

REVISED AGENDA

REGULAR CITY COUNCIL MEETING

October 13, 2014

5:30 p.m.

CITY HALL COUNCIL CHAMBER

313 COURT STREET

THE DALLES, OREGON

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

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

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

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

- A. Approval of September 22, 2014 Regular City Council Meeting Minutes
- B. Request by Taner Elliott for Refund of Land Use Appeal Fees

CITY OF THE DALLES

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

- C. Resolution No. 14-029 Assessing the Properties at 600 East 12th Street, 800 East 10th Street, and 1290 West 8th Street for the Cost of Abatement of Hazardous Vegetation
- D. Resolution No. 14-030 Assessing the Properties at 2220 West 8th Street, 508 East Second Street, and 514 Liberty Street for the Cost of Abatement of Junk and Hazardous Vegetation

11. ACTION ITEMS

- A. Consideration of Amendment of the City's Annexation Policy [**Agenda Staff Report #14-072**]
- B. Resolution No. 14-031 Initiating a Street Vacation Procedure for a Portion of the Alley Between East First and East Second Streets and Court and Washington Streets for the Granada Block Project [**Agenda Staff Report #14-069**]
- C. Resolution No. 14-028 Approving the Enterprise Zone Extended Tax Abatement Agreement Between the Sponsors of The Dalles/Wasco County Enterprise Zone III and Integrated 3D LLC [**Agenda Staff Report #14-070**]

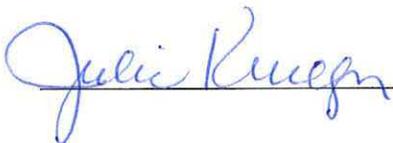
12. DISCUSSION ITEMS

- A. Discussion Regarding Implementation of a Local Tax for Use of Recreational Marijuana [**Agenda Staff Report #14-073**]

13. ADJOURNMENT

This meeting conducted in a handicap accessible room.

Prepared by/
Julie Krueger, MMC
City Clerk

 _____



CITY of THE DALLES

313 COURT STREET
THE DALLES, OR 97058

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

AGENDA STAFF REPORT
CITY OF THE DALLES

MEETING DATE	AGENDA LOCATION	AGENDA REPORT #
October 13, 2014	Consent Agenda 10, A - D	N/A

TO: Honorable Mayor and City Council

FROM: Julie Krueger, MMC, City Clerk 

THRU: Nolan K. Young, City Manager

DATE: October 1, 2014

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

A. **ITEM:** Approval of September 22, 2014 City Council Meeting Minutes.

BUDGET IMPLICATIONS: None.

SYNOPSIS: The minutes of the September 22, 2014 City Council meeting have been prepared and are submitted for review and approval.

RECOMMENDATION: That City Council review and approve the minutes of the September 22, 2014 City Council meeting.

B. **ITEM:** Request by Taner Elliott for Refund of Land Use Appeal Fees.

BUDGET IMPLICATIONS: If approved, the refund would be paid from the General Fund.

SYNOPSIS: Taner Elliott, for Elkhorn Development, appealed the conditions of a minor partition application, first to the Planning Commission and then to the City Council. Attached is a written request from Taner Elliott for refund of the \$380 appeal fee in both appeals. Also attached is a memorandum from Planning Director Dick Gassman regarding the requests.

RECOMMENDATION: The City Manager recommends refund of one of the two appeal fees (\$380) because of the complexity of this issue, as illustrated by the fact that there were three different results through this process, as summarized in the last paragraph of Mr. Gassman's memo. This recommendation is similar to action taken by the City Council in a similar request for refund by Randy Hager on September 8, 2014.

C. **ITEM:** Resolution No. 14-029 Assessing the Properties at 600 East 12th Street and 800 West Tenth Street for Abatement of Hazardous Vegetation.

BUDGET IMPLICATIONS: Assessment fees will be entered on the City's Lien Docket for collection.

SYNOPSIS: A Notice to Abate Nuisance Conditions was posted by Nikki Lesich, the City's Code Enforcement Officer, upon the properties located at 600 East 12th Street and 800 West 10th Street on May 22, 2014. The Notice to Abate Nuisance Conditions advised the property owners of nuisance conditions existing upon the properties, consisting of the presence of hazardous vegetation. When the property owners did not remove the nuisance conditions, the City hired FLI Landscaping to abate the public nuisances. The cost for removal of the nuisance conditions was \$445.00 for the property located at 600 East 12th Street, and \$245.00 for the property located at 800 West Tenth Street.

On July 21, 2014, a notice of the proposed assessment for the costs of the abatements was sent by certified mail to David Campbell, the owner of the property at 600 East 12th Street, and Dustin Alldredge, the owner of the property at 800 West Tenth Street. Copies of the notices are enclosed with this staff report. The notices advised the owners they had until July 28, 2014 to file any objections to the proposed assessment, and that if the assessments were not paid by August 21, 2014, the amount of the assessments would be imposed as a lien upon the properties.

No objections to the assessments were filed by July 28, 2014, and no payment has been made toward the proposed assessments by any of the property owners.

RECOMMENDATION: That City Council adopt Resolution No. 14-029 assessing the properties at 600 East 12th Street and 800 West Tenth Street for abatement of hazardous vegetation.

- D. **ITEM:** Resolution No. 14-030 Assessing Properties at 1290 West Eighth Street, 2220 West Eighth Street, and 508 East Second Street for the Cost of Abatement of Hazardous Vegetation and Junk.

BUDGET IMPLICATIONS: Assessment fees will be entered on the City's Lien Docket for collection.

SYNOPSIS: A Notice to Abate Nuisance Conditions was posted by Nikki Lesich, the City's Code Enforcement Officer, upon the properties located at 1290 West 8th Street, 2220 West 8th Street, and 508 East Second Street on June 4, 2014, May 6, 2014, and January 16, 2014, respectively. The Notice to Abate Nuisance Conditions advised the property owners of nuisance conditions existing upon the properties, consisting of the presence of hazardous vegetation and junk. When the property owners did not remove the nuisance conditions, the City hired FLI Landscaping to abate the public nuisances. The cost for removal of the nuisance conditions was \$790.00 for the property located at 1290 West 8th Street, \$590.00 for the property located at 2220 West 8th Street, and \$190.00 for the property located at 508 East Second Street.

On July 21, 2014, a notice of the proposed assessment for the costs of the abatements was sent by certified mail to Rae Ann Clark, the owner of the property at 1290 West 8th Street, Reva Christopherson, the owner of the property at 2220 West 8th Street, and Howard Clark, the owner of the property at 508 East Second Street. Copies of the notices are enclosed with this staff report. The notices also advised the owners that the final assessment would include the sum of \$500 for an administrative fee as allowed by General Ordinance No. 93-1162. The notices advised the owners they had until July 28, 2014 to file any objections to the proposed assessments, and that if the assessments were not paid by August 5, 2014, the amount of the assessments would be imposed as a lien upon the properties. No objections to the assessments were filed by July 28, 2014, and no payment has been made toward the proposed assessments by any of the property owners.

RECOMMENDATION: That City Council adopt Resolution No. 14-030 assessing the properties at 2220 West Eighth Street, 1290 West Eight Street, and 508 East Second Street for the cost of abatement of junk and hazardous vegetation.

MINUTES

REGULAR COUNCIL MEETING
OF
SEPTEMBER 22, 2014
5:30 P.M.

THE DALLES CITY HALL
313 COURT STREET
THE DALLES, OREGON

PRESIDING: Mayor Steve Lawrence

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

COUNCIL ABSENT: None

STAFF PRESENT: City Manager Nolan Young, City Attorney Gene Parker, City Clerk Julie Krueger, Public Works Director Dave Anderson, Administrative Intern Rich Wachter, Finance Director Kate Mast, Police Chief Jay Waterbury, Administrative Fellow Daniel Hunter, Senior Planner Dawn Hert

CALL TO ORDER

Mayor Lawrence called the meeting to order at 5:40 p.m.

ROLL CALL

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

PLEDGE OF ALLEGIANCE

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

APPROVAL OF AGENDA

Mayor Lawrence asked that the Action Item regarding Enterprise Zone Agreement with Integrated 3D be removed from the agenda and to add an item concerning an encroachment agreement with Triple W Properties.

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

PRESENTATIONS/PROCLAMATIONS

Manufacturing Day Proclamation

Mayor Lawrence read a proclamation, declaring October 3, 2014, as Manufacturing Day. Port of The Dalles representative Kathy Ursprung provided statistics, noting that approximately 10% of private, non-farm and non-government jobs were in manufacturing in Wasco County. She said the Port's number one goal was to promote industrial development. Ursprung discussed the Port's efforts to support creation, retention, expansion and recruitment of businesses and jobs to the Port District. She provided a brief update on the Chenoweth Creek subdivision and said the Port was also working with Gary Rains to ensure coordination of business recruitment efforts, as well as working with the Main Street Program and Chamber of Commerce.

Breast Cancer Awareness Month Proclamation

Mayor Lawrence read a proclamation, declaring the month of October, 2014, as Breast Cancer Awareness Month.

Museum Commission Update and Approval of Museum Commission Bylaws

Trish Neal provided an update to the City Council and asked them to sign the new Bylaws for the Museum Commission. Neal said the Commission had never had Bylaws and noted Wasco County Commission had assisted in drafting the document.

It was the consensus of the City Council to approve the proposed Bylaws.

Museum Director Paula Kuttner provided a brief report regarding the operations of the museum, noting the cruise ship visitors had helped increase attendance.

AUDIENCE PARTICIPATION

None.

CITY MANAGER REPORT

City Manager Young reported on his recent trip to Washington, D.C. with the Community Outreach Team, noting the primary focus for this trip was the PUD project.

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Regular Council Meeting
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Young said the City had been notified that they had been awarded a grant from the Oregon Department of Transportation for an update of the Transportation Growth Management Plan. He said the work scope would now be developed, an agreement prepared, a Request for Proposals process completed, then work would begin on the Plan update.

Young reminded the City Council of the upcoming Budget Workshop on September 29 at 5:30 p.m.

City Manager Young recognized Engineer Eric Orton and Technical Manager John Amery for their work and dedication to QLife. He said the presentation prior to the meeting, concerning the Agency now being debt free was wonderful, but wanted to call special attention to Eric and John.

CITY ATTORNEY REPORT

City Attorney Parker reported that two of the foreclosure properties would be sold on September 26. Parker said he would be attending the League of Oregon Cities Conference later in the week.

Mayor Lawrence asked the status of the burned residence on Fourth Street. Parker said he believed the property owner had hired a contractor to complete demolition, but would need to check with the Codes Enforcement Officer regarding the status of the property.

Senior Planner Hert said a letter had been sent to the property owners and that they had been seeking bids for the demolition, but it was expensive. Hert said it was expected they would complete the demolition by the end of the month.

CITY COUNCIL REPORTS

Councilor Wood said she had not been able to attend the Council of Governments meeting, but that they had received their annual audit, with good findings. She said there was no Historic Landmarks Commission meeting.

Councilor McGlothlin said he had attended the League of Oregon Cities City Hall Day event in Bend and would provide the information to the City Council. He said the Traffic Safety Commission had focused on trees and visibility issues and downtown trees getting too large. McGlothlin said he would be attending the St. Vincent de Paul ribbon cutting on behalf of the Mayor this Friday, and attending a meeting on October 2 regarding recreational vehicle park development possibilities.

Councilor Dick reported he had attended the QLife Agency meeting.

Councilor Spatz congratulated QLife Agency for their great success and credited the success and vision to City Manager Young and Keith Mobley, saying they were great community leaders.

Spatz said he had also been to Washington, D.C. with the Community Outreach Team and noted that good conversations and partnerships were established.

Councilor Spatz reminded the City Council of the October visit from sister city, Miyoshi City delegates. He encouraged the Councilors to consider serving as a host family.

Councilor Miller said she had attended the Urban Renewal Advisory Committee meeting and the recommendations of the Advisory Committee would be discussed by the Agency at their meeting tonight. Miller said she attended the disaster planning program over the weekend. She said it was a great event and well attended by the community.

Mayor Lawrence reported he attended several events for the Cycle Oregon program, including the welcome, greeting at the finish line, and serving snacks to the riders at one of their stops. He said he attended their final dinner, and said it had been a very successful event for The Dalles. Mayor Lawrence said he would also be attending the League of Oregon Cities conference later in the week.

CONSENT AGENDA

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

Items approved by Consent Agenda were: approval of September 8, 2014 regular City Council meeting minutes and approval of August 14, 2014 special City Council meeting minutes.

PUBLIC HEARINGS

Continuation of Public Hearing to Receive Testimony Regarding Appeal of Minor Partition Conditions by Taner Elliott

City Attorney Parker provided a summary of where the hearing had been postponed, noting additional information had been provided regarding what Habitat for Humanity had been required to do when they developed their property; noting that delayed development agreements differed from non-remonstrance agreements because a delayed development agreement was an agreement to require future improvements, while a non-remonstrance agreement prohibited a

property owner from objecting to a local improvement district; and that examples of other properties in the area had signed delayed development agreements. Parker recommended the City Council deny the appeal.

Mayor Lawrence invited the appellants to speak. Taner Elliott, 397 Summit Drive, The Dalles, reiterated that the home had been a replacement of an existing structure and there was no change that warranted a delayed development agreement. He said if the property was further developed he would agree to sign an agreement for future improvements. In response to a question, Mr. Elliott said the natural gas and sewer were already connected to the property, but they had paid to connect to City water service.

Mayor Lawrence asked the City Council if they had enough information to begin deliberations.

Councilor Miller asked if there had been any change in use of the property, and if not, questioned the need to require an agreement from the applicant.

Elliott said he did agree that any additional development of the property would warrant an improvement agreement, but did not believe replacing the existing home should require the agreement.

Mayor Lawrence asked for clarification that the Planning Department had said no additional improvements would be required until another structure was placed on the property. Mr. Elliott said the Planning Department had told him it was not required, partly tied to when an additional structure was built, and partly because the City had not done engineering for the improvements.

Senior Planner Hert noted that during the time of the application, it was thought a local improvement district would be formed which would include the improvements.

The public hearing was closed and turned over to the City Council for deliberation.

Council Deliberation

Councilor Wood said if the applicant wasn't required to sign the agreement, then future development occurred, there would be one section that had no improvements. She said the agreement would only require the improvements that had not yet been installed.

Mayor Lawrence said there had been no change in use of the property, so it didn't make sense to require additional improvements.

Councilor Miller said the residents in the area had defeated the local improvement district and did not support urban improvements in the neighborhood.

Councilor Spatz said he agreed that this had been a replacement of an existing dwelling, not changing the level of density of the area.

City Manager Young said he would like to ask a question of staff. Mayor Lawrence reminded the City Manager this was a time for the City Council to discuss the merits of the appeal. Young said he was allowed by Charter to participate in the deliberations of the City Council.

City Manager Young asked staff to clarify whether it was a requirement to sign a delayed development agreement if anyone replaced a residence, regardless of whether it was connected to a minor partition or subdivision. He said staff could correct him if he was incorrect, but that he believed it was a requirement of the Land Use Development Ordinance.

Mayor Lawrence said staff had told the appellant that no agreement would be required until a second residence was placed on the property, as a result of a partition.

Young said the decision regarding a second residence had been related to subdivision requirements, but the appellant had changed his application to a minor partition. He said if an agreement was not required, that portion of the property would be excluded for improvement requirements.

Councilor Miller said she believed the delayed development agreement was not really different than a non-remonstrance agreement.

Councilor Spatz said he believed they were different.

Mayor Lawrence noted the appellant had stated he agreed to sign an agreement if any future development occurred on the property.

City Manager Young proposed a compromise, saying no improvements would be required until a second residence was constructed, but at that time the improvements would be required for both of the residences.

Councilor Dick expressed frustration with inconsistency in how the rules were applied. He said the appellant believed that staff hadn't communicated well. He questioned how many other properties could be affected by the decision made on this issue. Dick said if the delayed development agreement was required as a matter of policy, it should be fair and everyone should be required to file an agreement.

Mayor Lawrence said once the Planning Commission forwarded their recommendations to the Council, a decision could be made, making the development requirements fair for all.

Councilor Spatz said it was a complex issue and he would prefer to err with the land owners.

It was moved by Spatz and seconded by Miller to grant the appeal for the purpose of deleting the condition requiring the signing of a delayed development agreement for the frontage associated with the lot with the new dwelling and direct staff to prepare a resolution setting forth the Council's decision, based on findings of fact and conclusions of law.

Councilor McGlothlin said he agreed with the motion, saying he believed the City had represented that the agreement would be required at the time a second dwelling was constructed.

The motion to grant the appeal for the purpose of deleting the condition requiring the signing of a delayed development agreement for the frontage associated with the lot with the new dwelling and direct staff to prepare a resolution setting forth the Council's decision, based on findings of fact and conclusions of law was voted on and carried; Wood voting no, Dick abstaining.

ACTION ITEMS

Review of Encroachment Permit for Right-of-Way at the Intersection of Third Street, Fourth Street and Third Place

The staff report was reviewed by City Manager Young. City Attorney Parker highlighted the options to remove Section 2 of the agreement and not allow any public forum signs; or to allow only limited public forum signs, allowing certain signs.

It was the consensus of the City Council to select Option 1, and to not allow any signs.

Dr. Wally Wolf said he would agree and although it would mean that community events could no longer be publicized at the location, it would solve the problem of people placing signs without permission.

It was moved by Dick and seconded by Spatz that the portion of public right of way at the intersection of Third Street, Fourth Street, and Third Place, as described in the encroachment agreement dated April 5, 2013, not be designated as a "designated public forum" or "limited public forum" and direct staff to prepare a revised version of the encroachment agreement to acknowledge the designation and delete Section 2 of the agreement. The motion carried unanimously.

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Regular Council Meeting
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ADJOURNMENT

Being no further business, the meeting adjourned at 7:13 p.m.

Submitted by/
Julie Krueger, MMC
City Clerk

SIGNED:

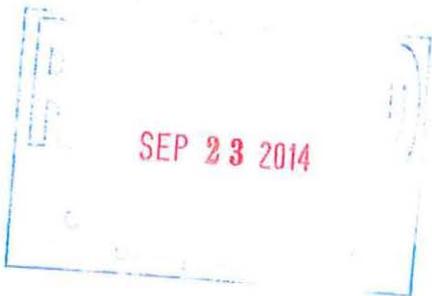
Stephen E. Lawrence, Mayor

ATTEST:

Julie Krueger, MMC, City Clerk

I am requesting that both of our
appeal fees be returned to us after
last night's meeting overturning the
need for a DDA.

Thanks
Tanner Elliott





CITY of THE DALLES

313 COURT STREET
THE DALLES, OREGON 97058

(541) 296-5481 ext. 1125
FAX: (541) 298-5490
PLANNING DEPARTMENT

Memorandum

To: Nolan Young

From: Richard Gassman, Director

Re: Refund of Appeal Fees – Elk Horn

Date: September 24, 2014

Taner Elliott, on behalf of Elk Horn Development, has filed a request for a refund of two appeal fees. I have attached a copy of his request.

Elk Horn Development filed a Minor Partition application for the property at 1611 Thompson Street, which was approved with conditions. The applicant then filed an appeal of the conditions to the Planning Commission. As part of this process Elk Horn paid the filing fee of \$380.00. The Planning Commission granted the appeal and approved the Minor Partition with changed conditions. Elk Horn then appealed the decision of the Planning Commission to the City Council. As part of this second appeal, Elk Horn paid a second appeal fee of \$380.00. The City Council granted the appeal, and approved the Minor Partition with conditions that were different from those of the Planning Commission.

The process for a refund request is set out in the Land Use and Development Ordinance (LUDO) at Section 3.020.080 I., entitled Refund of Appeal Fee. The process is started with a letter from the appellant requesting a refund and stating the reasons. As stated, the letter is attached. The next step is for staff to make a report to the City Manager, who then makes a recommendation to the City Council that is placed in the consent agenda for Council consideration. Only the City Council can approve an appeal refund request. This Memorandum is staff's report.

The LUDO provides a process for considering a refund request, but no criteria. A practical approach would be to look at the results of the appeals and see if there were significant changes made. In this case, due in part to the complexity of the issues, there were three different results, one at the staff level, a second one at the Planning Commission, and then a third at the City Council. Taking into account this unusual sequence plus the costs associated with preparing for the appeal, I would recommend that the City refund \$380.00, the amount of one appeal fee.

RESOLUTION NO. 14-029

AN ORDINANCE ASSESSING THE REAL PROPERTIES LOCATED AT 600 EAST 12TH STREET AND 800 WEST TENTH STREET FOR THE COSTS OF ABATEMENT OF HAZARDOUS VEGETATION

WHEREAS, the City Codes Enforcement Officer posted a Notice to Abate Nuisance upon the following listed properties on the dates shown below:

<u>Property</u>	<u>Assessor's Map No</u>	<u>Date of Posting</u>
600 East 12 th Street	1N 13E 3CD #10200	May 22, 2014
800 West 10 th Street	1N 13E 4AC #7700	May 22, 2014

and

WHEREAS, the following persons are the owners of the above listed properties:

<u>Property</u>	<u>Owner</u>
600 East 12 th Street	David Campbell
800 West Tenth Street	Dustin Alldredge

and

WHEREAS, the Notice to Abate Nuisance posted for the properties required the removal of hazardous vegetation from the properties pursuant to the provisions of General Ordinance Nos. 99-1234; and

WHEREAS, the Notice to Abate Nuisance further provided that if the nuisance conditions were not abated, the City would hire a contractor to abate the nuisance conditions, and the costs of the abatement would be charged to the owners of the properties, and become a lien upon the properties; and

WHEREAS, as a result of the owners' failure to abate the nuisance conditions on their properties, the City hired a contractor (FLI Landscape) who abated the nuisance conditions, at a cost of \$445.00 for the property located at 600 East 12th Street, and a cost of \$245.00 for the property located at 800 West Tenth Street; and

WHEREAS, pursuant to Section 7 of General Ordinance No. 99-1234, the City Clerk sent a Notice of Assessment by certified mail on July 21, 2014 to the owners of the properties. The Notice of Assessment advised the property owners of the sum that had been incurred for the abatements, and that the sum would become a lien upon the properties if the amounts listed were not paid by August 21, 2014; and

WHEREAS, the July 21, 2014 Notice of Assessment also advised the property owners that they had until July 28, 2014 to file any objection to the proposed assessments; and

WHEREAS, the owners have not filed any objections to the proposed assessments, and the owners have not paid the assessments by the stated deadline, and the City Council finds that the statement of the amount of the proposed assessments are correct, and that there is no reason to justify any delay in proceeding with the imposition of a lien upon the properties for the costs of the assessments;

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

Section 1. Assessment. The cost of the abatement of the nuisance conditions consisting of the removal of hazardous vegetation for the properties listed below is assessed upon the following properties:

<u>Name/Address</u>	<u>Description</u>	<u>Final Assessment</u>
David Campbell P.O. Box 198 Trout Lake, WA 98650	1N 13E 3CD #10200	\$445.00
Dustin Alldredge 915 22 nd Street Hood River, OR 97031	1N 13E 4AC #7700	\$245.00

The legal description for the above listed properties is set forth in Exhibit "A".

Section 2. Docket Entry. Upon passage of this Resolution and its approval by the Mayor, the City Clerk is instructed and directed to enter into the Docket of City Liens the following matters in relation to the assessment:

- a. The foregoing legal description of the property assessed.
- b. The name of the owners or statement that the owners are unknown.
- c. The sum assessed upon each lot or tract of land.
- d. The date of the docket entry.

Section 3. Notices/Collection of Assessment. The City Clerk is directed to proceed with notice and collection of the assessments in accordance with the procedures set forth in Section 9 of General Ordinance No. 91-1127, and to proceed with collection of the assessed amount in the manner provided by law.

Section 4. Effective Date. This Resolution shall be effective as of October 13, 2014.

PASSED AND ADOPTED THIS 13TH DAY OF OCTOBER, 2014

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

AND APPROVED BY THE MAYOR THIS 13TH DAY OF OCTOBER, 2014

Stephen E. Lawrence, Mayor

ATTEST:

Julie Krueger, MMC, City Clerk

EXHIBIT "A"

RESOLUTION NO. 14-029

600 East 12th – Assessor's Map No. 1N 13E 3CD #10200

North 81 feet, Lots 1 and 2, Block 47, Bigelow's Bluff Addition to Dalles City

800 West 10th – Assessor's Map No. 1N 13E 4AC #7700

Lots K & L, Block 82, Fort Dalles Military Reservation to Dalles City

RESOLUTION NO. 14-030

A RESOLUTION ASSESSING THE REAL PROPERTIES LOCATED AT 1290 WEST EIGHTH STREET, 2220 WEST EIGHTH, AND 508 EAST SECOND STREET FOR THE COSTS OF ABATEMENT OF JUNK AND HAZARDOUS VEGETATION

WHEREAS, the City Codes Enforcement Officer posted a Notice to Abate Nuisance upon the following listed properties on the dates shown below;

<u>Property</u>	<u>Assessor's Map No.</u>	<u>Date of Posting</u>
1290 West 8 th Street	1N 13E 4 #103	June 4, 2014
2220 West 8 th Street.	1N 13E 32DA #6400	May 6, 2014
508 East Second Street	1N 13E 3BD #6200	January 16, 2014

and

WHEREAS, the following persons are the owners of the following listed properties;

<u>Property</u>	<u>Owner</u>
1290 West 8 th Street	Rae Ann Clark
2220 West 8 th Street	Reva Christopherson
508 East Second Street	Howard Clark

and

WHEREAS, the Notice to Abate Nuisance required the removal of junk and hazardous vegetation from the listed properties pursuant to the provisions of General Ordinance Nos. 93-1162 and 99-1234; and

WHEREAS, the Notice to Abate Nuisance further provided that if the nuisance conditions were not abated, the City would hire a contractor to abate the nuisance conditions, and the costs of the abatement would be charged to the owner of the property, and become a lien upon the property; and

WHEREAS, as a result of the owner's failure to abate the nuisance conditions on the properties, the City hired the following listed contractors, who abated the nuisance conditions on the dates listed below, for the costs listed below;

<u>Property</u>	<u>Contractor</u>	<u>Date of Abatement</u>	<u>Cost</u>
1290 West 8 th St.	FLI Landscaping, Inc.	July 10, 2014	\$790.00

2220 West 8 th St.	FLI Landscaping, Inc.	July 8, 2014	\$590.00
508 East Second St.	FLI Landscaping, Inc.	July 14, 2014	\$190.00

and

WHEREAS, pursuant to Section 34 of General Ordinance No. 93-1162 and Section 7 of General Ordinance No. 99-1234, the City Clerk sent a Notice of Assessment by certified mail on July 21, 2014 to Rae Ann Clark, Reva Christopherson, and Howard Clark, advising them that the total costs of the assessment for each property was \$1,290.00, \$1,090.00, and \$690.00 respectively, which sums included a \$500 administrative fee required by General Ordinance No. 93-1162, and that the listed sums would become a lien upon the respective properties if the amount was not paid by August 5, 2014; and

WHEREAS, the July 21, 2014 Notice of Assessment also advised the respective property owners that they had until July 28, 2014 to file any objection to the proposed assessments; and

WHEREAS, none of the affected property owners filed any objection by the stated deadline, and none of them paid the listed amounts by the stated deadline, and the City Council finds that the statement of the amount of the proposed assessments is correct, and that no reason exists to justify any delay in proceeding with the imposition of a lien upon the properties for the costs of the assessments;

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

Section 1. Assessment. The cost of the abatement of the nuisance conditions consisting of the removal of junk and hazardous vegetation for the properties located at 1290 West 8th Street, 2220 West 8th Street, and 508 East Second Street, in The Dalles, Oregon, is assessed upon the following properties:

<u>Name/Address</u>	<u>Description</u>	<u>Final Assessment</u>
Rae Ann Clark 14004 NE 7 th Court Vancouver, WA 98685	1N 13E 4 #103	\$1,290.00
Reva Christopherson 2220 West 8 th Street The Dalles, OR 97058	1N 13E 32DA #6400	\$1,090.00
Howard Clark 508 East Second Street The Dalles, OR 97058	1N 13E 3BD #6200	\$690.00

The legal description for the properties is shown in the attached Exhibit "A".

Section 2. Docket Entry. Upon passage of this Resolution and its approval by the Mayor, the City Clerk is instructed and directed to enter into the Docket of City Liens the following matters in relation to the assessment:

- a. The foregoing legal description of the property assessed.
- b. The name of the owners or statement that the owners are unknown.
- c. The sum assessed upon each lot or tract of land.
- d. The date of the docket entry.

Section 3. Notices/Collection of Assessment. The City Clerk is directed to proceed with notice and collection of the assessment in accordance with the procedures prescribed by State law for enforcement of liens and collection of assessments.

Section 4. Effective Date. This Resolution shall be effective as of October 13, 2014.

PASSED AND ADOPTED THIS 13TH DAY OF OCTOBER, 2014

Voting Yes, Councilors: _____

Voting No, Councilors: _____

Absent, Councilors: _____

Abstaining, Councilors: _____

AND APPROVED BY THE MAYOR THIS 13TH DAY OF OCTOBER, 2014

Stephen E. Lawrence, Mayor

ATTEST:

Julie Krueger, MMC, City Clerk

EXHIBIT "A"

RESOLUTION NO. 14-030

1290 West 8th – Assessor's Map No. 1N 13E 4 #103

Parcel 1, Partition Plat No. #2000-0026, filed for record December 29, 2000, under Microfilm No. 2000-5582, Slide C-143A, being a portion of the Northwest quarter of Section 4, Township 1 North, Range 13 East and the Southwest quarter of Section 33, Township 2 North, Range 13 East of the Willamette Meridian, Wasco County and State of Oregon.

2220 West 8th – Assessor's Map No. 1N 13E 32DA #6400

Lot 1, Block 6, Subdivision Re-Plat of the Southerly one-half of Lot 5 and Lots 6, 1, 8, 9 and 10, Block 6, Mission Park Tracts Addition Plat No. 93-0035, Recorded October 28, 1993, as Microfilm No. 93-5007, Wasco County Deed Records, in the County of Wasco and State of Oregon.

508 East Second Street – Assessor's Map No. 1N 13E 3BD #6200

Parcel #1: The West one-half of Lot 3, Block 9, Laughlin's Addition to Dalles City, in the City of The Dalles, County of Wasco and State of Oregon.

Parcel #2: The East half of Lot 3 and the West half of Lot 4, Block 9, Laughlin's Addition to Dalles City, in the City of The Dalles, County of Wasco and State of Oregon.



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

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

AGENDA STAFF REPORT CITY OF THE DALLES

MEETING DATE	AGENDA LOCATION	AGENDA REPORT #
October 13, 2014	Action Items 11, A	14-072

TO: Honorable Mayor and City Council
FROM: Daniel Hunter, Administrative Fellow
THRU: Nolan Young, City Manager *nyj*
DATE: October 1, 2014

ISSUE: Annexation Policy Review.

RELATED COUNCIL GOAL: Annexation of all territory within the 1983 Urban Growth Boundary as specified in The Dalles Comprehensive Land Use Plan, General Ordinance 11-1312.

PREVIOUS AGENDA STAFF REPORT (ASR): #11-031; #11-037; #11-045

BACKGROUND: The City Council has asked staff to look at the City's current annexation policy and identify potential modifications. Attached is a written review that goes into the history of the policy and the effects of annexation.

OPTIONS FOR CONSIDERATION: Some alternatives to the current policy are provided below. Once Council by motion adopts, City Staff will implement one of the selected options, including processing any needed LUDO amendments and bring to the Council a resolution replacing Resolution 06-011(attached) which implemented the current policy:

- **Option 1, Continue with current policy:** Continuing the current policy would eventually achieve the Council's goal of annexing all property within the UGB.

Those properties that remain may take substantial time and effort to annex. The undeveloped industrial property in the North West corner of the UGB would be annexed if ever developed. Residential property in the West includes a trailer park where the property owner has consented to annexation while the residents have not. This would be required due to the location and type of the property. Another conditional property is located in the South. This property is managed by a Home Owners Association (HOA) with commonly held property between individual properties. Individual property owners have expressed consent to annex. However, because there is commonly held property between them the entire HOA would have to vote and approve the consent to annex. Due to the commonly held property, City Limits do not abut all of the individual properties. Therefore, it cannot be annexed without HOA and individual property owner approval. Lastly, there is property in the South East that is not fully developed at urban levels and the owners have not consented to annexation (Exhibit B). There are currently no island properties in the three-year waiting period.

- **Option 2, Modify the current annexation policy:** The current policy could be modified by the Council. One modification could be to continue with annexation of commercial and industrial areas once they become developed. The Council could instruct staff to continue with residential property annexation on a consent basis where other requirements are met, such as urbanization from development. This could include amending the current **Land Use and Development Ordinance** (LUDO), Chapter, Section and Paragraph 9.020.020(B), replacing “may” with “shall” and adding standard for when annexation occurs. We propose paragraph B of said chapter and section to read: Whenever any new lot is created or existing property is urbanized inside the Urban Growth Boundary but outside the City limits, the City shall require annexation or the signing of a consent to annexation and a waiver of the one year limitation on consent to annexation. Determination and definition of urbanized to be determined by the Planning Commission.

One example affected by this option is the property of Randy Hager on East 10th Street. Mr. Hager’s property is currently outside, but abuts city limits and is within the Urban Growth Boundary. He has a buyer for that property who is able to purchase a portion, if sub-divided, then contingent on the sale of the buyer’s Montana property purchase the remaining lots. To partition his property, the Council has required Mr. Hager to sign a consent to annex. The buyer plans are to vacate the sub-division once all lots are purchased and request the consent to annex be vacated at that time. Under the current policy this property would be annexed at the time Mr. Hager partitions his property and signs the consent to annex, under option 2 annexation of that property would occur once it reached appropriate levels of urbanization (delay of the annexation would require signing of a waiver of the one-year time limit on the consent to annex). Unless the Council approves the new property owners request, as part of a vacation of the sub-division, that the consent to annex also be vacated.

Option 3, Postpone action: The Council postpones further action on amending the annexation policy and instructs staff to conduct further research on alternatives.

BUDGET IMPLICATIONS: The timing of annexations will have an impact on both revenues and expenditures. The annexation reduces the amount Wasco County pays to the City for planning administration within the Urban Growth Boundary. Revenues gained through property taxes by annexing property is offset by reductions in water and sewer fees where the property's taxable assessed value is less than \$240,000.

COUNCIL ALTERNATIVES:

1. Staff Recommendation: Direct Staff to process LUDO Amendments and a New Resolution amending the Council's current annexation policy to continue with annexation of commercial and industrial property as they develop, and to prepare for future annexation of residential properties through signed consent at the time development happens and then delay annexation to the time the city determines the area is urbanized.
2. Direct Staff to continue with the current annexation policy in Resolution 06-011 and process an amendment of the LUDO to support that policy.
3. Postpone action on the current policy to conduct research on this issue.

RESOLUTION NO. 06-011

**A RESOLUTION ADOPTING THE
CITY OF THE DALLES ANNEXATION POLICY**

WHEREAS; The City of The Dalles was incorporated in 1857 and has frequently, over time annexed property into its City limits for the benefit of the public; and

WHEREAS; Annexation of property provides for a more efficient and cost effective delivery of urban level services including; police, water, sanitary sewer, storm sewer, roads, planning and development, administration, and codes enforcement; and

WHEREAS; The City has established an urban growth boundary within which properties may be provided urban level services; and

WHEREAS; The City is experiencing an expanding economy creating the need to expand the urban growth boundary; and

WHEREAS; In order to efficiently and effectively provide for urban level services within the existing and expanding urban growth boundary, it is to the benefit of the public to annex properties within the urban growth boundary; and

WHEREAS; The City Council wishes to establish by resolution a uniform policy regarding annexation of property into the City;

NOW, THEREFORE, THE CITY COUNCIL RESOLVES AS FOLLOWS:

Section 1. Annexation Policy. The City Council hereby adopts and approves an annexation policy with the following elements:

- A. All properties within the urban growth boundary, and as it may be amended from time to time, shall be annexed.
- B. On November 7, 2006, there will be an election of the voters within the existing City limits, and those within the existing urban growth boundary outside the City limits, asking whether all the properties not already annexed be annexed at one time.
- C. Upon passage of this resolution, annexation of individual properties will be delayed until after the results of the November 7, 2006, election are known.

- D. If the all inclusive annexation election in November should fail, the City will, at the earliest opportunity, use all available means to annex properties including but not limited to; limited area annexation elections, consent annexations, and island annexations.
- E. The City will continue to require consents to annexation from individual properties owners as they develop property and/or they require connections to City utilities outside existing City limits.

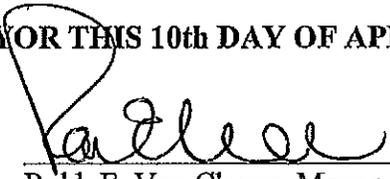
2. Effective Date. This annexation policy resolution shall become effective immediately upon its passage and approval, April 10, 2006.

PASSED AND ADOPTED THIS 10th DAY OF APRIL, 2006

Voting Yes, Councilors:	<u>Davison, Seckora, Broehl, Tenney, Zukin</u>
Voting No, Councilors:	<u>None</u>
Absent, Councilors:	<u>None</u>
Abstaining, Councilors:	<u>None</u>

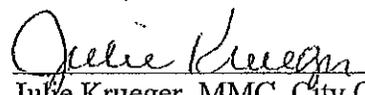
AND APPROVED BY THE MAYOR THIS 10th DAY OF APRIL, 2006

SIGNED:



Robb E. Van Cleave, Mayor

ATTEST:



Julie Krueger, MMC, City Clerk



CITY of THE DALLES

313 COURT STREET
THE DALLES, OREGON 97058

(541) 296-5481
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October 1, 2014

Staff Review of Annexation Policy

Introduction

The City Council in April 2006 adopted a goal to annex all property in the Urban Growth Boundary at the first possible opportunity (Res. 06-011). After a review of the Comprehensive Land Use Plan (CLUP); 2005 studies on growth management within the Urban Growth Boundary (UGB); and 2010 land needs revision based on 2026 buildable land needs, a revision to City development plans was needed. Following the review of the city's land use plan, several studies and input from various organizations The Dalles adopted a plan amendment, in accordance with Oregon State Planning Goals and local ordinances. Annexation of all properties within the UGB was part of that plan. The initial hope was to have the voters approve annexation *en masse*. The results from that vote were split. Those living within City limits voted in favor by a 65% margin; those outside the city and within the UGB voted in opposition by a 77% margin. The measure failed.

The city then began deliberate annexation in accordance with State statute and local ordinance. The annexation was via one of three methods: *consent*, *contiguous* or *island* which has a three year delay. One exception to the waiting period is if the property is transferred during the waiting period. A transfer within an island initiates an automatic annexation.

History

In 1983, The Dalles UGB was acknowledged by the Land Conservation and Development Commission (LCDC). The UGB was intended to meet the growth needs of the city for the following 20 years. In 1986 Congress adopted the Columbia River National Scenic Area Act and established the Columbia River Gorge Commission. The Gorge Commission exempted most of the area within the UGB from provisions of the Act. Exemption is consistent with section 4(f) of the *Columbia River Gorge National Scenic Area Act* (Title 16 U.S.C. §544 Sec.4(f)).

In 1993 the City reviewed the Comprehensive Land Use Plan. The City adopted policies to encourage affordable housing, allow mixed use commercial centers (nodal). Residential development within the city was averaged at 5.0 dwellings per gross buildable acre. In 2005 The City received a grant to conduct growth management studies from the Oregon Department of Land Conservation and Development (DLCD). As a result of those studies the City determined there was an unmet need of 745 buildable acres within the UGB. In order to meet the density requirements of Goal 14 of the Oregon State Land Use Planning Goals, the City increased density to 5.6 units per buildable acre which reduced the unmet need to 682 buildable acres within the UGB. Due to state regulations and local values the City chose to avoid agricultural lands to the south and west as they are *high-value* agricultural land. As a result of the 2007 UGB expansion 434 acres were considered buildable for residential purposes. In 2010 the unmet need was revised down again following the land needs revision and Land Use and Development Ordinance (LUDO) Amendments to 457 buildable acres (at 5.6 units per gross acre). The breakdown of needs is: 395 acres low density; 51 acres medium density; and 11 acres high density. The *Residential Land Needs Report* (Winterbrook, April 2007) determined that if The Dalles continued at 2007 density levels and development types, residential land needs would be 604 acres through 2026 (at 5.0 units per gross

acre).

The employment land needs have been affected by two events. The first is the development of 50 industrial acres by Google. The second is the permanent shut down of Northwest Aluminum which placed 120 industrial acres on the market. Rather than development current green spaces for industrial use, the city has opted to utilize the space vacated by Northwest Aluminum.

The continuation 1983 twenty-year UGB and development density ordinances were insufficient to meet future needs. Considering topographic restrictions within the 1983 twenty-year UGB, inclines of 25 degrees or greater and in consideration of the Nation Scenic Area lands, changes were required to meet current and future needs. Annexation of all land within the UGB and subsequent expansion of the UGB were appropriate. Annexation allows The Dalles to establish Urban Area Expansion and related ordinances for development density. It also allows The Dalles to establish a plan for the next 20 years that meets the city's growth needs. Given the forgoing as well as the following rationale, annexation and expansion of the UGB was adopted.

Annex Rationale

Major Points

- Combined School Districts
- Improved Law Enforcement Coverage
- UGB Expansion

Minor Points

- UGB Planning Administration

In 2005 the City Council directed staff to proceed with annexation of all property within the UGB at the earliest opportunity allowed by state law. In 2005 the Oregon State Senate developed a bill (SB380) which clarified the "double majority" in ORS 195.205-195.235. The bill was passed and signed by then Governor Kulongoski. The "double majority" rule means, a majority of voters within city limits and a majority of

those outside city limits and within the UGB. House Bill 2760 also passed and was signed by the Governor. This Bill established a three-year pause for island annexations.

City Staff prepared a measure and placed it on the November 7th 2006 ballot (measure 33-57). The intent of the measure was the annexation *en masse* of all property within the UGB. This would have been the most effective and efficient method of annexation allowed by law. In that vote 4,513 votes were cast within the city of The Dalles, with a majority (2,959) voting in favor of annexation. Those outside city limits and within the UGB totaled 826 votes cast, with a majority (639) voting in opposition. As a result, the measure failed to gain a double majority. Annexation *en masse* had failed. As a result, the City Council began a process of annexation by periodic resolution in accordance with ORS 222.125 and ORS 222.120 on properties that were contiguous to city limits, or where island annexation is allowed by state law.

For years the city has been collecting consent to annex as properties develop or when they request city sewer or water service; when properties with the consent to be annexed become contiguous to city limits it is annexed. *Island* annexation occurs when property is abutted (except street right-of-way less than 25%) or completely surrounded by city territory. There is at least a three-year hold on affective dates for *island* annexation in accordance with ORS 222.750. Annexation by transfer of ownership occurs when the city annexes by ordinance an *island* property where transfer of ownership occurs. In such a case, annexation of said property is immediate upon *transfer* (ORS 222.750) and the waiting period no longer applies. The final method, which is rarely used, is in the event of septic failure where the septic system is within three-hundred feet of the city sewer system. In such an event the property is annexed and connected to the city sewer system.

As of September 2014, 973.02 acres have been annexed. There are no properties

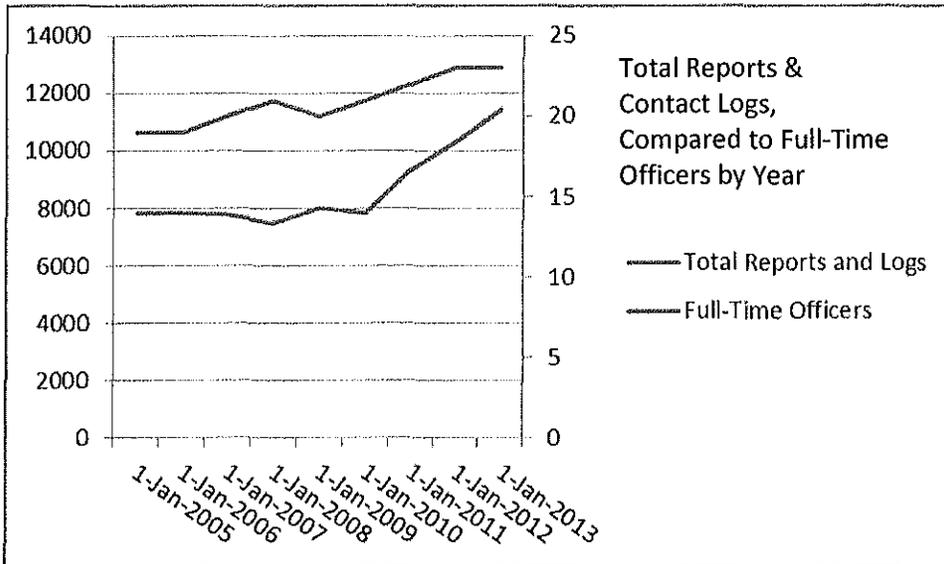
currently in the three year waiting period and few acres remain to be annexed (Exhibit B). Without further action by the Council to amend the policy, annexation of remaining property will continue as set forth above. There are 241.98 acres remaining outside city limits and with the UGB.

Effects of Annexation

The following is a summary of how city departments have been effected by annexation, particularly their interaction with the public.

Police Department

At the time the annexation policy was adopted (2006), the city's police department had nineteen full-time officers. For that year, there were 7,861 logs and reports written; 1,013 arrests made; 1,378 charges filed and 1,387 tickets issued. In 2013 there were twenty-three full-time officers on staff. For that year there were 11,447 logs and reports; 1,062 arrests made; 2,051 charges filed and 1,117 tickets issued. The total logs and reports for the year reflect the total calls for service. In 2012 and 2013 the total calls for service were higher than previous years. The average calls for service from 2005-2013 was 8,668. In 2013 there were 11,447; in 2012 there were 10,340. Arrests and tickets have remained relatively consistent, while charges filed did see an increased slightly in 2013 at 2,051 (1,648 is average).



In 2006 The Dalles had 1.58 officers per 1,000 residents. In 2013 we had 1.59 officers per 1,000 residents. The Oregon State average is 1.6 officers per 1,000 residents. The national average for cities with populations of 10,000 to 24,999 is 1.9 officers per 1,000 residents. Police Chief Jay Waterbury has received positive feedback from the public who reside in annexed areas now serviced by the city police department. In 2012 total calls for assistance increase 19.3% above average; while total arrests, charges and tickets remained relatively constant. In 2013 total calls increased 32% above average; while arrests, charges and tickets have remained relatively constant.

Code Enforcement

Nikki Lesich, the City Code Enforcement Officer has received some considerable feedback from the community. There has been both positive and negative feedback regarding the annexation, particularly in the west. While some comments to Code Enforcement have been negative this has mainly centered on the method the city adopted. However, this method was largely dictated by Oregon Law. Some of the more positive feedback regards neighbors who have been living with what they consider a nuisance now wanting it addressed. In most of these cases it is either noise or condition of a

neighbor's property. Some feedback received appears to indicate that residents do not know they are now in city limits. The changing of standards from county ordinance compliance to city ordinance compliance has caught some off-guard.

Code Enforcement workload peaked in March 2011 and March 2012 as large annexations took effect in those years. A large part of the repeat enforcement is in this area and involves nuisance and land use compliance issues. This has caused Planning and Codes Enforcement to work together, to the benefit of the personnel in those departments.

Most recently Codes Enforcement returned two-hundred-two phone calls; performed two-hundred-sixty-four property inspections and sent one-hundred-thirty-two compliance letters. There have been four special cases in 2014 involving the City Attorney, Planning, The Port of The Dalles and The Dalles Police Department. Thus far, there have been eight property abatements for 2014.

Public Works

The impact on Public Works due to the annexation has thus far been negligible. There will be an increase in costs associated with street maintenance once the details are worked out with Wasco County. Local access roads in areas annexed have transferred from county to city jurisdiction. There has been a slight decrease in city sewer revenue for services provided by Public Works due to lower in-city rates. The utility rates are covered in more detail under Finance.

Planning

The Planning Department's work load had increase as the result of annexation process itself. There were ten to fifteen enforcement actions taken in the annexed area last year. That workload has diminished in recent months as the number of properties being annexed has slowed.

Library

There has been some increase in the number of people seeking library services. However, it is believed that this is likely due to the poor economy over the last several years rather than an effect of annexation.

Legal

Initial workload increased due to annexation legal procedures. Since then the case load has remained relatively constant (see Police and Code Enforcement for variances).

Finance

There has been a marginal increase in workload due to an increase in property tax calculations for annexed properties. As annexation proceeded, revenue sources changed. As properties were annexed, water and sewer rates changed to inside city limits from outside city limits. For these utilities on those properties the revenue went down. On residential property over \$240,000 in assessed value the revenue gained through city property tax off-sets the loss in outside city limits utility fees.

In addition, the city provides planning administration within the UGB for Wasco County. As territory within the UGB has been annexed the amount Wasco County pays The Dalles has declined.

Administration

The City Manager's Office has not seen an appreciable difference in public contacts or comments since the annexation policy began in 2006.

Results

The rationale for the city's annexation policy has largely been achieved. Properties within the UGB that the city is able to annex have been annexed. While there are a few exceptions, it is foreseeable that these properties would be annexed at some

point in the future. However, the time-frame for this to occur is unknown. Exhibit A shows the Proposed annexation Boundary and City Limits when the city began its annexation; Exhibit B shows the current city limits.

The Dalles has improved law enforcement coverage to annexed areas. The city's police department has received positive feedback from residents, particularly at the west end of the city. These areas were formerly outside city limits. Now that these areas are within city limits regular patrols by city police officers can be and are conducted. Residents have commented that they now feel safe in their neighborhood.

The Dalles now has a combined school district. This will help establish a sense of The Dalles being one community.

Designation of areas outside city limits as Urban Growth Areas (UGA) and any future UGB expansion can now take place if development need warrants and in accordance with ORS 197.296-197.314; the 1983, 20 years UGB has been annexed. UGB Planning Administration has diminished significantly as a result of annexation, as have the fees paid to the City by Wasco County for that service. Any action by the city shall conform to Oregon Land Use Planning Goals and in particular Goals 1, 2 & 14 as they pertain to UGB Planning, Urbanization and Annexation. Goal 1 of the Oregon Land Use Planning Goals pertains to citizen involvement; Goal 2 is land use planning and Goal 14 is Urbanization.



AGENDA STAFF REPORT

MEETING DATE	AGENDA LOCATION	AGENDA REPORT #
October 13, 2014	Action Items 11, B	14-069

TO: Honorable Mayor and City Council

FROM: Dan Durow, Economic Development Specialist

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

DATE: October 1, 2014

ISSUE: City Council Resolution to Initiate a Street Vacation Process for a Portion of the Alley between E. 1st and E. 2nd Streets for the Granada Block Redevelopment Project.

BACKGROUND: The alley right-of-way is located between East 1st and 2nd Streets, and between Court and Washington Streets and includes approximately the eastern half-block of the alley as shown on the attached drawing. This alley vacation is necessary to consolidate the site for the Hotel/Conference Center building complex. The consideration of the alley vacation is also part of the responsibilities of the City and Urban Renewal Agency under the terms of the Memorandum of Understanding (MOU) and the Disposition and Development Agreement (DDA) with the developers. Upon Completion of the partial alley vacation, half of the alley to be vacated (divided through the middle) will revert to the ownership of the property on either side. All of this property ownership is currently with the Urban Renewal Agency and will be sold to the developers as part of the Phase I Hotel/Conference Center project.

Enclosed with this staff report is Resolution No. 14-031, which will initiate the vacation proceeding. If the Resolution is approved, a public hearing will be held on the proposed alley vacation at a later date.

BUDGET IMPLICATIONS: The costs associated with this proposed alley vacation are minimal, including the costs of publishing notices and some staff time. When the right-of-way is vacated, ORS 271.150 requires that "The petitioner (City) for such

vacation shall bear the recording costs and the cost of the preparing and filling the certified copy of the ordinance and map.” It is estimated that the cost of such filing will be about \$600.00 along with some minor additional costs to prepare the final map and legal description for filing.

ALTERNATIVES:

- A. Staff recommendation: *Move to adopt Resolution No. 14-031 initiating the street vacation process for a portion of the alley between E. First and Second Streets and between Court and Washington Streets for the Granada Block Redevelopment Project.*

- B. Do not adopt the resolution and provide staff with additional direction.

RESOLUTION NO. 14-031

**INITIATING A STREET VACATION PROCEDURE FOR A
PORTION OF THE ALLEY BETWEEN EAST 1ST. AND 2ND
STREETS AND BETWEEN COURT AND WASHINGTON
STREETS FOR THE GRANADA BLOCK PROJECT**

WHEREAS, by this Resolution, the City Council is initiating a street vacation for a portion of the alley between E. 1st and 2nd Streets, and between Court and Washington Streets; and

WHEREAS, street vacations are governed by General Ordinance No. 99-1230 of the City of The Dalles; and

WHEREAS, under General Ordinance No. 99-1230, Section 6, the City Council may initiate the vacation process by providing notice (ORS 271.110) of public hearing and posting of notice no less than 14 days prior to the hearing; and

WHEREAS, it is in the best interest of the public for the City Council to initiate a public hearing for the requested partial alley vacation;

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

Section 1. Street Vacation Initiated. Street Vacation No. 64-14, which is further described on the attached map as "Exhibit 1", is hereby initiated.

Section 2. Officers to Act. The Community Development Department of the City is directed to post and publish notice for the street vacation initiated in Section 1, according to the provisions of ORS 271.110 and City Ordinance No. 99-1230.

Section 3. Effective Date. This resolution shall be effective as of October 13, 2014.

PASSED AND ADOPTED THIS 13th DAY OF OCTOBER, 2014

Voting Yes, Councilors: _____

Voting No, Councilors: _____

Absent, Councilors: _____

Abstaining, Councilors: _____

AND APPROVED BY THE MAYOR THIS 13TH DAY OF OCTOBER, 2014

Stephen E. Lawrence, Mayor

Attest:

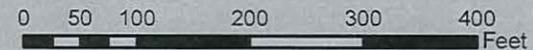
Julie Krueger, MMC, City Clerk



Legend

-  **Parcels**
-  **Roads**
-  **Notified Properties**

City of The Dalles
Granada Block Alley Vacation



Planning Department
September 22, 2014 ~ DMH



CITY of THE DALLES

313 COURT STREET
THE DALLES, OREGON 97058

(541) 296-5481 ext. 1125
FAX: (541) 298-5490

AGENDA STAFF REPORT

Meeting Date	Agenda Location	Agenda Report #
October 13, 2014	Action Items 11, C	14-070

TO: Honorable Mayor and City Council

FROM: Dan Durow; Enterprise Zone Manager

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

DATE: September 24, 2014

ISSUE: Decision on the Enterprise Zone, (4) four or (5) five-year “extended abatement” for Integrated 3D LLC, 3721 Klindt Drive, The Dalles, Oregon, 97058.

BACKGROUND: Integrated 3D LLC has applied for an “extended abatement” period of five (5) years under the Enterprise Zone program. The standard three-year abatement period can be extended to four or five years if certain qualifications are met and with the approval of the zone sponsors; City of The Dalles and Wasco County. Beside all the regular qualifications, during each of the five years starting with the first year of qualification, the average annual compensation for new employees must be at least 150 percent of the county average wage. The 2012 Wasco County average annual payroll rate (latest available) is \$33,005, of which 150 percent equals \$49,508.

The zone sponsors can require additional local requirements for the additional 4th and 5th years. The Oregon Revised Statutes (ORS’s) and the Oregon Administrative rules (OAR’s) provide the guidelines by which these additional requirements can be placed on the applicant. One important provision is that the sponsor must be consistent with all businesses in its application of the additional requirements as well as the pattern of approving or not approving the extended abatement period. However, the requirements may be differentiated among relevant business firms; for example, the size of the investment or the firm’s type of industry. The differentiation must be based upon definable characteristics, consistently used, and explained in terms of a public purpose.

The City and County did approve one, five-year extended abatement agreement in the first ten-year Enterprise Zone Designation from 1986 to 1996, which was for Northwest Aluminum

Specialties. In the second ten-year Enterprise Zone Designation from 1996 to 2007, there was again one business approved for a five-year extended abatement agreement, which was Homeshield Corporation. However, Homeshield Corporation was not able to qualify for the additional 4th and 5th years because they did not meet the 150 percent wage requirement in the first year of the exemption. They did qualify for, and took advantage of, the standard 3-year exemption.

In the third, and current, ten-year Enterprise Zone Designation, from 2007 to 2017, there has been one business approved for a five-year extended abatement agreement, Columbia Phytotechnology, LLC. However, they were also not able to qualify for the extended abatement because they did not meet the 150 percent wage requirement during the first year.

Design LLC, was approved twice under a different category of extended abatement called “long-term”, which is a 7 to 15-year abatement period. In the agreements with Design LLC, they are required to contribute annually for all fifteen years to support local institutions and projects. Although the Design LLC development is unusual and the firm is clearly definable and different from Northwest Aluminum Specialties, Homeshield Corporation, and Columbia Phytotechnology, it does indicate that some requirement for supporting community needs would be fair and equitable.

After the Columbia Phytotechnology, LLC application was received, a few City and County staff and elected representatives met to discuss a suggested policy of additional requirements for extended abatements. This was done in order to give the Enterprise Zone Manager some direction as to what would be acceptable for a standard approach to future extended abatement agreements.

During the City and County Enterprise Zone Designation application process in 2007, School District-21 asked that they be included in any negotiations when a business is asking for an extended abatement. This requirement was then added to the E.Z. Designation Order from the State. School District-21 was invited to participate in discussions with Columbia Phytotechnology but was unable to be at the initial meeting. The school district’s superintendent did submit comments later through emails and phone calls. There was general agreement on this approach.

Any “cash contribution” provided by a business through the Extended Abatement Agreement would be divided equally between the City and County. This money would be discretionary and could be spent as provided for in the Agreement. In addition, the City and County could spend it on goods or services provided by another taxing district.

The following table and chart of Tax Savings and Cash Contribution for the additional 4th and/or 5th years shows what the direction was for any future extended exemptions agreements.

TABLE

Tax Savings for each of years 4 and 5	Tax Savings Per Year	Total Cash Contribution Per Year
	\$0.00 to \$29,999	15 percent of tax savings
	\$30,000 to \$69,999	20 percent of tax savings
	\$70,000 to \$119,999	25 percent of tax savings
	\$120,000 to \$189,999	30 percent of tax savings
	\$190,000 to \$299,999	35 percent of tax savings
	\$300,000 to \$489,999	40 percent of tax savings
	\$490,000 to \$unlimited	45 percent of tax savings

However, Integrated 3D LLC has proposed alternative extended abatement requirements that would be implemented in the 4th and 5th years:

“Integrated 3D™ LLC is committed to being a catalyst to educational and entrepreneurial growth in The Dalles, Oregon. As a start-up with very limited resources and profit during its initial 5 years of business, Integrated 3D™ LLC will perform the following sweat equity form of cash contribution valued at \$3,000 - \$5,000 per class of students in time and materials.”

In the fourth and fifth calendar years of the extended exemption period and prior to December 31st of those fourth and fifth years, the Firm shall contribute to the Zone Sponsors by holding a total of three (3) annual STEM (science, technology, engineering, and mathematics) open houses, one (1) for each class from each of the Wasco County middle and high schools, and Columbia Gorge Community College in which the students and teachers visit the Firm's operations and have instruction on the 3D printing machines and 3D CAD engineering and modeling. The students will then go back to their classrooms and using a student version of SolidWorks, on which they have had and continue to have classroom instruction, create 3D design projects that the Firm will print for free. The 3D design projects can be created and printed by each individual student or one or two more complicated designs as class-wide projects. There will be a limitation on the number of 3D printer hours that each class can have, which will be determined at the time of design work. It is anticipated that many simple projects would use about the same amount of 3D printer time as one or two more complicated projects. To qualify, the STEM teacher and students must agree to obtain free SolidWorks software, have some preliminary instruction and continue instruction before submitting the design or designs to print.

This alternative proposal would be unique to Integrated 3D LLC. It is important to note that the Statutory provisions noted above about being consistent among businesses when approving extended abatements must be met. The City and County could find that although the contribution differs in form from the standard approach, the monetary value of the Integrated 3D LLC alternative approach actually exceeds the cash contribution required by the standard approach, which is acceptable by the company and therefore equitable with any future extended abatement requests that would use the standard approach. The tax savings on \$1,000,000 AV, (the amount of new tax value suggested in the Enterprise Zone Exemption Application) would be about \$22,000 per year not considering any depreciation value on the equipment.

[\$1,000,000AV x \$22.00/\$1,000AV]. The amount of the 'cash contribution' based upon the standard approach in the table would be 0.15 percent of the tax savings, or in this case about \$3,300 per year. The applicant's alternative contribution value (determined by them) would be between \$9,000 and \$15,000 per year. [3 classes x \$3,000 to \$5,000 /class]

The County Commission and City Council as sponsors will need to approve the Agreement in consultation with SD-21 and pass respective resolutions containing the identical requirements. School District-21 was notified of these proposed requirements and asked to provide input. Staff will provide their comments at the meeting or a representative of SD-21 will be there to present verbal comments.

BUDGET IMPLICATIONS: The Enterprise Zone program is intended to be another tool to encourage economic development and jobs. Allowing an additional two years of tax exemption does provide greater incentive for those businesses that pay higher wages to expand or locate in Wasco County. Budget impacts will depend on the value of investments for each business.

STAFF RECOMMENDATION: Approve Resolution No. 14-028, approving the proposed Extended Abatement Agreement with Integrated 3D LLC, for (5) five years, and recommend approval to the Wasco County Commission.

Suggested motion: *Move to approve Resolution No. 14-028, approving the Extended Abatement Agreement with Integrated 3D LLC for (5) five years.*

ALTERNATIVES:

1. Approve the Agreement with Integrated 3D LLC for a (4) four-year extended tax abatement period. If this is the course of action, then the standard approach to any future requests would be to only allow a 4th year.
2. Modify the proposed Agreement in some other way and recommend that the County Commission approve the modified agreement.
3. Do not approve any extended abatement period. If this is the course of action, then the standard approach to any future requests would be to not allow any additional years of exemption.

THE DALLES/WASCO COUNTY ENTERPRISE ZONE III

EXTENDED ABATEMENT AGREEMENT

WITH

INTEGRATED 3D LLC

**WRITTEN AGREEMENT WITH THE SPONSORS OF THE
DALLES/WASCO COUNTY ENTERPRISE ZONE III AND
INTEGRATED 3D LLC, TO EXTEND PROPERTY TAX EXEMPTION TO
FIVE (5) CONSECUTIVE YEARS IN TOTAL FOR CAPITAL
INVESTMENT AND JOB CREATION.**

The sponsors of The Dalles/Wasco County Enterprise Zone III comprising the governing bodies of the City of The Dalles and Wasco County, Oregon, hereinafter the "Zone Sponsors" and Integrated 3D LLC, hereinafter the "Firm" do hereby enter into the Integrated 3D LLC, Extended Abatement Agreement, hereinafter the "Agreement"; an Agreement for extending the period of time in which the Firm shall receive an exemption on its proposed investments in qualified property in The Dalles/Wasco County Enterprise Zone III contingent on certain special requirements, under ORS 285C.160.

The Zone Sponsors and the Firm jointly acknowledge that, subject to approval of the application for authorization submitted on November 19, 2013, and the satisfaction of other requirements under ORS 285C.050 to 285C.250, the Firm is eligible for three years of complete exemption on its qualified property; that nothing in this Agreement shall modify or infringe on this three-year exemption or the requirements thereof, and that this Agreement becomes null and void if the Firm does not qualify for these three years of the exemption.

The Zone Sponsors extend the Firm's property tax exemption an additional two (2) years on all property that initially qualifies in The Dalles/Wasco County Enterprise Zone III in the assessment year beginning on January 1, 2015, and thereby sets a total period of exemption of five (5) consecutive years during which statutory requirements for the standard three-year enterprise zone exemption must also be satisfied and maintained.

CONFIRMATION OF STATUTORY PROVISIONS

In order to receive the additional two (2) years of enterprise zone exemption granted herein, the Firm agrees herewith under 285C.160(3)(a)(A) that for each year of the entire five-year exemption period, all of the Firm's new employees shall receive an average level of compensation equal to or greater than 150 percent of the county average annual wage, in accordance with the specific definitions and guidelines in Oregon

Administrative Rules (OAR), Chapter 123, Division 65 (123-065-41), which provides that:

1. Such compensation may include non-mandatory benefits that can be monetized;
2. The county average annual wage is set at the time of authorization, except as pursuant to ORS 285C.160(4), according to the 2012 Wasco County average annual payroll rate of \$33,005, of which 150 percent equals \$49,508 (current rate until 12-31-14). [*The actual rate will be based upon when the first year of exemption occurs and the latest rates published by the State.*]
3. Only employees working at jobs filled for the first time after the application for authorization but by December 31st of the first full year of the initial exemption and performed within the current boundaries of The Dalles/Wasco County Enterprise Zone III are counted; and
4. Only full-time, year-round and non-temporary employees engaged a majority of their time in the Firm's eligible operations consistent with ORS 285C.135 & 285C.200(3) are counted, regardless if such employees are leased, contracted for or otherwise obtained through an external agency or are employed directly by the Firm.

LOCAL ADDITIONAL REQUIREMENTS

For the Firm to receive the additional two (2) years of enterprise zone exemption granted herein, the Zone Sponsors and the Firm agree that the Firm shall do the following, in addition to statutory requirements, as reasonably requested by the Zone Sponsors under ORS 285C.160(3)(a)(B).

Integrated 3D™ LLC is committed to being a catalyst to educational and entrepreneurial growth in The Dalles, Oregon. As a start-up with very limited resources and profit during its initial 5 years of business, Integrated 3D™ LLC will perform the following "sweat equity" form of community contribution valued at \$3,000 - \$5,000 per "class" of students in time and materials:

In the fourth and fifth calendar years of the extended exemption period and prior to December 31st of those fourth and fifth years, the Firm shall contribute to the Zone Sponsors by holding a total of three (3) annual STEM (science, technology, engineering, and mathematics) open houses, one (1) for each class from each of the Wasco County middle and high schools, and Columbia Gorge Community College in which the students and teachers visit the Firm's operations and have instruction on the 3D printing machines and 3D CAD engineering and modeling. The students will then go back to their classrooms and using a student version of SolidWorks, on which they have had and continue to have classroom instruction, create 3D design projects that the Firm will print for free. The 3D design projects can be created and printed by each individual student or one or two more complicated designs as class-wide projects. There will be a limitation on the number of 3D printer hours that each class can have, which will be determined at

the time of design work. It is anticipated that many simple projects would use about the same amount of 3D printer time as one or two more complicated projects. To qualify, the STEM teacher and students must agree to obtain free SolidWorks software, have some preliminary instruction and continue instruction before submitting the design or designs to print.

ACCEPTING FOR THE SPONSORS

City of The Dalles
Stephen E. Lawrence, Mayor

_____, 2014
Signature

Wasco County Commission
Rod Runyon, Commission Chair

_____, 2014
Signature

ACCEPTING FOR INTEGRATED 3D LLC

_____, Owner

Title: _____

_____, 2014
Signature

RESOLUTION NO. 14-028

**A RESOLUTION APPROVING THE ENTERPRISE ZONE EXTENDED
TAX ABATEMENT AGREEMENT BETWEEN THE SPONSORS OF THE
DALLES/WASCO COUNTY ENTERPRISE ZONE III AND
INTREGRATED 3D LLC**

WHEREAS, the Oregon Legislative Assembly has adopted the provisions of ORS 285C.050 to 285C.250 to provide tax incentives to certified business firms that invest in a qualifying facility located within a non-urban enterprise zone in a county with chronically low income or chronic unemployment; and

WHEREAS, the City of The Dalles and Wasco County jointly sponsor a non-urban enterprise zone known as The Dalles/Wasco County Enterprise Zone III; and

WHEREAS, Integrated 3D LLC proposes to make investments in a production facility and to operate said production facility on real property located inside The Dalles/Wasco County Enterprise Zone III, which will employ a number of persons that will be compensated on average at a rate of at least 1.5 times that of the County average annual wage; and

WHEREAS, to facilitate the investment in the production facility by Integrated 3D LLC within The Dalles/Wasco County Enterprise Zone III, it is necessary for a written Agreement between Integrated 3D LLC and the City of The Dalles and Wasco County to be executed, and for the governing bodies of the City and County to adopt resolutions approving the property tax exemption for Integrated 3D LLC; and

WHEREAS, the City Council has reviewed the terms of the proposed Enterprise Zone Extended Tax Abatement Agreement between the City of The Dalles, Wasco County, and Integrated 3D LLC, and the City Council finds that approval of the Agreement is in the best interests of the citizens of The Dalles.

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

Section 1. Agreement Approved. The City Council hereby approves the Enterprise Zone Extended Tax Abatement Agreement between the City of The Dalles, Wasco County, and Integrated 3D LLC. The Mayor is authorized to execute the agreement on behalf of the City.

Section 2. Effective Date. This Resolution shall be considered effective as of October 13, 2014.

PASSED AND ADOPTED THIS 13TH DAY OF OCTOBER 2014

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

AND APPROVED BY THE MAYOR THIS 13TH DAY OF OCTOBER 2014

Stephen E. Lawrence, Mayor

Attest:

Julie Krueger, MMC, City Clerk

THE DALLES/WASCO COUNTY ENTERPRISE ZONE III

EXTENDED ABATEMENT AGREEMENT

WITH

INTEGRATED 3D LLC

**WRITTEN AGREEMENT WITH THE SPONSORS OF THE
DALLES/WASCO COUNTY ENTERPRISE ZONE III AND
INTEGRATED 3D LLC, TO EXTEND PROPERTY TAX EXEMPTION TO
FIVE (5) CONSECUTIVE YEARS IN TOTAL FOR CAPITAL
INVESTMENT AND JOB CREATION.**

The sponsors of The Dalles/Wasco County Enterprise Zone III comprising the governing bodies of the City of The Dalles and Wasco County, Oregon, hereinafter the "Zone Sponsors" and Integrated 3D LLC, hereinafter the "Firm" do hereby enter into the Integrated 3D LLC, Extended Abatement Agreement, hereinafter the "Agreement"; an Agreement for extending the period of time in which the Firm shall receive an exemption on its proposed investments in qualified property in The Dalles/Wasco County Enterprise Zone III contingent on certain special requirements, under ORS 285C.160.

The Zone Sponsors and the Firm jointly acknowledge that, subject to approval of the application for authorization submitted on November 19, 2013, and the satisfaction of other requirements under ORS 285C.050 to 285C.250, the Firm is eligible for three years of complete exemption on its qualified property; that nothing in this Agreement shall modify or infringe on this three-year exemption or the requirements thereof, and that this Agreement becomes null and void if the Firm does not qualify for these three years of the exemption.

The Zone Sponsors extend the Firm's property tax exemption an additional two (2) years on all property that initially qualifies in The Dalles/Wasco County Enterprise Zone III in the assessment year beginning on January 1, 2015, and thereby sets a total period of exemption of five (5) consecutive years during which statutory requirements for the standard three-year enterprise zone exemption must also be satisfied and maintained.

CONFIRMATION OF STATUTORY PROVISIONS

In order to receive the additional two (2) years of enterprise zone exemption granted herein, the Firm agrees herewith under 285C.160(3)(a)(A) that for each year of the entire five-year exemption period, all of the Firm's new employees shall receive an average level of compensation equal to or greater than 150 percent of the county average annual wage, in accordance with the specific definitions and guidelines in Oregon

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1. Such compensation may include non-mandatory benefits that can be monetized;
2. The county average annual wage is set at the time of authorization, except as pursuant to ORS 285C.160(4), according to the 2012 Wasco County average annual payroll rate of \$33,005, of which 150 percent equals \$49,508 (current rate until 12-31-14). [*The actual rate will be based upon when the first year of exemption occurs and the latest rates published by the State.*]
3. Only employees working at jobs filled for the first time after the application for authorization but by December 31st of the first full year of the initial exemption and performed within the current boundaries of The Dalles/Wasco County Enterprise Zone III are counted; and
4. Only full-time, year-round and non-temporary employees engaged a majority of their time in the Firm's eligible operations consistent with ORS 285C.135 & 285C.200(3) are counted, regardless if such employees are leased, contracted for or otherwise obtained through an external agency or are employed directly by the Firm.

LOCAL ADDITIONAL REQUIREMENTS

For the Firm to receive the additional two (2) years of enterprise zone exemption granted herein, the Zone Sponsors and the Firm agree that the Firm shall do the following, in addition to statutory requirements, as reasonably requested by the Zone Sponsors under ORS 285C.160(3)(a)(B).

Integrated 3D™ LLC is committed to being a catalyst to educational and entrepreneurial growth in The Dalles, Oregon. As a start-up with very limited resources and profit during its initial 5 years of business, Integrated 3D™ LLC will perform the following "sweat equity" form of community contribution valued at \$3,000 - \$5,000 per "class" of students in time and materials:

In the fourth and fifth calendar years of the extended exemption period and prior to December 31st of those fourth and fifth years, the Firm shall contribute to the Zone Sponsors by holding a total of three (3) annual STEM (science, technology, engineering, and mathematics) open houses, one (1) for each class from each of the Wasco County middle and high schools, and Columbia Gorge Community College in which the students and teachers visit the Firm's operations and have instruction on the 3D printing machines and 3D CAD engineering and modeling. The students will then go back to their classrooms and using a student version of SolidWorks, on which they have had and continue to have classroom instruction, create 3D design projects that the Firm will print for free. The 3D design projects can be created and printed by each individual student or one or two more complicated designs as class-wide projects. There will be a limitation on the number of 3D printer hours that each class can have, which will be determined at

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ACCEPTING FOR THE SPONSORS

City of The Dalles
Stephen E. Lawrence, Mayor

Signature Dated, _____, 2014

Wasco County Commission
Rod Runyon, Commission Chair

Signature Dated, _____, 2014

ACCEPTING FOR INTEGRATED 3D LLC

_____, Owner

Title: _____

Signature Dated, _____, 2014

RESOLUTION NO. 14-031

**A RESOLUTION APPROVING THE ENTERPRISE ZONE EXTENDED
TAX ABATEMENT AGREEMENT BETWEEN THE SPONSORS OF THE
DALLES/WASCO COUNTY ENTERPRISE ZONE III AND
INTREGRATED 3D LLC.**

WHEREAS, the Oregon Legislative Assembly has adopted the provisions of ORS 285C.050 to 285C.250 to provide tax incentives to certified business firms that invest in a qualifying facility located within a non-urban enterprise zone in a county with chronically low income or chronic unemployment; and

WHEREAS, the City of The Dalles and Wasco County jointly sponsor a non-urban enterprise zone known as The Dalles/Wasco County Enterprise Zone III; and

WHEREAS, Integrated 3D LLC proposes to make investments in a production facility and to operate said production facility on real property located inside The Dalles/Wasco County Enterprise Zone III, which will employ a number of persons that will be compensated on average at a rate of at least 1.5 times that of the County average annual wage; and

WHEREAS, to facilitate the investment in the production facility by Integrated 3D LLC within The Dalles/Wasco County Enterprise Zone III, it is necessary for a written Agreement between Integrated 3D LLC and the City of The Dalles and Wasco County to be executed, and for the governing bodies of the City and County to adopt resolutions approving the property tax exemption for Integrated 3D LLC; and

WHEREAS, the City Council has reviewed the terms of the proposed Enterprise Zone Extended Tax Abatement Agreement between the City of The Dalles, Wasco County, and Integrated 3D LLC, and the City Council finds that approval of the Agreement is in the best interests of the citizens of The Dalles.

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

Section 1. Agreement Approved. The City Council hereby approves the Enterprise Zone Extended Tax Abatement Agreement between the City of The Dalles, Wasco County, and Integrated 3D LLC. The Mayor is authorized to execute the agreement on behalf of the City.

Section 2. Effective Date. This Resolution shall be considered effective as of October 13, 2014.

PASSED AND ADOPTED THIS 13TH DAY OF OCTOBER 2014.

Voting Yes, Councilors: _____

Voting No, Councilors: _____

Abstaining, Councilors: _____

Absent, Councilors: _____

AND APPROVED BY THE MAYOR THIS 13TH DAY OF OCTOBER 2014.

Stephen E. Lawrence, Mayor

Attest:

Julie Krueger, MMC, City Clerk



CITY OF THE DALLES

313 COURT STREET
THE DALLES, OREGON 97058

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

AGENDA STAFF REPORT

CITY OF THE DALLES

MEETING DATE:	AGENDA LOCATION:	AGENDA REPORT #
October 13, 2014	Discussion Items 12, A	14-073

TO: Honorable Mayor and City Council

FROM: Gene E. Parker, City Attorney

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

DATE: October 2, 2014

ISSUE: Discussion of proposed General Ordinance establishing a tax on the sale of marijuana and marijuana-infused products in the City of The Dalles.

RELATED CITY COUNCIL GOAL: None.

PREVIOUS AGENDA REPORT NUMBERS: None.

BACKGROUND: Ballot Measure #91, an initiative measure on the November 4, 2014 ballot, would allow the possession, manufacture, and sale of marijuana by and to adults, subject to state licensing, regulation, and taxation. There is currently no provision in Oregon law which would prohibit a municipality from taxing marijuana. However, Measure 91 includes the following provision:

“SECTION 42. State has the exclusive right to tax marijuana. No county or city of this state shall impose any fee or tax, including occupation taxes, privilege taxes and inspection fees, in connection with the purchase, sale, production, processing, transportation, and delivery of marijuana items.”

Despite this language in the ballot measures, several cities, including Ashland, Tigard, Happy Valley, and Central Point, relying upon the “home rule” provisions in their city charters, have

adopted ordinances proposing to tax the sale of marijuana. Enclosed with this staff report is a proposed ordinance to establish a tax upon the retail sale of marijuana and marijuana-infused products. The draft ordinance incorporates many of the provisions from the ordinances created in Ashland, Tigard, and Happy Valley. The draft ordinance also includes administrative provisions which are similar to administrative provisions in the City's current transient room tax ordinance.

One issue where there seems to be a variety of approaches in the ordinances regulating marijuana is the rate of taxation. The following is a summary of the approaches taken by cities:

1. Central Point: 5% on gross sales for medical marijuana; 10% on gross sales for marijuana not purchased under the medical marijuana program; and there is a provision for the Council to increase either of these taxes up to 25% of the gross sales.
2. Happy Valley – 0% tax on medical marijuana; 10% tax on gross sales for marijuana not purchased under the medical marijuana program.
3. Tigard – 5% on gross sales for medical marijuana; 10% on gross sales for marijuana not purchased under the medical marijuana program.
4. Ashland – the tax rate was not specified in their ordinance, and it will be established by a Council resolution.

The enclosed draft ordinance for the City proposes to use the approach taken by the City of Ashland.

Another major issue to address concerns the effective date of any ordinance adopted by the City to regulate marijuana. Under the holding in the case of *Advance Resorts of America, Inc. v. City of Wheeler*, 141 Or App 166 (1996), the City cannot include an emergency clause in any ordinance which proposes to establish a tax. This means that if the Council were to adopt an ordinance regulating marijuana on October 27, 2014, the ordinance would not be effective until November 26, 2014.

Under Oregon law, if an initiative measure is adopted, the governor has until 30 days from the date of the election, to issue a proclamation declaring the measure as the law on the effective date of the measure. I am in the process of doing some further research, including consulting with other city attorneys, to determine whether an ordinance which has an effective date beyond November 4, 2014, would be preempted by the language in Section 42 of the initiative measure. I will prepare a supplemental staff report summarizing the results of the additional research.

BUDGET IMPLICATIONS: I have enclosed a copy of a previous memorandum dated August 12, 2014, which included a preliminary analysis of the potential budget implications of a measure to tax marijuana. As the memorandum points out, this analysis is speculative in nature.

ALTERNATIVES:

- A. Staff Recommendation. As this is a discussion item, staff will be looking for direction from the Council as to whether the Council wants to pursue the adoption of an ordinance imposing a tax upon marijuana and marijuana-infused products.

MEMORANDUM

TO: Mayor and City Council
Nolan K. Young, City Manager

FROM: Gene E. Parker, City Attorney

DATE: August 12, 2014

RE: Issues related to possible taxation of marijuana sales

As the Council members may be aware, there is an initiative measure (Measure 91) on the November 4, 2014 ballot which would allow the possession, manufacture, and sale of marijuana by and to adults, subject to state licensing, regulation, and taxation. There is currently no provision in Oregon law which would prohibit a municipality from taxing marijuana. However, Measure 91 includes the following provision:

“SECTION 42. State has the exclusive right to tax marijuana. No county or city of this state shall impose any fee or tax, including occupation taxes, privilege taxes and inspection fees, in connection with the purchase, sale, production, processing, transportation, and delivery of marijuana items.

Some cities have interpreted the provisions of Section 42 of Measure 91, to mean that a local government has the authority to adopt a provision imposing a tax upon the sale of marijuana, provided that provision has been adopted prior to the effective date of the ballot measure. The City of Gold Hill, Oregon adopted a 5% gross receipts tax upon medical marijuana which became effective June 2, 2014, but the city has not actually begun collecting any revenue from the tax. The City of Ashland, Oregon recently adopted an ordinance adopting a tax on the sale of medical marijuana, and upon the sale of recreational marijuana if the voters approve Measure 91. Ashland’s ordinance will take effect upon September 4, 2014. The ordinance provides that the rate of the tax on gross receipts will be established by the City Council by resolution. The tax rate on medical marijuana can go up to 5%, and the tax rate upon the sale of marijuana for recreational use can go up to 10%.

The City Council in Ashland requested that their city staff prepare an economic analysis of a tax on marijuana in the city. The economic analysis noted there was virtually no reliable or verifiable baseline data upon which to base assumptions and projections. The analysis noted that “The amount of revenue that could be generated and the number of people who might be impacted is unknowable”.

The analysis noted there are two important factors; price and market demand. Concerning price, the analysis cited information from the web site “priceofweed.com”, showing that the average retail price of high quality medical marijuana in Oregon is

currently \$209.65 an ounce. The analysis reported that medical marijuana users will typically purchase quantities smaller than one ounce. According to the analysis, an Oregon Medical Marijuana Program (OMMP) cardholder will typically purchase four grams of marijuana (which is equivalent to one-seventh of an ounce) for approximately \$45.00. The analysis assumed that on average, a medical marijuana patient spends \$45.00 per week, or an annual total of \$2,340.00. The analysis also assumed that the prices and purchasing patterns would carry through to a recreational marijuana market, if Measure 91 is approved. Based upon this assumption, the analysis predicted that the typical recreational marijuana user would also spend an average of \$2,340.00 per year on marijuana.

Concerning the factor of market demand, the analysis noted that “There is no way of reliably determining what the potential number of customers for either medical marijuana or recreational marijuana might be in Ashland”. Using the methodology in Ashland’s analysis, we can develop some estimates as to the market demand for medical marijuana and recreational marijuana in The Dalles.

According to the OMMP, there are currently 413 registered medical marijuana cardholders in Wasco County. As the Ashland study noted, there was no way to verify how many of these cardholders were growing their own marijuana, or paying a grower directly for their marijuana, or how many were currently purchasing marijuana from a dispensary, or to determine how many would purchase from a dispensary if one was readily available to them. Given that the City of The Dalles is the largest city in Wasco County, it is reasonable to assume that a dispensary located in The Dalles would attract a significant portion of the available market. It would also seem reasonable to assume that dispensaries in The Dalles would serve a client base of 200.

The Ashland analysis cited statistics from a Pew Research Center Study published in 2013, showing that 48% of all American adults have tried marijuana, and 12% had used it in the prior year. The 2013 US Census Bureau reported the population for Wasco County to be 25,477. Assuming that 12% of all Wasco County residents 21 or over are marijuana users, that would result in a number of 3,057. If you subtract the number of registered medical marijuana cardholders, it would appear there would be 2,644 potential recreational marijuana customers in Wasco County. The Ashland analysis assumed that one-third of the potential customer base for recreational use of marijuana in Jackson County would purchase their marijuana at retail outlets located in Ashland.

Using the methodology of the Ashland analysis, and assuming a 5% gross receipts tax upon medical marijuana, and a 10% gross receipts tax upon the sale of recreational marijuana, the following table summarizes the potential revenue for The Dalles:

<u>Customers</u>	<u>Annual Expense</u>	<u>Tax Rate</u>	<u>Gross</u>	<u>Tax Receipts</u>
Medical Use - 200	\$2,340	@5% - \$117	\$468,000	\$23,400
Recreational - 872	\$2,340	@10% - \$234	\$2,040,480	\$204,048

At the September 8, 2014 Council meeting, during my comment portion of the Agenda, I would like to have a brief discussion with the City Council whether the Council has an interest in pursuing the option of considering an ordinance which would impose a gross receipts tax upon the sale of medical marijuana, and the recreational use of marijuana if Measure 91 is approved at the November 4, 2014 election. If the Council wants to consider this option, staff needs to begin the process of considering what language would be included in such a proposed ordinance, and an ordinance would need to be presented to the Council in time to have the ordinance become effective prior to November 4th.

GENERAL ORDINANCE NO. 14-____

AN ORDINANCE ESTABLISHING A TAX ON THE SALE OF MARIJUANA AND MARIJUANA-INFUSED PRODUCTS IN THE CITY OF THE DALLES

WHEREAS, the City of The Dalles is an Oregon home-rule municipal corporation with a City Charter that grants it all the powers and authority that the constitution, statutes, and common law of the United States and the State of Oregon expressly or impliedly grant or allow as though each such powers were specifically enumerated; and

WHEREAS, that authority and power includes the authority to impose a tax on the sale of marijuana and marijuana-infused products sold within the City; and

WHEREAS, the City desires to tax the sale or transfer of marijuana and marijuana-infused products within the City;

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

Section 1. Purpose. For the purposes of this ordinance, every person who sells marijuana, medical marijuana, or marijuana-infused products in the City of The Dalles is exercising a taxable privilege. The purpose of this ordinance is to impose a tax upon the retail sale of marijuana, medical marijuana, and marijuana-infused products.

Section 2. Definitions. Except where the context otherwise requires, the definitions given in this section govern the construction of this ordinance.

(A) "Finance Director" means the Finance Director for the City of The Dalles or his/her designee.

(B) "Gross sales" means the total amount received in money, credits, property or other consideration from sales of marijuana, medical marijuana and marijuana-infused products that is subject to the tax imposed by this ordinance.

(C) "Marijuana" means all parts of the plant of the Cannabis family Moraceae, whether growing or not; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant or its resin, as may be defined by Oregon Revised Statutes as they currently exist or may from time to time be amended. It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted

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therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination.

- (D) “Oregon Medical Marijuana Program” means the office within the Oregon Health Authority that administers the provisions of ORS 475.300 through 475.346, the Oregon Medical Marijuana Act, and all policies and procedures pertaining thereto.
- (E) “Person” means natural person, joint venture, joint stock company, partnership, association, club, company, corporation, business, trust, organization, or any group or combination acting as a unit, including the United States of America, the State of Oregon and any political subdivision thereof, or the manager, lessee, agent, servant, officer or employee of any of them.
- (F) “Purchase or Sale” means the retail acquisition or furnishing for consideration by any person of marijuana or marijuana-infused products within the City and does not include the acquisition or furnishing of marijuana or marijuana-infused products by a grower or processor to a seller.
- (G) “Registry identification cardholder” means a person who has been diagnosed by an attending physician with a debilitating medical condition and for whom the use of medical marijuana may mitigate the symptoms or effects of the person’s debilitating medical condition, and who has been issued a registry identification card by the Oregon Health Authority.
- (H) “Retail sale” means the transfer of goods or services in exchange for any valuable consideration and does not include the transfer or exchange of goods or services between a grower or processor and a seller.
- (I) “Seller” means any person who is required to be licensed or registered or has been licensed or registered by the State of Oregon to provide marijuana or marijuana-infused products to purchasers for money, credit, property or other consideration.
- (J) “Tax” means either the tax payable by the seller or the aggregate amount of taxes due from a seller during the period for which the seller is required to report collections under this ordinance.
- (K) “Taxpayer” means any person obligated to account to the Finance Director for taxes collected or to be collected, or from whom a tax is due, under the terms of this ordinance.

Section 3. Tax Imposed. A tax is hereby levied and shall be paid by every seller exercising the taxable privilege of selling marijuana and marijuana-infused products as defined in this chapter. The amount of the tax levied shall be established by

the City Council by resolution. The Finance Director is authorized to exercise all supervisory and administrative powers with regard to the enforcement, collection, and administration of the marijuana tax.

Section 4. Deductions. The following deductions shall be allowed against sales received by the seller providing marijuana or marijuana-infused products:

- (A) Refunds of sales actually returned to any purchaser;
- (B) Any adjustments in sales which amount to a refund to a purchaser, providing such adjustment pertains to the actual sale of marijuana or marijuana-infused products and does not include any adjustments for other services furnished by a seller.

Section 5. Seller Responsible for Payment of Tax.

- (A) All amounts of the tax imposed by this ordinance which are collected by a seller are due and payable to the Finance Director on a monthly basis on or before the fifteenth day of the following month, and are delinquent after that date. On or before the fifteenth day of the month following each month of collection by a seller, the seller shall file a return for the proceeding month's tax collections with the Finance Director. The return shall be filed in such a form as the Finance Director may prescribe, specifying the total sales subject to this ordinance and the amount of tax collected under this ordinance. The seller may request or the Finance Director may establish shorter reporting periods for any seller if the seller or Finance Director deems it necessary in order to ensure collection of the tax, and the Finance Director may require further information in the return relevant to the payment of the tax. A return shall not be considered filed until it is actually received by the Finance Director.
- (B) At the time the return is filed, the full amount of the tax collected shall be remitted to the Finance Director. Payments received by the Finance Director for application against existing liabilities will be credited toward the period designated by the taxpayer under conditions that are not prejudicial to the interest of the City. A condition considered prejudicial is the imminent expiration of the statute of limitations for a period or periods.
- (C) Non-designated payments shall be applied in the order of the oldest liability first, with the payment credited first toward any accrued penalty, then to interest, then to the underlying tax until the payment is exhausted. Crediting of a payment toward a specific reporting period will be first applied against any accrued penalty, then to interest, then to the underlying tax. If the Finance Director, in his or her sole discretion, determines that an alternative order of payment application would be in the best interest of the City in a particular tax or factual situation, the Finance Director may order such a

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change. When a shorter return period is required under the provisions of subsection (A), penalties and interest shall be computed according to the shorter return period. Returns and payments are due immediately upon cessation of business for any reason. All taxes collected by sellers pursuant to this ordinance shall be held in trust for the account of the City until payment is made to the City. A separate trust bank account is not required in order to comply with this provision.

- (D) Every seller must keep and preserve, in an accounting format established by the Finance Director, records of all sales made by the dispensary and such other books or accounts as may be required by the Finance Director for a period of three (3) years or until all taxes associated with the sales have been paid, whichever is longer. The City shall have the right to inspect all such records at all reasonable times.

Section 6. Penalties and Interest.

- (A) Original delinquency. Any seller who has not been granted an extension of time for delivery of return and payment of tax due, and who fails to remit any tax imposed by this ordinance prior to delinquency, shall pay a penalty of ten percent (10%) of the amount of the tax due in addition to the amount of the tax.
- (B) Continued delinquency. Any seller who has not been granted an extension of time for delivery of return and payment of tax due, and who has failed to pay any delinquent remittance on or before a period of thirty (30) days following the date on which the remittance first became delinquent, shall pay a second delinquency penalty of fifteen percent (15%) of the amount of the tax due, plus the amount of the tax and ten percent (10%) penalty first imposed.
- (C) Fraud. If the Finance Director determines that the nonpayment of any remittance due under this ordinance is due to fraud or intent to evade the provisions thereof, a penalty of twenty five percent (25%) of the amount of the tax shall be added thereto in addition to the penalties stated in subsections (A) and (B).
- (D) Interest. In addition to the penalties imposed, any seller who fails to remit any tax imposed by this ordinance shall pay interest at the rate of one percent (1%) per month or fraction thereof, without proration for portions of a month, on the amount of the tax due, exclusive of penalties, from the date on which the remittance first became delinquent until paid.
- (E) Penalties merged with tax. Every penalty imposed and such interest as accrues under the provisions of this section shall be merged with and become a part of the tax herein required to be paid.

- (F) Distribution. All sums collected pursuant to the penalty provisions in this section shall be distributed to the City of The Dalles General Fund to offset the costs of auditing and enforcement of this tax.

Section 7. Failure to Report and Remit Tax – Determination by Finance Director. If any seller shall fail to make, within the time provided in this ordinance, any report of the tax required by this ordinance, the Finance Director shall proceed in such manner as deemed best to obtain facts and information on which to base the estimate of tax due. As soon as the Finance Director shall procure such facts and information as is able to be obtained, upon which to base the assessment of any tax imposed by this ordinance and payable by any seller, the Finance Director shall proceed to determine and assess against such seller the tax, interest and penalties provided for by this ordinance. In case such a determination is made, the Finance Director shall give a notice of the amount so assessed by having it served personally or by depositing it in the United States mail, postage prepaid, addressed to the seller so assessed at the last known place of address. Such seller may make an appeal of such determination as provided in Section 8. If no appeal is filed, the Finance Director's determination is final and the amount is thereby immediately due and payable.

Section 8. Appeal. Any seller aggrieved by any decision of the Finance Director with respect to the amount of such tax, interest, and penalties, if any, may appeal to the City Council. The appeal shall be filed with the City Clerk within thirty (30) days of the serving or mailing of the determination of the tax due. The City Council shall hear and consider any records and evidence presented which bear upon the Finance Director's determination of the amount due, and make findings affirming, reversing, or modifying the determination. The findings of the City Council shall be final and conclusive, and shall be served upon the appellant in the manner prescribed above for service of the notice of hearing. Any amount found to be due shall be immediately due and payable upon the service of the notice.

Section 9. Refunds.

- (A) Whenever the amount of any tax, interest or penalty has been overpaid or paid more than once, or has been erroneously collected or received by the City under this ordinance, it may be refunded as provided in subparagraph (B) of this section, provided a claim in writing, stating under penalty of perjury the specific grounds upon which the claim is founded, is filed with the Finance Director within one (1) year of the date of payment. The claim shall be on forms furnished by the City.
- (B) The Finance Director shall have twenty (20) calendar days from the date of receipt of a claim to review the claim and make a determination in writing as to the validity of the claim. The Finance Director shall notify the claimant in writing of the Director's determination. Such notice shall be mailed to the address provided by the claimant on the claim form. In the event a claim is determined by the Finance Director to be a valid claim, in a manner described

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by the Finance Director a seller may claim a refund, or take as credit against taxes collected and remitted, the amount overpaid, paid more than once or erroneously collected or received. The seller shall notify the Finance Director of the claimant's choice within the fifteen (15) day period no later than fifteen (15) days following the date the Finance Director mailed the determination. In the event claimant has not notified the Finance Director of the claimant's choice within the fifteen (15) day period and the seller is still in business, a credit will be granted against the tax liability for the next reporting period. If the seller is no longer in business, a refund check will be mailed to claimant at the address provided in the claim form.

- (C) Any credit for erroneous overpayment of tax made by a seller taken on a subsequent return or any claim for refund or tax erroneously overpaid filed by a seller must be so taken or filed within three (3) years after the date on which the overpayment was made to the City.
- (D) No refund shall be paid under the provisions of this section unless the claimant established the right by written records showing entitlement to such refund and the Finance Director acknowledged the validity of the claim.

Section 10. Actions to Collect. Any tax required to be paid under the provisions of this ordinance shall be deemed a debt owed by the seller to the City. Any such tax collected by a seller which has not been paid to the City shall be deemed a debt owed by the seller to the City. Any person owing money to the City under the provisions of this ordinance shall be liable to an action brought in the name of the City of The Dalles for the recovery of such amount. In lieu of filing an action for the recovery when taxes are due more than thirty (30) days delinquent, the City can submit any outstanding tax to a collection agency. So long as the City has complied with the provisions set forth in ORS 697.105, in the event the City turns over a delinquent tax account to a collection agency, it may add to the amount owing an amount equal to the collection agency fees, not to exceed the greater of fifty dollars (\$50.00) or fifty percent (50%) of the outstanding tax, penalties and interest owing.

Section 11. Violation.

- (A) Violation of this ordinance shall constitute a Class A infraction. It is a violation of this ordinance for any seller or other person to do the following:
 - (1) Fail or refuse to comply as required herein;
 - (2) Fail or refuse to furnish any return required to be made;
 - (3) Fail or refuse to permit inspection of records;
 - (4) Fail or refuse to furnish a supplement return or other data required by the City, or;
 - (5) Fail, refuse or neglect to remit the tax to the City by the due date.

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- (B) Filing a false or fraudulent return shall be considered to be a Class B Misdemeanor.
- (C) The remedies provided by this section are not exclusive and shall not prevent the City from exercising any other remedy available under the law, nor shall the provisions of this ordinance prohibit or restrict the City or other appropriate prosecutor from pursuing criminal charges under state law or City ordinance.

Section 12. Confidentiality. Except as otherwise required by law, it shall be unlawful for the City, any officer, employee or agent to divulge, release or make known in any manner any financial information submitted or disclosed to the City under the terms of this ordinance. Nothing in this ordinance shall prohibit the following:

- (A) The disclosure of the names and addresses of any person who is operating a licensed establishment from which marijuana or marijuana-infused products are sold or provided; or
- (B) The disclosure of general statistics in a form which would not reveal an individual seller's financial information; or
- (C) Presentation of evidence to the court, or other tribunal having jurisdiction in the prosecution of any criminal or civil claim by the City or an appeal from the City for amount due the City under this ordinance; or
- (D) The disclosure of information when such disclosure of conditionally exempt information is ordered under public records law procedures; or
- (E) The disclosure of records related to a business' failure to report and remit the tax when the report or tax is in arrears for over six (6) months or the tax exceeds five thousand dollars (\$5,000). The City Council expressly finds and determines that the public interest in disclosure of such records clearly outweighs the interest in confidentiality under ORS 192.501(5).

Section 13. Audit of Books, Records or Persons.

- (A) The City, for the purpose of determining the correctness of any tax return, or for the purpose of an estimate of taxes due, may examine or may cause to be examined by an agent or representative designated by the City for that purpose, any books, papers, records, or memoranda, including copies of the seller's state and federal income tax returns, bearing upon the matter of the seller's tax return. All books, invoices, accounts and other records shall be made available within the City limits and be open at any time during regular business hours for examination by the Finance Director or an authorized agent of the Finance Director.

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- (B) If the examinations or investigations disclose that any reports of sellers filed with the Finance Director pursuant to the requirements herein have shown incorrectly the amount of tax accruing, the Finance Director may make such changes in subsequent reports and payments, or make such refunds, as may be necessary to correct the errors disclosed by its examinations or investigations.

- (C) The seller shall reimburse the City for reasonable costs of the examination or investigation if the action disclosed that the seller paid ninety five percent (95%) or less of the tax owing for the period of the examination or investigation. In the event that such examination or investigation results in an assessment by and an additional payment due to the City, such additional payment shall be subject to interest at the rate of one percent (1%) per month, or the portion thereof, from the date the original payment was due.

- (D) If any taxpayer refuses to voluntarily furnish any of the foregoing information when requested, the City may immediately seek a subpoena from the City Municipal Court to require that the taxpayer or a representative of the taxpayer attend a hearing or produce any such books, accounts, and records for examination.

- (E) Every seller shall keep a record in such form as may be prescribed by the City of all sales of marijuana and marijuana-infused products. The records shall at all times during the business hours of the day be subject to inspection by the City or authorized officers or agents of the Finance Director.

Section 14. Forms and Regulations. The Finance Director is hereby authorized to prescribe forms and promulgate rules and regulations to aid in the making of returns, the ascertainment, assessment, and collection of said marijuana tax and in particular and without limiting the general language of this ordinance, to provide for the following:

- (A) A form of report on sales and purchases to be supplied to all vendors;

- (B) The records which sellers providing marijuana and marijuana-infused products are to be keep concerning the tax imposed by this ordinance.

Section 15. Severability. The sections, subsections, paragraphs, and clauses of this ordinance are severable. The invalidity of one section, subsection, paragraph, or clause shall not affect the validity of the remaining sections, subsections, paragraphs, and clauses.

Section 16. Savings. Notwithstanding any amendment or repeal, the City ordinances in existence at the time any criminal or civil enforcement actions were commenced, shall remain valid and in full force and effect for purposes of all cases filed or commenced during the times said ordinance(s) or portions thereof were operative. This section simply clarifies the existing situation that nothing in this ordinance affects

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the validity of prosecutions commenced and continued under the laws in effect at the time the matters were originally filed.

Section 17. Effective Date. This ordinance shall be effective thirty (30) days after its passage and adoption by the City Council.

PASSED AND ADOPTED THIS ____ DAY OF _____, 2014.

Voting Yes, Councilors: _____

Voting No, Councilors: _____

Absent, Councilors: _____

Abstaining, Councilors: _____

AND APPROVED BY THE MAYOR THIS __ DAY OF _____, 2014.

Stephen E. Lawrence, Mayor

ATTEST:

Julie Krueger, MMC, City Clerk