prefer to make cuts than to implement an additional tax.

Councilor Dick said he would not be opposed to the general obligation tax because the entire community would pay for improvements within their own community.

Councilor Spatz said he preferred the fuel tax concept because people using the streets would be the people paying for their upkeep. He said the School District or another entity may need to go out for a bond measure in the future and didn't want to impede their ability to do that. He said the voters could make the decision whether they wanted to fund street maintenance through an increase in the fuel tax.

Councilor Miller said she believed there were areas within the budget that could be scrutinized and funds shifted to do more street maintenance.

The majority of the Council agreed to direct staff to bring a proposed measure back for approval at the July 28 Council meeting.

Staff was directed to provide a list of maintenance projects, provide fuel sales and tax revenue information, and an update on the State's proposed transportation funding package.

Discussion Regarding Implementation of a Fee for Use of the Commercial Dock

City Manager Young reviewed the staff report.

It was the consensus of the Council to implement a fee for the 2015 season and staff was directed to bring an amendment to the City's fee schedule for the September 8 Council meeting.

Discussion Regarding Proposed Amendment to General Ordinance No. 12-1321 to Consider Matching the Open Burn Season to the Mid-Columbia Fire and Rescue District Season

Councilor Wood said she recalled the reason for the short season was to reduce smoke issues during the winter when there were so many air inversions.

Russ Brown said the Committee had made recommendations to the Council when the ordinance was considered but they were not fully accepted and the season had been compressed. He said the DEQ advisory information needed to be connected to the days for burning to resolve the problem.

Staff was directed to provide a copy of the Burn Committee recommendations to City Council, research how other cities manage "no burn" days, and to develop a plan for identifying the no burn days. The City Council agreed to direct staff to bring back the information and possible ordinance amendment at a meeting in September.

MINUTES (Continued)
Regular Council Meeting
July 14, 2014
Page 10

ADJOURNMENT

Being no further business, the meeting adjourned at 8:15 p.m.

Submitted by/
Julie Krueger, MMC
City Clerk

SIGNED:

Stephen E. Lawrence, Mayor

ATTEST:

Julie Krueger, MMC, City Clerk

RESOLUTION NO. 14-023

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

WHEREAS, there are vacancies on the several Committees and Commissions; and

WHEREAS, the Mayor has selected Fred Davis to fill a vacancy on the Traffic Safety
Commission; and

WHEREAS, Atha Lincoln has been selected to fill a vacancy on the Urban Renewal
Advisory Committee;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL AS

FOLLOWS:

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

Section 2. The City Council concurs with the appointment of Atha Lincoln to the Urban
Renewal Advisory Committee, term to expire December 31, 2017.

Section 3. This Resolution shall be effective July 28, 2014.

PASSED AND ADOPTED THIS 28th DAY OF JULY, 2014

Voting Yes, Councilors: _____

Voting No, Councilors: _____

Absent, Councilors: _____

Abstaining, Councilors: _____

AND APPROVED BY THE MAYOR THIS 28th DAY OF JULY, 2014

SIGNED:

ATTEST:

Stephen E. Lawrence, Mayor

Julie Krueger, MMC, City Clerk



CITY of THE DALLES

313 COURT STREET
THE DALLES, OREGON 97058

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

AGENDA STAFF REPORT

CITY OF THE DALLES

MEETING DATE:	AGENDA LOCATION:	AGENDA REPORT #
July 28, 2014	Public Hearings 11, A	14-057

TO: Honorable Mayor and City Council

FROM: Richard Gassman, Planning Director

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

DATE July 28, 2014

ISSUE: Quasi-Judicial public hearing to hear appeal APL 29-14 by Randolph Hager from decision of the Planning Commission regarding Minor Partition MIP 311-14.

RELATED CITY COUNCIL GOAL: None.

PREVIOUS AGENDA REPORT NUMBERS: None.

BACKGROUND: The applicant filed an application for a minor partition to divide his lot on East 10th Street into two lots. This was approved by staff, with conditions. The applicant appealed the decision to the Planning Commission. The Planning Commission granted the appeal and modified the conditions of approval. The applicant has now appealed the decision of the Planning Commission to the City Council.

PROCESS: This is a quasi-judicial de novo public hearing. The Council has the ability to make any changes in the conditions of approval that are warranted by the evidence. The Council's decision is the final decision at the local level.

ISSUES: The issues in dispute have been reduced to two. The applicant is asking the Council to eliminate the condition of approval requiring him to pay City system development charges (SDCs) for transportation, storm water, and the Park District's SDC. City staff is asking the Council to consider reinstating the condition of approval requiring the applicant to sign a consent to annex, which was deleted by the Planning Commission.

DISCUSSION:

1. System Development Charges. Prior to 2011 this property was developed with one single family dwelling. In 2011 the applicant obtained a permit to add an accessory dwelling unit and it was subsequently built. One of the benefits of an accessory dwelling unit is that it does not count as a new dwelling for purposes of SDCs.

The current minor partition application seeks to divide the lot in such a way that the single family dwelling would be on one lot and the accessory dwelling unit would be on the other lot. The effect of such a division would be to change the status of the accessory dwelling to a regular single family home.

Each new single family dwelling is required to pay the relevant SDCs. All dwellings pay a residential transportation SDC of \$1,500.00, one storm water SDC of \$342.00, and the Parks and Recreation District SDC of \$1,552.00. A new dwelling is also charged water and sanitary sewer SDCs at the time it connects to those services. This dwelling has its own water and septic system, so those charges have not been required.

The applicant has stated that a building permit is necessary in order for the City to collect SDCs. While that is certainly the normal time for assessing SDCs, Section 9 of General Ordinance No. 06-1266 states: "Collection of Charge. A. The system development charge is payable upon issuance of : (1) A building permit; (2) A development permit; (3) A development permit for development not requiring the issuance of a building permit, . . .".

While this situation is unusual, the City's policy of requiring the payment of SDCs with the creation of a single family dwelling is clear, whether that creation is by the direct building of a single family home, or by an indirect method, such as this one involving a development permit, but not a building permit.

2. Annexation. One of the other benefits of building an accessory dwelling unit is that since it is considered as part of the main house, even if detached, it does not trigger the requirement for annexation. With the minor partition, as stated above, the status of the house changes from an accessory dwelling unit to a regular single family dwelling. When a new house is built, or when a lot is created, it has been the standard policy of the City, for those properties not inside the City limits, to require annexation. The language located in LUDO Section 9.020.020 B, says: "Annexation. Whenever any new lot is created inside the Urban Growth Boundary but outside the City limits, the City may require annexation or the signing of a consent to annexation and a waiver of the one year limitation on consent to annexation." The Planning Commission relied on the words "may require" and decided not to require annexation. Staff has been following the current Council policy which is to annex property within the urban growth area at the earliest possible opportunity. If the Council does not want staff to pursue annexation in these situations, then the Council should amend the City policy, which includes staff seeking the signing of a consent to annex whenever a new house is built, or when a new lot is created. Under the current policy not only would the City require signing of the consent to annex, but would also proceed with the annexation of both lots.

The applicant's property is adjacent to the City limits on the East 10th Street frontage. A map is attached for your information. It is interesting to note that the applicant wants to take advantage of the urban densities allowed by City policies, but does not want to actually be in the City. For most areas outside the UGB the minimum lot size is 5 acres. Except for being in the UGA, the applicant would not be allowed to divide this lot.

BUDGET IMPLICATIONS: If the condition to pay SDCs is kept, and the minor partition proceeds to completion, the City will have those additional funds. If the property is annexed prior to March 31, 2015, there will be an increase in the general fund revenue beginning in the fall of 2015.

ATTACHMENTS:

1. Map filed with Application.
2. Notice of Decision of the Planning Commission's action, dated June 19, 2014.
3. Appeal from decision of the Planning Commission filed June 30, 2014.
4. Map showing the applicant's property and the City limits.

ALTERNATIVES:

- A. ***Staff Recommendation. Move to grant the appeal for the purpose of reinstating the condition to sign a consent to annex and leaving the other conditions of approval as set by the Planning Commission, and direct staff to prepare a resolution setting forth the Council's decision based upon findings of fact and conclusions of law.***
- B. Move to grant the appeal for the purpose of deleting the condition requiring payment of the SDCs, and direct staff to prepare a resolution setting forth the Council's decision based upon findings of fact and conclusions of law. Further direct staff to bring back to the Council possible revisions of the current Council policy on annexation.
- C. Move to grant the appeal for other changes as determined appropriate by the Council, and direct staff to prepare a resolution setting forth the Council's decision based upon findings of fact and conclusions of law.
- D. Move to deny the appeal and leave the conditions of approval as set by the Planning Commission, and direct staff to prepare a resolution setting forth the Council's decision based upon findings of fact and conclusions of law. Further direct staff to bring back to the Council possible revisions of the current Council policy on annexation.



NOTICE OF PUBLIC HEARING DECISION
APL 28-14
Randolph G. Hager

DECISION DATE: June 19, 2014

APPLICANT: Randolph G. Hager

REQUEST: Appeal of a land use decision dated March 17, 2014, regarding a minor partition application #MIP 311-14.

LOCATION: 2804 E. 10th Street, The Dalles, Oregon, and is further described as Township 1 North, Range 13 East, Map 1C, tax lot 500.

PROPERTY OWNER: Randolph G. Hager

AUTHORITY: City of The Dalles Land Use and Development Ordinance 98-1222 and the Comprehensive Land Use Plan, May 23, 2011.

DECISION: Based on the findings of fact and conclusions in the staff report of APL 28-14; and after a hearing in front of the The Dalles Planning Commission, the appeal by **Randolph G. Hager is hereby granted and MIP 311-14 is approved** with the following conditions:

1. Final plat submission must meet all the requirements of LUDO Section 9.030 and the other provisions of the LUDO.
2. Two copies of the surveyed and recorded plat must be received in the Community Development Department office within one year of the date of the notice of decision for this partition to be effective.
3. Legal access to East 10th Street must be provided to parcel 2.
4. A second access point may be allowed on East 10th Street, subject to City review.
5. Building setback lines will be shown on the final plat.
6. Applicant will be responsible for paying to the City of The Dalles transportation and stormwater system development charges and to Northern Wasco County Parks and Recreation District for their system development charges.

Signed this 20th day of June, 2014 by



Richard Gassman, Director
Planning Department

TIME LIMITS: The period of approval is valid for the time period specified for the particular application type in Ordinance No. 98-1222. All conditions of approval shall be fulfilled within the time limit set forth in the approval thereof, or, if no specific time has been set forth, within a reasonable time. Failure to fulfill any of the conditions of approval within the time limits imposed can be considered grounds for revocation of approval by the Director.

Please Note! No guarantee of extension or subsequent approval either expressed or implied can be made by the City of The Dalles Planning Department. Please take care in implementing your approved proposal in a timely manner.

APPEAL PROCESS: The Planning Commission's approval, approval with conditions, or denial is the City's final decision, and may be appealed to the City Council if a completed Notice of Appeal is received by the Director no later than 5:00 p.m. on the 10th day following the date of the mailing of the Notice of Public Hearing Decision. The following may file an appeal of administrative decisions:

1. Any party of record to the particular public hearing action.
2. A person entitled to notice and to whom no notice was mailed. (A person to whom notice is mailed is deemed notified even if notice is not received.)
3. The Historic Landmarks Commission, the Planning Commission, or the City Council by majority vote.

A complete record of application for public hearing action is available for review upon request during regular business hours, or copies can be ordered at a reasonable price, at the City of The Dalles Planning Department. Notice of Appeal forms is also available at The Dalles Planning Office. The fee to file a Notice of Appeal is \$380.00. **The appeal process is regulated by Section 3.020.080: Appeal Procedures of Ordinance No. 98-1222, The City of The Dalles Land Use and Development Ordinance.**



CITY of THE DALLES

313 COURT STREET
THE DALLES, OREGON 97058

(541) 296-5481

City Council
CITY OF THE DALLES
NOTICE OF APPEAL FOR LAND USE DECISIONS

APPELLANT'S NAME & ADDRESS: Randolph G. Hager
2804 E. 10th St.
The Dalles OR 97058

Please state the reasons why the appellant qualifies as a party entitled to file a notice of appeal:

Property owner

Please provide the date and a brief description of the decision being appealed:

June 19, 2014 Planning Commission appeal hearing Decision APL 28-14
* Condition # 6 " Applicant will be responsible for paying to the city of
The Dalles transportation and stormwater system development charges
and to Northern Wasco Co. Parks and Recreation District for their system
development charges."

Please cite the specific grounds why the decision should be reversed or modified, and cite the applicable criteria or procedural error which supports the grounds for the appeal:*

REVERSE - Condition # 6 contradicts city council directives to staff
to remove collection of fees except upon the issuance of a building
permit; not the sale of a lot resulting from an approved partition.

NOTE. applicant requests expedited hearing date.

Applicant requests rescinding of City charged hearing fee of \$380⁰⁰ as mis-
directed by Planning Director at the time of application for Planning Comm. Hearing
appeal.

*Additional sheets may be attached as necessary to this form explaining the appeal grounds

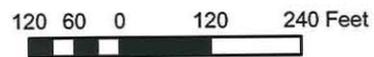
380⁰⁰ Appeal fee received

√# 1827 6/30/14

RG Hager
June 30, 2014



City of The Dalles Planning Dept.
2804 E. 10th Street ~ July 2014



- Subject property
- City Limits





CITY of THE DALLES

313 COURT STREET
THE DALLES, OR 97058

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

**AGENDA STAFF REPORT
CITY OF THE DALLES**

MEETING DATE	AGENDA LOCATION	AGENDA REPORT #
July 28, 2014	Action Items 12, A	14-059

TO: Honorable Mayor and City Council

FROM: Julie Krueger, CMC, City Clerk

THRU: Nolan K. Young, City Manager

DATE: July 1, 2014

ISSUE: Resolution No. 14-021 Calling for the Engineer's Study and Report for West Seventh Street Local Improvement District.

BACKGROUND: The Mid-Columbia Council of Governments (MCCOG) has requested the City of The Dalles to initiate a Local Improvement District for West Seventh Street between Hostetler Street and Chenoweth Loop Road. MCCOG is planning to construct a transportation facility at 802 Chenoweth Loop Road and will need to have street improvements completed prior to occupancy of the facility in 2015.

The map, list of affected property owners, letter from MCCOG, and copies of waivers of remonstrance are attached.

BUDGET IMPLICATIONS: None at this time. The cost to prepare the Study and Report will become part of the overall cost of the Local Improvement District.

ALTERNATIVES:

- A. ***Staff Recommendation: Move to adopt Resolution No. 14-021 Calling for the Engineer's Study and Report for the West Seventh Street Local Improvement District.***
- B. Decline to form the Local Improvement District. The result of choosing not to proceed would delay the transit center operations.

RESOLUTION NO. 14-021

**DIRECTING THE CITY ENGINEER TO PROCEED WITH
PREPARATION OF A STUDY AND REPORT FOR WEST
SEVENTH STREET LOCAL IMPROVEMENT DISTRICT**

WHEREAS, the City Council has been requested to initiate a local improvement district for West Seventh Street improvements between Hostetler Street and Chenoweth Loop Road, including street, sidewalk, curb and utility improvements; and

WHEREAS, a detailed study is necessary to determine the projected cost of improvements and the lands to be specifically benefitted by the improvements; and

WHEREAS, General Ordinance No. 91-1127 provides for the City Engineer to compile a study and report to the City Council related to these matters; **NOW, THEREFORE,**

BE IT RESOLVED BY THE CITY COUNCIL AS FOLLOWS:

Section 1. Engineer Directed to Prepare Study and Report. The City Engineer is directed to make a study and report which shall be filed with the City Clerk within 30 days of the date of this Resolution, unless the City Council grants an extension of time. The study and report shall address matters relating to the proposed street, sidewalks, curbs and utilities needed for the West Seventh Street improvements, including but not limited to:

- A. The cost of the proposed improvement;
- B. Whether the improvement shall be constructed under contract or by City crews;
- C. A plat or map showing the nature, location and extent of the improvement and the lands to be assessed;

- D. A description of the type of proposed improvement and the estimated useful life of the improvement;
- E a description of the location and land use of each lot, tract, or parcel of land or portion thereof, which will be specially benefitted by the proposed improvement, the name of the owner of each parcel and its estimated share of project costs;
- F. A map or description of the boundaries of the district to be benefitted by and assessed for improvement;
- G. The percentage of land within the district which is vacant and unused for urban purposes;
- H. The assessed valuation of each lot, tract, or parcel of land within the district according to the latest county assessment roll, the amount of any delinquent taxes or assessments on each parcel, and the amount of taxes and assessments levied but not delinquent for each lot, tract, and parcel of land within the district; and
- I. A recommendation of a fair method of apportioning costs.

Section 2. Cost of Report. Costs of the study and report authorized shall be deemed project costs assessable to the benefitted properties in the event the Council elects to proceed with the proposed improvement.

Section 3. Report to be Open for Public Inspection. The report of the Engineer will be open for public inspection by interested persons once it is filed with the City Clerk.

Section 4. Report to be Forwarded to City Council. The City Clerk shall provide the Engineer's Study and Report to the City Council for its consideration.

Section 5. Effective Date. This Resolution shall be effective upon adoption.

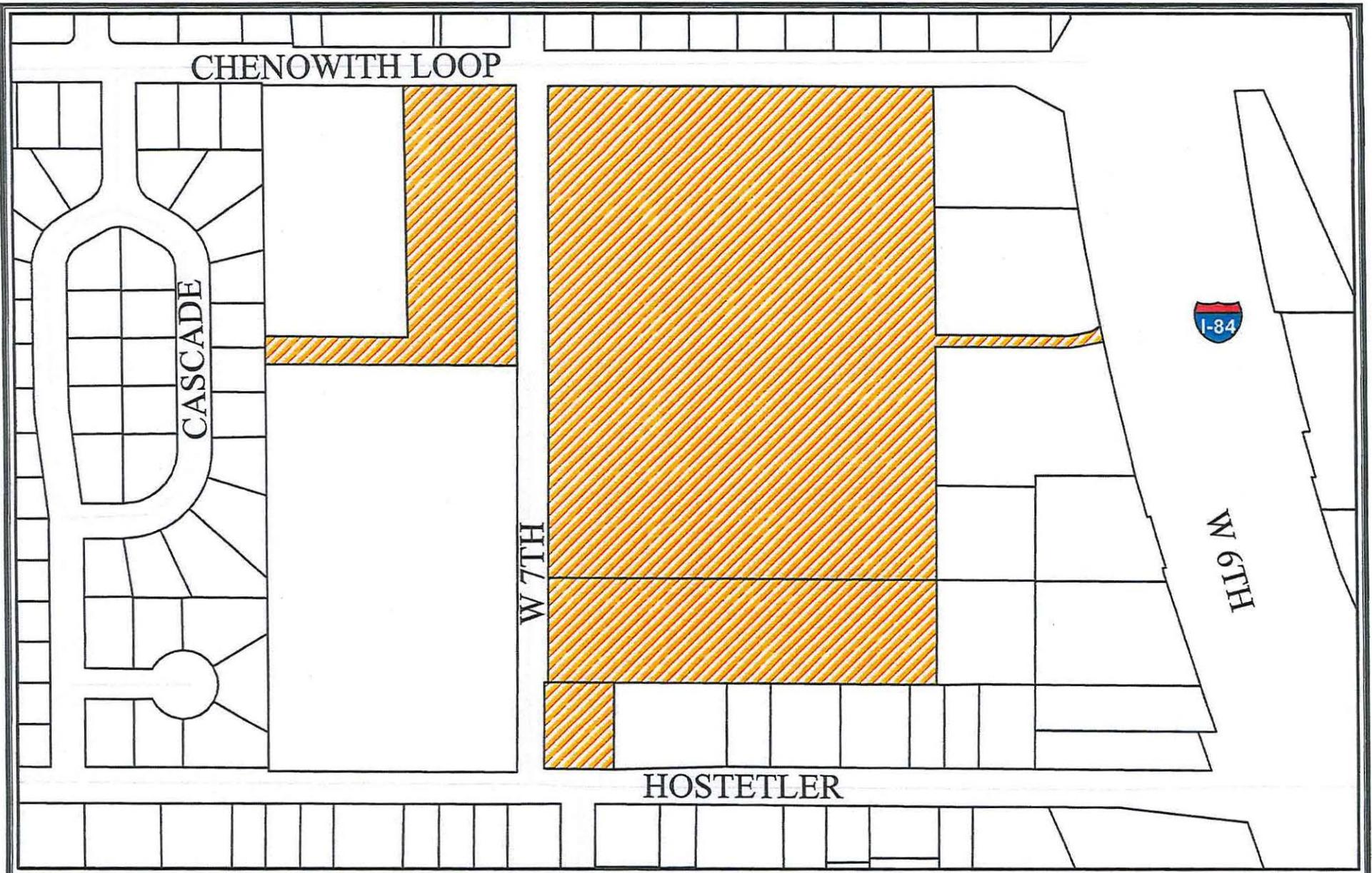
PASSED AND ADOPTED THIS 28TH DAY OF JULY, 2014

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

AND APPROVED BY THE MAYOR THIS 28TH DAY OF JULY, 2014

SIGNED: _____
Stephen E. Lawrence, Mayor

ATTEST: _____
Julie Krueger, MMC, City Clerk



Legend

-  Taxlots
-  West 7th Street LID Properties

Proposed West 7th Street Local Improvement District
 City Council July 14, 2014
 LID Initiation & Call of Engineer's Report

0 40 80 160 240 320 Feet

N

6/26/2014 DMH

West First Street Local Improvement District Property Owners

<u>Map & Taxlot</u>	<u>Calc'd Acres</u>	<u>Account #</u>	<u>Taxpayer</u>	<u>Mailing Address</u>	<u>City</u>	<u>State</u>	<u>ZIP</u>
2N 13E 29 DA 1400	9.311808	2018	HOME DEPOT USA INC	PO BOX 105842	ATLANTA	Georgia	30348-5842
2N 13E 29 DB 7500	1.695182	2065	MID COL COUNCIL OF GOVERNMENTS	4040 FAIRVIEW INDUSTRIAL DR SE MS#2	SALEM	Oregon	97302-1142
2N 13E 29 DC 200	0.291456	2160	MATHIE MONTY L	PO BOX 1585	LAKE OSWEGO	Oregon	97035
2N 13E 29 DD 2000	1.978357	2159	HOME DEPOT USA INC	PO BOX 105842	ATLANTA	Georgia	30348-5842



June 18, 2014

Dawn Marie Hert
Senior Planner & Historic Landmarks Coordinator
City of The Dalles Planning Department
313 Court Street
The Dalles, OR 97058

SUBJECT: 7th Street Local Improvement District (LID) between Hostetler Way and Chenoweth Loop

Dear Dawn:

The Mid-Columbia Council of Governments (MCCOG) purchased the property located at 802 Chenoweth Loop Road. We have completed preliminary plans for a new Transportation Facility that will provide services for Wasco County. We are planning to move forward with construction early in 2015, and will need to have the street improvements completed prior to occupancy in 2015.

On April 17, 2014 I dropped off information to the Manager at Home Depot in The Dalles. On April 22nd I mailed the same information to the Home Depot Corporate Office with a copy of the petition we submitted to The City of The Dalles, along with copies of the 3 Waivers of Remonstrance that were signed by Home Depot. To date, I have not heard anything back from Home Depot.

I am requesting that the City of The Dalles initiate a formal Local Improvement District for West 7th Street between Hostetler and Chenoweth Loop.

Thank you for your consideration.

Sincerely,

John R Arens,
Executive Director

JAN 21 2011

PETITION FOR SPECIAL IMPROVEMENT

We, the undersigned property owners, do hereby petition the City of The Dalles to create a special assessment district for: (describe proposed improvements) _____

7th STREET IMPROVEMENTS BETWEEN CHENOWETH LOOP ROAD AND HOSTETLER

to be located on (street location) 7th Street

and to do all things necessary to cause said improvement to be installed.

<u>NAME</u>	<u>ADDRESS</u>	<u>MAP/TAX LOT</u>
<u>MCCO6</u>	<u>802 CHENOWETH LOOP ROAD</u>	<u>ZN 13E 29DB 7500</u>

Signature: [Signature] EXECUTIVE DIRECTOR

Signature: _____

Signature: _____

Signature: _____

Signature: _____

Additional pages may be attached.

I, JOHN R ARENS hereby certify that I personally circulated this petition and have knowledge that the signatures are the personal signatures of the property owners listed.

Signed: [Signature] Address: 1113 KELLY AVE THE DALLES, OR 97058

Received by: _____ Date: _____
City Clerk

WAIVER OF REMONSTRANCE AGREEMENT

Agreement made this 1st day of MARCH, 20 04, by and between the City of The Dalles, a municipal corporation of the State of Oregon, hereinafter "City", and Marie Easter and Douglas A. Shepard, hereinafter collectively known as "Applicant." (Name)

RECITALS:

WHEREAS, Applicant desire to convey ownership to Home Depot Inc. to construct a 102,513 square foot commercial facility with a 27,988 square foot outdoor garden center (Project Description)

located outside the City of The Dalles, at 3600 W. 6th Street, and (Address)

WHEREAS, City land use laws, rules and policy require that certain public improvements be installed to serve the land proposed for such use;

NOW, THEREFORE, in return for the mutual promises and consideration contained herein, City and Applicant, as a condition to approval of above described project agree as follows:

1. City to Forbear Improvement Requirements. City agrees to forbear requiring Applicant to construct the public improvements listed above as a requirement of the building permit approval.

2. Waiver of Remonstrance. In the event action is taken to implement a local improvement district to improve the portion of W. 7th adjacent to the property described in number 5 below including storm, street, sidewalk, curb, gutter and utilities together or separately as part of a local improvement district. (Description of Improvement)

APPLICANT AND THEIR SUCCESSORS IN INTEREST WAIVE ANY RIGHT TO REMONSTRANCE AGAINST THE PROPOSED LOCAL IMPROVEMENT DISTRICT AND WAIVE ANY RIGHT TO REMONSTRATE AGAINST THE COST OF SUCH IMPROVEMENT.

Applicant further agrees that they or their successors shall bear the assessed cost of construction of public improvements located upon or adjacent to the land described in this agreement. In the event the Applicant or their successors in interest fail or refuse to construct improvements required by the City, the City shall be entitled to construct the improvements or to contract to have them constructed and to assess the cost of construction together with legal, engineering and administrative costs against the Applicant's land. APPLICANT AND THEIR SUCCESSORS IN INTEREST AGREE THAT THE ASSESSMENT LIEN SHALL BE SUBJECT TO FORECLOSURE BY THE CITY IN THE MANNER PROVIDED BY LAW.

3. Agreement to be Covenant Running with the Land. Applicant agrees that the provisions of this agreement regarding public improvements shall be a covenant running with the land and that the terms hereof shall be included in any deed or contract of sale purporting to convey any legal or equitable interest in the lands to which this agreement is applicable. The agreement shall be legally binding upon Applicant's heirs, or successors in interest.

4. Agreement to be Recorded. This agreement shall be recorded in the Deed records of Wasco County at Applicant's expense.

5. Land to which Applicable. The real property to which this agreement applies is known as: 2 North 13 East Map 29 DD Tax Lot 2000 and further described as (see attached legal description). (Notes and bounds legal description of property)

6. Attorney Fees and Costs in the Event of Litigation. In the event of litigation concerning this agreement, Applicant agrees to have and hold the City harmless from any claim, award, or judgment and to pay all costs of litigation incurred by the City including attorney fees in defending its rights hereunder regardless of the outcome of the litigation.

DONE AND DATED THIS 1st DAY OF March 20 04.

CITY OF THE DALLES, a municipal Corporation of the State of Oregon By: [Signature] Community and Economic Development Department

Approved as to form: [Signature] Gene E. Parker, City Attorney

APPLICANT [Signature] Applicant - Marie Easter

[Signature] Applicant - Douglas A. Shepard

STATE OF OREGON) ss. County of Wasco) The foregoing instrument was acknowledged before me on 2-12, 2004, by Marie Easter to be his/her voluntary act and deed.

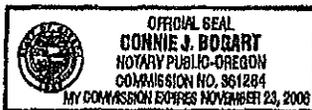
[Signature] Notary Public for Oregon My commission expires: 11-23-06

STATE OF OREGON) ss. County of Wasco) The foregoing instrument was acknowledged before me on 2-12, 2004, by Doug Shepherd to be his/her voluntary act and deed.

[Signature] Notary Public for Oregon My commission expires: 11-23-06

After Recording return to:

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



Acct # 2159

Account Description	Number	Rate
FMLY TL 600		
CHENOWITH HOME TRACTS		
LOTS 7,8 & 9 TRACT D		
ALSO:	127-0651	
THE ADJACENT SLY 20' OF VAC ALLEN AC. CORR. 11-21-69		2.17
WAY .032 AC.	10-08-70 P68-686	2.49
	BS 01-18-82 81-3423	
	CC 06-18-84 16407	

WAIVER OF REMONSTRANCE AGREEMENT

Agreement made this 14 day of MARCH, 20 04, by and between the City of The Dalles, a municipal corporation of the State of Oregon, hereinafter "City", and Marie Easter and Douglas A. Shepard, hereinafter collectively known as "Applicant." (Name)

RECITALS:

WHEREAS, Applicant desire to convey ownership to Home Depot Inc. to construct a 102,513 square foot commercial facility with a 27,988 square foot outdoor garden center

(Project Description)

located outside the City of The Dalles, at 3600 W. 6th Street, and (Address)

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NOW, THEREFORE, in return for the mutual promises and consideration contained herein, City and Applicant, as a condition to approval of above described project agree as follows:

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(Description of Improvement)

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3. Agreement to be Covenant Running with the Land. Applicant agrees that the provisions of this agreement regarding public improvements shall be a covenant running with the land and that the terms hereof shall be included in any deed or contract of sale purporting to convey any legal or equitable interest in the lands to which this agreement is applicable. The agreement shall be legally binding upon Applicant's heirs, or successors in interest.

4. Agreement to be Recorded. This agreement shall be recorded in the Deed records of Wasco County at Applicant's expense.

5. Land to which Applicable. The real property to which this agreement applies is known as: 2 North 13 East Map 29 DD Tax Lot 1500 and further described as (see attached legal description).

(Metes and bounds legal description of property)

6. Attorney Fees and Costs in the Event of Litigation. In the event of litigation concerning this agreement, Applicant agrees to save and hold the City harmless from any claim, award, or judgment and to pay all costs of litigation incurred by the City including attorney fees in defending its rights hereunder regardless of the outcome of the litigation.

DONE AND DATED THIS 12th DAY OF Feb., 20 04.

CITY OF THE DALLES, a municipal Corporation of the State of Oregon
By [Signature]
Community and Economic Development Department

Approved as to form:
[Signature]
Eric E. Parker, City Attorney

APPLICANT
[Signature]
Applicant - Marie Easter
[Signature]
Applicant - Douglas A. Shepard

STATE OF OREGON) ss.
County of Wasco)
The foregoing instrument was acknowledged before me on 12, 2004, by Marie Easter to be his/her voluntary act and deed.
[Signature]
Notary Public for Oregon
My commission expires: 11-27-06

STATE OF OREGON) ss.
County of Wasco)
The foregoing instrument was acknowledged before me on 12, 2004, by Marie Easter to be his/her voluntary act and deed.
[Signature]
Notary Public for Oregon
My commission expires: 11-27-06

After Recording return to:

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



Acct # 2077

BOE ORDER #121 1993-94 VALUE			
SUSTAINED			
094(#922)			
FMLY TL 3700			
CHENOWITH HOME TRACTS			
LOTS 5, 6, 7, 8, 9, 10, 11, 12, TRACT C		119-0228	
LOTS 1, 2, 3, 4, 5, & 6 TRACT D		127-0651	12.47
EXC:			
HWY RAW 22 AC.		WD 01-23-70 69-2208	12.25
ALSO:			
THE ADJACENT 20 FT VAC. ALLEN WAY		P 10-08-70 68-0696	12.57
EXC:			
TL 3801		WD 08-30-71 71-1495	7.57
		BS 01-18-82 81-3423	
		BS 06-18-84 54-0674	
		CC 08-18-84 16407	
		WD 03-29-89 89-0237	
		BS 03-29-89 89-0238	
EXC: PARCEL 1600 0.60 AC		WD 02-01-95 81-2338	8.5
EXC: PARCEL 1700 0.40 AC		WD 02-01-95 87-1927	7.5
EXC: RD WIDENING 0.03 AC		EASE 08-21-95 95-0738	7.47
SEE ACCT #922			

WAIVER OF REMONSTRANCE AGREEMENT

Agreement made this 1 day of MARCH, 20 04, by and between the City of The Dalles, a municipal corporation of the State of Oregon, hereinafter "City", and Wallace W. Jr. & Joan W. Wolf (deceased 7-4-2000) hereinafter collectively known as "Applicant".

(Name)

RECITALS:

WHEREAS, Applicants desire to convey ownership to Home Depot Inc. to construct a 102,513 square foot commercial facility with a 27,988 square foot outdoor garden center

(Project Description)

located outside the City of The Dalles, at 3600 W. 6th Street, and (Address)

WHEREAS, City land use laws, rules and policy require that certain public improvements be installed to serve the land proposed for such use; NOW, THEREFORE, in return for the mutual promises and consideration contained herein, City and Applicant, as a condition to approval of above described project agree as follows:

- 1. City to Forbear Improvement Requirements. City agrees to forbear requiring Applicant to construct the public improvements listed above as a requirement of the building permit approval.
2. Waiver of Remonstrance. In the event action is taken to implement a local improvement district to improve the portion of W. 7th adjacent to the property described in number 5 below including storm, street, sidewalk, curb, gutter and utilities together or separately as part of a local improvement district.

(Description of Improvement)

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4. Agreement to be Recorded. This agreement shall be recorded in the Deed records of Wasco County at Applicant's expense.

5. Land to which Applicable. The real property to which this agreement applies is known as:

2 North 13 East Man 29 DA Tax Lot 1400 and further described as (see attached legal description).

(Metes and bounds legal description of property)

6. Attorney Fees and Costs in the Event of Litigation. In the event of litigation concerning this agreement, Applicant agrees to save and hold the City harmless from any claim, award, or judgment and to pay all costs of litigation incurred by the City including attorney fees in defending its rights hereunder regardless of the outcome of the litigation.

DONE AND DATED THIS 1 DAY OF MARCH 20 04.

CITY OF THE DALLES, a municipal Corporation of the State of Oregon By: [Signature] Community and Economic Development Department

Approved as to form: [Signature] Gene E. Parker, City Attorney

APPLICANT [Signature] Applicant - Wallace W. Wolf Jr. by John A. Wolf, POA

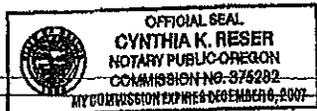
Applicant -

STATE OF OREGON) ss. County of Wasco) The foregoing instrument was acknowledged before me on 1/12, 2004, by [Signature] to be his/her voluntary act and deed.

Notary Public for Oregon My commission expires: [Blank]

STATE OF OREGON) ss. County of Wasco) The foregoing instrument was acknowledged before me on 2/12, 2004, by John A. Wolf POA to be his/her voluntary act and deed.

[Signature] Notary Public for Oregon My commission expires: 12/6/07



After Recording return to:

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

Acct # 2018

Comm/Legal Text	Non-Display El
FMLY TL 3701 CHENOWITH HOME TRACTS BG AT THE NW COR OF BLK C OF THE CHENOWITH HOME TRACTS; TH S 0°36'00" E 381.25 FT FILG THE W LI OF THE ABOVE MENTIONED BLK C; TH N 89°10'52" E 571.27 FT; TH N 0°136'00" W 381.25 FT TO THEN LI OF ABV MENTIONED BLK C THUS S 89°10'52" W FILG THE N LI OF BLK C 571.27 FT TO THE POB.	
WD 08-30-71 71-1435	5.00
CC 08-26-78 14796	
BS 10-20-81 81-2752	
D 06-18-84 84-0716	
WD 06-18-84 84-1054	
BS 06-18-84 84-1055	
EXC: RD WIDENING 0.13	D 08-21-95 95-1584 4.87
JOAN W WOLF DECEASED 7-4-2000 INFO FROM PAPER	



CITY OF THE DALLES

313 COURT STREET
THE DALLES, OREGON 97058

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

AGENDA STAFF REPORT

CITY OF THE DALLES

MEETING DATE:	AGENDA LOCATION:	AGENDA REPORT #
July 28, 2014	Action Items 12, B	14-058

TO: Honorable Mayor and City Council

FROM: Gene E. Parker, City Attorney

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

DATE: July 17, 2014

ISSUE: Resolution No. 14-022, Initiating a Measure to Increase the City Motor Vehicle Fuel Tax from Three Cents Per Gallon to Six Cents Per Gallon, and Calling for an Election.

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

PREVIOUS AGENDA REPORT NUMBERS: #14-055.

BACKGROUND: On July 14, 2014, the City Council conducted a discussion of a proposed resolution to refer a measure to the voters to increase the current City motor vehicle fuel tax from three cents per gallon to six cents per gallon. It is anticipated that a three cent fuel tax would raise \$450,000 annually. These funds would be specifically used to address a backlog of street repair projects on collector and arterial streets within the City. Enclosed with this staff report is a list of 27 streets currently identified which would receive improvement. The chart shows the estimated year of completion for each project. The cost includes a 4.2% annual inflation rate from 2013 until the year the project is completed.

Following public comment upon the proposed ballot measure, the Council voted three to two to direct staff to present a resolution at the July 28th Council meeting which would refer the

measure to the voters. Resolution No. 14-022 provides that the proposed measure would become effective January 2, 2015, and sunset on January 2, 2025. The City Council would adopt an ordinance implementing the measure, if the measure is approved by the legal voters of the City at the General Election to be held on November 4, 2014. The Resolution includes the proposed caption, question, and statement of chief purpose for the proposed ballot measure. After the Council discussion of the proposed ballot measure on July 14th, staff has revised the proposed Resolution to include a provision for the measure to sunset as of January 2, 2025, change the language in the statement of the question for the measure to restrict the use of revenue collected as a result of the increase in the fuel tax to street repair projects, and provide for an annual report on the expenditure of the tax revenue collected.

During the July 14, 2014 Council meeting, a citizen made a comment that the City was collecting a motor vehicle fuel tax from a dealer who apparently was providing fuel at The Dalles Marina. Section 2(7) of the motor vehicle fuel tax ordinance specifically restricts the applicability of the fuel tax to fuel sold to motor vehicles which use public highways. Under the fuel tax ordinance, the City would not have authority to collect a fuel tax from a dealer who provides fuel to boats. A check of the Finance Department's records did not indicate any record of any dealer registered to pay tax who was selling motor vehicle fuel at the Marina.

A supplemental agenda staff report will be prepared and provided to the City Council prior to the July 28th meeting, providing information as to other proposed street maintenance projects, an analysis of the amount of fuel tax revenue received in the past and the amount projected for the current fiscal year, and a status report on the potential for a statewide fuel tax increase.

BUDGET IMPLICATIONS: If the Council places a three cents per gallon fuel tax measure on the ballot, and the voters approve the measure which is intended to become effective January 2, 2015, in the current fiscal year the City would receive \$225,000, and for each fiscal year thereafter, the City anticipates receiving the sum of \$450,000 for street repair projects. In 16 years, the City would have completed the 27 identified projects at a total cost of \$7,568,192.00.

ALTERNATIVES:

- A. Staff Recommendation. *Move to adopt Resolution No. 14-022.*
- B. Direct staff to research the option of placing a general obligation (GO) bond measure on a future ballot to address specific street projects, and bring the information back to the Council at a future Council meeting for discussion.
- C. Not take any action at this time to increase the motor vehicle fuel tax.

Proposed Street Construction Projects for Supplemental Funding, Project Schedule (prepared 7/19/2013)

Option 1 - Cash Only

Annual inflation rate (%) 4.2% 1.042 Annual funding: \$450,000

Project Name	2014	2015	2016	2017	2018	2019	2020	2021	2022
3rd St, Taylor to Lincoln+ side streets	\$ 52,100								
4th St Grade	\$ 125,040								
W 2nd, Webber to Snipes (1/2St-con)		\$460,364							
2nd St, Taylor to Lincoln (contract)			\$678,820						
Union, 4th to 14th (contract)					\$1,101,171				
Trevitt, 3rd Pl to 17th (contract)								\$1,600,499	
2nd St, Lincoln to Webber									
E 12th, Kelly to Dry Hollow									
E Scenic Dr, 16th Pl to CGCC									
Court St, 5th to 10th									
E 10th St, Union to Kelly									
W Scenic Dr, 17th to CGCC									
Cherry Hts, 6th to 10th									
Brewery Gr, Roundie thru 9th St									
Col View Hts, E Knoll to Summit Rdg									
W 6th, Snipes to City Limits									
Webber, 6th to 10th									
4th St, Jefferson to 3rd Pl									
10th St, Dry Hollow to Thompson									
10th St, Lewis to Dry Hollow									
10th St, Mt Hood to Mill Cr									
W 10th St, Cherry Hts to Walnut									
Old Dufur Rd, Thompson to Richmond									
13th St, Jordan to Washington									
W 15th, Trevitt to Liberty Way									
Washington, 3rd to 7th Place									
7th St, Snipes to Walnut (City portion)									
TOTAL ANNUAL	\$ 177,140	\$460,364	\$678,820	\$ -	\$1,101,171	\$ -	\$ -	\$1,600,499	\$ -

Assumes generally completing most expensive projects first
 Total spent in 16 years \$7,568,192 27 projects
 After 16 years balance available to contribute toward other projects

**Proposed Street Construction Pro.
Option 1 - Cash Only
Annual inflation rate (%)**

Project Name	2023	2024	2025	2026	2027	2028	2029
3rd St, Taylor to Lincoln+ side streets							
4th St Grade							
W 2nd, Webber to Snipes (1/2St-con)							
2nd St, Taylor to Lincoln (contract)							
Union, 4th to 14th (contract)							
Trevitt, 3rd Pl to 17th (contract)							
2nd St, Lincoln to Webber	\$573,404						
E 12th, Kelly to Dry Hollow		\$385,222					
E Scenic Dr, 16th Pl to CGCC		\$322,329					
Court St, 5th to 10th			\$147,454				
E 10th St, Union to Kelly			\$188,413				
W Scenic Dr, 17th to CGCC			\$155,645				
Cherry Hts, 6th to 10th				\$102,431			
Brewery Gr, Roundie thru 9th St				\$136,575			
Col View Hts, E Knoll to Summit Rdg				\$ 85,359			
W 6th, Snipes to City Limits				\$182,669			
Webber, 6th to 10th					\$ 53,367		
4th St, Jefferson to 3rd Pl					\$133,416		
10th St, Dry Hollow to Thompson					\$ 65,819		
10th St, Lewis to Dry Hollow					\$ 85,387		
10th St, Mt Hood to Mill Cr					\$ 78,004		
W 10th St, Cherry Hts to Walnut						\$101,948	
Old Dufur Rd, Thompson to Richmond						\$ 74,144	
13th St, Jordan to Washington						\$305,844	
W 15th, Trevitt to Liberty Way							\$125,544
Washington, 3rd to 7th Place							\$ 48,286
7th St, Snipes to Walnut (City portion)							\$198,939
TOTAL ANNUAL	\$573,404	\$707,551	\$491,512	\$507,034	\$415,993	\$481,936	\$372,769

Assumes generally completing most exp
Total spent in 16 years \$7,568,192
After 16 years balance available to contri

RESOLUTION NO. 14-022

**A RESOLUTION INITIATING A MEASURE TO INCREASE
THE CITY MOTOR VEHICLE FUEL TAX FROM THREE
CENTS PER GALLON TO SIX CENTS PER GALLON,
CALLING FOR AN ELECTION AND MAKING PROVISION
THEREFORE (A BALLOT)**

WHEREAS, Chapter III, Section 1 of General Ordinance No. 92-1150 provides that the City Council may refer municipal measures as provided for in ORS 250.265 to 250.355; and

WHEREAS, the City Council now deems it to be in the best interest of the City that provision be made for submitting the question of adopting a measure increasing the amount of the City motor vehicle fuel tax from three cents per gallon to six cents per gallon, to the legal voters of the City;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of The Dalles, a municipal corporation of the State of Oregon, that the following measure is proposed for submission to the legal voters of the City for their approval or rejection at the General Election to be held in the City of The Dalles (between the hours of 8:00 A.M. and 8:00 P.M. Pacific prevailing time) on Tuesday, November 4, 2014.

BALLOT MEASURE SUBMITTED TO THE VOTERS BY THE COUNCIL

**AN ACT AMENDING SECTION 4(1)(b) OF GENERAL ORDINANCE NO. 80-982,
INCREASING THE CITY MOTOR VEHICLE FUEL TAX FROM THREE CENTS PER
GALLON TO SIX CENTS PER GALLON FOR REPAIR OF CITY STREETS.**

**BE IT ENACTED BY THE PEOPLE OF THE CITY OF THE DALLES AND THE
PEOPLE OF THE CITY OF THE DALLES ORDAIN AS FOLLOWS:**

Section 1. This act shall go into effect on January 2, 2015, and the City Council shall adopt an ordinance implementing this measure, if this measure is approved by the legal voters of the City of The Dalles at the General Election to be held on November 4, 2014.

BE IT FURTHER RESOLVED that the caption, ballot title and statement of purpose shall be in the following form and substance and is hereby adopted by the City Council:

CAPTION: Measure increasing three cent fuel tax to six cents.

QUESTION: Shall the City motor vehicle fuel tax be increased from three to six cents per gallon until January 2, 2025?

STATEMENT OF CHIEF PURPOSE: The City of The Dalles presently has a three cents per gallon motor vehicle fuel tax. The revenue generated by the current tax may be used only for reconstruction, improvement, repair and maintenance (including snow removal and sanding) of City Streets. If the measure is approved, the City anticipates receiving annual revenue from the fuel tax of approximately \$450,000, which resources will only be used to undertake several deferred street repair projects. The selection of projects and timing of completion may be determined by available funding, or the City may be choose to issue revenue bonds, depending upon which option is determined to be the most efficient use of the gas tax revenue. The City will produce an annual report in October of each year detailing how the tax revenue collected has been spent.

BE IT FURTHER RESOLVED that the City Clerk is directed to forward to the County Clerk of Wasco County, Oregon, a Notice of Election for the foregoing Ballot Measure to be submitted to the voters of the City by the City Council, and to give notice of said election by publication in The Dalles Chronicle, a newspaper of general circulation published in the City of

The Dalles, Oregon, and hereby designated by the City Council. The Notice shall be in the form prescribed by state law.

PASSED BY THE CITY COUNCIL THIS 28th DAY OF JULY, 2014

Voting Yes, Councilors: _____

Voting No, Councilors: _____

Absent, Councilors: _____

Abstaining, Councilors: _____

AND APPROVED BY THE MAYOR THIS 28th DAY OF JULY, 2014

Stephen E, Lawrence, Mayor

ATTEST:

Julie Krueger, MMC, City Clerk



AGENDA STAFF REPORT
CITY OF THE DALLES

MEETING DATE	AGENDA LOCATION	AGENDA REPORT #
July 28, 2014	Action Items 12, C	14-060

TO: Honorable Mayor and City Council
FROM: Julie Krueger, MMC, City Clerk 
THROUGH: Nolan Young, City Manager 
DATE: June 27, 2014

ISSUE: Agreement With Northern Wasco County Parks and Recreation District to Provide Downtown Street Tree and Riverfront Trail Maintenance.

BACKGROUND: The City has had a five year agreement with the Parks and Recreation District to provide maintenance of the downtown street trees and a portion of the Riverfront Trail that is the responsibility of the City to maintain. The agreement expired June 30, 2014. This has been a successful partnership. The proposed new agreement does increase the fee from \$18,000 to \$22,000. During the previous five years, the District has not increased its fees. The new fee is based on actual increase in wages, benefits, fuel, supplies, an administrative fee and a small profit. The actual cost for services is \$19,581.84. The profit would be about \$2,400. It has not been the City's practice to charge or to pay profit in partnership agreements with other governmental agencies.

With the proposed increase and the expired contract, this is a good opportunity to evaluate the services and consider other alternatives. Staff has developed an option where the City Hall maintenance crew could take on the maintenance projects. This would include hiring a seasonal employee who would work five months per year on a part-time basis.

If we have a part-time, temporary employee at 30 hours per week for the five month period, the cost would be approximately \$8,400. Adding in supplies and a contract for spraying, the total cost for the City to perform these duties is estimated at \$12,907.

Another consideration is to hire the position at 40 hours per week for five months, which would cost approximately \$11,210. Including supplies and contract for spraying, the cost would then be estimated at \$15,710. Over the past one to two years, the Department has taken on many additional assignments, including the Lewis and Clark Festival Park, commercial dock, the roundabout, and downtown banners and street furniture (benches and trash receptacles). If the City takes over these proposed duties, we will also need to take on the responsibility of locking and unlocking the park restrooms. Having a 40 hour per week position during the summer months would allow some scheduling flexibility to have someone do that task which is not done during normal work hours.

BUDGET IMPLICATIONS: The City Council included an additional \$4,000 in the City Hall budget to cover the increase proposed in the agreement. If the City takes the job duties, there would be a savings of at least \$6,000.

ALTERNATIVES:

- A. **Staff Recommendation:** *Direct staff to hire a part-time, temporary employee (40 hours per week) to assist maintenance staff and bring the downtown street tree and Riverfront Trail maintenance back under the City's work scope.*
- B. Move to direct staff to hire a part-time, temporary employee (30 hours per week) to assist City Hall maintenance staff and to bring the downtown street tree and Riverfront Trail maintenance back under the City's work scope.
- C. Move to approve an agreement between the City and the Northern Wasco County Parks and Recreation District for maintenance of .6 mile of Riverfront Trail, associated landscaping, and downtown street trees in an amount of \$22,000.
- D. Make amendments to agreement. The agreement could be approved for a shorter or longer period of time, or the Council could decide to contract for only a portion of the maintenance described in the agreement.



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

AGENDA STAFF REPORT

CITY OF THE DALLES

MEETING DATE	AGENDA LOCATION	AGENDA REPORT #
July 28, 2014	Discussion Item 13, A	14-056

TO: Honorable Mayor and City Council

FROM: Dave Anderson, Public Works Director
Gene E. Parker, City Attorney

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

DATE: June 26, 2014

ISSUE: Discussion regarding potential revisions to General Ordinance No. 06-1266 concerning System Development Charges.

RELATED CITY COUNCIL GOALS: N.A.

PREVIOUS AGENDA REPORT NUMBERS: Agenda Report #14-040.

BACKGROUND: At its June 9, 2014 meeting, City Council decided to postpone consideration of any changes to the City's General Ordinance No. 06-1266 which authorizes the establishment of system development charges (SDCs) for water, wastewater, streets, storm and parks systems. The expressed desire was to allow time for Council to consider issues being discussed before the Planning Commission related to residential in-fill development standards. City Council discussed those issues on June 30th. Therefore, suggested updates of the SDC ordinance are now being presented to Council for consideration.

Agenda Staff Report No. 14-040, originally included in the June 9th City Council meeting agenda packet and attached to this report for reference, identified a number of relatively minor revisions to the current SDC ordinance intended to clarify and streamline the SDC assessment and collection process. While detailed information regarding those revisions was presented in the original staff report, those proposed revisions are summarized as follows:

- Amend the language in the Scope section of the ordinance to clarify that SDCs are considered to be “fees” for services available now or in the future, consistent with state law, rather than some other form of charge, such as “taxes”.
- Elimination of language that established a one-year deferral program for residential SDCs in 2009 due to the economic recession; the program was never used and the Council did not renew it.
- Amending language so that SDCs would be collected under the direction of the Planning Director rather than the Finance Director, consistent with current practice.
- Adding language requiring that SDC charges would need to be paid in full when they are incurred and that installment plans, at 10% interest and up to 12 months in length, would only be allowed when events occurred that were not attributable to the actions of the property owner or developer. The proposed additional language would also require that a lien be placed upon the property when a payment plan was executed.
- Revising the processes related to delinquent SDC charges such that the City would rely on the lien foreclosure process, as it does for LID assessment liens and liens for abatement of public nuisances, rather than a public hearing before City Council. The proposed new language provides for options, other than a public hearing, for an owner to contest any errors the property owner believes the City may have committed related to foreclosure upon a lien.

A significant provision within the existing SDC ordinance that may warrant some consideration by the City Council relates to the job creation credits. This provision, found in Section 12(f), provides a 1% credit for each new “permanent full time equivalent job” created by a new commercial or industrial development. A full time equivalent job can be a 40-hour per week position, or it can be two 20-hour per week part time workers, a 10-hour and a 30-hour per week worker, or any other combination of schedules made up of permanent part-time employees rather than family-wage jobs. There is a concern that, as currently written, a new business with a large number of minimum wage part-time jobs would get a substantial credit against all SDCs while still placing significant additional demand on the City’s infrastructure systems. In this case, City residents and rate payers may have to fund most or all of the cost of the capacity improvements necessary to serve the new development. Historically, the Council has supported new development paying at least a portion of their share of the cost to construct new capacity to utility and transportation systems in an effort to lessen the impacts to rate payers and street maintenance funding sources.

Councilors may recall that there was a conscious decision to establish the City’s combined SDC rates (including Water, Wastewater, Storm, Transportation, and Parks) in 2007 at a level that was below the average from similar-sized cities in Oregon with which we may compete in attracting new businesses and industry. The level of combined SDCs for a single-family residence was adopted at the 38th percentile of comparable cities at that time, meaning that 62% of the cities surveyed had higher combined rates. None of the City’s SDC rates were set at their potential maximum levels and our SDCs have not been changed since that time. While likely outdated as other cities have adjusted their SDCs over time, the results of the 2007 SDC Survey conducted by City staff is attached for reference.

There are a number of types of credits for which new development may qualify other than the one for job creation. Key among those is the 50% waiver of permit fees, which has historically been interpreted to include SDCs, for qualifying Enterprise Zone developments. These

developments could include new industries on the Port and new motel/hotel developments elsewhere in the Enterprise Zone. There are Council-approved SDC credits available up to 50% for non-profit or government developments. And there are currently credits on Transportation SDCs for new small businesses, new businesses that redevelop or expand existing vacant buildings in the City (up to 50% or 5000 square feet expansion limit), expansion of existing businesses on a current site with new construction, and relocation of an existing business within the City to a new site with construction of new facilities.

Staff has researched the issue of job creation credits for SDCs and found that neither the SDC sample ordinance developed by the League of Oregon Cities nor any of the eleven Oregon cities surveyed provide such credits. It appears, from this information, that eliminating the job creation SDC credit would not place the City at a competitive disadvantage to other cities that collect SDCs.

Staff believes that, if a job creation credit for SDCs is maintained, it is worth considering the "quality" of jobs that would qualify. The Enterprise Zone program may provide a good model to consider in that portions of it require that qualifying jobs must pay at least 150% of the county average (the current county average annual compensation is \$33,005). This same approach could be utilized related to the job creation credit for SDCs in an attempt to provide the greatest incentives for the "best" new businesses and industries in terms of economic development. It may also be good to clarify that credits toward SDCs are not additive or cumulative; that is, a development must choose the credit that is most advantageous to it from those available rather than "double-dipping".

With that background information, staff has developed the following four alternative concepts for the Council's consideration related to the SDC credit for job creation, some of which can be combined and/or adjusted as desired.

- Concept 1: keep the job creation credit for SDCs as is with no revisions and rely to a greater extent on utility rates and street funds to build system capacity.
- Concept 2: maintain a job creation credit toward SDCs but with a maximum cap, such as 25% or 50%.
- Concept 3: specifying that only new full-time jobs (rather than all jobs counting toward full-time equivalent positions) that pay the county average wage or more count toward the job creation credit. This concept could also specify an amount over the county average wage, such as 125% or 150%, like the Enterprise Zone program does.
- Concept 4: eliminate the job creation credit for SDCs.

Given the potential for large new developments that may not provide family-wage jobs to get significant reductions in their SDCs while still adding significant demands to City infrastructure systems, the fact the City's SDCs were adopted at levels intended to be competitive with other communities, the fact that the City offers other types of credits toward SDCs that may better stimulate development, and the fact that it appears that other cities do not normally offer this type of credit against SDCs, staff recommends that revision or elimination of the job creation credit for SDCs be considered. Five alternatives are presented for consideration, three of which identify values that can be adjusted as desired by Council.

For reference, and as a starting point for Council's discussion, a working draft of General Ordinance No. 14-1335 is attached. Since Council has not yet discussed the draft, it is unchanged from when it was included in the City Council meeting agenda packet for June 9, 2014 and is currently written to eliminate the job creation credit as well as to address the other more-minor suggested revisions.

BUDGET IMPLICATIONS: There would be no immediate budget implications. However, if revisions are made to the job creation credit toward SDCs, the City could receive more revenues from SDCs toward infrastructure projects that increase capacity than would occur with the current provision.

ALTERNATIVES:

- A. Indicate support of General Ordinance No. 14-1335 as presented and direct staff to bring it back at a future meeting for adoption.
- B. Indicate support for maintaining the job creation credit with a cap (25%, 50%, or some other value) and provide any other direction related to the minor revisions; staff to present a revised ordinance at a future meeting.
- C. Indicate support for maintaining the job creation credit, and specifying that only new full-time jobs that pay at the county average or greater (such as 125% or 150%) qualify toward the credit, and provide any other direction related to the minor revisions; staff to present a revised ordinance at a future meeting with or without a credit cap (25%, 50% or some other value).
- D. Indicate support for maintaining the job creation credit, and specifying both a cap and wage criteria to qualify toward the credit, and provide any other direction related to the minor revisions; staff to present a revised ordinance at a future meeting.
- E. Make no changes to the current job creation credit toward SDCs and provide any other direction related to the minor revisions; staff to present a revised ordinance at a future meeting.



CITY of THE DALLES
313 COURT STREET
THE DALLES, OREGON 97068

(541) 296-6481 ext. 1122
FAX: (541) 296-6906

AGENDA STAFF REPORT

CITY OF THE DALLES

MEETING DATE:	AGENDA LOCATION:	AGENDA REPORT #
June 9, 2014	Action Items 12, B	14-040

TO: Honorable Mayor and City Council

FROM: Gene E. Parker, City Attorney
Dave Anderson, Public Works Director

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

DATE: May 23, 2014

ISSUE: General Ordinance No. 14-1335, amending Sections 2, 9, and 11 through 19, and repealing Section 10 of General Ordinance No. 06-1266 concerning System Development Charges.

RELATED CITY COUNCIL GOAL: None.

PREVIOUS AGENDA REPORT NUMBERS: None.

BACKGROUND: On May 22, 2006, the City Council adopted General Ordinance No. 06-1266 authorizing the establishment of provisions for governing the development and use of system development charges ("SDC") for water, wastewater drainage, streets, flood control, and parks. The ordinance includes a provision concerning the scope of the ordinance, a section defining applicable terms used in the ordinance, provisions concerning the collection of SDC charges, procedures for collection of delinquent SDC charges, and provisions concerning credits towards SDC charges.

City staff had recently been reviewing the provisions of Section 12 of the ordinance which provides credits towards the SDC charges, particularly the provisions of Section 12(F) which provide for a credit for any non-residential development which results in the creation of new and

permanent full-time equivalent jobs, calculated at the rate of one percent for each new, permanent full-time equivalent position created by the development. City staff is aware of at least one approved development (Wal-Mart) which will likely generate a significant number of new and permanent full-time equivalent jobs in excess of the 100 amount threshold. As will be explored in further detail in this staff report, a development of this size will have a significant impact upon the City's utility and transportation system, and under the current provisions in the City's SDC ordinance, such a developer could end up with receiving credits towards the SDC charges which would result in the developer being completely relieved of any obligation to pay towards the costs of addressing the impacts created by the development.

City staff researched SDC ordinances from 11 other cities, and the model SDC ordinance template developed by the League of Oregon Cities (LOC). The 11 cities included Ashland, Cannon Beach, Fairview, Junction City, Lake Oswego, Medford, Scappoose, Tigard, Waldport, Yamhill, and Bend. None of the ordinances for these cities, or the LOC template, includes a provision which provides a developer can receive an SDC credit based upon job creation. City staff is unaware of any development within the City which has occurred because of the job credit provision in Section 12(F) of General Ordinance No. 06-1266. It appears that elimination of the job credit provision would be consistent with the practices in other cities in Oregon, and that it will not place the city at a competitive disadvantage for development.

From the discussion of the provisions of Section 12(F), City staff also discovered there were certain other provisions in the SDC ordinance which were in need of some amendment and clarification. General Ordinance No. 14-1335, which is included with this staff report, has been prepared to address the issue of credits under the SDC ordinance, as well as other "housekeeping" types of issues that the staff believes would be appropriate for the Council to address. This agenda staff report will summarize those issues and the staff's recommendations.

1. Scope. Section 2 of General Ordinance No. 06-1266 includes provisions regarding the scope of the SDC ordinance. The SDC ordinance allows the City to establish two different types of SDC charges. One is for an improvement fee, which is a fee for costs associated with capital improvements to be constructed after the fee has been adopted under the SDC ordinance. Improvement fees are intended to pay for the costs of improvements which will expand the capacity of the city's utility and transportation systems. The second fee is classified as a reimbursement fee, which is a fee for costs associated with capital improvements already constructed or under construction at the time the fee is adopted, where the Council has determined that sufficient capacity exists. The second sentence of Section 2 has been amended to clarify that SDC charges are considered to be in the nature of a charge for services and/or facilities made available (reimbursement fee), or a charge for services and/or facilities to be made available in the future (improvement fee).
2. Deferral Program for SDC's for Single Family and Duplex Residential Dwelling Units. On June 15, 2009, the City Council adopted Resolution No. 09-020 which established a program for deferral of SDC charges in connection with the construction of single family and duplex residential dwelling units. The intent of the program was to provide a stimulus to the development of these types of dwelling units during the national

economic recession. The City did not receive any applications under this deferral program. The resolution provided that the program would be in effect from June 15, 2009 through December 15, 2009, and unless the City Council adopted a resolution extending the deferral program, the deferral period would expire on December 16, 2009. The Council did not adopt a resolution extending the deferral program, and since the program has expired, staff is recommending that the provision in General Ordinance No. 06-1266 which authorized the program be deleted from the ordinance.

3. Collection of SDC charges. Section 9 of General Ordinance No. 06-1266 contains the provisions governing the collection of SDC charges. General Ordinance No. 14-1335 proposes several changes to the procedures which the City would use to collect these charges, which are set forth below:
 - A. Subsection D which defines the events which would trigger the need to collect the SDC charges is being amended to delete payment of the SDC's under the deferral program for SDC's imposed in connection with the construction of a single family dwelling or duplex residential unit, as one of the triggering events.
 - B. Subsections (E), (F), and (G) are being replaced with new subsections (E), (F), (G), (H), (I) and (J). Under the current SDC ordinance, the Finance Director is responsible for collection of SDC payments, and for approving requests for installment payment plans for SDC payments. Under proposed General Ordinance No. 14-1335, the City Planning Director will be responsible for collection of the SDC payments, which is consistent with the method of collection which City staff has been using for several years. The Planning Director will also be responsible for processing requests for installment payments of the SDC charges.

Under proposed General Ordinance No. 14-1335, for all new development, the applicable SDC charge will need to be paid in full at the time of occurrence of one of the events described in Subsection D. The use of installment payment plans will be limited to situations involving an emergency of other event or cause which is not attributable to any action taken by the property owner or a developer, which results in undue financial hardship to the property owner or the developer. In the event the property owner or developer are not the same individuals or entities, both the owner and the developer will be required to sign the installment plan agreement in order for the agreement to be effective. The maximum period for any installment plan agreement is 12 months.

Once the payment plan agreement is signed, it will authorize the placement of a lien upon the property. The agreement will provide for interest at the rate of 10% per annum from date of execution of the payment plan. No permit shall be issued for water or sewer service, nor shall any connection to the water or sewer system be allowed, until the SDC charge has been paid in full, or the

Public Works Director has a copy of the signed installment plan agreement. The City Finance Director shall provide information concerning the terms of the installment plan agreement to the City Clerk, and the City Clerk shall enter the appropriate amount for the SDC charge in the City's electronic lien docket. The lien shall bear interest at the rate of 10% per annum on the unpaid balance of the SDC charges from the date of execution of the installment plan agreement.

General Ordinance No. 06-1266 includes a provision for delinquent charges which involves a public hearing before the City Council. The City Council recently conducted a public hearing to consider a report concerning a delinquent SDC charge for a sanitary sewer connection. Under proposed General Ordinance No. 14-1335, the provision providing for a public hearing to consider reports regarding delinquent SDC charges will be deleted. In the event the SDC charge becomes delinquent, the City will rely upon the lien foreclosure process which is the standard process which the City uses for the collection of LID assessment liens and liens for the abatement of public nuisances.

Other city ordinances which use the process of imposing a lien to secure payment of the installments, and the LOC template do not include a requirement for a public hearing. General Ordinance No. 14-1335 includes a provision that an owner or developer retains the right to contest any computational errors made in the assessment of the lien. The lien foreclosure process also includes requirements for publication of any notice of intent to foreclose upon the lien, as well as notice sent by certified mail to the owner of the affected property, so there are additional opportunities for a property owner to contest the amount of any lien if the property owner believes the City has committed an error.

City staff believes that the City should not be placed in the position where it is essentially functioning as a bank to finance the costs of construction of the improvements associated with the SDC charges. The inclusion of an interest rate of 10% per annum will provide an incentive for private owners and developers to seek alternative sources of financing the costs of improvements at a more favorable financing rate, which would result in lower costs for the property owner or the developer.

4. Other housekeeping provisions. Current Sections 11 through 19 in General Ordinance No. 06-1266 would be renumbered 10 through 18 respectively. Subsection (F) of the newly renumbered Section 11 will be deleted, and subsections (G) and (H) of the newly renumbered Section 11 will be renumbered (F) and (G). A new subsection (H) will be added to the newly renumbered Section 11. The current Section 18 concerning penalties will be renumbered Section 17.

The City Attorney, Finance Director, Public Works Director, and Planning Director worked together upon the proposed revisions of the City's current SDC ordinance, and they all concur that the proposed revisions are in the best interests of the City. Copies of General Ordinance No. 14-1335 have been posted in accordance with the requirements of the City Charter, and the Council can choose to adopt the ordinance by title only.

BUDGET IMPLICATIONS: The City's Capital Improvement Plan adopted in connection with its SDC's ordinance contemplates the collection of SDC charges from developers who construct projects which will have a significant impact upon the City's utility and transportation systems. Adoption of General Ordinance No. 14-1335 will ensure that the City collects the applicable SDC charges from development which will impose a significant impact upon the City's utility and transportation systems, and ensure the City has the necessary financial resources to allow for construction of improvements required to address those impacts.

ALTERNATIVES:

- A. Staff Recommendation. *Move to adopt General Ordinance No. 14-1335 by title only.*
- B. If the Council desires to make some minor amendments to the proposed ordinance, the Council can read those amendments in public, and then move to adopt General Ordinance as amended by title only.
- C. If the Council desires to make more substantial amendments to General Ordinance No. 14-1335, provide direction to staff as to which sections of the ordinance the Council would like to amend, and direct staff to bring an amended ordinance to the Council at a future meeting for its review.
- D. Determine not to adopt proposed General Ordinance No. 14-1335, which would leave the current provisions in General Ordinance No. 06-1266 in place.

GENERAL ORDINANCE NO. 14-1335

**AN ORDINANCE AMENDING SECTIONS 2, 9, AND 11
THROUGH 19, AND REPEALING SECTION 10 OF
GENERAL ORDINANCE NO. 06-1266 CONCERNING
SYSTEM DEVELOPMENT CHARGES**

WHEREAS, on May 22, 2006, the City Council adopted General Ordinance No. 06-1266 authorizing the establishment of provisions for governing the development and use of system development charges for water, wastewater drainage, streets, flood control, and parks; and

WHEREAS, Section 2 of General Ordinance No. 06-1266 sets forth provisions regarding the scope of the ordinance; and

WHEREAS, City staff has recommended the Council consider certain amendments to Section 2 of General Ordinance No. 06-1266, to clarify that the scope of the ordinance is consistent with the types of system development charges authorized by the ordinance; and

WHEREAS, Section 9 of General Ordinance No. 06-1266 sets forth provisions governing the collection of system development charges; and

WHEREAS, pursuant to Section 9(A) of General Ordinance No. 06-1266, the City Council adopted Resolution No. 09-020 relating to the establishment of a program for a deferral of systems development charges in connection with construction of single family and duplex residential dwelling units; and

WHEREAS, Section 5 of Resolution No. 09-020 provided that the deferral period established by the resolution would be in force and effect from June 15, 2009 through December 15, 2009, and unless the City Council adopted a resolution extending the deferral period, the deferral period would expire on December 16, 2009; and

WHEREAS, the City Council did not pass a resolution extending the deferral period for payment of system development charges in connection with construction of single family and duplex residential dwelling units, and City staff is recommending the provisions of General Ordinance No. 06-1266 be amended to repeal the provisions establishing the deferral program for payment of system development charges in connection with construction of single family and duplex residential dwelling units; and

WHEREAS, Section 9 of General Ordinance No. 06-1266(E) sets forth provisions authorizing the payment of system development charges pursuant to an installment payment plan, and City staff is recommending amendments to these provisions to clarify the process for authorizing installment payment plans, and providing for imposition of a lien to secure the payment of the installments, and ensuring that

General Ordinance No. 06-1266 complies with provisions of state law concerning the payment of systems development charges pursuant to an installment payment plan; and

WHEREAS, Section 10 of General Ordinance No. 06-1266 sets forth provisions concerning the process when systems development charges become delinquent, and City staff is recommending that with the adoption of the proposed amendments to Section 9 of General Ordinance No. 06-1266, Section 10 would become obsolete and should be repealed; and

WHEREAS, Section 12(F) of General Ordinance No. 06-1266 provides for a credit towards the payment of systems development charges for any non-residential development which results in the creation of new and permanent full-time equivalent jobs, calculated at the rate of one percent (1%) for each new, permanent full-time equivalent position created by the development; and

WHEREAS, City staff has recommended repeal of Section 12(F) of General Ordinance No. 06-1266, due to the potential for any development which creates 100 or more full time positions, receiving a credit of 100% toward the obligation to pay system development charges, which could result in a development which causes a significant burden upon the City's utility and transportation systems, being relieved of the obligation to pay any costs towards addressing the impacts created by that development; and

WHEREAS, City Council has reviewed the proposed amendments to General Ordinance No. 06-1266 recommended by City staff, and concurs that adoption of the proposed amendments is in the best interest and welfare of the citizens of The Dalles;

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

Section 1. Section 2, Scope, of General Ordinance No. 06-1266 shall be amended to read as follows:

Section 2. Scope. The system development charges imposed by this ordinance are separate from and in addition to any applicable tax, assessment, charge, or fee otherwise provided by law or imposed as a condition of development. A systems development charge is to be considered in the nature of a charge for services and/or facilities made available, or a charge for services and/or facilities to be made available in the future.

Section 2. Section 3, Definitions, shall be amended by adding a new subsection (M) which shall read as follows:

M. Planning Director. The duly appointed Director of the Planning Department, or his/her designee.

Section 3. Section 9(A) of General Ordinance No. 06-1266 shall be amended by deleting the following language:

“The City Council may, by adoption of a resolution, establish a program for deferral of water and sanitary sewer system development charges in connection with the construction of a new single family or duplex residential dwelling unit. Such a program may be authorized on a periodic basis. The terms of the deferral program, which include defining the due date of the deferred payment and the length of time which the deferred payment program shall be in effect, shall be set forth in a Council resolution”.

Section 4. Section 9(D) of General Ordinance No. 06-1266 shall be amended by deleting subsection (3), and amending subsections (1) and (2) to read as follows:

D. Collection of the applicable system development charge by the Planning Director shall be initiated by one of the following events:

- (1) Upon issuance of a permit which allows expansion of an existing building or development of an existing parcel.
- (2) When a request is made for water or sewer service, or when a connection to the water or sewer system of the City is made, whichever event occurs first.

Section 5. Sections 9(E), (F), and (G) of General Ordinance No. 06-1266 shall be deleted and replaced with the following language:

E. For all new development, the applicable system development charge shall be paid in full at the time of occurrence of one of the events outlined in subsection (D). In the event of an emergency or other event or cause which is not directly attributable to an action taken by the owner or the developer, which results in undue financial hardship to the owner or the developer, the owner or developer may apply to the Planning Director to pay the system development charge pursuant to a monthly installment payment plan (“payment plan”). In the event the owner or developer are separate individuals or entities, both the owner and developer will be required to execute a payment plan agreement in order for the payment plan to be effective. The maximum period for any payment plan shall not exceed twelve (12) months. The payment plan shall provide that interest on the unpaid balance of the system development charge shall accrue from the date of execution of the payment plan at the rate of ten percent (10%) per annum. The payment plan shall also include a waiver of all rights to contest the validity of a lien which shall be placed upon the property, except for the correction of computational errors. The Planning Director shall provide a copy of the executed payment plan to the Finance Director and Public Works Director.

- F. No permit shall be issued for water or sewer service, nor shall any water or sewer connection be allowed, until the applicable system development charge has been paid in full, or the Public Works Director has received a copy of a monthly installment payment plan agreement signed by the Planning Director and the owner or developer, or unless an exemption has been granted pursuant to Section 10 of this Ordinance.
- G. An applicant for installment payments shall have the burden of demonstrating the applicant's authority to assent to the imposition of a lien on the parcel.
- H. The City Finance Director shall report to the City Clerk the amount of the system development charge, the dates on which payments are due, the name of the owner(s), and the description of the parcel.
- I. The City Clerk shall docket the lien in the City Lien Docket. From that time the City shall have a lien upon the described parcel for the amount of the system development charge, together with interest on the unpaid balance at the rate of ten percent (10%) per annum from the date of execution of the installment payment plan. The lien shall be enforceable in the manner provided in ORS Chapter 223.
- J. For any installment payment agreement entered into prior to the effective date of this Ordinance, in the event there is a default in any payment of an installment due and owing under the agreement, the Finance Director shall report to the City Clerk the amount of the unpaid balance owing under the installment payment agreement. The City Clerk shall then enter the amount of the unpaid balance as a lien in the City Lien Docket, together with interest at the rate of ten percent (10%) per annum on the unpaid balance, and the lien shall be enforceable in the manner provided in ORS Chapter 223.

Section 5. Section 10 of General Ordinance, Delinquent Charges, shall be deleted, and Sections 11 through 19, shall be renumbered 10 through 18 respectively.

Section 6. Subsection (F) of Section 12, which shall be renumbered Section 11, shall be deleted. Subsections (G) and (H) of Section 12, which shall be renumbered Section 11, shall be renumbered (F) and (G). A new subsection (H) shall be added to the renumbered Section 11 which shall read as follows:

- H. Upon written request of the City Manager, the City Clerk is authorized to cancel assessments of systems development charges, without further City Council action, where the new development approved by the building permit is not constructed and the building permit is cancelled.

Section 7. Section 18, Penalty, which shall be renumbered Section 17, shall be revised to read as follows:

Section 17. Penalty. Violation of Section 16 of this ordinance is punishable by a fine not to exceed \$500.00.

PASSED AND ADOPTED THIS 9TH DAY OF JUNE, 2014

Voting Yes, Councilors: _____

Voting No, Councilors: _____

Absent, Councilors: _____

Abstaining, Councilors: _____

AND APPROVED BY THE MAYOR THIS 9TH DAY OF JUNE, 2014

Stephen E. Lawrence, Mayor

ATTEST:

Julie Krueger, MMC, City Clerk

GENERAL ORDINANCE NO. 06-1266**AN ORDINANCE AUTHORIZING THE ESTABLISHMENT OF PROVISIONS FOR GOVERNING THE DEVELOPMENT AND USE OF SYSTEM DEVELOPMENT CHARGES FOR WATER, WASTEWATER DRAINAGE, STREETS, FLOOD CONTROL, AND PARKS, REPEALING GENERAL ORDINANCE NO. 91-1130**

THE PEOPLE OF THE CITY OF THE DALLES DO ORDAIN AS FOLLOWS:

Section 1. Purpose. The purpose of the system development charge is to impose an equitable portion of the cost of capital improvements for water, wastewater drainage, streets, flood control, and parks upon those developments that create the need for, or increase the demand on capital improvements, and to create a source of funds to assist in paying for such capital improvements.

Section 2. Scope. The system development charges imposed by this ordinance are separate from and in addition to any applicable tax, assessment, charge, or fee otherwise provided by law or imposed as a condition of development. A systems development charge is to be considered in the nature of a charge for service rendered, a service hookup charge, or a charge for services to be rendered.

Section 3. Definitions. For purposes of this ordinance, the following mean:

A. Capital improvements. Facilities or assets used for:

- (1) Water supply, transmission, treatment, or distribution, or any combination;
- (2) Wastewater collection, transmission, treatment or disposal or any combination;
- (3) Drainage or flood control;
- (4) Transportation; or
- (5) Parks and recreation.

- B. Development. As used in this ordinance, "development" means constructing or enlarging a building or adding facilities, or making a physical change in the use of a structure or land, including redevelopment and demolishing a building for the conversion of such property to a different use, which increases the usage of any capital improvements or which will contribute to the need for additional or enlarged capital improvements.
- C. Improvement fee. A fee for costs associated with capital improvements to be constructed after the date the fee is adopted pursuant to Section 4 of this ordinance.
- D. Land area. The area of a parcel of land as measured by projection of the parcel boundaries upon a horizontal plane with the exception of a portion of the parcel within a recorded right-of-way or easement subject to a servitude for a public street or scenic or preservation purpose.
- E. Owner. The owner or owners of record title or the purchaser or purchasers under a recorded land sales agreement, and other persons having an interest of record in the described real property.
- F. Parcel of land. A lot, block or other tract of land that is occupied or may be occupied by a structure or structures or other use, and that includes the yards and other open spaces required under the zoning, subdivision, or other development ordinances.
- G. Qualified public improvements. A capital improvement that is:
- (1) Required as a condition of development approval;
 - (2) Identified in the plan adopted pursuant to Section 8 of this ordinance; and either
 - (A) Not located on or contiguous to a parcel of land that is the subject of the development approval; or
 - (B) Located in whole or in part on or contiguous to property that is the subject of development approval and required to be built larger or with greater capacity than is necessary for the particular development project to which the improvement fee is related.

- (3) For purposes of this definition, contiguous means in a public way which abuts the parcel.
- H. Reimbursement fee. A fee for costs associated with capital improvements already constructed or under construction on the date the fee is adopted pursuant to Section 4 of this ordinance, and for which the City Council determines capacity to exist..
- I. System development charge. A reimbursement fee, an improvement fee, or a combination thereof assessed or collected at the time of increased usage of the capital improvement, at the time of issuance of a development permit or building permit, or at the time of connection to the capital improvement. A "system development charge" is a separate charge which does not include reimbursement to the City for its cost of inspecting and installing connections with water and sewer facilities, which cost is recovered through other fees. A "system development charge" does not include fees assessed or collected as part of a local improvement district or a charge in lieu of a local improvement district assessment, or the cost of complying with requirements or conditions imposed by land use decision.
- J. Finance Director. The duly appointed Director of the Finance Department, or his/her designee.
- K. Public Works Director. The duly appointed Director of the Public Works Department, or his/her designee.
- L. Nonprofit Corporation. A mutual benefit corporation, a public benefit corporation, or a religious corporation.

Section 4. System Development Charge Established.

- A. System development charges shall be established and may be revised by resolution of the council. The resolution shall set the amount of the charge, the type of permit to which the charge applies, and, if the charge applies to a geographic area smaller than the entire City, the geographic area subject to the charge.

- B. Unless otherwise exempted by the provisions of this ordinance or other local or state law, a system development charge is hereby imposed upon all development within the City, upon the act of making a connection to the City water or sewer system within the City, and upon all development outside the boundary of the City that connects to or otherwise uses the sewer facilities, storm sewers, or water facilities of the City.

Section 5. Methodology.

- A. The methodology used to establish the reimbursement fee shall, where applicable, be based on the cost of the existing facility or then-existing facilities, including without limitation design, financing and construction costs, prior contributions by then-existing users, gifts or grants from federal or state government or private persons, the value of unused capacity available to future system users or the cost of existing facilities, rate-making principles employed to finance publicly owned capital improvements, and other relevant factors identified by the council. The methodology shall promote the objective that future systems users shall contribute no more than an equitable share of the cost of then-existing facilities.
- B. The methodology used to establish or modify the improvement fee shall consider the cost of projected capital improvements needed to increase the capacity of the system, the need for increased capacity required to serve future users, and be calculated to obtain the cost of capital improvements for the projected need for available system capacity for future system users.
- C. The methodology used to establish the improvement fee or the reimbursement fee, or both, shall be adopted by the council by resolution.

Section 6. Authorized Expenditures.

- A. Reimbursement fees shall be applied only to capital improvements associated with the systems for which the fees are assessed, including expenditures relating to repayment of indebtedness.
- B. Improvement fees shall be spent only on capacity increasing capital improvements associated with the system for which the fee is assessed, including expenditures relating to repayment of future debt for the improvements. An increase in system capacity occurs if a capital improvement increases the level of performance or service provided by existing facilities or provides new facilities. The portion of

the capital improvements funded by improvement fees must be related to demands created by current or projected development. A capital improvement being funded wholly or in part from revenues derived from the improvement fee shall be included in the plan adopted by the City pursuant to Section 8 of this ordinance.

- C. Notwithstanding subsections A and B of this section, system development charge revenues may be expended on the direct costs of complying with the provisions of this ordinance, including the costs of developing system development charge methodologies and providing an annual accounting of system development charge expenditures.

Section 7. Expenditure Restrictions. System development charges shall not be expended for costs associated with the construction of administrative office facilities that are more than an incidental part of other capital improvements. System development charges shall not be expended for costs of the operation or routine maintenance of capital improvements.

Section 8. Improvement Plan.

- A. Prior to the establishment of a system development charge, the City Council shall adopt a plan that includes a list of:
 - (1) The capital improvements that the City Council intends to fund in whole or in part with improvement fee revenues;
 - (2) The estimated cost and time of construction of each improvement and the percentage of that cost eligible to be funded with improvement fee revenues; and
 - (3) A description of the process for modifying the plan.
- B. In adopting this plan, the City Council may incorporate by reference all or a portion of any public facilities plan, master plan, capital improvements plan or similar plan that contains the information required by this section.
- C. The City Council may modify such plan and list at any time. If a system development charge will be increased by a proposed modification to the list to include a capacity increasing public improvement, the Council will:

- (1) at least 30 days prior to the adoption of the proposed modification, provide written notice to persons who have requested notice pursuant to Section 13 of this ordinance; and
 - (2) hold a public hearing if a written request for a hearing is received within seven days of the date of the proposed modification.
- D. A change in the amount of a reimbursement fee or an improvement fee is not a modification of the system development charge if the change in amount is based on a change in the cost of materials, labor or real property applied to the projects or project capacity, as set forth in the plan adopted pursuant to Section 8 of this ordinance; or the periodic application of one or more specific cost indexes or other periodic data sources. A specific cost index or periodic data source must be:
- (1) A relevant measurement of the average change in prices or costs over an identified time period for materials, labor, real property or a combination of the three;
 - (2) Published by a recognized organization or agency that produces the index or data source for reasons that are independent of the system development charge methodology; and
 - (3) Incorporated as part of the established methodology or identified and adopted in a separate ordinance, resolution or order.
- E. For system development charges for water and wastewater utility facilities, the City Council hereby adopts and approves the 2006 Water aster Plan and the 2002 Wastewater Facility Master Plan. The Council may adopt improvement plans for other system development charges by resolution. [As amended by Ordinance 12-1322, adopted May 23, 2012.]

Section 9. Collection of Charge.

- A. The system development charge is payable upon issuance of:
- (1) A building permit;
 - (2) A development permit;
 - (3) A development permit for development not requiring the issuance of a building permit;
 - (4) A permit to connect to the water system;
 - (5) A permit to connect to the sewer system; or

- (6) A right-of-way access permit.

The City Council may, by adoption of a resolution, establish a program for deferral of water and sanitary sewer system development charges in connection with the construction of a new single family or duplex residential dwelling unit. Such a program may be authorized on a periodic basis. The terms of the deferral program, which include defining the due date of the deferred payment and the length of time which the deferred payment program shall be in effect, shall be set forth in a Council resolution. [Added by General Ordinance No. 09-1300, adopted by City Council June 8, 2009.]

- B. If no building, development, or connection permit is required, the system development charge is payable at the time the usage of the capital improvement is increased.
- C. If development is commenced or connection is made to the water or sewer systems without an appropriate permit, the system development charge is immediately payable upon the earliest date that a permit was required.
- D. Collection of the applicable system development charge by the Finance Director shall be initiated by one of the following events:
- (1) Upon issuance of a permit which allows expansion of an existing building or development of an existing parcel.
 - (2) When a request is made for water or sewer service, or when a connection to the water or sewer system of the City is made, whichever event occurs first.
 - (3) Payment of the water and sanitary sewer system development charge in accordance with a deferred payment program authorized by adoption of a Council resolution, in connection with development or redevelopment of a new single family or duplex residential unit, shall be made in accordance with the terms and conditions set forth in the resolution establishing such a deferred payment program. [Subsection added by General Ordinance No. 09-1300 adopted by City Council June 8, 2009.]

- E. The applicable system development charge shall either be paid in full at the time of occurrence of one of the events outlined in subsection (D), or pursuant to a monthly installment plan approved by the Finance Director. Persons who desire to pay on an installment basis shall submit an application on a form provided by the Finance Director. The maximum period for any installment payment plan shall not exceed twelve (12) months. The installment agreements shall provide that no interest charge will be imposed as long as no default in payment occurs, and that a late charge at the rate of ten percent (10%) per annum will be imposed upon any past due installment.
- F. No permit shall be issued for water or sewer service, nor shall any water or sewer connection be allowed, until the applicable system development charge has been paid in full, or the Public Works Director has received a copy of an installment payment agreement signed by the applicant and the Finance Director, or unless an exemption has been granted pursuant to Section 11 of this ordinance.
- G. The Community Development Director is authorized to prepare and receive requests for and consent to assessment of the amount of systems development charges deferred in accordance with the terms and provisions set forth in the resolution authorizing the deferred payment program. The City Clerk shall enter the assessment in the docket of City liens, and the City Attorney's Office shall record the assessment in the Wasco County Deed Records. Upon the entry and recordation being made, the assessments shall constitute a lien upon the property which received the deferred charge. [Section G added by General Ordinance No. 09-1300, adopted by City Council June 8, 2009.]

Section 10. Delinquent Charges.

- A. When, for any reason, a system development charge has not been paid, the City Manager shall report to the Council the amount of the uncollected charge, the description of the real property to which the charge is attributable, the date upon which the charge was due, and the name of the owner.
- B. The Council shall schedule a public hearing on the matter and direct that notice of the hearing be given to each owner with a copy of the City Manager's report concerning the unpaid charge. Notice of the hearing shall be given either personally or by certified mail, return receipt requested, or by both personal and mailed notice, and by posting notice on the parcel at least ten (10) days before the date set for the hearing.

- C. At the hearing, the City Council may accept, reject, or modify the determination of the City Manager as set forth in the report. If the Council finds that a systems development charge is unpaid and uncollected, the City Clerk shall docket the unpaid and uncollected system development charge in the City lien docket. Upon completion of the docketing, the City shall have a lien against the described land for the full amount of the unpaid charge, together with interest at the legal rate of ten (10) percent. The lien shall be enforceable in the manner provided in ORS Chapter 223.
- D. Upon written request of the City Manager, the City Clerk is authorized to cancel assessments of system development charges, without further City Council action, where the new development approved by the building permit is not constructed and the building permit is cancelled.

Section 11. Exemptions. Existing water and sewer connections, to the extent of current service levels as of the effective date of this ordinance, are exempt from a system development charge. Additions to single-family dwellings that do not constitute the addition of a dwelling unit, as defined by the State Uniform Building Code, are exempt from all portions of the system development charge. An alteration, addition, replacement or change in use that does not increase the use of a public improvement facility is exempt from all portions of the system development charge. Municipal projects are exempt from all system development charges.

A. Fire Sprinkler systems for residential development. [subsections A and B added by Ordinance 12-1322, adopted April 23, 2012.]

1. An applicant seeking to install a fire suppression sprinkler system in an existing residential structure or a new residential structure, shall be exempt from paying any additional water system development charge for installation of such a sprinkler system, provided the applicant furnishes a written statement from the licensed plumber installing the sprinkler system, that the sole reason for increasing the size of the meter serving the sprinkler system from a 3/4 inch to a 1 inch size meter is the installation of the sprinkler system. The City has the right to verify the submitted information by consulting with the State Plumbing Inspector. Following installation of the sprinkler system, the applicant shall pay the normal rate established by Council resolution for service provided by a 1 inch meter, which rate shall also apply to the amount of water usage generated when the fire sprinkler system is activated.

2. In the case of an applicant who has an existing 1 inch service for a residential structure, who seeks to install a fire sprinkler system, who is required to install a larger service line for any reason other than the installation of a fire sprinkler system (for example, a need to provide a large quantity of outdoor irrigation), that applicant would not qualify for the exemption from the water system development charge provided for in subsection A(1) of this section.

B. Fire sprinkler systems for commercial and industrial development. An applicant seeking to install a fire suppression sprinkler system as part of a commercial or industrial development, shall be exempt for paying a water system development charge which would otherwise be assessed for the construction of a dedicated fire line for the fire sprinkler system which would serve the commercial or industrial development.

Section 12. Credits.

- A. When development occurs that is subject to a system development charge, the system development charge for the existing use, if applicable, shall be calculated; and if it is less than the system development charge for the use that will result from the development, the difference between the system development for the existing use and the system development charge for the proposed use shall be the system development charge. If the change in the use results in the system development charge for the proposed use being less than the system development charge for the existing use, no system development charge shall be required. No refund or credit shall be given unless provided for by another subsection of this section.
- B. A credit shall be given to the permittee for the cost of a qualified public improvement upon acceptance by the City of the public improvement. The credit shall not exceed the improvement fee even if the cost of the capital improvement exceeds the applicable improvement fee and shall only be for the improvement fee charged for the type of improvement being constructed.

- C. If a qualified public improvement is located in whole or in part on or contiguous to the property that is the subject of development approval and is required to be built larger or with greater capacity than is necessary for the particular development project, a credit shall be given for the cost of the portion of the improvement that exceeds the City's minimum standard facility size or capacity needed to serve the particular development project or property. The applicant shall have the burden of demonstrating that a particular improvement qualifies for credit under this subsection. The request for credit shall be filed in writing no later than 60 days after acceptance of the improvement by the City.
- (1) The City may deny the credit provided for in this section if the City demonstrates that the application does not meet the requirements of this section or if the improvement for which the credit is sought was not included in the improvement plan pursuant to Section 8 of this ordinance.
- D. When the construction of a qualified public improvement located in whole or in part on or contiguous to the property that is the subject of development approval, gives rise to a credit amount greater than the improvement fee that would otherwise be levied against the project, the credit in excess of the improvement fee for the original development project may be applied against improvement fees that accrue in subsequent phases of the original development project.
- E. Notwithstanding subsections (C) and (D), when establishing a methodology for a systems development charge, the City may provide for a credit against the improvement fee, the reimbursement fee, or both, for capital improvements constructed as part of the development which reduce the development's demand upon existing capital improvements and/or the need for future capital improvements, or a credit based upon any other rationale the Council finds reasonable.
- F. Any non-residential development which results in the creation of new and permanent full-time equivalent jobs, shall be entitled to receive a credit toward the applicable system development charge, which credit shall be calculated at the rate of one percent (1 %) for each new, permanent full-

time equivalent position created by the development. Eligibility for this credit shall be subject to verification by the Finance Director within twelve (12) months of occupancy or start-up of the development. Only non-residential development occurring upon property located within the City limits shall be eligible for this credit.

- G. 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.
- H. Credits shall not be transferable from one development to another. Credits shall not be transferable from one type of system development charge to another. Credits shall be used within 10 years from the date the credit is given.

Section 13. Notice.

- A. The City shall maintain a list of persons who have made a written request for notification prior to adoption or amendment of a methodology for any system development charge. Written notice shall be mailed to persons on the list at least 90 days prior to the first hearing to adopt or amend a system development charge. The methodology supporting the adoption or amendment shall be available at least 60 days prior to the first hearing to adopt or amend a system development charge. The failure of a person on the list to receive a notice that was mailed shall not invalidate the action of the City.
- B. The City may periodically delete the names from the list, but at least 30 days prior to removing a name from the list, the City must notify the person whose name is to be deleted that a new written request for notification is required if the person wishes to remain on the notification list.

Section 14. Segregation and Use of Revenue.

- A. All funds derived from a particular type of system development charge are to be segregated by accounting practices from all other funds of the City.

The portion of the system development charge calculated and collected on account of a utility system shall be used for no purpose other than those set forth in Section 6 of this ordinance.

- B. The Finance Director shall provide the City Council with an annual accounting, by January 1st of each year, of system development charges showing the total amount of system development charge revenues collected for each utility and the projects funded from each account in the previous fiscal year. A list of the amount spent on each project funded in whole or in part with system development charge revenues shall be included in the annual accounting.

Section 15. Implementing Regulations; Amendments. The City Council delegates authority to the City Manager to adopt necessary procedures to implement the provisions of this ordinance. All rules pursuant to this delegated authority shall be filed with the office of the City Clerk and be available for public inspection.

Section 16. Appeal Procedure.

- A. A person challenging the propriety of an expenditure of system development charge revenues may appeal the decision or the expenditure to the City Council by filing a written request with the City Manager, or his designee, describing with particularity the decision of the Finance Director or Public Works Director, and the expenditure from which the person appeals. An appeal of an expenditure must be filed within two (2) years of the date of the alleged improper expenditure.
- B. Appeals of any other decision required or permitted to be made by the Finance Director or Public Works Director under this ordinance must be filed within 30 days of the date of the decision.
- C. After providing notice to the appellant, the Council shall determine whether the Finance Director's or Public Works Director's decision or the expenditure is in accordance with this ordinance and the provisions of ORS 223.297 to 223.314 and may affirm, modify, or overrule the decision. If the Council determines that there has been an improper expenditure of system development charge revenues, the Council shall direct that a sum

equal to the misspent amount shall be deposited within one year to the credit of the account or fund from which it was spent. The decision of the Council shall be reviewed only as provided in ORS 34.010 to 34.100, and not otherwise.

- D. A legal action challenging the methodology adopted by the Council pursuant to Section 5 shall not be filed later than 60 days after the adoption. The decision of the Council shall be reviewed only as provided in ORS 34.010 to 34.100, and not otherwise.

Section 17. Prohibited Connection. No person may connect to the water or sewer systems of the City unless the appropriate system development charge has been paid.

Section 18. Penalty. Violation of Section 15 of this ordinance is punishable by a fine not to exceed \$500.00.

Section 19. Construction. For purposes of administration and enforcement of this ordinance, unless otherwise stated in this ordinance, the following rules of construction apply:

- A. In case of any difference of meaning or implication between the text of this ordinance and any caption, illustration, summary table, or illustrative table, the text shall control.
- B. The word "shall" is always mandatory and not discretionary; the word "may" is permissive.
- C. Words used in the present tense shall include the future; and words used in the singular number shall include the plural and the plural the singular, unless the context clearly indicates the contrary.
- D. The phrase "used for" includes "arranged for", "designed for", "maintained for", or "occupied for".
- E. Where a regulation involves two or more connected items, conditions, provisions, or events:

- (1) "And" indicates that all the connected terms, conditions, provisions or events shall apply;
 - (2) "Or" indicates that the connected items, conditions, provisions or events may apply singly or in any combination.
- F. The word "includes" shall not limit a term to the specific example, but is intended to extend its meaning to all other instances of like kind or character.

Section 20. Severability. The provisions of this ordinance are severable, and it is the intention to confer the whole or any part of the powers herein provided for. If any clause, section or provision of this ordinance shall be declared unconstitutional or invalid for any reason or cause, the remaining portion of this ordinance shall be in full force and effect and be valid as if such invalid portion thereof had not been incorporated herein. It is hereby declared to be the City Council's intent that this ordinance would have been adopted had such unconstitutional provision not been included herein.

Section 21. Classification. The City Council determines that any fee, rates, or charges imposed by this ordinance are not a tax subject to the property tax limitations of Article XI, Section 11(b) of the Oregon Constitution.

Section 22. Repeal. General Ordinance No. 91-1130, as amended by General Ordinance Nos. 93-1170 and 96-1199 is hereby repealed in its entirety. Any and all resolutions adopted pursuant to General Ordinance No. 91-1130 shall remain in full force and effect pursuant to the authority granted the City in General Ordinance No. 91-1130 and this ordinance, until specifically repealed or amended by resolution.

ADOPTED BY CITY COUNCIL AND APPROVED BY THE MAYOR MAY
22, 2006.