

AGENDA

REGULAR CITY COUNCIL MEETING

November 14, 2016

5:30 p.m.

CITY HALL COUNCIL CHAMBER

313 COURT STREET

THE DALLES, OREGON

1. CALL TO ORDER
2. ROLL CALL OF COUNCIL
3. PLEDGE OF ALLEGIANCE
4. APPROVAL OF AGENDA
5. PRESENTATION

A. Gorge Commission Update – Krystyna Wolniakowski

6. AUDIENCE PARTICIPATION

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

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

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

**CITY OF THE DALLES**

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

A. Approval of October 24, 2016 Regular City Council Meeting Minutes

11. PUBLIC HEARINGS

A. General Ordinance No. 16-1348 Amending General Ordinance No. 98-1222, Concerning Zoning Ordinance Amendment #93-16 Establishing Time, Place and Manner Regulations of Facilities for Processing, Production, and Wholesaling of Medical Marijuana, and Establishing Reasonable Restrictions on the Location of Marijuana Grow Sites, and Upon the Manner of Operation of Medical Marijuana Grow Sites

12. ACTION ITEMS

A. Adopting Resolution No. 16-030 Supplemental Budget for Fiscal Year 2016/2017, Making Appropriations and Authorizing Expenditures within Various Funds of the City of The Dalles Adopted Budget

B. Authorization to Purchase a Utility Easement from SAPA (operating the old Northwest Aluminum Specialties Facility) for Construction of the 18-inch Port Industrial Water Main

C. Adopting General Ordinance No. 16-1349 accepting an offer from Wasco County pursuant to ORS 373.270 to transfer jurisdiction over portions of roads located in or near the City of The Dalles, to the City of The Dalles

D. Adopting Special Ordinance No. 16-574 Granting a Non-Exclusive Telecommunications Franchise to Light Speed Networks, Inc. and Fixing Terms, Conditions and Compensation of Such Franchise, and Declaring an Emergency

13. DISCUSSION ITEMS

A. Update on Dog River Pipeline Replacement Environmental Permitting

14. ADJOURNMENT

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This meeting conducted in a handicap accessible room.

Prepared by/  
Izetta Grossman  
City Clerk

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Regular City Council Meeting  
October 24, 2016  
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MINUTES

REGULAR COUNCIL MEETING  
OF  
October 24, 2016  
5:30 p.m.

THE DALLES CITY HALL  
313 COURT STREET  
THE DALLES, OREGON

**PRESIDING:** Mayor Stephen Lawrence

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

**COUNCIL ABSENT:** None

**STAFF PRESENT:** City Manager Julie Krueger, City Attorney Gene Parker, City Clerk Izetta Grossman, Planning Director Steve Harris, Public Works Director Dave Anderson, Police Chief Patrick Ashmore, Human Resource Director Daniel Hunter

**CALL TO ORDER**

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

**ROLL CALL**

Roll call was conducted by City Clerk Grossman, all Councilors present.

**PLEDGE OF ALLEGIANCE**

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

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### **APPROVAL OF AGENDA**

Mayor Lawrence noted Presentation Item #6-B American Samoa Group was removed and replaced with Wasco County Clerk Lisa Gambee. It was moved by Spatz and seconded by Miller to approve the agenda as amended. The motion carried unanimously.

### **PRESENTATIONS/PROCLAMATIONS**

#### Google Wi Fi Update

Darcy Nothnagle from Google and Dave Keleher from Gorge.net updated the Council on the status of the project and reviewed the handouts (attached).

In response to a question, Keleher said with the system is much more secure now with the recent upgrades.

Councilor McGlothlin asked that the engineers drive through the service area and spot check speed and connections periodically. He asked that they work with Rukus (the manufacturer).

Keleher said the manufacturer has recommended the recent upgrades.

#### Wasco County Clerk Lisa Gambee

Gambee reported on missing ballot information regarding the Mid Columbia Fire and Rescue District bond. She said a flyer with the missing text would be distributed on Wednesday. The missing text would say property owners would pay \$.21 per thousand of assessed value for the bond, which equates to an average cost of \$21 per \$100,000 of assessed value. She apologized for the error.

### **AUDIENCE PARTICIPATION**

Barbara Pashek thanked the Council for the new loop system technology recently installed in the Council Chamber. She said they were coming in loud and clear.

### **CITY MANAGER REPORT**

City Manager Julie Krueger introduced the new Planning Director, Steve Harris.

### **CITY ATTORNEY REPORT**

City Attorney Parker reported on attending a Governmental Law seminar. He said he had hoped there would be new information regarding marijuana laws.

He said he would be attending an Employment Law seminar on Wednesday. Mayor Lawrence asked if they would be discussing a delay in implementation of the minimum wage law. Parker said he would report back.

### **CITY COUNCIL REPORTS**

Spatz reported on attending a QLife meeting. He said QLife would be working on strategic planning and noted that he would be retiring from Council at the end of the year. He said it was important for Council to have a knowledgeable replacement on the QLife Board.

He reminded the Council of the Sister City Delegation visit, and invited Council to attend the JaMata Party at the Fort Dalles Riders Club on Sunday from 5 to 7 p.m.

McGlothlin reported on attending the Pow Wow on Sunday, and the Airport Board meeting.

Elliott said he attended the QLife meeting and also wanted to note the importance of filling Spatz's position on the board.

Miller said she attended the meet and greet for the FAM Tour (writers in our area for fishing), she said the Chamber had the writers all over. She attended the Urban Renewal Advisory Committee meeting and said a recommendation would be coming before the Agency later.

Miller said she went to a Mid-Columbia Concert Series event and it was marvelous. She also attended the Pow Wow on Saturday and Sunday. She said it was nice to hear Lana Jack say there were as many non-natives as Native Americans dancing.

Mayor Lawrence said he attended the FAM Tour, SAPA Safety Day, Readiness Center fund raiser, Fort Dalles Museum open house, and the Pow Wow on Saturday and Sunday. He said he was honored to receive a vest and Warriors Metal.

### **CONSENT AGENDA**

Mayor Lawrence noted a scrivener's error; it was Councilor Miller not Councilor Brown that attended the League of Oregon Cities Conference. It was moved by Elliot and seconded by Brown to approve the Consent Agenda with the correction to the minutes. The motion carried unanimously.

Items approved by Consent Agenda were: 1) Approval of October 10, 2016 Regular City Council Meeting Minutes. 2) Surplus of various Public Works items. 3) Surplus of printers, shredder, check signing machine from Finance Department. 4) Adoption Resolution 16-029 Releasing the Property Located at 913 Laughlin from a Nuisance Abatement Lien, and Authorizing Refund of Assessment Paid.

### **CONTRACT REVIEW BOARD ACTIONS**

#### **Award Contract for Columbia Gorge Regional Airport Taxiway A-Center Rehabilitation**

Airport Managers Rolf Anderson and Chuck Cover reviewed the staff report.

Elliott said he had bid on the project as a subcontractor.

It was moved by Spatz and seconded by Brown to Award of the contract for the Taxiway "A" Rehabilitation Project in the amount not to exceed \$1,414,184.23 to Crestline Construction Company. The motion carried, Elliot abstained.

### **ACTION ITEMS**

#### **Resolution No. 16-028 Establishing New Procedures for the Sale of Certain Classes of City-Owned Real Property and Repealing Resolution No. 98-013**

City Attorney Parker reviewed the staff report.

After some discussion, it was moved by McGlothlin and seconded by Spatz to adopt Resolution No. 16-028 establishing new procedures for the sale of certain classes of City-owned real property, and repealing Resolution No. 98-013 with the following amendments:

1. On Page 2, in the second line of Paragraph C, the word "shall" would be replaced with "may".
2. On Page 2, in paragraph C(2), the additional language in red font would be included which referred to the pulling of credit reports and processing by automated underwriting.
3. On Page 2, in paragraph F, the first sentence would be revised to read as follows:

In the event no acceptable bids are received, the City reserves the right to reject all bids, and re-advertise the property for sale, or list the property for six months with a local real estate broker/agent on a multiple listing basis, at the same or different minimum acceptable terms established under Section C. The motion carried unanimously.

**ADJOURNMENT**

Being no further business, the meeting adjourned at 6:48 p.m.

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Submitted by/  
Izetta Grossman  
City Clerk

SIGNED:

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Stephen E. Lawrence, Mayor

ATTEST:

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Izetta Grossman, City Clerk

## The Dalles Public WiFi

### State of the System – Updated October 24, 2016

The Dalles public WiFi system was first operational in the summer of 2011 as a result of a grant from Google. Gorge Networks was selected through a competitive bid process and installed the system during the summer of 2011. At the completion of the initial network installation, the system covered downtown The Dalles with roughly 40 Access Points (AP's). The total system capacity was 15M.

Over the next 4 years the system was expanded to include some of the outlying public areas such as Sorosis Park, the Waterfront Park, 6th Street, and Overlook Point. The system continued to grow both in the size of the footprint, the quantity of users, and the bandwidth used. The system has grown to over 90 Access Points supporting 200-300 users on a daily basis. Last year (2015) Google issued revised specification that Google funded city WiFi systems must meet. The most significant upgrades included in that specification were 1) an increase in system capacity from a 3M to 15M user experience and 2) the use of the 5GHz frequency that allowed for better/faster coverage. With the system providing coverage in all of the desired areas within The Dalles, the 2015 funding was targeted at upgrading the system to meet this new specification. Also in the course of implementing these improvements, the 5-year-old Ruckus Access points that were installed in the beginning had been discontinued by the manufacturer. As with all technology, hardware eventually fails, is no longer available or supported, or is no longer able to perform up to expectations. As a result, the team (Google, City of The Dalles and Gorge Networks) agreed that the implementation a life cycle plan was necessary in order for the system to remain manageable and functional on into the future. In our phase 6 proposal (submitted in 2015 for work to be done summer of 2016) we proposed the support of a lifecycle plan which basically is to replace 20% of the access points each year. Of the 90 AP's in service today, 57 are the older model AP's (Model 7762) which were part of the originally installed access points. In 2014 we began using a newer model (Model 7782) and added roughly 20 of the newer AP's. The older model 7762 have been schedule to be end-of-life by Ruckus this year. This means that they will no longer support the product and it will not be compatible with the newer controller they sell today.

This August 2016, we will be replacing roughly 18 AP's with the newest model AP (model T710). We will be able to operate the system well with this transition for 2016. However, in 2017, we should budget for the replacement of the remaining 30 End-of-Life 7762 units and also upgrade the system controller (the "Zone Director"). This will give the best performance of the system. We will provide more detail later this summer on the level of effort necessary to upgrade the controller and eliminate the discontinued AP's.

## Current Coverage Area

The coverage area is shown in the image below. This coverage area was determined by The City and Google so that it covered the primary downtown sector and most public places. It was not intended to be used outside of the defined area nor was it intended to be used indoors. You may still connect to the system in non-supported coverage areas however service can be unpredictable in those areas.

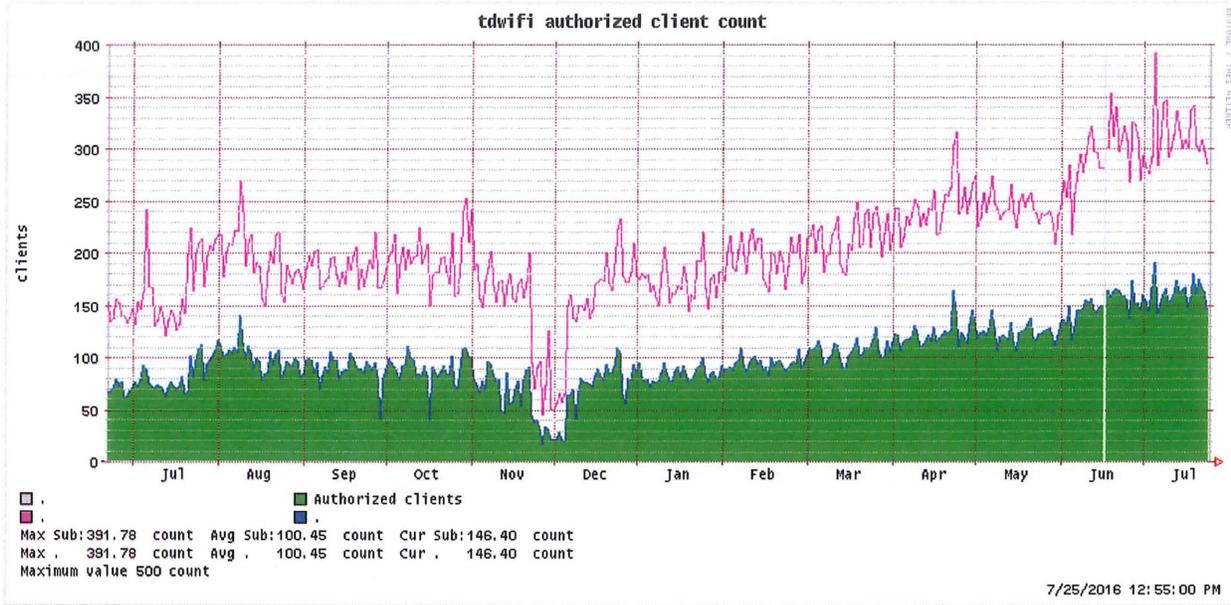


**TDWiFi Coverage Map**

## System Usage

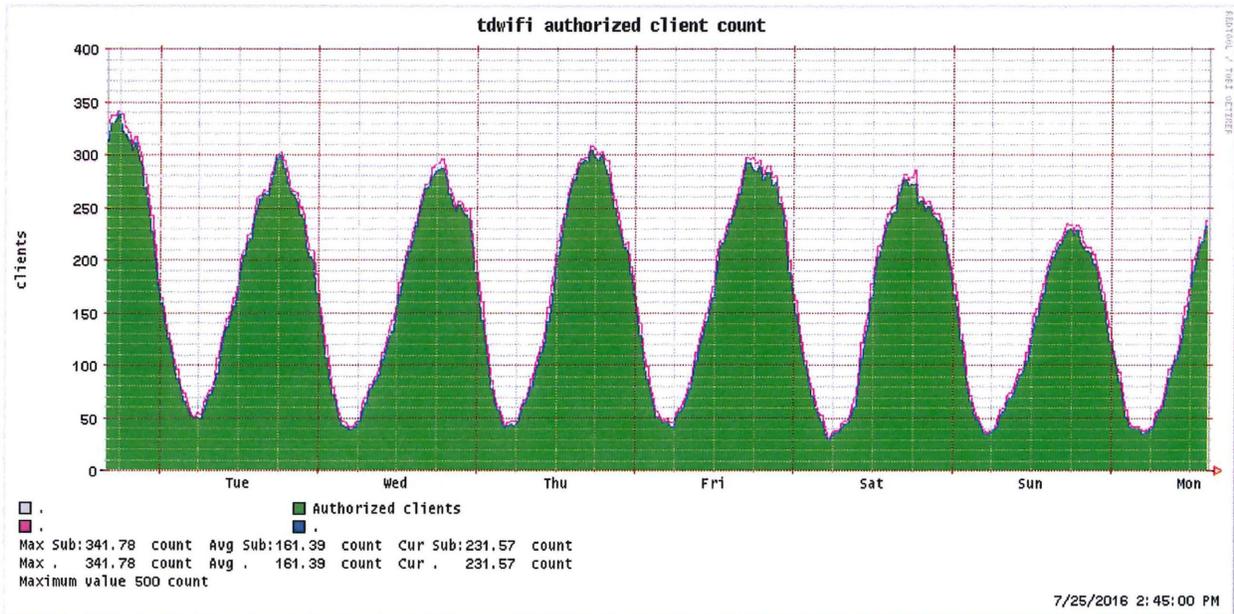
Since we implemented the improvements in 2015 we have seen near double the number of authorized clients over the prior year. We anticipate this number we will reach an all-time high this coming summer.

The graphs below show a 1-year and 1-week perspective of the number of concurrent users on the system over the respective timeframe.



**TDWiFi Authorized Clients – past year**

The chart above shows a steady increase on use over the course of the year. In particular, we see more than a 2x increase in users of the system in the month of August 2016 compared to August 2015. We attribute this to the system being faster, more reliable, and there being more awareness of the availability of the system.



**TDWiFi Authorized Clients – past week**

The chart above is similar to the yearly chart but shows a finer grain view of usage over a one-week timeframe. The chart displays the number of concurrent clients using the system at any one time. As shown in the chart, roughly 300 people are on the system concurrently during

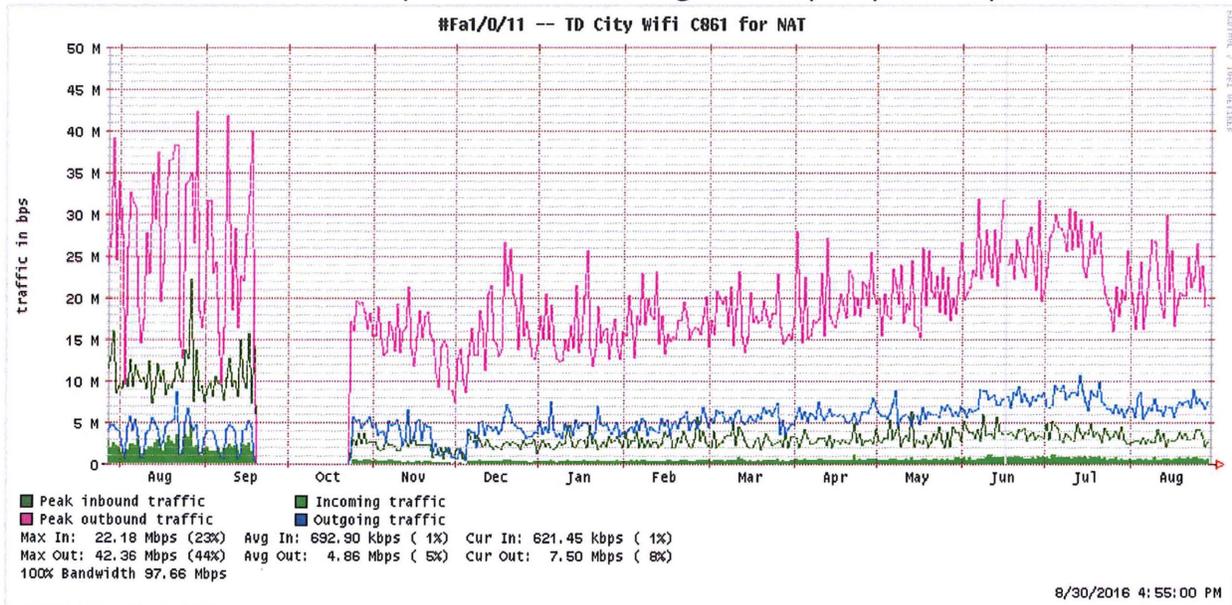
peak usage nearly every day. Specifically, these are active users that have acknowledged the terms of use and logged into the system.

Since people are not typically connected during the entire day, we estimate that this represents close approximately 700-800 unique users daily.

## Bandwidth Usage

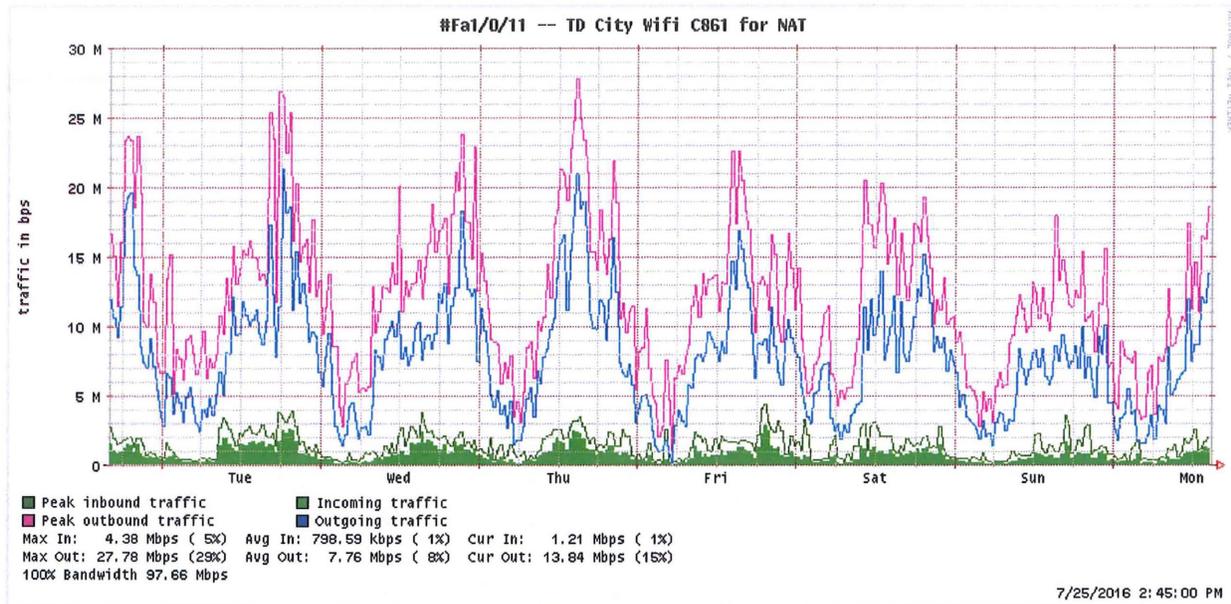
Bandwidth usage has remained steadily increasing but at a predictable, manageable level. We identified and corrected a network related issue in September 2015 that further secured the network and improved overall system performance.

The charts below show overall system bandwidth usage for the past year and past week.



### TDWiFi Bandwidth usage 1 year(\*see note)

*Note: 1) the gap from mid September to late October shown in the chart above, is due to a data collection error. While the system was operating normally, the system did not collect data during that time. 2) the apparent drop in data usage shown from the end of September as compared to October and beyond is due to a correction made to the network configuration. There was broadcast data on the network prior to October 2016 which created non-user based traffic. Once the broadcast data was eliminated, the actual user generated data is shown more accurately. This is not to be interpreted as a decline in network data usage.*



**TDWiFi Bandwidth usage 1 week**

In the chart above we see that the system hits 25M aggregate usage nearly every day.

## Current Plans and Future Improvements

In 2015 we made many significant system improvements (such as firmware upgrades, switch replacements, network monitoring, and interference mitigation) and we improved coverage in some weaker coverage areas. We verified the performance of the system by performing site tests at over 100 locations within the coverage area. Future improvements will be focused on starting the process of replacing hardware that will ultimately will not be supported by next year. Moving forward we feel the system is in good shape to switch to a basic level of monitoring and maintenance and continuation of the Life Cycle plan. Two improvements are currently in progress or recently completed:

- 1) Upgrade the system controller software. This software is required in order to take advantage of the full features of the newer T710 AP's that have been installed in 2016. It also provides the security and system management function and the reporting and monitoring. It is basically the "brains" of the system.
- 2) Replace all remaining model 7762 AP's that will not work with the updated controller and are scheduled to be "end-of-life" in 2017.

The two items above were addressed by the Phase 6 and phase 7 proposals. These two phases were worked in combination with each other for cost savings reasons as well as to minimize disruption of service on the network. At this time, phase 6 is complete and phase 7 is near completion. By the end of October 2016 we will complete phase 7 and all 57 of the older 7762 AP's will be replaced by the T710's.

Over the course of the next few years we will be in a good position to minimize the cost of maintaining the system due to the past investments. The only required activity will be to maintain the annual support licenses required by the manufacturer. This costs will be approximately 10,000/year. Any desire to extend coverage beyond the current footprint would be in addition to that cost.

We consider it a privilege to work with Google and the City of The Dalles to develop this Public WiFi Network. We consider the WiFi system to be highly successful based on the several hundred users that utilize the system every day. We look forward to continuing this success well into the future. Please let me know if there are questions by citizens, City Council, Google or any other interested parties.

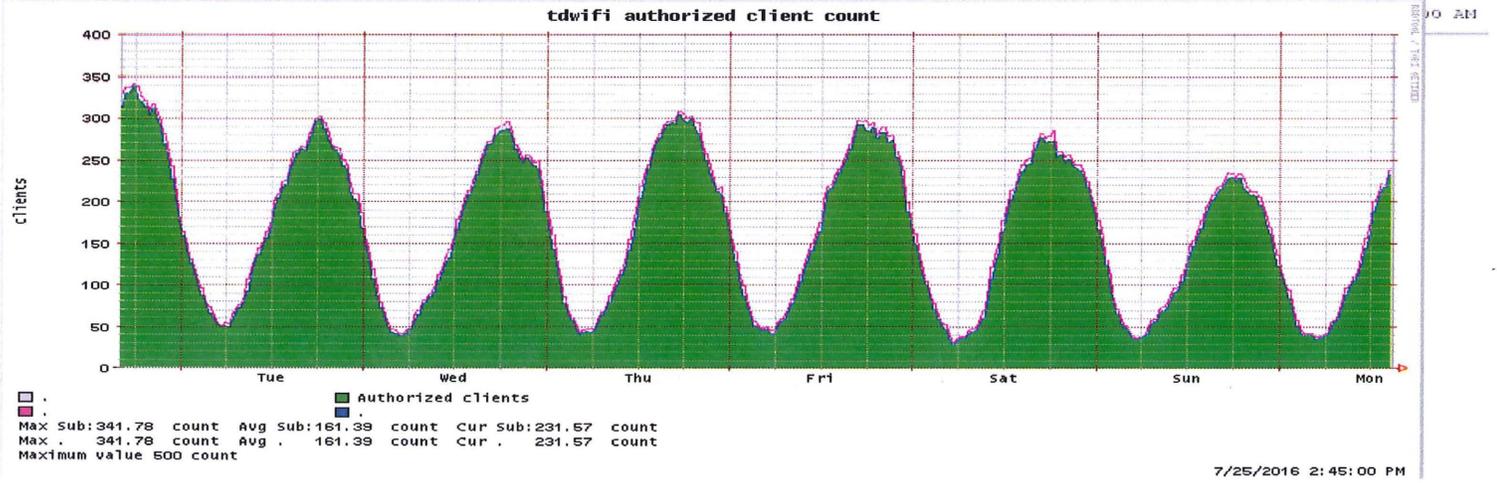
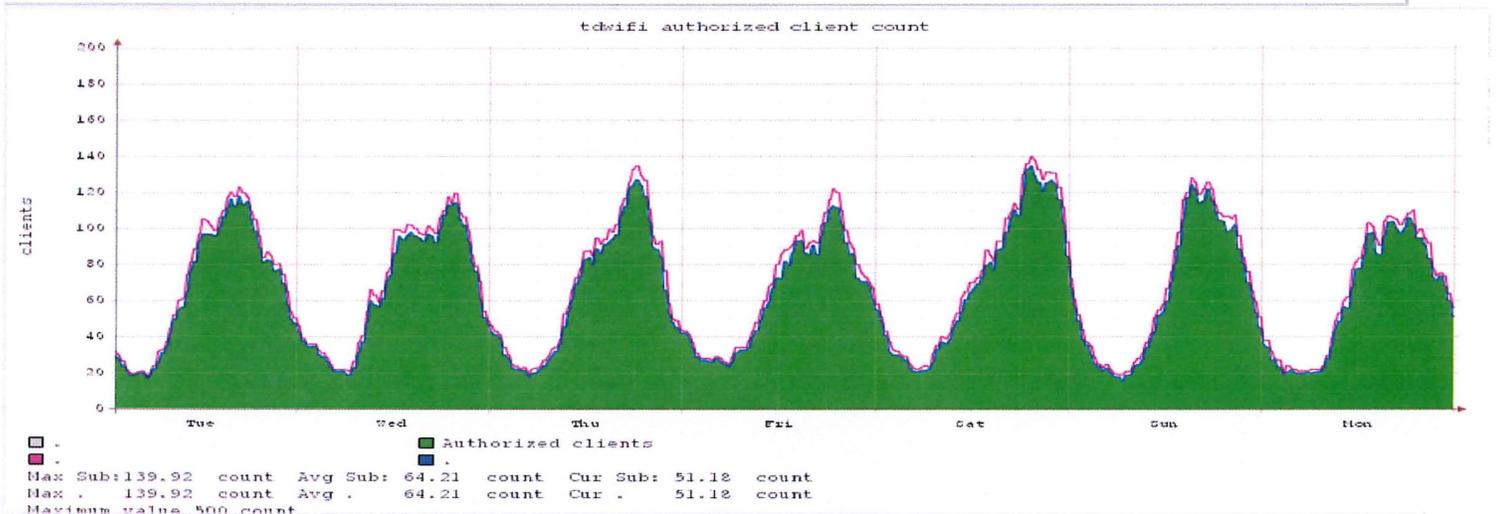
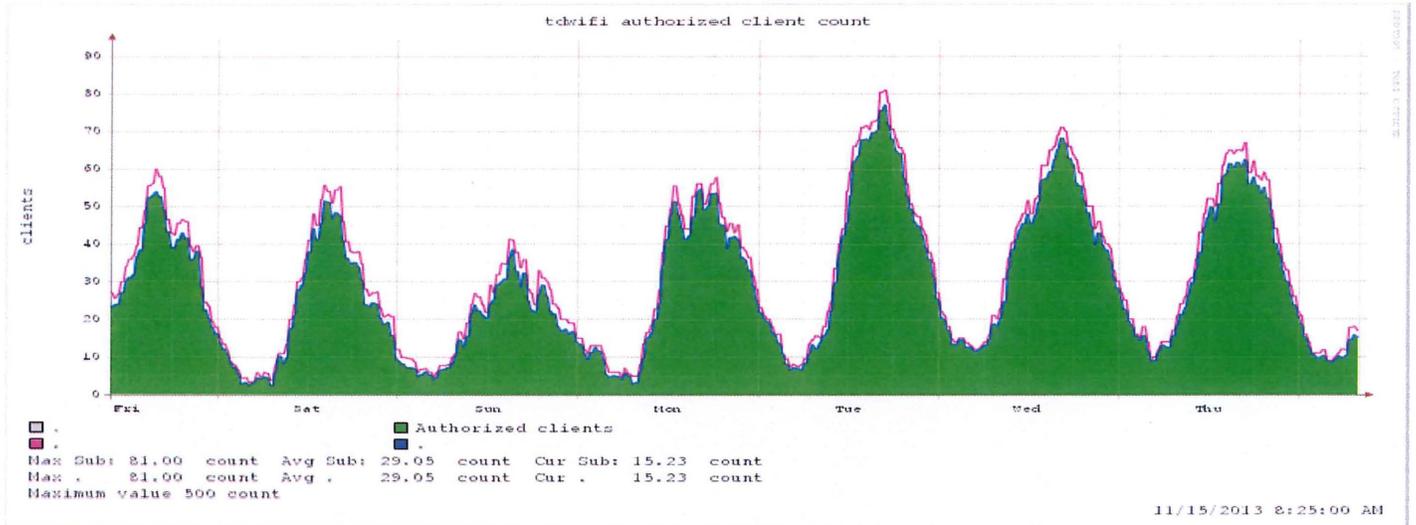
Sincerely,



Dan Bubba  
President – Gorge Networks  
541-386-3723

## Appendix - Historical information

The charts below show weekly usage in November 2013, October 2014, and August 2016. While the October and November timeframe is typically less usage, we are seeing consistent growth in the use of the system over time, from 50-80 concurrent users to 300-350 concurrent users.



## System expansion history

Since the system was initially installed the system has been expanded geographically to 12 locations that were outside of the original footprint. The following areas have been added over the past 5 years:

- Overlook Point
- 6<sup>th</sup> Street Corridor
- Quinton Street Ball Field
- Civic Auditorium (indoor application)
- Firehouse
- Rodeo grounds
- Sorisis park,
- Kramer field
- River front park
- Discovery center
- Cascade square
- Safeway area

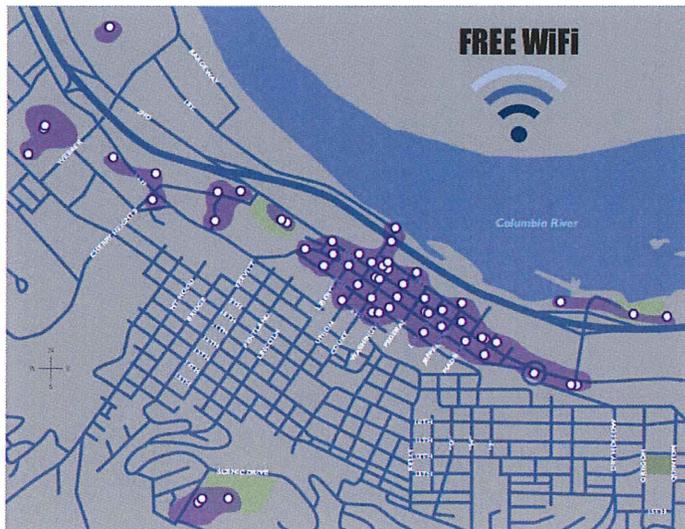
Adding these areas was done at a fairly significant expense since they were typically difficult to reach and required addition power and network connectivity unique to each location (ie we were typically not able to simply mesh with existing AP's). The end result was the addition of over 50 additional AP's effectively doubling the size of the coverage area.

## Free Wi-Fi: City of The Dalles Public Wi-Fi brought to you by Google, Q-Life and GorgeNet

The Dalles Public Wi-Fi System is a wireless internet service that is free and open to the public. This service spans The Dalles area with a focus on high-traffic environments and event site locations.

### Quick Facts:

- More than 90 access points downtown and in surrounding areas provide outside Wi-Fi (with a few indoor locations, such as the Discovery Center and the Civic Auditorium).
- The Dalles public Wi-Fi system was first operational in the summer of 2011 as a result of a grant from Google. Gorge Networks was selected through a competitive bid process and installed the system during the summer of 2011.
- The system originally started with 40 access points, but over four years, more than doubled the size of the coverage area with the addition of 50 more access points.
- In 2015, Google provided \$87,880 to help bring high-speed broadband to the Maupin community and to establish free public Wi-Fi at Maupin's Riverfront Park and the Maupin Branch of the Wasco County Library District. The grant will also connect the branch library to The Dalles' main library and provide free internet on library computers for patrons.
- After the current refresh, Google will have provided more than \$450,000 for public Wi-Fi in The Dalles.



Over the past five years, the system has expanded to 12 more locations:

- Overlook Point
- 6th Street Corridor
- Quinton Street Ball Field
- Civic Auditorium (indoor)
- Firehouse
- Rodeo Grounds
- Sorisis Park
- Kramer Field
- River Front Park
- Discovery Center
- Cascade Square
- Safeway area



*This service is made possible by funding from Google and Q-Life, and installed and operated by GorgeNet*



Dear Mid-Columbia Fire and Rescue District Voter,

This letter is to inform you that the Mid-Columbia Fire and Rescue District General Obligation Bond measure had text that was inadvertently omitted on the flyer titled "Full Text of Ballot Titles—November 8, 2016." This flyer was inserted with your ballot. The omission occurred in the paragraph stating the estimated cost to taxpayers. The corrected text for the measure is printed below.

I apologize for the omission and any confusion it may have caused.

Sincerely,

Lisa Gambee, *Wasco County Clerk*

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## MID-COLUMBIA FIRE AND RESCUE DISTRICT

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### 33-88 MID-COLUMBIA FIRE AND RESCUE DISTRICT GENERAL OBLIGATION BOND

**Question:** Shall the District issue general obligation bonds not to exceed \$3,850,000? If the bonds are approved, they will be payable from taxes on property or property ownership that are not subject to the limits of sections 11 and 11b, Article XI of the Oregon Constitution.

**Summary:** If approved, this measure would provide funds for capital costs including:

- The purchase of firefighting equipment and apparatus;
- The purchase of Emergency Medical Service equipment and ambulances;
- Upgrade existing fire apparatus and equipment;
- Purchase firefighting equipment and medical equipment; and
- Make additions to, furnish, equip, and renovate existing public safety facilities and pay bond issuance costs.

The Bonds would mature not later than sixteen (16) years from the date of issuance. The measure is estimated to cost taxpayers an average of \$0.21 per thousand of assessed value each year. For the owner of a home or property owner, the estimated annual average cost would be \$21.00 per \$100,000 of taxable assessed value.

The estimated tax cost for this measure is an ESTIMATE ONLY, based on the best information available from the county assessor at the time of the estimate.



## **AGENDA STAFF REPORT**

**AGENDA LOCATION:** Public Hearing Item #11-A

**MEETING DATE:** November 14, 2016

**TO:** Honorable Mayor and City Council

**FROM:** Gene Parker, City Attorney

**ISSUE:** General Ordinance No. 16-1348, amending General Ordinance No. 98-1222, concerning Zoning Ordinance Amendment #93-16 establishing time, place, and manner regulations of facilities for processing, production, and wholesaling of medical marijuana, and establishing reasonable restrictions on the location of marijuana grow sites, and upon the manner of operation of medical marijuana grow sites

**BACKGROUND:** State law does not restrict where medical marijuana grow sites can be located. The only restriction under state law for medical marijuana processing sites is that they cannot be located in an area zoned for residential use. The only restriction under state law on medical marijuana wholesalers is that they cannot be located in an area that is exclusively zoned for residential use. Under state law, a holder of a medical marijuana card (which is referred to as the registry identification cardholder) and a designated caregiver can jointly possess up to six marijuana plants. State law provides that a person may be designated to produce medical marijuana for no more than four (4) registry identification cardholders. State law provides that if the address of the person who is responsible for the grow site, located in a residential zone within the city limits, the grow site can have up to 12 marijuana plants. If the medical marijuana grow site is located at the address of the person responsible for the grow site, which is outside the City limits, the grow site can have up to 48 marijuana plants.

State law provides that local governments can adopt reasonable time, place, and manner regulations on the manner in which a marijuana producer may produce marijuana; the manner in which a marijuana processor processes marijuana; and the manner in which a marijuana wholesaler may sell the marijuana. These reasonable time, place, and manner restrictions can be imposed upon medical marijuana businesses which are located in an area subject to the jurisdiction of the City. State law also provides that local time, place, and manner regulations include reasonable limitations on the operation of marijuana grow sites of a person designated to produce marijuana by a registry identification cardholder and the operation of marijuana processing sites. These regulations can include provisions concerning the location of the medical marijuana grow sites and the medical marijuana processing sites.

On October 6, 2016, the City Planning Commission conducted a public hearing upon proposed

Zoning Amendment #93-16, which included several provisions amending the City's Land Use and Development Ordinance (No. 98-1222), concerning medical marijuana production, processing, wholesaling, and medical marijuana grow sites. Enclosed with this staff report is a document entitled "Summary of Marijuana Regulations for Residential Property and for Growing and Processing of Medical Marijuana". This document summarizes the Planning Commission's recommendations. New language to be included in the City's LUDO is set forth in bold type. Some additional language has been added to the Planning Commission's recommendations to clarify that the production, processing, and wholesaling of medical marijuana is restricted in residential zoning districts.

Section 1 contains proposed definitions for the terms, Homegrown or Homemade, Household, Homegrown Recreational Marijuana Grow Site, Housing Unit, Medical Marijuana Processing, and Medical Marijuana Wholesaling. These terms are based upon language in state law and state administrative rules adopted by the Oregon Health Authority. Section 1 also includes definitions for the terms "Non-Personal Medical Marijuana Grow Operation" and "Personal Medical Marijuana Grow Site". These terms are based upon an ordinance adopted by the City of Gresham. Under the approach followed by the City of Gresham, medical marijuana grow sites are restricted to the address where the holder of the registry identification card lives, and the number of plants that can be grown at the site is limited to six plants.

Sections 2, 3, 4, and 5 provide that a homegrown recreational marijuana grow site is allowed in residential zones and the Neighborhood Center Overlay zoning district; and the number of plants allowed is limited to four, consistent with state law. These sections allow for personal medical marijuana grow sites in the residential zones and the Neighborhood Center Overlay zoning district and restrict the production, processing, and wholesaling of medical marijuana, as provided for in the ordinance.

Section 6 sets forth a new subsection concerning marijuana facilities, including the production, processing, storage and wholesaling of medical marijuana, including a Non-Personal Medical Marijuana Grow Operation. These facilities are subject to many of the same restrictions which are imposed upon the production, processing, storage, and wholesaling of recreational marijuana.

Section 7 amends the LUDO provisions for the Industrial zoning district, by allowing for the production, processing, storage, and wholesaling of medical marijuana, including a Non-Personal Medical Marijuana Grow Operation. Similar to the language in Section 6, the new proposed uses are subject to the same restrictions imposed upon the production, processing, storage, and wholesaling of recreational marijuana.

There are two issues which the Council should be aware of concerning the proposed amendments. State law provides that the time, place, and manner regulations adopted by a local governing body affecting medical marijuana production, processing, and wholesaling, and upon the location and operation of medical marijuana grow sites must be "reasonable". State law does not include a definition for the term "reasonable".

The Oregon Attorney General's office has issued some opinions related to the definition of the term "reasonable", in the context of regulation of marijuana, indicating that a court would consider the text and context of the term and any pertinent legislative history. In terms of the text in a statute, the courts typically give a term its ordinary meaning, and the Attorney General's office has indicated that the term "reasonable" means "not extreme or excessive". The Attorney General's opinions have cited examples of unreasonable regulations as ones which are "partial and unequal" in their application to different classes, "manifestly unjust", "disclosed in bad

faith”, or “so oppressive and gratuitous” that a reasonable person can find no justification for the regulation. A regulation which violates a provision of state or federal constitutional law would be considered unreasonable.

Under current state law, a grower of medical marijuana could have up to four (4) medical marijuana grow sites in a residential zone, with 12 plants at each site. The proposed ordinance includes findings by the Council that current state law could encourage the proliferation of medical marijuana grow sites in residential zones, which could increase the likelihood for the creation of negative impacts such as odor and bright lighting on adjacent residential properties. The proposed ordinance also includes findings by the Council that the current provisions in state law are not sufficient to protect residential neighborhoods from the negative impacts resulting from an increased number of medical marijuana grow sites in residential zoning districts, and that the proposed amendments are reasonable and necessary to protect the residential zoning districts from such negative impacts. There is currently no established legal precedent that limiting the number of medical marijuana grow sites to six plants, and that the location of such sites must be at the address of the registered identification cardholder, constitutes a “reasonable” type of regulation. The potential exists that a challenge could be raised that the proposed time, place, and manner regulations are not “reasonable”.

The second issue concerns a legal doctrine known as “preemption”. The proposed amendments are more restrictive than the provisions in state law in terms of the locations where the grow sites can be located, and the number of plants which may be grown at the grow sites. There is the potential that these types of local restrictions could be subject to a challenge that they have been preempted by the state law which established the medical marijuana program.

In a landmark case concerning the doctrine of preemption, the Oregon Supreme Court ruled that cities have home rule authority to allow the people of the City to decide upon the organization of the local government and the scope of the City’s powers under its charter, without having to obtain statutory authorization. *LaGrande/Astoria v. PERB*, 281 Or. 137, 142 576 P.2d 1204 (1978). In making a determination whether a local enactment is compatible with state law, the Court made the following statement:

“the first inquiry must be whether the local rule in truth is incompatible with the (state) legislative policy, either because both cannot operate concurrently or because the legislature meant its law to be exclusive. It is reasonable to interpret local enactments, if possible, to be intended to function consistently with state laws, and equally reasonable to assume that the legislature does not mean to displace local civil or administrative regulation of local conditions by statewide law unless that intention is apparent”. *LaGrande/Astoria*, 281 at 148-49, 576 P.2d 1204.

In the case of *Northwest Natural Gas Co. v. City of Gresham*, 359 Or. 309, 473 P.3d 829 (2016), the Oregon Supreme Court noted that a state statute will displace a local ordinance only “where the text, context, and legislative history of the statute *unambiguously* expresses an intention to preclude local governments from regulating in the same area as that governed by the statute”. It is my opinion that the fact that state law, as set forth in ORS 475B.500(2) which specifically acknowledges that the governing body of a City may adopt reasonable regulations on the operation of marijuana grow sites of persons designated to produce medical marijuana by registry cardholders, does not reflect a clear intention by the legislature that they intended to prevent local governments from adopting regulations which would regulate the operation of medical marijuana grow sites.

Enclosed with this staff report is General Ordinance No. 16-1348 which includes the recommendations of the Planning Commission, as revised by additional language noted in this staff report. Notice of adoption of the ordinance has been posted in accordance with the City Charter and the Council can choose to adopt the ordinance by title only.

**BUDGET IMPLICATIONS:** No significant budget implications are anticipated by the proposed amendments.

**COUNCIL ALTERNATIVES:**

- A. Staff recommendation: *Move to adopt General Ordinance No. 16-1348 by title only.*  
This motion would have to be adopted unanimously by the Council. If the vote to adopt the ordinance is not unanimous, the ordinance would need to be read in full, and staff recommends that the Council then adopt a motion to approve the first reading of the ordinance. The second reading of the ordinance and adoption of the ordinance would occur at a future council meeting.
- B. If the Council desires to amend the proposed ordinance, and the amendment would not constitute a substantive change, the proposed amendment can be read aloud. The Council could choose to adopt the ordinance as amended by title only, which again would require a unanimous vote to be effective. If the vote to adopt was not unanimous, staff recommends that the Council move to approve the first reading of the ordinance as amended, after the amended ordinance is read in full.
- C. If there are significant revisions which the Council desires to make to the ordinance, staff would revise the ordinance, and present a revised ordinance at a future Council meeting.
- D. The Council could determine it does not want to adopt the ordinance, which would mean the provisions of state law would govern the medical marijuana facilities and the operation of medical marijuana grow sites.

## SUMMARY

### Marijuana Regulations for Residential Property and for Growing and Processing of Medical Marijuana

New language is highlighted in bold type.

Section 1. Amend LUDO Section 2.030 to add new definitions for Homegrown or Homemade, Household, Homegrown Recreational Marijuana Grow Site, Housing Unit, Medical Marijuana Processing, Medical Marijuana Wholesaling, Non-Personal Medical Marijuana Grow Operation, and Personal Medical Marijuana Grow Site.

**Homegrown or Homemade** – means grown or made by a person 21 years of age or older for noncommercial purposes.

**Household** – means a housing unit and any place in or around a housing unit at which the occupants of the housing unit are producing, processing, or storing homegrown marijuana or homemade cannabinoid products or cannabinoid extracts.

**Homegrown Recreational Marijuana Grow Site** – means the production of marijuana at a household that does not exceed four marijuana plants at a time.

**Housing Unit** – means a house, an apartment or a mobile home, or a group of rooms or a single room that is occupied as separate living quarters, in which the occupants live and eat separately from any other persons in the building and that has direct access from the outside of the building or through a common hall.

**Medical Marijuana Processing** – The processing, compounding, or conversion of marijuana into cannabinoid products, cannabinoid concentrates, or cannabinoid extracts, provided that the marijuana processor is licensed by the Oregon Health Authority.

**Medical Marijuana Wholesaling** – The purchase of marijuana items for resale to a person other than a consumer, provided that the marijuana wholesaler is licensed by the Oregon Health Authority.

**Non-Personal Medical Marijuana Grow Operation** – means any grow site registered with the Oregon Health Authority under ORS 475B.420 for the planting, cultivating, growing, trimming or harvesting marijuana, or drying marijuana leaves or flowers, but excluding a Personal Medical Marijuana Grow Site.

**Personal Medical Marijuana Grow Site** – means a marijuana grow site registered with the Oregon Health Authority at the location where the holder of a registry identification card lives. Notwithstanding the number of grow sites registered by the Oregon Health Authority at the location, or the number of persons with a registry identification card at the location, a personal medical marijuana grow site shall lose that designation if more than six mature medical marijuana plants are growing at such location.

Section 2. Section 5.010.040 shall be amended to read as follows:

**Except as provided herein**, the production, processing, wholesaling, and retailing of recreational **and medical** marijuana are prohibited uses in all “RL” – Residential Low Density districts.

**Marijuana shall not be grown on any residentially zoned property except as follows:**

- A. A Homegrown Recreational Marijuana Grow Site**
- B. A Personal Medical Marijuana Grow Site**

Section 3. Section 5.020.040 shall be amended to read as follows:

**Except as provided herein**, the production, processing, wholesaling, and retailing of recreational **and medical** marijuana are prohibited uses in all “RH” – Residential High Density districts.

**Marijuana shall not be grown on any residentially zoned property except as follows:**

- A. A Homegrown Recreational Marijuana Grow Site.**
- B. A Personal Medical Marijuana Grow Site.**

Section 4. Section 5.030.040 shall be amended to read as follows:

**Except as provided herein**, the production, processing, wholesaling, and retailing of recreational **and medical** marijuana are prohibited uses in all “RM” – Residential Medium Density districts.

**Marijuana shall not be grown on any residentially zoned property except as follows:**

- A. A Homegrown Recreational Marijuana Grow Site.**
- B. A Personal Medical Marijuana Grow Site.**

Section 5. Section 5.040.040 shall be amended to read as follows:

**Except as provided herein**, the production, processing, wholesaling, and retailing of recreational **and medical** marijuana are prohibited uses in all “NC” – Neighborhood Center Overlay zones.

**Marijuana shall not be grown on any residentially zoned property except as follows:**

- A. A Homegrown Recreational Marijuana Grow Site.**
- B. A Personal Medical Marijuana Grow Site.**

Section 6. Section 5.070.030 shall be amended by adding a new subsection (H) concerning marijuana facilities, which would read as follows:

**H. The production, processing, storage, and wholesaling of medical marijuana, including a Non-Personal Medical Marijuana Grow Operation, subject to the following additional provisions:**

- 1. The facility must be located in a building and may not be located in an intermodal cargo container, motor vehicle, recreational vehicle or residential trailer. Outdoor storage of merchandise, raw materials, or other material associated with the production, processing, storage or wholesaling facility is prohibited. Greenhouses are not allowed.**
- 2. The facility shall provide for secure disposal of marijuana remnants or by-products; such remnants or by-products shall not be placed in the facility’s exterior refuse containers.**

3. **A building used for medical marijuana production, processing, storage, wholesaling or Non-Personal Medical Marijuana Grow Operation shall be equipped with a carbon filtration system for odor control.**
  - a. **The system shall consist of one or more fans and filters.**
  - b. **At a minimum, the fan(s) shall be sized for cubic feet per minute (CFM) equivalent to the square footage of the building floor space (i.e., one CFM per square feet of building floor space).**
  - c. **The filter(s) shall be rated for the required CFM.**
  - d. **The filtration system shall be maintained in working order and shall be in use.**
  - e. **An alternative odor control system is permitted if the applicant submits a report by a mechanical engineer licensed in the State of Oregon demonstrating that the alternative system will control odor as well, or better than, the carbon filtration system otherwise required.**
4. **The medical marijuana production, processing, storage, wholesaling business or Non-Personal Medical Marijuana Grow Operation's state licensing or authority must be in good standing with all rules of the State of Oregon, including the Oregon Health Authority and the Oregon Liquor Control Commission, and the business must comply with all applicable rules and regulations administered by any state agency, including, without limitation, those rules that relate to labeling, packaging, testing, security, waste management, food handling, and training.**
5. **The medical marijuana production, processing, storage, wholesaling business, or Non-Personal Medical Marijuana Grow Operation must be located more than 500 feet from a public elementary or secondary school for which attendance is compulsory under ORS 339.020, or a private or parochial elementary or secondary school, teaching children as described in ORS 339.030(1)(a).**

Section 7. Amend LUDO Section 5.090.030(J) by adding a new use concerning marijuana facilities, which would read as follows:

The production, processing, storage, and wholesaling of recreational **or medical** marijuana, **including a Non-Personal Medical Marijuana Grow Operation.** An application for a marijuana production, processing, storage, wholesaling facility, **or Non-Personal Medical Marijuana Grow Operation** shall also comply with the following criteria:

1. The facility must be located in a building and may not be located in an intermodal cargo container, motor vehicle, recreational vehicle or residential trailer. Outdoor storage of merchandise, raw materials, or other material

associated with the production, processing, storage or wholesaling facility is prohibited. Greenhouses are not allowed.

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

**GENERAL ORDINANCE NO. 16-1348**

**AN ORDINANCE AMENDING GENERAL ORDINANCE NO. 98-1222,  
CONCERNING ZONING ORDINANCE AMENDMENT # 93-16 ESTABLISHING TIME,  
PLACE, AND MANNER REGULATIONS OF FACILITIES FOR PROCESSING,  
PRODUCTION, AND WHOLESALING OF MEDICAL MARIJUANA, AND  
ESTABLISHING REASONABLE RESTRICTIONS ON THE LOCATION OF  
MARIJUANA GROW SITES, AND UPON THE MANNER OF OPERATION OF  
MEDICAL MARIJUANA GROW SITES**

**WHEREAS**, ORS 475B.340(1)(a), (b), (c), and (g) provide that local governments can adopt reasonable time, place and manner regulations on the manner in which a marijuana producer licensed under ORS 475B.070 may produce marijuana; on the manner in which a marijuana processor licensed under ORS 475B.090 may process marijuana; on the manner in which a marijuana wholesaler licensed under ORS 475B.100 may sell marijuana at wholesale; and reasonable limitations on where a premises for which a license may be issued under ORS 475B.070, 475B.090, and ORS 475B.100 may be located; and

**WHEREAS**, ORS 475B.340(2) provides that notwithstanding ORS 633.738, the governing body of a city may adopt ordinances that impose reasonable regulations on the operation of businesses located at premises for which a license has been issued under ORS 475B.070, 475B.090, and 475B.100 if the premises are located in the area subject to the jurisdiction of the city, except the governing body of the city may not adopt an ordinance that prohibits a premises for which a license has been issued under ORS 475B.110 from being located within a distance that is greater than 1,000 feet of another premises for which a license has been issued under ORS 475B.110; and

**WHEREAS**, ORS 475B.500(1)(d) provides that local time, place, and manner regulations include reasonable limitations on where the marijuana grow site of a person designated to produce marijuana by a registry identification cardholder, a marijuana processing site, or a medical dispensary may be located; and

**WHEREAS**, ORS 475B.500(2) provides that notwithstanding ORS 633.738, the governing body of a city may adopt ordinances that impose reasonable regulations on the operation of marijuana grow sites of persons designated to produce marijuana by registry identification cardholders, marijuana processing sites and medical marijuana dispensaries that are located in the area subject to the jurisdiction of the city; and

**WHEREAS**, on October 6, 2016, the City Planning Commission conducted a public hearing upon proposed amendments to the City's Land Use and Development Ordinance to establish time, place, and manner regulations for facilities for the production, processing, and wholesaling of medical marijuana, and to establish reasonable restrictions on the location of marijuana grow sites, and to adopt time, place, and manner restrictions on medical marijuana grow sites, and voted to adopt Resolution No. P.C. 577-16 for Zoning Ordinance Amendment #93-16; and

**WHEREAS**, the City Council conducted a public hearing on November 14, 2016 to consider the Planning Commission's recommendations, and following the close of the public hearing, the City Council conducted deliberations and voted to accept the Planning Commission's recommendations;

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

**Section 1. Findings.** In support of the adoption of General Ordinance No. 16-1348, the City Council makes the following findings:

- A. State law authorizes the operation of medical marijuana businesses and provides these businesses with immunity from state criminal prosecution.
- B. Although the State of Oregon has passed legislation authorizing medical marijuana businesses and providing criminal immunity under state law, the operation of those businesses remains illegal under federal law.
- C. The City Council has home rule authority to decide whether, and under what conditions, certain commercial conduct should be regulated within the City and subject to the general and police powers of the City, except when local action has been clearly and unambiguously preempted by state statute.
- D. Whether a certain business should operate within a local jurisdiction is a local government decision, and local governments may enforce that decision through the general and police powers of that jurisdiction.
- E. The City Council wants to regulate the operation of certain medical marijuana businesses, and the location and operation of medical marijuana grow sites, located in the City in ways that protect and benefit the public health, safety and welfare of existing and future residents and businesses in the City.
- F. This ordinance is intended to impose restrictions, not provide authorizations.
- G. The operation of a medical marijuana business without proper authority from either the Oregon Liquor Control Commission or the Oregon Health Authority is prohibited within the City.

**Section 2. Criteria for Amendment Satisfied.** Section 3.110.030 of the City's Land Use and Development Ordinance provides that text amendments to the Ordinance shall be consistent with the City's Comprehensive Plan, and State laws and administrative rules. Concerning the Comprehensive Plan, Goal #9, Economic Development is stated as follows: "To provide adequate opportunities throughout the state for a variety of economic activities vital to the health, welfare, and prosperity of Oregon's citizens". The proposed amendments provide specific locations where the commercial activity associated with the operation of medical marijuana processing and wholesaling can occur. Medical marijuana processing and wholesaling facilities, and Non-Personal Medical Grow Operations will be subject to the same requirements concerning operation and licensing which are imposed upon retail marijuana processing and wholesaling operations. The requirements include that the facility be located in a building; that the operation complies with specified provisions for odor control; and that the medical marijuana processing and wholesaling and Non-Personal Medical Grow Operations comply with all applicable rules of the State of Oregon, including the Oregon Health Authority and the Oregon Liquor Control Commission. These provisions will ensure that operations associated with the processing and wholesaling of medical marijuana, and the operation of Non-Personal Medical Grow Operations,

occur in a manner which protects the welfare of the community. The proposed amendments also provide opportunities, under restricted conditions, for economic activity associated with medical marijuana production, processing, storage, and wholesaling, within the commercial light industrial and industrial zoning district. The Council finds and concludes that the proposed text amendments are consistent with the City's Comprehensive Plan.

State law provides that processors that produce medical marijuana extracts may not be located in an area zoned for residential use. The proposed amendments would allow medical marijuana processing and wholesaling to occur in the "CLI" – Commercial Light Industrial Zone, and the "I" – Industrial Zone. These zoning districts allow recreational marijuana processing and wholesaling. The proposed amendments do not lessen the provisions imposed by state law; they clarify which zoning districts will allow the processing of medical marijuana. The proposed amendments impose certain requirements upon the manner in which the medical marijuana operations must occur. Administrative rules adopted by the Oregon Health Authority include a significant volume of provisions which regulate the manner of operation of medical marijuana processors and wholesalers. The additional restrictions on the operation of these types of businesses imposed by this ordinance do not lessen the provisions or regulations adopted by State law and administrative rules. The City Council finds the proposed amendments concerning the operation of medical marijuana processing and wholesaling operations are consistent with the provisions of State law and administrative rules concerning medical marijuana processing and wholesaling facilities.

Concerning the regulation of marijuana grow sites, the proposed amendments provide for homegrown recreational grow sites limited to four plants, in residential zoning districts and the "NC" – Neighborhood Center Overlay zones, which is consistent with state law. State law does not include any provisions restricting the location of medical marijuana grow sites. Under State law, in an area zoned for residential use, a medical marijuana grow site may have up to 12 mature plants, and up to 48 plants if located in any other zoning district. State law allows a person to be designated to grow medical marijuana for up to four registry identification cardholders. This creates the potential for a grower to have up to four medical marijuana grow sites in a residential zone with up to 12 plants at each site.

Under the proposed amendments, personal medical marijuana grow sites would be allowed only in residential zoning districts, and the "NC" – Neighborhood Center Overlay zoning district. The number of plants which could be grown at these sites is limited to six. The amendments also provide that the medical marijuana grow site would need to be registered with the Oregon Health Authority at the location where the holder of the registry identification card lives. The Council finds that current state law which allows the potential for one grower to have four medical marijuana grow sites with 12 plants in residential zones, could encourage the proliferation of such grow sites in residential zones. The Council finds the potential for a significant increase in the number of medical marijuana grow sites in residential zones increases the likelihood for creation of negative impacts such as odor or bright lighting which can impact adjacent residential properties. The Council also finds that the restrictions in state law are not sufficient to protect residential neighborhoods from the negative impacts resulting from an increased number of medical marijuana grow sites in residential zoning districts, and the proposed amendments are reasonable and necessary to protect the residential districts from such negative impacts. The proposed amendments allow for Non-Personal Medical Marijuana Grow Operations in non-residential zoning districts, and include provisions to ensure these operations do not operate in a manner which negatively impacts adjacent properties. The Non-Personal Medical Marijuana Grow Operations will provide a source of medical marijuana, which can ultimately be dispensed for patients who qualify to use medical marijuana.

State law allows a local governing body to adopt time, place, and manner regulations including reasonable limitations on where the marijuana grow site of a person designated to produce marijuana by a registry identification cardholder, a marijuana processing site, or a medical dispensary may be located. State law also allows a local governing body to adopt ordinances that impose reasonable regulations on the operation of marijuana grow sites by persons designated to produce marijuana by registry identification cardholders, marijuana processing sites and medical marijuana dispensaries that are located in the area subject to the jurisdiction of the city. The City Council finds that the proposed amendments are consistent with the provisions of state statutes and administrative rules for marijuana grow sites.

**Section 3.** Amend LUDO Section 2.030 to add new definitions for Homegrown or Homemade, Household, Homegrown Recreational Marijuana Grow Site, Housing Unit, Medical Marijuana Processing, Medical Marijuana Wholesaling, Non-Personal Medical Marijuana Grow Operation, and Personal Medical Marijuana Grow Site.

Homegrown or Homemade – means grown or made by a person 21 years of age or older for noncommercial purposes.

Household – means a housing unit and any place in or around a housing unit at which the occupants of the housing unit are producing, processing, or storing homegrown marijuana or homemade cannabinoid products or cannabinoid extracts.

Homegrown Recreational Marijuana Grow Site – means the production of marijuana at a household that does not exceed four marijuana plants at a time.

Housing Unit – means a house, an apartment or a mobile home, or a group of rooms or a single room that is occupied as separate living quarters, in which the occupants live and eat separately from any other persons in the building and that has direct access from the outside of the building or through a common hall.

Medical Marijuana Processing – The processing, compounding, or conversion of marijuana into cannabinoid products, cannabinoid concentrates, or cannabinoid extracts, provided that the marijuana processor is licensed by the Oregon Health Authority.

Medical Marijuana Wholesaling – The purchase of marijuana items for resale to a person other than a consumer, provided that the marijuana wholesaler is licensed by the Oregon Health Authority.

Non-Personal Medical Marijuana Grow Operation – means any grow site registered with the Oregon Health Authority under ORS 475B.420 for the planting, cultivating, growing, trimming or harvesting marijuana, or drying marijuana leaves or flowers, but excluding a Personal Medical Marijuana Grow Site.

Personal Medical Marijuana Grow Site – means a marijuana grow site registered with the Oregon Health Authority at the location where the holder of a registry identification card lives. Notwithstanding the number of grow sites registered by the Oregon Health Authority at the location, or the number of persons with a registry identification card at the location, a personal medical marijuana grow site shall lose that designation if more than six mature medical marijuana plants are growing at such location.

**Section 4.** Section 5.010.040 Prohibited Uses shall be amended to read as follows:

Except as provided herein, the production, processing, wholesaling, and retailing of recreational and medical marijuana are prohibited uses in all “RL” – Residential Low Density districts. Marijuana shall not be grown on any residentially zoned property except as follows:

- A. A Homegrown Recreational Marijuana Grow Site.
- B. A Personal Medical Marijuana Grow Site.

**Section 5.** Section 5.020.040 Prohibited Uses shall be amended to read as follows:

Except as provided herein, the production, processing, wholesaling, and retailing of recreational and medical marijuana are prohibited uses in all “RH”– Residential High Density districts. Marijuana shall not be grown on any residentially zoned property except as follows:

- A. A Homegrown Recreational Marijuana Grow Site.
- B. A Personal Medical Marijuana Grow Site.

**Section 6.** Section 5.030.040 Prohibited Uses shall be amended to read as follows:

Except as provided herein, the production, processing, wholesaling, and retailing of recreational marijuana are prohibited uses in all “RM”– Residential Medium Density districts. Marijuana shall not be grown on any residentially zoned property except as follows:

- A. A Homegrown Recreational Marijuana Grow Site.
- B. A Personal Medical Marijuana Grow Site.

**Section 7.** Section 5.040.040 Prohibited Uses shall be amended to read as follows:

Except as provided herein, the production, processing, wholesaling, and retailing of recreational marijuana are prohibited uses in all “NC” – Neighborhood Center Overlay zones. Marijuana shall not be grown on any residentially zoned property except as follows:

- A. A Homegrown Recreational Marijuana Grow Site.
- B. A Personal Medical Marijuana Grow Site.

**Section 8.** Section 5.070.030 shall be amended by adding a new subsection (H) concerning marijuana facilities, which would read as follows:

H. The production, processing, storage, and wholesaling of medical marijuana, including a Non-Personal Medical Marijuana Grow Operation, subject to the following additional provisions:

1. The facility must be located in a building and may not be located in an intermodal cargo container, motor vehicle, recreational vehicle or residential trailer. Outdoor storage of merchandise, raw materials, or other material associated with the production, processing, storage or wholesaling facility is prohibited. Greenhouses are not allowed.
2. The facility shall provide for secure disposal of marijuana remnants or by-products; such remnants or by-products shall not be placed in the facility’s exterior refuse containers.
3. A building used for marijuana production, processing, storage, wholesaling or Non-Personal Medical Marijuana Grow Operation shall be equipped with a carbon filtration system for odor control.

- a. The system shall consist of one or more fans and filters.
  - b. At a minimum, the fan(s) shall be sized for cubic feet per minute (CFM) equivalent to the square footage of the building floor space (i.e., one CFM per square feet of building floor space).
  - c. The filter(s) shall be rated for the required CFM.
  - d. The filtration system shall be maintained in working order and shall be in use.
  - e. An alternative odor control system is permitted if the applicant submits a report by a mechanical engineer licensed in the State of Oregon demonstrating that the alternative system will control odor as well or better than the carbon filtration system otherwise required.
4. The medical marijuana production, processing, storage, wholesaling business or Non-Personal Medical Marijuana Grow Operation's state licensing or authority must be in good standing with all rules of the State of Oregon, including the Oregon Health Authority and the Oregon Liquor Control Commission; and the business must comply with all applicable rules and regulations administered by any state agency, including, without limitation those rules that relate to labeling, packaging, testing, security, waste management, food handling, and training.
  5. The medical marijuana production, processing, storage, wholesaling business, or Non-Personal Medical Marijuana Grow Operation must be located more than 500 feet from a public elementary or secondary school for which attendance is compulsory under ORS 339.020, or a private or parochial elementary or secondary school, teaching children as described in ORS 339.030(1)(a).

**Section 9.** Amend LUDO Section 5.090.030(J) by adding a new use concerning marijuana facilities, which would read as follows:

The production, processing, storage, and wholesaling of recreational or medical marijuana, including a Non-Personal Medical Marijuana Grow Operation. An application for a marijuana production, processing, storage, wholesaling facility, or Non-Personal Medical Marijuana Grow Operation shall also comply with the following criteria:

1. The facility must be located in a building and may not be located in an intermodal cargo container, motor vehicle, recreational vehicle or residential trailer. Outdoor storage of merchandise, raw materials, or other material associated with the production, processing, storage or wholesaling facility is prohibited. Greenhouses are not allowed.
2. The facility shall provide for secure disposal of marijuana remnants or by-products; such remnants or by-products shall not be placed in the facility's exterior refuse containers.
3. The production, processing, storage, or wholesaling facility or Non-Personal Medical Marijuana Grow Operation shall be licensed by the Oregon Liquor

Control Commission or Oregon Health Authority and comply with the requirements of any applicable administrative rule adopted by the Oregon Liquor Control Commission or Oregon Health Authority.

- 4. A building used for marijuana production, processing, storage, or wholesaling or Non-Personal Medical Marijuana Grow Operation shall be equipped with a carbon filtration system for odor control.
  - a. The system shall consist of one or more fans and filters.
  - b. At a minimum, the fan(s) shall be sized for cubic feet per minute (CFM) equivalent to the square footage of the building floor space (i.e., one CFM per square feet of building floor space).
  - c. The filter(s) shall be rated for the required CFM.
  - d. The filtration system shall be maintained in working order and shall be in use.
  - e. An alternative odor control system is permitted if the applicant submits a report by a mechanical engineer licensed in the State of Oregon demonstrating that the alternative system will control odor as well or better than the carbon filtration system otherwise required.
- 5. The recreational or medical marijuana production, processing, storage, wholesaling business, or Non-Personal Medical Marijuana Grow Operation’s state licensing or authority must be in good standing with all rules of the State of Oregon, including the Oregon Health Authority and the Oregon Liquor Control Commission, and the business must comply with all applicable rules and regulations administered by any state agency, including, without limitation, those rules that relate to labeling, packaging, testing, security, waste management, food handling, and training.

**PASSED AND ADOPTED THIS 14<sup>TH</sup> DAY OF NOVEMBER, 2016.**

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

**AND APPROVED BY THE MAYOR THIS 14<sup>TH</sup> DAY OF NOVEMBER, 2016.**

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

Attest:

\_\_\_\_\_  
Izetta Grossman, City Clerk



## AGENDA STAFF REPORT

**AGENDA LOCATION:** Action Item #12-A

**MEETING DATE:** November 14, 2016

**TO:** Honorable Mayor and City Council

**FROM:** Kate Mast, Finance Director

**ISSUE:** **Resolution No. 16-030 Adopting a Supplemental Budget for Fiscal Year 2016/2017, Making Appropriations and Authorizing Expenditures within Various Funds of the City of The Dalles Adopted Budget.**

**BACKGROUND:** Oregon Budget Law recognizes that after the beginning of the fiscal year, changes in appropriations in the budget sometimes become necessary, and so allows for those changes via supplemental budgets and budget amendments. Supplemental budgets add funds to existing budgets, while budget amendments move already budgeted funds between categories of the same fund without adding to the fund's total budget.

A Public Hearing is required for any supplemental budget that changes a fund by more than 10%. The proposed supplemental budget is less than 10% of the operating budget of either of the affected funds, so a Public Hearing is not required.

A notice of the Supplemental Budget is required to be published, and that notice is scheduled to be printed in The Dalles Chronicle on Sunday, November 6, 2016.

The City has received SAIF dividends in the amount of \$53,737.00. The Council has previously indicated that all such SAIF dividends received be allocated to the "Safety Supplies/Equipment" line item (001-0100-000.69-50) in the City Council Department of the General Fund 001.

The City has received a grant from Google in the amount of \$96,511 to provide for upgrading/replacement of equipment in the City's Wi Fi system. These funds have been received and this proposed resolution will recognize those funds and allocate them to the Wi Fi Project line item (018-4700-000.75-10) in the Special Grants Fund 018.

**BUDGET IMPLICATIONS:** The Supplemental Budget Resolution No. 16-030 increases the General Fund by \$53,737 and the Special Grants Fund budget by \$96,511, for a total increase of \$150,248.

**ALTERNATIVES:**

- A. **Staff Recommendation:** *Move to Adopt Resolution No. 16-030 Adopting a Supplemental Budget for Fiscal Year 2016/2017, Making Appropriations and Authorizing Expenditures within Various Funds of The Dalles Adopted Budget.*
- B. Council may choose to decline to make any changes to the adopted budget at this time.

**RESOLUTION NO. 16-030**

**RESOLUTION NO. 16-030 ADOPTING A SUPPLEMENTAL BUDGET FOR  
FISCAL YEAR 2016/2017, MAKING APPROPRIATIONS AND  
AUTHORIZING EXPENDITURES WITHIN VARIOUS FUNDS OF THE CITY  
OF THE DALLES ADOPTED BUDGET**

**WHEREAS**, the City has received SAIF dividends in the amount of \$53,737 and wishes to recognize and allocate those funds to the City Council Department of the General Fund (001) to be used for safety programs and equipment; and

**WHEREAS**, the City’s Special Grants Fund (018) has received a grant from Google in the amount of \$96,511 and wishes to recognize and allocate those funds to the Wi Fi Project in the Special Assessments Fund; and

**WHEREAS**, a public hearing is not required for this supplemental budget, as the proposed changes do not exceed 10% of the operating budget of either fund affected; and

**WHEREAS**, the required public notice for this supplemental budget was published on Sunday, November 6, 2016;

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

Section 1. The City Council hereby adopts the Supplemental Budget for FY16/17, increasing revenues and making appropriations as follows.

<b>Summary of Supplemental Budget – Line Item Detail</b>				
<b>Fund</b>	<b>Resource</b>	<b>Amount</b>	<b>Requirement</b>	<b>Amount</b>
General Fund (001)	SAIF Dividends	53,737	City Council Dept	53,737
	<b>Total New City Council Dept Requirements</b>			<b>428,457</b>
	<b>Total New Resources</b>	<b>53,737</b>	<b>Total New Requirements</b>	<b>53,737</b>
	<b>New Total All Fund 001 Resources</b>	<b>9,293,194</b>	<b>New Total All Fund 001 Expenditures</b>	<b>9,293,194</b>
Special Grants Fund (018)	Google Grant for Wi Fi System to Refresh Equipment	96,511	Capital Outlay	96,511
	<b>Total New Capital Outlay Requirements</b>			<b>10,537,791</b>
	<b>Total New Resources</b>	<b>96,511</b>	<b>Total New Requirements</b>	<b>96,511</b>
	<b>New Total All Fund 018 Resources</b>	<b>10,596,791</b>	<b>New Total All Fund 018 Expenditures</b>	<b>10,596,791</b>

Section 2. This Resolution shall become effective upon adoption by the City Council and shall remain in effect until receipt and acceptance of the FY16/17 audit report.

**PASSED AND ADOPTED THIS 14<sup>th</sup> DAY OF NOVEMBER, 2016.**

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

**AND APPROVED BY THE MAYOR THIS 14<sup>th</sup> DAY OF NOVEMBER, 2016.**

SIGNED:

ATTEST:

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

\_\_\_\_\_  
Izetta Grossman, City Clerk



## AGENDA STAFF REPORT

### AGENDA LOCATION: Action Item # 12-B

**MEETING DATE:** November 14, 2016

**TO:** Honorable Mayor and City Council

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

**ISSUE:** Acquisition of an easement from SAPA Extrusions Inc. for construction of new 18-inch diameter Port Industrial Water Main

**BACKGROUND:** One of the projects in the City's current Water Capital Improvement Plan (CIP) that is scheduled for completion in the 2016/17 fiscal year is the construction of a new 18-inch diameter Port Industrial Water Main. The City entered into a development agreement with Design LLC in October 2015 that, in part, committed the City to completing the construction of this water main within 18 months of Design LLC's purchase of property in the Columbia Gorge Industrial Center. That property purchase has been completed and this project now needs to be completed by May 2017. Under that agreement, Design LLC will provide funding to cover 50% of the construction costs for the project up to \$1.5 million. The formation of a reimbursement district for this project that could partially reimburse Design LLC for its costs was authorized by Council on February 8, 2016.

An easement is needed from SAPA Extrusions Inc. (owner of the old Northwest Specialties facility) to locate a portion of the new pipeline on the edge of their property near the railroad tracks. A price of \$59,132 has been negotiated with SAPA Extrusions for purchase of the easement; this equates to \$4.00 per square foot of easement area. If SAPA connects to the new pipeline in the future, they will be required to pay Water SDCs and their share of the reimbursement district costs at the time of connection.

The project has been designed in-house by our Public Works Engineers and is ready to bid for construction. This easement is needed, along with another one on a different parcel, prior to bidding the project.

Staff is still working with SAPA Extrusions Inc. to finalize the language of the easement agreement. It is intended that, if the agreement can be finalized within the next week or so, the agreement will be distributed to Council for review prior to the City Council meeting.

**BUDGET IMPLICATIONS:** Within Fund 53, the Water Reserve Fund, line 053-5300-000.76-20, there is a total of \$2.6 million allocated for this project. There are adequate funds available to pay for the purchase of this water main easement.

**COUNCIL ALTERNATIVES**

- A. Staff Recommendation: *Move to authorize the purchase of a water main easement from SAPA Extrusions Inc. for an amount not to exceed \$59,132.00.*
- B. Deny authorization for purchase of the easement and direct staff on how to proceed.



## AGENDA STAFF REPORT

### AGENDA LOCATION: Action Item #12-C

**MEETING DATE:** November 14, 2016

**TO:** Honorable Mayor and City Council

**FROM:** Gene Parker, City Attorney

**ISSUE:** General Ordinance No. 16-1349, accepting an offer from Wasco County pursuant to ORS 373.270 to transfer jurisdiction over portions of roads located in or near the City of The Dalles, to the City of The Dalles

**RELATED COUNCIL GOAL:** Goal B(4) – Investigate opportunities to partner with or share services with Wasco County

**BACKGROUND:** On June 29, 2015, an agreement between the City and Wasco County was filed with the Wasco County Clerk. That agreement set forth a process for the transfer of jurisdiction of certain County roads located within the City and The Dalles Urban Growth Boundary. The agreement provided that complete identified maintenance work on current County street sections which were identified in Table 2 of the Agreement, and to perform certain maintenance on City street sections which were identified in Table 3 of the Agreement, the County agreed to provide the necessary labor and equipment, and the City agreed to purchase the necessary materials and assist with labor. The agreement provided that proceedings to initiate transfer of jurisdiction of the designated County roads pursuant to ORS 373.370(2) would not occur until the roads met the modified street standards as set forth in the agreement, the road surface had been brought to a paving condition of “good” or “better”, and the road has a functioning storm sewer drainage system as defined in Section 2(A). All of the conditions for initiating the process of transferring jurisdiction of the County roads to the City have occurred.

Pursuant to ORS 373.270(2), the County initiated the process to transfer jurisdiction over portions of County roads located in or near the City, which roads are listed in Exhibit “A” attached to General Ordinance No. 16-1349. On September 21, 2016, the Wasco County Board of Commissioners adopted Order #16-602, offering to transfer jurisdiction of the County roads listed in Exhibit “A” to the City. In order to complete the process of

transferring jurisdiction of the listed roads, the City needs to adopt legislation accepting the County's offer to transfer jurisdiction.

Included in the list of County roads to be transferred to the City is a portion of East 18<sup>th</sup> Street between Thompson and Morton Streets, which measures 0.33 miles. In 2011, Wasco County withdrew County road status for this portion of Thompson Street, and the portion was designated a local access road. It appears that inclusion of this portion of Thompson Street as a County road was technically incorrect.

City staff is recommending that this portion of Thompson Street be included in with the list of County roads which are being transferred to the City's jurisdiction. This portion of Thompson Street is surrounded by portions of Thompson Street to the east and west which are in the City limits. Including the additional portion of Thompson Street in the roads to be transferred to the City's jurisdiction will facilitate the annexation of the properties adjacent to this portion of Thompson Street, in the event the City desires to annex these properties at some time in the future. Since the City is already responsible for maintaining the portion of Thompson Street which borders the 0.33 miles of Thompson Street, it makes sense to have the City responsible for this portion of Thompson Street.

Notice of adoption of General Ordinance No. 16-1349 has been posted in accordance with the City Charter, and the ordinance can be adopted by title only.

**BUDGET IMPLICATIONS:** With the adoption of General Ordinance No. 16-1349, responsibility for maintenance of the designated County roads will be transferred to the City.

**COUNCIL ALTERNATIVES:**

- A. Staff recommendation: *Move to adopt General Ordinance No. 16-1349 by title only.*
- B. If there are any sections of the ordinance which the Council desires to revise, which do not result in a substantive change to the ordinance, those changes can be read aloud, and the Council can move to adopt the Ordinance as amended by title only.
- C. The Council can choose not to adopt General Ordinance No. 16-1349.

**GENERAL ORDINANCE NO. 16-1349**

**AN ORDINANCE ACCEPTING AN OFFER FROM WASCO COUNTY  
PURSUANT TO ORS 373.270 TO TRANSFER JURISDICTION OVER  
PORTIONS OF ROADS LOCATED IN OR NEAR THE CITY OF  
THE DALLES, TO THE CITY OF THE DALLES**

**WHEREAS**, on June 29, 2015, an agreement between the City of The Dalles and Wasco County was filed with the Wasco County Clerk; and

**WHEREAS**, pursuant to ORS 373.270(2), Wasco County initiated the process to transfer jurisdiction over portions of County roads located in or near the City of The Dalles, to the City, which roads are listed in Exhibit "A" attached hereto and incorporated herein by this reference; and

**WHEREAS**, on September 21, 2016, the Wasco County Board of Commissioners adopted Order #16-602, in which the County offered to transfer jurisdiction of the County roads described in Exhibit "A" to the City of The Dalles; and

**WHEREAS**, the City of The Dalles desires to adopt appropriate legislation accepting the offer of Wasco County to surrender jurisdiction of the County roads described in Exhibit "A";

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

**Section 1. Offer to Accept Jurisdiction.** Pursuant to ORS 373.270(7), the City of The Dalles hereby accepts the offer of Wasco County set forth in Order #16-602 to surrender jurisdiction of the County roads listed in Exhibit "A". Adoption of this ordinance shall have the following effect:

- A. The jurisdiction of Wasco County over the County roads or portions thereof, as a County road, or for its improvement, construction or repair shall cease.
- B. The full and absolute jurisdiction over the roads for all purposes of repair, construction, improvement and the levying and collection of assessments therefore shall vest in the City.
- C. The City shall have the same jurisdiction over the roads, or portions thereof, as by the charter and the laws of the State are given or granted to the City over any of the public streets and alleys of the City.

**PASSED AND ADOPTED THIS 14<sup>TH</sup> DAY OF NOVEMBER, 2016**

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

**AND APPROVED BY THE MAYOR THIS 14<sup>TH</sup> DAY OF NOVEMBER, 2016.**

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

Attest:

\_\_\_\_\_  
Izetta Grossman, City Clerk

# EXHIBIT A

Street Name/Segment	County Road	Length (miles)
Fremont Street - Old Dufur Road to Hwy 197	152	0.37
Hostetler Street - 6 <sup>th</sup> Street to 10 <sup>th</sup> Street	528	0.58
Dry Hollow Road - Remaining area in City Limits	106	0.10
East 2 <sup>nd</sup> Street - Big Jim's to City Limits	182	1.17
West 10 <sup>th</sup> Street - Walnut Street to City Limits	503	1.69
East 10 <sup>th</sup> Street - Richmond Street to City Limits	109	0.11
Cherry Heights Road - West 13 <sup>th</sup> Street to City Limits	504	0.17
Myrtle Street - West 7 <sup>th</sup> Street to West 8 <sup>th</sup> Street	520	0.08
West 8 <sup>th</sup> Street - Walnut Street to Snipes Street	521	0.64
Mill Creek Road - Sunset Valley Road to "Local Access"	3	0.19
Snipes Street - 9 <sup>th</sup> Place to 10 <sup>th</sup> Street	508	0.19
West 2 <sup>nd</sup> Street - Hostetler Street to Cul-de-sac	591	0.30
Columbia View Drive (Fremont) Summit Ridge to 3720 Columbia View	152	0.32
East 16 <sup>th</sup> Street - E of Golden Way toward E 15th	108	0.31
Richmond Street - Old Dufur Road to East 12 <sup>th</sup> Street	189	0.24
Chenowith Loop Road - West 7 <sup>th</sup> Street to West 10 <sup>th</sup> Street	512	0.44
Pomona Street - West 7 <sup>th</sup> Street to West 10 <sup>th</sup>	526	0.32
West 14 <sup>th</sup> Street - Kingsley Street to Elberta Street	590	0.18
River Road - Bargeway Road to ODOT ROW	514	1.65
Kingsley Street - West 13 <sup>th</sup> Street to West 16 <sup>th</sup> Street	540	0.12
Snipes Street - West 6 <sup>th</sup> to West 9 <sup>th</sup> Place	508	0.39
West 7 <sup>th</sup> Street - Hostetler Street to Snipes Street	536	0.42
West 8 <sup>th</sup> Street - Hostetler St to Chenowith Loop	521	0.21
Cascade Street - All	539	0.12
Cascade Court - All	538	0.03
Verdant Street - West 10 <sup>th</sup> Street to West 13 <sup>th</sup> Street	524	0.14
Elberta Street - West 13 <sup>th</sup> Street to West 14 <sup>th</sup> Street	584	0.05
Walnut Street - West 10 <sup>th</sup> Street to Griffith Motors	518	0.18
Walnut Street - West 13 <sup>th</sup> to West 10 <sup>th</sup> Street	518	0.13
Old Dufur Road - Richmond Street to Lambert Street	142	0.21
Bret Glodtelter Way - Hwy 197 to gate	155	0.68
Lambert Street - Old Dufur Road to City Limits	184	0.04
Viewpoint Road - Lower Eightmile Road to City Limits	187	0.25
Morton Street - East 15 <sup>th</sup> Street to East 18 <sup>th</sup> Street	188	0.14
West 13 <sup>th</sup> Street - Cherry Heights Road to Verdant Street	501	1.11
Sandy Street - West 10 <sup>th</sup> Street to Walnut Street	581	0.11
West 2 <sup>nd</sup> Street - Snipes Street to Hostetler Street	591	0.34
East 18 <sup>th</sup> Street - Between Thompson and Morton Streets	185	0.33
Snipes - West 2 <sup>nd</sup> to Dead End	508	0.06
Emerson Street - West 10 <sup>th</sup> to City Limits	543	0.06
East 16 <sup>th</sup> - East from East 15 <sup>th</sup>	108	0.10
Columbia View Drive (Fremont) - Hwy 197 to East Knoll	152	0.23
Skyline Road - Mt. Hood Street to City Limits	151	0.14

ORDER 16-062



## AGENDA STAFF REPORT

### AGENDA LOCATION: Action Item #12-D

**MEETING DATE:** November 14, 2016

**TO:** Honorable Mayor and City Council

**FROM:** Gene Parker, City Attorney

**ISSUE:** Special Ordinance No. 16-574 granting a Non-Exclusive Telecommunications Franchise to Light Speed Networks, Inc. and fixing terms, conditions, and compensation of such franchise, and declaring an emergency

**BACKGROUND:** Light Speed Networks Inc., dba LS Networks is an Oregon based telecommunications Competitive Local Exchange Carrier (CLEC), with fiber optic cable deployed around the Pacific Northwest. LS Networks has been leasing telecommunications access services from other providers in The Dalles area, but the company has indicated that they are now required to initiate a project to construct fiber optic cable and supporting infrastructure within the City limits to interconnect with leased BPA fiber at the Big Eddie substation. Light Speed Networks contacted City staff and inquired about the process for obtaining a franchise to place their infrastructure within the City's public right-of-way. The preliminary scope of work for their first project in the City is for the placement of a 4 foot by 4 foot (or similar) utility vault on Columbia View Drive in the right-of-way adjacent to the BPA Big Eddie Substation property. The exact location of the placement of the vault has not been finalized as the engineers for Light Speed Networks are still working out the route requirements.

Enclosed with this staff report is Special Ordinance No. 16-574, which proposes to grant a non-exclusive ten year franchise to Light Speed Networks Inc. dba LS Networks. The proposed ordinance is based upon an ordinance granted to LS Networks by the City of Albany, and also includes some standard provisions that LS Networks has used in other franchise agreements. The proposed franchise ordinance includes many of the same types of provisions which were included in the recent franchise ordinances granted to Charter Communications and Northwest Natural Gas. The purpose of granting the franchise is to allow LS Networks to provide telecommunication services, internet access services, and private line services. The franchise requires the franchisee to obtain all

necessary permits before conducting any work in the public right-of-way. The franchisee will provide the City with maps showing the location of any construction, extension, or relocation of any of the franchisee's facilities, and obtain the City's approval of the location and plans prior to commencement of the work. The franchise includes a provision for a 10-year moratorium on the cutting of a newly paved street, with a provision that the City can consider a request to waive that moratorium if the franchisee can show that moling, boring, or shoulder work are feasible to repair a system failure or construct system improvements.

Section 6 of the franchise ordinance includes a provision which the City has not typically required of franchisees, to file a construction and performance bond prior to commencement of any construction work. This requirement can be waived by the City or allow the franchisee to file a combined performance and payment bond. Under Section 12 of the ordinance, the franchisee will pay a franchise fee of 7% of gross revenues. Payment of the franchise fees will be made quarterly. The payments will include a sworn statement or declaration under oath from the Chief Finance Officer or their designee, setting forth the amount and calculation of the payment.

The work by the BPA at the Big Eddie Substation was scheduled to be completed in October, and the franchisee has requested that the franchise be approved and effective as soon as possible. To facilitate the work to be done by the franchisee, Special Ordinance No. 16-547 includes an emergency clause which would make the ordinance effective upon its adoption by the Council. Notice of adoption of the ordinance has been posted in accordance with the City Charter and the ordinance can be adopted by title only.

**BUDGET IMPLICATIONS:** The proposed ordinance provides the franchisee will pay a franchise fee of 7% of its gross revenue from its operations within the City. It is unknown at this time what amount of money will be collected as a result of the franchise fee.

**COUNCIL ALTERNATIVES:**

- A. Staff recommendation: *Move to adopt Special Ordinance No. 16-574 by title only.*
- B. If the Council desires to make an amendment to the language in the ordinance which will not cause a substantive change to the ordinance, the proposed amendment can be read aloud, and the Council could vote to adopt Special Ordinance No. 16-547 as amended by title only.
- C. If there are substantial revisions to the proposed ordinance requested by the Council, staff will prepare a revised ordinance for presentation at a future Council meeting.
- D. The Council could decline to take any action to adopt Special Ordinance No. 16-547.

**Special Ordinance No. 16-574**

**AN ORDINANCE GRANTING A NON-EXCLUSIVE TELECOMMUNICATIONS  
FRANCHISE TO LIGHT SPEED NETWORKS, INC. AND FIXING TERMS,  
CONDITIONS AND COMPENSATION OF SUCH FRANCHISE, AND  
DECLARING AN EMERGENCY**

WHEREAS, the City of The Dalles has determined that the financial, legal, and technical ability of LightSpeed Networks is reasonably sufficient to provide services, facilities, and equipment necessary to meet the telecommunications needs of the community;

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

**Section 1. Definitions.**

A. **Rights-of-Way:** The present and future streets, viaducts, elevated roadways, alleys, public highways and avenues in the City, including Rights-of-Way held in fee, or by virtue of an easement or dedication.

B. **Telecommunications:** the transmission between and among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.

C. **Telecommunications Network:** infrastructure owned by Franchisee utilizing one or more facilities located within the City's Rights-of-Way, including, but not limited to, lines, poles, anchors, wires, cables, conduit, laterals, and other appurtenances, necessary and convenient to the provision of access to the Internet and Telecommunications service.

D. **Telecommunications Service:** the offering of Telecommunications for a fee directly to the public, regardless of the facilities' uses.

**Section 2. Franchise Granted.**

A. There is hereby granted by the City of The Dalles, hereinafter referred to as "City," to Lightspeed Networks, Inc. dba LS Networks, dba LSN, hereinafter referred to as "Grantee", an Oregon corporation authorized to conduct business in Oregon, their successors and assigns, hereinafter each referred to as "Franchisee," the nonexclusive right and privilege to conduct business as a telecommunications carrier as that term is defined in ORS 759.005(1) within the City and to place, erect, lay, maintain and operate in, upon, over and under streets, alleys, avenues, thoroughfares and public highways, places and grounds within the City, poles, wires and other appliances and conductors for all telephone and other communication purposes. Such wires and other appliances and conductors may be strung upon existing poles, or other existing fixtures, or new poles installed with the City's permission, above ground, or at the option of the Franchisee, its successors and assigns, may be laid underground, and such other apparatus may be used as may be necessary to property to operate and maintain the same.

B. The scope of this grant allows the installation, maintenance and repair of telecommunications facilities by Grantee in the City's rights-of-way to provide

telecommunications services, internet access services, and private line services. In the event the Grantee intends to provide services other than telecommunications services, internet access services, or private line services, Grantee shall be required to obtain an additional or revised franchise from the City to the extent required by law.

C. Notwithstanding the foregoing, the City Manager or his/her designee shall have the authority to prescribe which public ways will be used and the location of telecommunications facilities within the public way as may be reasonably necessary to minimize public inconvenience.

**Section 3. Excavations and Construction.**

A. It shall be lawful for Franchisee to make all needful excavations in any of such streets, alleys, avenues, thoroughfares, public utility easements and public highways, in the City for the purpose of placing, erecting, laying and maintaining poles, or other supports or conduits for said wires and appliances and auxiliary apparatus or repairing, renewing or replacing the same. A "Public utility easement" means the space in, upon, above, along, across, over, or under an easement for the constructing, reconstructing, operating, maintaining, inspecting, and repairing of utilities facilities. A "Public utility easement" does not include an easement solely for the constructing, reconstructing, operating, maintaining, inspecting, and repairing of City facilities, or where the proposed use by the utility operator is inconsistent with the terms of any easement granted to the City. The authority granted in this section shall apply only to the extent of the City's right, title, interest or authority to grant a franchise to occupy and use such spaces for Franchisee's telecommunications facilities. Said work shall be done in compliance with state and federal laws, as well as local rules, regulations, ordinances or orders, which may during the continuance of this Franchise be adopted from time to time by the City.

B. Franchisee shall obtain from the City all applicable permits, which will require plan submittal, approval, and the payment of fees before work begins. The Franchisee shall file with the City maps showing the location of any construction, extension, or relocation or any of the facilities of the Franchisee and shall obtain the City's approval of the location and plans prior to the commencement of the work. All transmission and distribution structures, lines, and equipment erected by the Franchisee within the City shall be so located as to cause minimum interference with the proper use of streets, bridges, and other public ways and places, and to cause minimum interference with the rights or reasonable convenience of property owners who adjoin any of the streets, bridges, or other public ways or places. Franchisee shall, protect, support, temporarily disconnect, remove or relocate any of its facilities and equipment required to do so by the City by reason of traffic conditions or public safety in a timely manner in order to protect the public. Franchisee shall, protect, support, temporarily disconnect, remove or relocate any of its facilities and equipment required to do so by the City in the public interest, including by reason of street vacation, highway and street construction, change or establishment of street grade, installation of sewers, drains, water pipes, power lines, signal lines, and tracks, or any other type of structures or improvements by the City. This work shall be completed within 120 days of notice from the City. If the Franchisee fails to complete the work as required in this subsection, the City may cause the work to be performed; and the reasonable costs shall be paid by the Franchisee.

C. Unless approved by the City, no newly overlaid street or newly constructed street shall be excavated by the Franchisee for a period of ten years from the time of completion of the street overlay or the street construction. In the event that moling, boring, or shoulder work are not feasible to repair a system failure or construct system improvements, at Franchisee's request, the City will consider approval of a street cut prior to the ten (10) year moratorium described in this section. In the event a street cut is not approved, Franchisee shall be excused by the City from extending services if a practical alternate route cannot be found.

D. When any excavation is made by the Franchisee, the Franchisee shall promptly restore the affected portion of the street, bridge, easement area, or public place to the reasonably same conditions in which it was prior to the excavation. The restoration shall be done in compliance with City specifications, requirements, and regulations in effect at the time of such restoration. If the Franchisee fails to restore promptly the affected portion of the street, bridge, easement area, or public place to the same condition in which it was prior to the excavation, the City may make the restoration; and the reasonable costs of making the restoration, including the cost of inspection, supervision, and administration shall be paid by the Franchisee.

**Section 4. Tree Trimming.**

Subject to the provisions of this ordinance, Franchisee may trim trees when necessary in public rights-of-way for the operation of the lines, wires, cables and antennae or other appurtenances, provided such trimming shall be done by competent employees, agents, or contractors using appropriate arboricultural methods to protect the health and integrity of desirable trees; and it shall be done without cost or expense to the City. Tree trimming shall be in accordance with City ordinances, and in the absence of any specific ordinance requirement, subject to such terms as the City shall reasonably require for such purposes.

**Section 5. Use of Poles.**

The City reserves to itself the right at any time to use the poles and other installations of the Franchisee erected or installed under the authority granted in this Franchise for any City-owned facilities of whatsoever nature, but it is agreed that such use shall not interfere with the Franchisee's use thereof. Franchisee shall not be required to own or operate any facilities the City is using if the Franchisee ceases to have a need therefor.

**Section 6. Construction and Performance Bond.**

Prior to the commencement of any construction work by the Franchisee, the Franchisee shall file both a construction and performance bond in an amount approved by the City in favor of the City and any other person who may suffer damages as a result of the breach of any duty by the Franchisee assured by such bond. Such bond as contemplated herein shall be in a form approved by the City and shall, among other matters, cover the cost of removal of any property of Franchisee. In no event shall the amount of said bond be construed to limit the liability of the Franchisee for damages. The City, at its sole option, may waive this requirement, or permit the consolidation of the construction bond with the performance bond. The Franchisee, pursuant to this chapter, shall also maintain in full force and effect public liability insurance in an amount specified by the City, see Section 15.

**Section 7. Improvements – Utility Obstruction Prohibited.**

The City reserves the right to construct, install, maintain, and operate any public improvement, work or facility, to do any work that the City may find desirable on, over, or under any street, bridge or public place, and to vacate, alter or close any street, bridge or public place. Nothing in this chapter shall be construed in any way to prevent the proper authorities of the City from installing sanitary sewer or storm sewer facilities, providing water service, grading, planking, rocking, paving, repairing, altering, or improving any of the streets, alleys, avenues, thoroughfares, and public highways, places and grounds within the City in or upon which the poles, wires, facilities, equipment or other conductors of Franchisee shall be placed, but all such work or improvements shall be done if possible so as not to obstruct or prevent the free use of said poles, wires, facilities, equipment or other conductors, and the moving of company facilities, where required due to such work by the City, will be done by Franchisee within 120 days of notice by the City without cost to the City. The Franchisee shall furnish maps or drawings to the City or contractor, as the case may be, showing the approximate location of all its structures in the area involved in such proposed work.

**Section 8. Emergency Removal and Alternate Routing of Facilities.**

If, at any time, in case of fire, disaster, or other threat to public safety in the franchise territory, it shall become necessary in the reasonable judgment of the City to cut or move any of the wires, cable, amplifiers or other appurtenances to the system of the Franchisee, such cutting or moving may be done. Any repairs rendered necessary thereby shall be made by the Franchisee, at its sole expense, provided that such repairs are not necessitated by a negligent act of the City, in which case costs for repairs shall be borne by the City. In the event continued use of any street is denied to the Franchisee by the City for any reason, the Franchisee shall provide service to affected subscribers over such alternate routes as shall be determined by Franchisee within a reasonable period of time.

**Section 9. Cables, Wires – Rearrangement – Notice.**

Whenever the City determines that the public interest requires that it is necessary to rearrange, remove, lower or raise the aerial cables or wires or other apparatus of the Franchisee to permit the passage of any building, machinery or other object, or to widen/realign City streets, or to make any other alteration or improvement which will require rearrangement of Franchisee's facilities or equipment, the said Franchisee will perform such rearrangement within a reasonable period after written notice from the City. Said notice shall bear the approval of such official as Council may designate and shall provide that the costs of such rearrangement shall be borne by any third persons whose activities create the need for rearrangement except that a request by the City of The Dalles, on behalf of itself or any other unit of government to rearrange aerial cables or wires or other apparatus of the Franchisee shall be accomplished by the Franchisee within 120 days at no cost to the City.

**Section 10. Compliance with Laws, Rules, and Regulations.**

At all times during the term of this franchise, Franchisee shall comply with all applicable laws, ordinances, rules and regulations of the United States of America, the State of Oregon, and the City of The Dalles, including all agencies and subdivisions thereof. Franchisee shall be subject to the lawful exercise of the police power of the City of The Dalles and to such reasonable

regulations of general applicability as the City may from time to time hereafter, by resolution or ordinance, provide insofar as such regulations or ordinances do not materially alter or impair the express provisions of this Franchise. No provision of this Franchise shall be construed as a waiver of local, state or federal law, or as a limit of liability. Franchisee shall at all times keep and maintain all of its poles, fixtures, conduits, wires, and its entire system in good state of repair and shall at all times conduct its operations under this Franchise, including installation, construction or maintenance of its facilities, in a safe and workmanlike manner so as not to present a danger to the public or the City. The location, construction, extension, installation, maintenance, removal and relocation of the facilities of the Franchisee shall conform to the requirements of the State and Federal statutes and regulations adopted pursuant thereto in force at the time of such work, and such reasonable specifications in force at the time of such work, as the City may from time to time adopt. All installations, re-arrangements, removals, lowering or raising of aerial cables or wiring or other apparatus shall be done in conformance with the requirements of the National Electric Safety Code, the laws of the State of Oregon and the ordinances of the City. The City may provide such specifications relating thereto as may be necessary or convenient for public safety or the orderly development of the City. The City may amend and add to such specifications from time to time.

**Section 11. Sale of Subscriber Lists Prohibited.**

The Franchisee shall not sell, or otherwise make available, any list which identifies subscribers by name or address, to any person, agency or entity, except as needed to maintain current services or implement new services to subscribers in connection with Franchisee's services.

**Section 12. Payment, Franchise Term.**

Effective November 14, 2016 and until the Franchise's expiration, which is November 14, 2026, Franchisee shall pay to the City quarterly, as specified below, 7% percent of gross revenues as defined below.

A. Payment of Franchise Fees. Payments due under this provision shall be computed and paid quarterly for the preceding quarter, as of March 31, June 30, September 30, and December 31, each quarterly payment due and payable no later than 30 days after such dates. This Franchise Fee shall be deposited in the U.S. Mail, postage prepaid addressed to the Finance Director of the City and postmarked on the due date described herein.

B. If a payment is not mailed or sent electronically within 30 days of the due date set forth above, the payment shall be deemed delinquent and shall accrue a late fee of 9% interest per annum until collected.

C. "Gross Revenues" mean any revenue derived by the Franchisee from the operation of the telecommunications system in the Service Area, consistent with federal and state law. However, such phrase shall not include: (1) any tax, fee or assessment of general applicability imposed on customers and collected by the Franchisee from customers for pass-through to a government agency;; and (2) unrecovered bad debt; (Franchisee shall report Gross Revenues to the City using the accrual method of accounting, and maintain its books and records consistent with Generally

Accepted Accounting Principles (“GAAP”). Nothing in this Section shall impair the City’s ability to challenge Franchisee’s interpretation of GAAP.

**Section 13. Abandonment.**

If the Franchisee goes out of business or withdraws service from the area and as a consequence refuses to renew the Franchise, or abandons all or any portion of its telecommunications facilities and equipment, unless the City gives written permission to the Franchisee to abandon in place, all telecommunications facilities and equipment installed or used by Franchisee under this Franchise shall be removed by Franchisee at Franchisee’s expense and the property upon which the telecommunications facilities and equipment were used shall be restored by Franchisee at its expense to the condition it was in before installation. Until such time as Franchisee removes the facilities and equipment or portion thereof, or the rights to and responsibility for the facilities and equipment are accepted by another person having authority to construct and maintain such facility, Franchisee shall be responsible for all necessary repairs and relocations of the facilities and equipment, in the same manner and degree as if the facilities and equipment were in active use, and Franchisee shall retain all liability for the same. In the alternative, the City may elect to take ownership and control of the abandoned facilities and equipment, in which case the City shall have all rights to the use of the facilities and equipment and may sell, lease or otherwise use the facilities and equipment at its sole discretion.

**Section 14. Other Fees and Charges.**

Nothing in this chapter shall give the Franchisee any credit against any business tax or business license fee, or any ad valorem property tax now or hereafter levied against real property or personal property within the City, or against any local improvement assessments levied on the Franchisee’s property.

**Section 15. Reporting of Funds.**

With each Franchise Fee payment, the Franchisee shall furnish a sworn statement or declaration under oath from the Chief Finance Officer or designee, setting forth the amount and calculation of the payment. The statement shall detail the calculation of the Franchise Fee paid, and shall specify the nature and amount of all exclusions and deductions from such revenue claimed by the Franchisee in calculating the Franchise Fee. The City Manager of the City may require the Franchisee to provide any additional information reasonably necessary for administration of the Franchise Fee. The Franchisee shall keep available and open to inspection by the City Manager of the City, all accounts, books, and other records reasonably necessary for ascertaining the Franchise liability. Franchisee shall provide any additional information requested by the City within 48 hours of any such request delivered to Franchise, to be produced at The Dalles City Hall, office of the City Manager, during regular office hours. In the event that an audit of the Franchise Fee payments results in a determination that an additional payment is due to the City, such additional payment shall be subject to interest at the rate of 9% percent per annum from the date the original payment was due. If the additional payment amount exceeds five percent (5%) of the amount reported, Franchisee shall reimburse City for all audit costs.

**Section 16. Indemnification and Insurance Requirements.**

A. Franchisee shall pay, save harmless, defend and indemnify the City from any loss or claim against the City on account of, or in connection with, any activity of Franchisee in the construction, operation, or maintenance of its facilities, equipment, systems and services. The Franchisee will not be required to indemnify the City for the negligent or willful misconduct of the City or its officials, boards, commissions, agents or employees.

B. The Franchisee shall, for the purposes of carrying out the provisions of this section, prior to commencing construction of any kind, have in full force and effect, and file and maintain during the term of the Franchise Certificate of Insurance evidence thereto with the City Attorney, good and sufficient policies covering:

- 1) Worker's Compensation Insurance as required by the State of Oregon including Employers Liability with limits not less than \$1,000,000; Franchisee shall ensure that each of its sub-contractors complies with these same requirements and shall contain a Waiver of Subrogation against the City; and
- 2) Commercial General Liability Insurance with limits of at least \$5,000,000 per occurrence and \$5,000,000 general aggregate, with the aggregate on a Per Project basis; and
- 3) Business Automobile Liability Insurance, for any owned, hired or non-owned vehicles used in the performance of this agreement with combined single limits of \$1,000,000 each accident.

C. The City of The Dalles, its officers, agents, and employees, shall be named an Additional Insured in said policy for losses caused in whole or in part by reason of the exercise of the rights and privileges herein granted.

D. Upon any material alteration or cancellation of any of the coverage, the Franchisee shall give the City notice as allowed per insured's insurance policy in advance of the effective date of the alteration or cancellation of the coverage.

E. Each policy, Commercial General Liability, Auto Liability and Workers' Compensation, shall contain a waiver of subrogation against the City.

**Section 17. Continuation.**

The rights, privileges and franchise herein granted shall continue and be in force until November 14, 2026, except that it is understood and agreed that either party may at any time terminate or renegotiate this agreement upon six months' notice in writing.

**Section 18. Forfeiture and Remedies.**

In addition to any other rights set out elsewhere in this Franchise, the City reserves the right to declare a forfeiture of the Franchise, subject to 45 day right to cure, and all of the Franchisee's rights arising thereunder in the event that Franchisee violates any material provision

of the Franchise including, but not limited to, failing to pay or any suspension of Franchisee's payments of Franchise Fees to the City under this Franchise, failure by Franchisee to submit timely reports regarding the calculation of its Gross Revenues-based Franchise Fees to the City, failure to maintain the liability insurance and/or bonds required under this Franchise, or failure to comply with all other state, federal or local laws as set forth in this Franchise. All remedies and penalties under this chapter, including termination of the Franchise, are cumulative, and the recovery or enforcement of one is not a bar to the recovery or enforcement of any other such remedy or penalty. The remedies and penalties contained in this chapter, including termination of the Franchise, are not exclusive, and the City reserves the right to enforce the penal provisions of any ordinance or resolution and to avail itself of any and all remedies available at law or in equity. Failure to enforce shall not be construed as a waiver of a breach of any term, condition or obligation imposed upon the Franchisee by, or pursuant to, this Ordinance. A specific waiver of a particular breach of any term, condition or obligation imposed upon the Franchisee by, or pursuant to, this chapter or acceptance of any payment due shall not be waiver of any other or subsequent or future breach of the same or of any other term, condition or obligation itself.

**Section 19. Bonds and Other Surety.**

Except as expressly provided herein in Section 5, Franchisee shall not be required to obtain or maintain bonds or other surety as a condition of being awarded the Franchise or continuing its existence at the time this Franchise is granted. The City acknowledges that the legal, financial, and technical qualifications of Franchisee are sufficient to afford compliance with the terms of the Franchise and the enforcement thereof. In the event that an additional bond or surety is required in the future, the City agrees to give the Franchisee at least ninety (90) days prior written notice thereof stating the exact reason for the requirement and the amount. Such reason must demonstrate a change in the Franchisee's legal, financial, or technical qualifications that would materially prohibit or impair its ability to comply with the terms of the Franchise or afford compliance therewith.

**Section 20. Severability.**

In the event any of the provisions of this Franchise are deemed to be void, invalid or unenforceable, that provision shall be severed from the remainder of this Franchise so as not to cause the invalidity or unenforceability of the remainder of this Franchise. All remaining provisions of this Franchise shall then continue in full force and effect. If any provision shall be deemed invalid due to its scope and breadth, such provisions shall be deemed valid to the extent of the scope and breadth permitted by law.

**Section 21. Successors and Assigns.**

This Franchise is binding upon and will inure to the benefit of all parties hereto, their respective heirs, legal representatives, successors and assigns. Franchisee, however, shall not make any assignment without the written consent of the City, and any assignment made without the City's consent shall be null and void.

**Section 22. Franchise Nonexclusive.**

This Franchise is not exclusive and shall not be construed as a limitation on the City in granting rights, privileges and authority to other persons similar to, or different from, those

granted by this chapter, or in constructing, installing, maintaining or operating any City-owned public utility. In the event the City enters into a Franchise, permit, license, authorization, or other agreement of any kind with any other person or entity other than Franchisee to enter into the City's streets and public ways for the purpose of conducting a business as a telecommunications carrier as that term is defined in ORS 759.005(1), within the City, the material provisions thereof shall be reasonably comparable to those contained herein, insofar as this is not in conflict with rules government, in order that one operator not be granted an unfair competitive advantage over another, and to provide all parties equal protection under the law.

**Section 23. Acceptance and Effective Date.**

The Franchisee shall, within 30 days from the date the City Council passes an ordinance approving this Franchise, file with the City its written unconditional acceptance of this Franchise. This Franchise shall be effective as of November 14, 2016, provided that Franchisee provides the City with its written unconditional acceptance as required in this Section. In the event the Franchisee fails to do so, this ordinance shall be void.

**Section 24. Emergency.**

The Franchisee's initial project is to reroute fiber associated with the BPA Big Eddie Substation, and the BPA has notified Franchisee they need a Franchise Agreement in effect by October 2016, allowing the use of the City's public right-of-way to route the necessary fiber, and it is in the interest of public health and safety that the ordinance granting a Franchise to LightSpeed Networks, Inc. take effective immediately;

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

**PASSED AND ADOPTED THIS 14<sup>th</sup> DAY OF NOVEMBER, 2016.**

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

**AND APPROVED BY THE MAYOR THIS 14<sup>TH</sup> DAY OF NOVEMBER, 2016.**

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

ATTEST:

\_\_\_\_\_  
Izetta Grossman, City Clerk

ACCEPTANCE

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

This is to advise the City of The Dalles, Oregon (the "City") that Light Speed Networks, Inc. (the "Grantee") hereby accepts the terms and provisions of Special Ordinance No. \_\_\_\_\_ passed by The Dalles City Council on \_\_\_\_\_, 2016 (the "Franchise") granting a Franchise for twenty (20) years to Grantee. The Grantee agrees to abide by each and every term of the Franchise, and shall become effective upon acceptance of said agreement by Light Speed Networks, Inc. (the "Grantee").

BY \_\_\_\_\_  
(Name)

TITLE Senior Vice President & General Counsel

DATE \_\_\_\_\_

This Acceptance was received by the City of The Dalles on \_\_\_\_\_, 2016.

\_\_\_\_\_  
City Clerk



## AGENDA STAFF REPORT

### AGENDA LOCATION: Discussion Item #13-A

**MEETING DATE:** November 14, 2016

**TO:** Honorable Mayor and City Council

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

**ISSUE:** Update on status of environmental permitting for the Dog River Pipeline Replacement Project

**BACKGROUND:** One of our largest and most important projects in the City's Water Capital Improvement Plan (CIP) is the replacement of the Dog River Diversion Pipeline. A copy of the Budget Issue Paper #16-022 is attached to provide detailed background on the project. This report will provide an update on the project including a description of additional permitting work that is needed, an update on anticipated associated permitting expenditures, and a revised project schedule.

The Forest Service conducted public scoping for the project in April/May 2016. Due to the substance of some of the public comments received through that process, additional environmental analyses will need to be conducted as part of the permitting process. These analyses are necessary to address the comments received about flows in Dog River downstream of the City's intake and potential effects of the project on Threatened and Endangered Species that may be present. The analyses will also be necessary to support the consultation that the Forest Service must conduct with NOAA Fisheries related to any environmental decisions. The Forest Service does not have the staff resources to do the additional analyses in-house, nor does the City have the expertise on staff to do so. However, the Forest Service does have a contracting method available to them to hire pre-approved specialists to do the work and the City would need to reimburse the Forest Service for this work through a new Cost Recovery Agreement. This process can be initiated fairly quickly and would minimize delays to the project schedule when compared to the alternative of the City developing a scope of work, issuing an RFP and awarding a contract, and then working as the middle-man to coordinate communications and study review between a consultant and the Forest Service. Working with pre-approved Forest Service consultants would help ensure an efficient project in that the consultants are experienced in working with the Forest Service and conducting the

required analyses using the methodologies appropriate to federal agency standards. It seems likely that the City would have to pay about the same amount as the Forest Service to hire these specialists if we issued our own contract and we may spend more money trying to finalize the product to meet federal requirements and needs.

To utilize the Forest Service contracting method, they need to develop a scope of work specific to the Dog River Pipeline project. They would then solicit quotations from their list of approved specialists. The catch is that to formally solicit quotations, their rules require that the funding be committed in advance. It would be difficult for the City to commit funding without knowing how much money would be required. To get around this challenge, the Forest Service is proposing to conduct a “pre-solicitation” to get a good estimate of costs; these pre-solicitation “bids” would be good for 60 days. They would be willing to initiate this pre-solicitation process if the Council is supportive of the concept, understanding that actual approval of the ultimate Cost Recovery Agreement with identified costs would require future Council action.

In an attempt to help understand the potential costs involved, Forest Service staff has reviewed the costs of some recent similar work they have undertaken. Some of that information indicates that the costs for the needed analyses may be around \$45,000 per study; two additional studies are needed, one for stream flows and one for T&E Species. That would mean that about \$90,000 may be needed for the contracted specialists to conduct the needed analyses. There is also information from other work the Forest Service has completed that indicates these costs may be 50% - 100% low; the costs could be closer to \$180,000 for the studies. The Cost Recovery Agreement would also include expenses to cover the time that Forest Service staff will need to spend reviewing the studies and providing feedback to the specialists, as well as time needed for consultations with NOAA Fisheries.

While these potential costs are higher than we were hoping to have to spend, City staff does not believe that issuing an independent contract is a better option. The project team (including both City and Forest Service staff) believes that the project will be best served using the Forest Service contracting option. This method will be better able to effectively manage the scope of work, deliver the analyses faster, and we believe that the findings will be better able to be defended by the federal agencies if they are challenged.

It may also be helpful to review the recent experiences from City of Bend as they sought to permit a new pipeline on Forest Service properties. They originally estimated \$250,000 for the environmental permitting but ended up spending over \$800,000 on permitting support and \$500,000 in legal fees defending the permit they received. To date, we have committed less than \$76,000 to the Forest Service for permitting efforts. By utilizing the Forest Service contracting option, we hope to conduct a series of analyses robust enough to support consultation with NOAA Fisheries and withstand potential challenges.

With the need to conduct these additional analyses and consult with NOAA Fisheries, the schedule for obtaining an environmental decision has slipped to about June 2017. If the decision is not challenged, the City could issue an RFP for design of the pipeline in the summer of 2017, complete the design in the fall and early winter of 2017, and hopefully bid the project soon enough for construction to begin in the 2018 construction season.

**BUDGET IMPLICATIONS:** Within Fund 53, the Water Reserve Fund, line 053-5300-000.75-10, there is a total of \$2,480,522 allocated in the current year for this project; the budget is on-track to have \$4,000,000 in cash available for the project at time of design and construction. There are adequate funds budgeted for the project in the current year to pay for the additional studies through a Cost Recovery Agreement with the Forest Service if desired.

**COUNCIL ALTERNATIVES:**

1. Staff Recommendation: No formal action is required at this time. However, staff is seeking direction from Council to proceed with the Forest Service contracting option.
2. Direct staff to develop and issue an independent RFP for environmental consulting services to conduct the needed analyses.