

AMENDED AGENDA

**WILSONVILLE CITY COUNCIL MEETING
DECEMBER 7, 2015
7:00 P.M.**

**CITY HALL
29799 SW TOWN CENTER LOOP
WILSONVILLE, OREGON**

Mayor Tim Knapp

Council President Scott Starr
Councilor Susie Stevens

Councilor Julie Fitzgerald
Councilor Charlotte Lehan

CITY COUNCIL MISSION STATEMENT

To protect and enhance Wilsonville’s livability by providing quality service to ensure a safe, attractive, economically vital community while preserving our natural environment and heritage.

Executive Session is held in the Willamette River Room, City Hall, 2nd Floor

- | | | | |
|------------------|---|-----------|---------------|
| 5:00 P.M. | EXECUTIVE SESSION | [20 min.] | |
| | Pursuant to ORS 192.660(2)(e) Real Property Transaction | | |
| 5:20 P.M. | REVIEW OF AGENDA | [5 min.] | |
| 5:25 P.M. | COUNCILORS’ CONCERNS | [5 min.] | |
| 5:30 P.M. | PRE-COUNCIL WORK SESSION | | |
| | A. Water Treatment Master Plan (Kerber/Kohlhoff) | [15 min.] | |
| | B. Wilsonville Community Sharing Update (Cole) | [10 min.] | |
| | C. West Linn-Wilsonville School District Development Agreement (Kohlhoff) | [15 min.] | |
| | D. No Fault Evictions (Jacobson) | [15 min.] | Page 4 |
| 6:50 P.M. | ADJOURN | | |

CITY COUNCIL MEETING

The following is a summary of the legislative and other matters to come before the Wilsonville City Council a regular session to be held, Monday, December 7, 2015 at City Hall. Legislative matters must have been filed in the office of the City Recorder by 10 a.m. on November 23, 2015. Remonstrances and other documents pertaining to any matters listed in said summary filed at or prior to the time of the meeting may be considered therewith except where a time limit for filing has been fixed.

7:00 P.M. CALL TO ORDER

- A. Roll Call
- B. Pledge of Allegiance
- C. Motion to approve the following order of the agenda and to remove items from the consent agenda.

7:05 P.M. MAYOR'S BUSINESS

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- A. Upcoming Meetings

7:15 P.M. CITIZEN INPUT & COMMUNITY ANNOUNCEMENTS

This is an opportunity for visitors to address the City Council on items *not* on the agenda. It is also the time to address items that are on the agenda but not scheduled for a public hearing. Staff and the City Council will make every effort to respond to questions raised during citizens input before tonight's meeting ends or as quickly as possible thereafter. Please limit your comments to three minutes.

7:25 P.M. COUNCILOR COMMENTS, LIAISON REPORTS & MEETING ANNOUNCEMENTS

- A. Council President Starr – (Park & Recreation Advisory Board Liaison)
- B. Councilor Fitzgerald – (Development Review Panels A & B Liaison)
- C. Councilor Stevens – (Library Board and Wilsonville Seniors Liaison)
- D. Councilor Lehan– (Planning Commission and CCI Liaison)

7:35 P.M. CONSENT AGENDA

- A. **Resolution No. 2557** **Page 20**
A Resolution Adopting The Canvass Of Votes For The November 3, 2015 Special Election (staff – King)
- B. **Resolution No. 2559** **Page 27**
A Resolution of the City of Wilsonville authorizing the City Manager to sign a franchise extension Agreement With Comcast, Extending The Term Of The Current Comcast Cable Franchise To January 31, 2016. (Staff – Jacobson)

7:40 P.M. PUBLIC HEARING

- A. **Ordinance No. 776** – 1st Reading **Page 32**
An Ordinance Of The City Of Wilsonville Amending Wilsonville Code Chapter 3, Right-Of-Way And Public Easement Management Section, By Amending Section 3.410, Franchise Required, And Adding A New Section 3.415, Franchise Fees. (staff – Kohlhoff)
- B. **Ordinance No. 778** 1st Reading **Page 42**
An Ordinance Of The City Of Wilsonville Declaring A Ban On Medical Marijuana Processing Sites, Medical Marijuana Dispensaries, Recreational Marijuana Producers, Recreational Marijuana Processors, Recreational Marijuana Wholesalers, And/Or Recreational Marijuana Retailers; Referring Ordinance; And Declaring An Emergency. (staff – Jacobson)

8:40 P.M. NEW BUSINESS

A. **Resolution No. 2558**

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A Resolution Of The City Of Wilsonville Authorizing Intergovernmental Cooperative Agreement For Advance Road Middle School Site Infrastructure Between City Of Wilsonville And West-Linn Wilsonville School District. (staff – Kohlhoff)

B. **Resolution No. 2560**

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A Resolution Approving The Systems Development Charges Deferral Agreement Between The City Of Wilsonville And BL & DJ, LLC For The Subaru Development. (staff – Kraushaar)

8:45 P.M. CITY MANAGER'S BUSINESS

8:50 P.M. LEGAL BUSINESS

9:00 P.M. ADJOURN

***AN URBAN RENEWAL AGENCY MEETING
WILL IMMEDIATELY FOLLOW***

Time frames for agenda items are not time certain (i.e. Agenda items may be considered earlier than indicated. The Mayor will call for a majority vote of the Council before allotting more time than indicated for an agenda item.) Assistive Listening Devices (ALD) are available for persons with impaired hearing and can be scheduled for this meeting if required at least 48 hours prior to the meeting. The city will also endeavor to provide the following services, without cost, if requested at least 48 hours prior to the meeting:-Qualified sign language interpreters for persons with speech or hearing impairments. Qualified bilingual interpreters. To obtain services, please contact the City Recorder, (503)570-1506 or king@ci.wilsonville.or.us



**CITY COUNCIL MEETING
STAFF REPORT**

Meeting Date: n/a		Subject: No Cause Tenancy Terminations	
		Staff Member: Barbara Jacobson Department: Legal	
Action Required		Advisory Board/Commission Recommendation	
<input type="checkbox"/> Motion <input type="checkbox"/> Public Hearing Date: <input type="checkbox"/> Ordinance 1 st Reading Date: <input type="checkbox"/> Ordinance 2 nd Reading Date: <input type="checkbox"/> Resolution <input type="checkbox"/> Information or Direction <input checked="" type="checkbox"/> Information Only <input type="checkbox"/> Council Direction <input type="checkbox"/> Consent Agenda		<input type="checkbox"/> Approval <input type="checkbox"/> Denial <input type="checkbox"/> None Forwarded <input checked="" type="checkbox"/> Not Applicable	
		Comments:	
Staff Recommendation:			
Recommended Language for Motion:			
Project / Issue Relates To: <i>[Identify which goal(s), master plans(s) your issue relates to.]</i>			
<input type="checkbox"/> Council Goals/Priorities	<input type="checkbox"/> Adopted Master Plan(s)	<input checked="" type="checkbox"/> Not Applicable	

ISSUE BEFORE COUNCIL: Background information on No Cause Tenancy Evictions.

EXECUTIVE SUMMARY:

Concerned citizens and impacted renters have appeared before City Council to urge the Council to take action to help tenants who are being evicted for no cause so that landlords may raise the rent to a higher level. Several factors have contributed to a significant shortage of affordable housing for rent or for sale in the Portland area, and that effect is also being felt in Wilsonville. Portland recently amended one of its city ordinances to provide for a longer notice period for no cause tenancy terminations and, during that period of time, a limit on how much the rent can be increased (no more than 5% during the prior 12 month period). The new law also contains stringent penalties for a violation of the notice requirement, including fines of up to three months' rent, as well as actual damages, attorney fees, and costs. A copy of the Ordinance is attached.

Portland City Code Section 30.01.085 (Ordinance N. 187380) prohibits residential landlords from adjusting rent prices by more than five percent over a 12-month period without providing a full 90 days' notice for what would otherwise be a month-to-month lease. A 90-day no cause termination notice is also required under the new ordinance, even absent a rent increase. Oregon state law requires at least 30 days' notice for a no cause termination for month-to-month leases. Oregon state law requires a minimum of 30 days' notice to raise the rent on a month-to-month lease, but there is no cap on how much the rent can be raised following that 30-day notice period.

Cities that have adopted a home rule charter, including Wilsonville and Portland, have the legal authority to impose more stringent regulations than are required by state law, as long as the state law does not contain specific clear preemptive language. This is what Wilsonville did when it gave additional protections to the mobile home park residents. As a result, Wilsonville was sued by the park owner, who claimed that state law was preemptive and that the City could not impose stricter regulations than state law. The City won the *Thunderbird* case, and that case has been frequently relied upon by courts to define the authority of home rule and what must occur to make a state law preemptive.

Like Wilsonville, Portland is now facing a law suit challenging the above-described ordinance. The law suit, filed on November 17, 2015, is based on the legal argument that ORS 91.225 precludes any local ordinance that would be tantamount to rent control. The Plaintiff's lawyer alleges that the Portland ordinance stretches the state's 30-day notice period into a 90-day rent moratorium, the result being a 60-day rent control period, during which time a lessor is prohibited from adjusting rents above the five percent cap. ORS 91.225 provides, in pertinent part: *"(2) Except as provided in subsections (3) to (5) of this section, a city or county shall not enact any ordinance or resolution which controls the rent that may be charged for rental of any dwelling..."* (Note: subsections (3) and (5) have no bearing on the issue at hand.)

In response to the testimony presented at Council, Planning Commissioner Eric Postma suggested that Deborah Imse and Gwenn Baldwin, of Multi-Family Northwest, contact me to speak from the lessor's perspective. I met with them on November 24, 2015, and they expressed several legitimate issues with the Portland ordinance and provided insights for the lessor's perspective as to alternative ordinance provisions that could be considered. They had many ideas and much information to offer. I suggested that they prepare a letter for City Council consideration summarizing their suggestions and concerns. I also advised them that no formal action was being presented to Council at this time, beyond this informational memo.

CONCLUSION:

Legal staff will await further Council direction. In the meantime, we will continue to follow the litigation and will monitor any information coming from other cities or the League of Oregon Cities. We will also work with Public Affairs staff to track any possible legislative initiatives.

ATTACHMENTS:

A. City of Portland Chapter 30.1, as amended by Ordinance 172844 (*see page 8*)

w:\admin\cc\sr re no cause tenancy termination (bj^).docm

Exhibit A
TITLE 30
AFFORDABLE HOUSING

(Title added by Ordinance No. 172844,
effective November 4, 1998)

Chapter 30.01

**AFFORDABLE
HOUSING PRESERVATION AND
PORTLAND RENTER
PROTECTIONS**

Sections:

- 30.01.010 Policy.
- 30.01.020 Intent.
- 30.01.030 Definitions.
- 30.01.040 Title 30.01 Responsibilities.
- 30.01.050 Federal Preservation Projects - City Notice and Preservation Opportunities.
- 30.01.060 Federal Preservation Projects - Tenant Provisions.
- 30.01.070 Federal Preservation Projects - Civil Fines.
- 30.01.080 Local Preservation Projects - Tenant and City Notice Provisions.
- 30.01.085 Portland Renter Additional Protections
- 30.01.090 City Subsidy Projects Properties - Long-Term Affordability
- 30.01.095 Requirements.
Partial and Full Exemptions of System Development Charges for Affordable
- 30.01.100 Housing Developments.
- 30.01.110 Compliance and Enforcement.
No Restriction of Powers of Eminent Domain; Severability.

30.01.010 Policy.

It is the policy of the City of Portland that all Portlanders, regardless of income level, family composition, race, ethnicity or physical ability, have reasonable certainty in their housing, whether publicly assisted or on the private market. Consequently, publicly assisted rental housing affordable to low and moderate income persons and households should be preserved as a long-term resource to the maximum extent practicable, and the ~~that~~-tenants of such properties should receive protections to facilitate securing new housing should the affordable units be converted to market rate units or otherwise be lost as a resource for low and moderate income housing. Likewise, Portland renters in unregulated housing on the private market, need additional protections to ensure that there is adequate time to find alternative housing in the case of a no cause eviction and adequate time to budget for an increase in rent.

30.01.020 Intent.

The intent of this Title is to protect the availability of publicly assisted affordable housing for low and moderate income households by: providing for notice to the City and tenants

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when transitions from current assistance programs and/or affordable housing uses are planned; providing purchase opportunities for the City to attempt to preserve the affordable housing while respecting ownership interests of building owners; providing tenant relocation assistance when the affordable housing is converted; ~~and~~; ensuring long term affordability in future projects that the City assists with public financing designed to create or preserve affordable housing; and ensuring that all Portland renters, have additional protections to ensure more certainty in their housing security.

30.01.030 Definitions.

(Amended by Ordinance No. 186028, effective May 15, 2013.)

- A. **"Affordable housing."** The term "affordable housing", "affordable rental housing" or "housing affordable to rental households" means that the rent is structured so that the targeted tenant population pays no more than 30 percent of their gross household income for rent and utilities. The targeted tenant populations referred to in this section include households up to 80 percent of ~~area median family income~~MFI.
- B. **"Associated Housing Costs."** include, but are not limited to, fees or utility or service charges, means the compensation or fees paid or charged, usually periodically, for the use of any property, land, buildings, or equipment. For purposes of this Chapter, housing costs include the basic rent charge and any periodic or monthly fees for other services paid to the Landlord by the Tenant, but do not include utility charges that are based on usage and that the Tenant has agreed in the Rental Agreement to pay, unless the obligation to pay those charges is itself a change in the terms of the Rental Agreement.
- ~~B. "PHB." The City of Portland's Portland Housing Bureau.~~
- C. **"City Subsidy."** Locally controlled public funds administered by ~~the Portland Development Commission~~PDC, ~~the Portland Housing Bureau~~PHB, or other City bureau or agency, allocated for the purpose of creating or preserving affordable rental housing to households below 80 percent of ~~median family income~~MFI. City subsidies may be provided to developers through direct financial assistance such as low interest or deferred loans, grants, equity gap investments, credit enhancements or loan guarantees, or other mechanisms.
- D. **"City Subsidy Projects."** Privately owned properties of five or more units which receive a City ~~subsidy~~Subsidy after the effective date of Title 30.01 through programs designed to create or preserve rental housing affordable at or below 80 percent of ~~area median family income~~MFI.
- E. **"Commercial Market Compatible Offer."** A ~~fair market value~~ Fair Market Value purchase

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offer made by the City or its designee which is consistent with the terms and conditions which would be made by a buyer on the open market such that a seller negotiating with the City on such terms would not experience any significant disadvantage as compared to a market rate transaction with a private party.

- F. **"Fair Market Value."** The amount of money in cash that real property would bring in the open market if it were offered for sale by one who desired, but was not obligated to sell, and was bought by one willing but not obliged to buy. It is the actual value of the property on the date when a City offer pursuant to Title 30.01.050 is made. As may be further refined by PHB through its Administrative Procedures developed in reference to the Uniform Standards of Professional Appraisal Practice, the Oregon Uniform Trial Instructions, and relevant case law, ~~fair market value~~ Fair Market Value is based on the best and highest use of the property, which may be greater than the use being made of the property by the current owner. However, ~~fair market value~~ Fair Market Value does not include speculative value, or possible value based on future expenditures and improvements, or potential -changes in applicable zoning regulations or laws, which are not reasonably probable. ~~Fair market value~~ Market Value includes assessment of environmental, structural or mechanical information derived from inspections or other due diligence activities.
- G. **"Federal Preservation Projects."** Properties having project-based rental assistance contracts for some or all of the units (such as Section 8 and Project Rental Assistance Contracts) including those developed under a variety of HUD mortgage assistance and interest rate reduction programs. Federal preservation projects include properties with loans, contracts, or insurance under the following federal subsidy programs: section 221(d)(4) with project-based Section 8; Section 202; Section 236(J)(1); Section 221(D)(3) BMIR; Section 221(D)(3) MIR; Section 811; Project based Section 8 contracts administered through HUD, Oregon Housing and Community Services, or the Housing Authority of Portland; Project Rental Assistance Contracts (PRAC); LIHPRHA capital grant program; and Section 241(±) preservation grant. An updated list of all known Federal Preservation Projects will be maintained and available upon request to the public.
- H. **"HUD."** The United States Department of Housing and Urban Development
- I. **"Involuntary Displacement."** Tenants of Federal Preservation Projects are considered to be involuntarily displaced if:
1. They are served a notice to vacate the property for reasons other than just cause as defined herein; or
 2. They are not offered a one year lease under their tenant based voucher by the property owner; or

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3. They are offered a one year lease under their tenant based voucher, but are required to pay as rent and utilities an amount greater than the tenant contribution to rent (and utilities) in effect under the project-based Section 8 contract, and they then choose to move from the property rather than enter into a lease under the voucher. This form of displacement is referred to as "economic displacement."
- J. **"Just Cause Eviction."** Evictions for serious or repeated violations of the terms and conditions of the lease or occupancy agreement, violation of applicable Federal, State or local law, or other good cause, ~~(ORS 90.400)~~.
- K. **"Local Preservation Projects."** Properties with 10 or more rental units which received financial assistance (from the programs listed below), to create or preserve housing serving households below 80 percent of ~~median family income~~ MFI since January 1, 1988 and through the effective date of Title 30.01, which have affordability restrictions that are still in force as of the effective date of Title 30.01. Financial assistance programs include subsidies from the City of Portland through the Portland Development Commission (Rental Housing Development Loan Program, Investor Rehabilitation Loan Program, Rental Rehabilitation Loan Program, or Downtown Housing Preservation Program), and/or from the State of Oregon Housing and Community Services Department (Housing Development Grant Program, Oregon Affordable Housing Tax Credit Program, and the former Oregon Lenders Tax Credit Program, Risk Sharing Bond program, Elderly and Disabled Bond Program), and/or which have received bond financing issued by the Housing Authority of Portland or the Portland Development Commission. An updated list of all known Local Preservation Projects will be maintained and available upon request to the public.
- L. **"Low Income."** Low income individuals, households or tenants are those with a gross household income below 50 percent of ~~the area median family income~~ MFI.
- M. **"MFI."** Median family income for the Portland Metropolitan Statistical Area as defined by HUD as adjusted for inflation and published periodically.
- N. **"Moderate Income."** Moderate income individuals, households or tenants are those with a gross household income below 80 percent of ~~the area median family income~~ MFI.
- O. **"Opt Out."** An owner's non-renewal of an available project-based Section 8 contract in a Federal Preservation Project. Owners may consider "opting out" when they contemplate conversion to open market rental housing, other housing or commercial uses, or a sale of the property.

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P. **"PHB."** The Portland Housing Bureau.

QP. **"PDC."** The Portland Development Commission.

RQ. **"Preservation Process."** The requirements contained in 30.01.050 - 30.01.070 for Federal Preservation Projects and in 30.01.080 for Local Preservation Projects respectively.

SR. **"Qualifying Household."** A household legally residing in a ~~federal preservation project~~ Federal Preservation Project with a gross household income at or below 50 percent of ~~median family income~~ MFI.

T. **"Residential Landlord and Tenant Act" or "Act."** ORS Chapter 90.

30.01.040 Title 30.01 Responsibilities.

(Amended by Ordinance No. 186028, effective May 15, 2013.) ~~The Portland Housing Bureau~~ PHB will have primary responsibility for implementation of Title 30.01. This responsibility will include the development and administration of operating procedures, and taking any and all City actions referenced herein as may be necessary for implementation of the requirements of this Title. ~~The Portland Development Commission~~ PDC will work with ~~the Portland Housing Bureau~~ PHB to implement property acquisition responsibilities described in this Title. ~~The Portland Development Commission~~ PDC is also expected to develop strategies to implement the 60-year affordability requirements in 30.01.090.

30.01.050 Federal Preservation Projects - City Notice and Preservation Opportunities.

(Replaced by Ordinance No. 174180; amended by Ordinance No. 186028, effective May 15, 2013.)

- A. Owners of Federal Preservation Projects must provide the City and each building tenant with ~~a~~ one year's notice of a pending HUD Section 8 contract expiration. In order to facilitate the owner's knowledge of the City's interest in notification, PHB shall provide written confirmation of the City's interest in the property to each Section 8 property within the City of which PHB is aware.
- B. Owners of Federal Preservation Projects who have decided to ~~"opt-out"~~ Opt Out must provide to the City a notice of 210 days of intent to do so if the owner is opting out of a long-term contract, and 150 days if the owner is opting out of a one-year extension to a long-term contract. The notice shall specify:
 - 1. whether the owner intends to withdraw the property from the Section 8 program;

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2. whether the owner intends to convert the participating property to a nonparticipating use; and
 3. whether the owner is involved in negotiations with HUD or the Housing and Community Services Department regarding an extension of an expiring contract.
- C. Owners of Federal Preservation- Projects who have decided to "~~opt-out~~"Opt Out must consent to reasonable inspection of the property and inspection of the owner reports on file with HUD or the State of Oregon Housing and Community Services Department. These inspections are designed to facilitate the City's ability to assess the ~~fair-market-value~~ Fair Market Value of the property and evaluate status of the tenants, viability of transfer and/or continuation of a Section 8 agreement with HUD and other pertinent information.
- D. To the extent allowed by HUD, owners of Federal Preservation Projects must maintain an available HUD Section 8 contract in good standing during the notice periods identified in this chapter as well as any condemnation proceeding commenced under ORS Chapter 35.
- E. Owners of Federal Preservation Projects must refrain from taking any action, other than notifying HUD of the owner's intention to not renew the contract, that would preclude the City or its designee from succeeding to the contract or negotiating with the owner for purchase of the property during the notice periods identified in this Chapter as well as any condemnation proceeding commenced under ORS Chapter 35.
- F. In addition to any other times, during the notice periods identified in this Chapter, the City may pursue preservation of the Federal Preservation Project through negotiation for purchase or through condemnation under ORS Chapter 35.

30.01.060 Federal Preservation Projects - Tenant Provisions.

(Replaced by Ordinance No. 174180; amended by Ordinance No. 186028, effective May 15, 2013.)

- A. Owners of Federal Preservation Projects who have decided to "~~opt-out~~"Opt Out must provide to each affected building tenant a notice of- 210 days of intent to do so if the owner is opting out of a long-term contract, and 150 days if the owner is opting out of a one-year extension to a long-term contract. The notice shall specify:
1. whether the owner intends to withdraw the property from the Section 8 program;

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2. whether the owner intends to convert the participating property to a nonparticipating use; and
 3. whether the owner is involved in negotiations with HUD or the State of Oregon Housing and Community Services Department regarding an extension of an expiring contract
- B.** Owners of Federal Preservation Projects who have decided to ~~"opt-out"~~Opt Out may not disturb any tenancy other than for cause defined in the contract, for a period of 180 days after expiration of the contract, if the City has paid or arranged to pay to the owner on the first day of each month, the monthly subsidy that the owner was receiving under the contract.
- C.** PHB shall identify and make available adequate financial resources for tenant relocation assistance for all tenants who experience involuntary displacement from Federal Preservation Properties. PHB shall request voluntary contributions to a tenant relocation fund: from owners of Federal Preservation Projects who have decided to ~~"opt-out"~~Opt Out.

30.01.070 Federal Preservation Projects - Civil Fines.

(Replaced by Ordinance No.174180; amended by Ordinance No. 186028, effective May 15,2013.)

- A. An owner who fails to comply with any of the requirements specified in PCC 30.01.050 A--E, tenant notice requirements in 30.01.060 A, or PHB procedures implementing those specified provisions of this Chapter, shall pay a civil fine. The fine shall be calculated in relation to the costs and damages caused by the owner's failure to comply, up to full replacement costs of each project-based Section 8 housing unit lost. Such civil fines shall be payable into a housing replacement fund to be established and managed by the City. If the civil fine is not received within the timeframes specified in the Administrative Procedures developed by PHB, the City may commence enforcement proceedings.
- B. Any civil fines received shall be used only for creating replacement housing serving households at or below 50 percent MFI.

30.01.080 Local Preservation Projects - Tenant and City Notice Provisions.

(Amended by Ordinance No. 186028, effective May 15,2013.)

- A. When the owner of a Local Preservation Project takes action which will make the affordable housing no longer affordable, whether the affordability requirements which were established under prior agreement with the City, PDC or State have

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expired or are still in effect, the owner must provide a notice of 90 days to the City. The notice shall meet standards developed by PHB. During the 90-day notification period, the owner may not sell or contract to sell the property, but may engage in discussions with other interested parties. Within this period, the City or its designee may make an offer to purchase or attempt to coordinate a purchase by an owner committed to maintaining affordability.

- B. Owners of Local Preservation Projects who have decided to take action described in 30.01.080 A, must provide a notice of 90 days to tenants. This shall be in addition to the City notice to be provided to the City under 30.01.080 A. During this notice period the Owner may not initiate a no-cause eviction. The notice must meet standards developed by PHB.

30.01.085 **Portland Renter Additional Protections.**

- A. In addition to the protections set forth in the Residential Landlord and Tenant Act, the following additional protections apply to Tenants that have a Rental Agreement for Premises covered by the Act. For purposes of this chapter, capitalized terms have the meaning set forth in the Residential Landlord and Tenant Act.
- B. A Landlord may terminate a Rental Agreement without a cause specified in the Act only by delivering a written notice of termination to the Tenant of (a) not less than 90 days before the termination date designated in that notice as calculated under the Act; or (b) the time period designated in the Rental Agreement, whichever is longer. This requirement does not apply to Rental Agreements for week-to-week tenancies or to Tenants that occupy the same Dwelling Unit as the Landlord.
- C. A Landlord may not increase a Tenant's Rent or Associated Housing Costs by 5 percent or more over a 12 month period unless the Landlord gives notice in writing to each affected Tenant: (a) at least 90 days prior to the effective date of the rent increase; or (b) the time period designated in the Rental Agreement, whichever is longer. Such notice must specify the amount of the increase, the amount of the new Rent or Associated Housing Costs and the date, as calculated under the Act, when the increase becomes effective.
- D. A Landlord that fails to comply with any of the requirements set forth in this section 30.01.085 shall be liable to the Tenant for an amount up to three months Rent as well as actual damages, reasonable attorney fees and costs (collectively, "Damages"). Any Tenant claiming to be aggrieved by a Landlord's noncompliance with the foregoing has a cause of action in any court of competent jurisdiction for Damages and such other remedies as may be appropriate.

30.01.090 City Subsidy ~~Projects~~ **Properties** - Long-Term Affordability Requirements.
 (Amended by Ordinance No. 186028, effective May 15, 2013.)

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- A. City Subsidy Projects ~~Properties~~ that in the future request and receive a City ~~subsidy~~Subsidy from PDC, PHB or other City bureau or agency for the purpose of creating or preserving rental housing affordable to households below 80 percent of ~~median family income~~MFI, will be subject to a minimum of 60 year affordability contract requirements developed by PHB consistent with the implementing charge in 30.01.090 B.
- B. All City Bureaus and agencies administering affordable rental housing subsidy programs will be responsible for implementing this section. As the primary agency charged by the City to negotiate and confer affordable housing subsidies, PHB will develop implementing strategies consistent with the 60 year affordability principles contained in this section, the Administrative Procedures Implementing Title 30.01 and the approved 1998/99 Consolidated Plan, Principle III (Ordinance No. 172259).

30.01.095 Partial and Full Exemptions of System Development Charges for Affordable Housing Developments.

(Added by Ordinance No. 183448; Amended by Ordinance Nos. 186712 and 186744, effective September 5, 2014.)

- A. The purpose of this Section is to reduce the costs of developing permanent affordable housing by exempting system development charges for qualified affordable housing developments. This section advances a Council-recognized public policy goal to provide for a diversity of housing types to meet the needs of the citizens of the City.
- B. The City will exempt qualified affordable housing developments from paying all or part of system development charges required by Code. The Applicant must apply for exemptions under this Section prior to the date the City issues the permit on the new development. Where new development consists of only part of one or more of the uses described in this section, only that portion of the development that qualifies under this Section is eligible for an exemption. The balance of the new

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development that does not qualify for any exemption under this Section is subject to system development charges to the full extent authorized by Code or general ordinance. The Applicant has the burden to prove entitlement to exemptions so requested.

- C. To obtain the exemption, the applicant must present to the City, at the time of Application, documentation from ~~Portland Housing Bureau~~PHB that the development qualifies for the exemption pursuant to this Chapter. Applicant must also pay an administration fee per unit on rental and/or owner-occupied units as determined by ~~the Portland Housing Bureau~~PHB.
- D. The City shall calculate exemptions in the manner authorized for calculating system development charges for rented and owner-occupied residential properties. Non-residential properties or the non-residential portion of mixed-use developments are not eligible for exemptions provided by this Section.
- E. The City shall require the recording of real property covenants in the deed records for properties receiving exemptions under this Section in order to ensure compliance, or to provide remedies for failure to restrict units, or both. Deed restrictions may be used by ~~the Portland Housing Bureau~~PHB in order to restrict sale prices and rents charged for exempt units, or to provide remedies for failure to restrict units, or both.
- F. Applicants shall meet the following affordable housing qualifications to be exempt from paying all or a portion of system development charges:
 - 1. Affordability.
 - a. For purposes of this Section, "affordable" for rental housing means that the rent and expenses associated with occupancy such as utilities or fees, does not exceed 30 percent of the gross household income at the level of the rent restrictions.
 - b. "Affordable" for ownership units means affordable to households earning at or below 100 percent of ~~area median income~~MFI and shall be sold to persons or households whose incomes are at or below 100 percent of ~~area median family income~~MFI for a family of four as determined annually for the Portland Metropolitan Area by the U.S. Department of Housing and Urban Development as adjusted upward for a household of more than four persons.
 - 2. Rental Units:

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AFFORDABLE HOUSING

- a. The units receiving an exemption shall be affordable to households earning 60 percent or less of ~~area median family income~~MFI at time of occupancy and shall be leased, rented or made available on a continuous basis to persons or households whose incomes are 60 percent or less of ~~area median family income~~MFI, as adjusted by household size and as determined by the U.S. Department of Housing and Urban Development for the Portland Metropolitan Area, except as provided for below. Such units shall remain affordable for a period of 60 years.

- b. Effective July 1, 2014, developments of new buildings in Old Town/Chinatown shall be eligible for exemption subject to the following conditions:
 - (1) Units must be located in the Old Town/Chinatown Action Plan Focus Area;
 - (2) Financial need must be verified through project pro forma underwriting conducted by the Portland Development Commission;
 - (3) All units shall remain affordable for a period of not less than 10 years, to persons or households whose incomes are 100 percent or less of ~~median family income~~MFI, as adjusted by household size and as determined by the U.S. Department of Housing and Urban Development for the Portland Metropolitan Area, and for not less than 5 years thereafter shall continue to remain affordable to persons or households whose incomes are 120 percent or less of ~~median family income~~MFI, as so described; and
 - (4) The exemption granted by this Subsection shall not be available to developments for which a building permit application is filed on or after July 1, 2019, or after permit applications have been filed for development of 500 qualifying units, in the aggregate, whichever occurs first.

- 3. Owner-Occupied Units.
 - a. The units receiving an exemption shall be affordable to households earning at or below 100 percent of area median income and shall be sold to persons or households whose incomes are at or below 100 percent of ~~area median family income~~MFI for a family of four as

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AFFORDABLE HOUSING

determined annually for the Portland Metropolitan Area by the U.S. Department of Housing and Urban Development adjusted upward for a household larger than four persons; and

- b. The units fall within the price limit as provided by Subsection 3.102.090 D.
4. Pursuant to Section 30.01.040, the Portland Housing Bureau is responsible for enforcing property covenants and other agreements with applicants that are conditions of receiving exemptions provided by this Section. Portland Housing Bureau may adopt, amend and appeal administrative rules, establish procedures, and prepare forms for implementation, administration and compliance monitoring consistent with the provisions of this Section.
- a. In addition to specific covenants and agreements required by the City as a condition of approval of an exemption application, qualified rental developments must adhere to the 60-year affordability requirements for rental housing developments, including qualifying requirements related to rents and occupancy.
 - b. In addition to specific covenants and agreements required by the City as a condition of approval of an exemption application, a qualifying ownership project must comply with applicable recapture or retention covenants.
 - c. In the event that an applicant violates the covenants, agreements or other requirements that were established by the City as a condition of approval of an exemption application, the City shall terminate the exemption and make due and payable all previously exempt portions of system development charges at rates in effect on the date of the submittal of a complete exemption application, plus accrued interest calculated based on the interim interest rate in effect on the date of the termination of the exemption as set by general ordinance pursuant to Section 17.12.140, and a processing fee of \$250.
 - d. For rental properties, if the exemption terminates within five years of initial building permit issuance, additional charges will be due and owing. These charges include a processing fee of \$250, and accrued interest from the date of the issuance of the building permit to the date of the termination of the exemption. The reinstated system development charges shall be determined based on rates in effect on the date of the submittal of a complete building permit application. Accrued interest shall be calculated based on the

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interim interest rate in effect on the date of the termination of the exemption as set by general ordinance pursuant to Section 17.12.140. The City may collect reinstated system development charges, processing fees, carrying charges and the actual costs of collections by recording a property lien pursuant to Title 22.

- e. For owner occupied units, if the units is not sold to a qualifying household, additional charges will be due and owing prior to change of ownership. These charges include a processing fee of \$250, and accrued interest from the date of the issuance of the building permit to the date of the termination of the exemption. The reinstated system development charges shall be determined based on rates in effect on the date of the submittal of a complete building permit application. Accrued interest shall be calculated based on the interim interest rate in effect on the date of the termination of the exemption as set by general ordinance pursuant to Section 17.12.140. The City may collect reinstated system development charges, processing fees, carrying charges and the actual costs of collections by recording a property lien pursuant to Title 22.

30.1.100 Compliance and Enforcement.

(Amended by Ordinance No. 186028, effective May 15, 2013.)

- A. PHB shall develop and implement procedures to enforce the provisions of this code. Such procedures should include, where feasible, record notice of the applicability of this code to affected properties, filing a lien to enforce the provisions of this code, and developing civil penalties or other enforcement provisions necessary or appropriate to enforce this code.
- B. The City Attorney's Office may enforce the provisions of this code on behalf of the City in any court of competent jurisdiction or City administrative body.

30.01.110 No Restriction of Powers of Eminent Domain; Severability.

- A. This Chapter shall not be construed to restrict the City's existing authority to exercise powers of eminent domain through condemnation as outlined in state law.
- B. If any part or provision of this Chapter, or application thereof to any person or circumstance, is held invalid, the remainder of this Chapter and the application of the provision or part thereof, to other persons not similarly situated or to other circumstances, shall not be affected thereby and shall continue in full force and effect. To this end, provisions of this Chapter are severable.

CITY COUNCIL ROLLING SCHEDULE

Board and Commission Meetings 2015

Items known as of 12/01/15

DECEMBER

DATE	DAY	TIME	EVENT	LOCATION
12/7	Monday	7 p.m.	City Council Meeting	Council Chambers
12/9	Wednesday	1 p.m.	Wilsonville Community Seniors	Community Center
12/9	Wednesday	6 p.m.	Planning Commission	Council Chambers
12/14	Monday	6:30 p.m.	DRB Panel A	Council Chambers
12/21	Monday		Council Meeting Cancelled	
12/16	Wednesday	6 p.m.	Joint Tualatin and Wilsonville City Council Meeting	Council Chambers
12.23	Wednesday	6:30 p.m.	Library Board	Library
12/15	Friday		Christmas Holiday – City Offices Closed	
12/28	Monday	6:30 p.m.	DRB Panel B	Council Chambers

COMMUNITY EVENTS

Toy Drive Begins

Park and Recreation Admin Offices through December 16th.
For more information call 503-783-PLAY

Reindeer Romp 5K Fun Run and Kids Dash

December 12 – 8 a.m. registration; 8:45 a.m. Kids Dash; 9 a.m. 5K start
Town Center Park register at www.wilsonvilleParksandRec.com/holiday

SMART Holiday Light Drives Begin

December 15, 6:30 p.m. Meet at Community Center
December 18 last day

Holiday Fun Fest

December 16 – 4-6 p.m. Community Center

Tourism Promotion Committee

December 17, 10 a.m. – 12 p.m. Library





**CITY COUNCIL MEETING
STAFF REPORT**

Meeting Date: December 7, 2015		Subject: Resolution No. 2557 Accept Canvass of Votes	
		Staff Member: Sandra King Department: Administration	
Action Required		Advisory Board/Commission Recommendation	
<input checked="" type="checkbox"/> Motion <input type="checkbox"/> Public Hearing Date: <input type="checkbox"/> Ordinance 1 st Reading Date: <input type="checkbox"/> Ordinance 2 nd Reading Date: <input checked="" type="checkbox"/> Resolution <input type="checkbox"/> Information or Direction <input type="checkbox"/> Information Only <input type="checkbox"/> Council Direction <input checked="" type="checkbox"/> Consent Agenda		<input type="checkbox"/> Approval <input type="checkbox"/> Denial <input type="checkbox"/> None Forwarded <input checked="" type="checkbox"/> Not Applicable	
		Comments:	
Staff Recommendation: Staff recommends the Council adopt Resolution No. 2557.			
Recommended Language for Motion: I move to adopt the Consent Agenda as read.			
Project / Issue Relates To: <i>[Identify which goal(s), master plans(s) your issue relates to.]</i>			
<input type="checkbox"/> Council Goals/Priorities	<input type="checkbox"/> Adopted Master Plan(s)	<input checked="" type="checkbox"/> Not Applicable	

ISSUE BEFORE COUNCIL:

Adoption of the official results of the November 3, 2015 Special Election.

EXECUTIVE SUMMARY:

Council placed Ballot Measure 3-468 on the November 3, 2015 Special Election to gauge public support for the formation of a Coffee Creek Urban Renewal District. The question submitted to the voters stated, “Shall Coffee Creek Tax Increment Financing (Urban Renewal) District be formed to fund the district’s streets, utilities, and infrastructure improvements?”

The election was held by mail, and conducted by the Clackamas County and Washington County Clerks.

EXPECTED RESULTS:

Adoption of the official canvass of votes compiled by the Clackamas County and Washington County clerks.

TIMELINE:

November 23, 2015 was the last day for county clerks to prepare and deliver abstracts to the appropriate election officials. The abstract was received on November 23, 2015 via email, with a hard copy sent the same day via U.S. Mail.

CURRENT YEAR BUDGET IMPACTS: N/A

FINANCIAL REVIEW / COMMENTS:

Reviewed by: _____SCole_____ Date: __11/30/15_____

LEGAL REVIEW / COMMENT:

Reviewed by: MEK_____ Date: _11/30/2015_____

Resolution approved as to form.

COMMUNITY INVOLVEMENT PROCESS:

Voters in the City of Wilsonville participated in the November 3, 2015 Special Election and by casting their ballots, made their wishes known.

POTENTIAL IMPACTS or BENEFIT TO THE COMMUNITY (businesses, neighborhoods, protected and other groups):

ALTERNATIVES: N/A

CITY MANAGER COMMENT:

ATTACHMENTS:

A. Resolution No. 2557

RESOLUTION NO. 2557

A RESOLUTION ADOPTING THE CANVASS OF VOTES FOR THE NOVEMBER 3, 2015 SPECIAL ELECTION.

WHEREAS, at the Special Election held November 3, 2015, the electorate of the City of Wilsonville cast ballots in a measure election for Measure 3-468; and

WHEREAS, the question submitted to the voters stated, “Shall Coffee Creek Tax Increment Financing (Urban Renewal) District be formed to fund the district’s streets, utilities, and infrastructure improvements?”, and

WHEREAS, the Special Election of the registered voters of Clackamas County was conducted by mail; and

WHEREAS, the County Clerk of Clackamas County, who by statute, is in charge of conducting all elections, has filed an abstract of the tally of votes cast at the election, which tally for Clackamas County was duly received by the City Recorder on November 23, 2015; and from Washington County was duly received by the City Recorder on November 23, 2015, copies of which are attached hereto and incorporated by reference.

NOW, THEREFORE, THE CITY OF WILSONVILLE RESOLVES AS FOLLOWS:

1. That the City Council of the City of Wilsonville does hereby adopt the votes of the November 3, 2015, Special Election as follows:

Clackamas County

Precinct Number	For	Against	Under	Over	Total Votes Cast	Registered Voters
201	354	264	0	0	618	2,401
202	393	385	1	0	779	4,079
203	546	409	1	0	956	2,167
204	257	302	0	0	559	2,373
Totals	1,550	1,360	2	0	2,912	11,020

Washington County

	For	Against	Under	Over
Totals	28	17	3	0

1. This resolution shall be effective upon its adoption.

ADOPTED by the City Council of the City of Wilsonville at a regular meeting this 7th day of December, 2015, and filed with the Wilsonville City Recorder this date.

TIM KNAPP, MAYOR

ATTEST:

Sandra C. King, MMC, City Recorder

SUMMARY of votes:

Mayor Knapp –

Council President Starr -

Councilor Fitzgerald –

Councilor Stevens –

Councilor Lehan -

Attachments:

Abstract of Vote – Clackamas and Washington counties



CLACKAMAS COUNTY

Office of County Clerk

SHERRY HALL
CLERK

1710 Red Soils Ct. Ste 100
OREGON CITY, OR 97045
503.722.6086

November 18, 2015

Sandra King – City of Wilsonville
29799 SW Town Center Loop E
Wilsonville, OR 97070

Dear Ms. King:

Please find attached the certified results of the November, 2015 Special Election.

Let us know if any additional information is needed.

A handwritten signature in blue ink, appearing to read "Steve", is written above the typed name.

Steve Kindred
Deputy Clerk, Elections Manager

Board of Property Tax Appeals
1710 Red Soils Court, Ste 100
Oregon City, OR 97045
503.655.8662
FAX 503.650.5687

Elections Division
1710 Red Soils Court, Ste 100
Oregon City, OR 97045
503.655.8510
FAX 503.655.8461

Recording Division
1710 Red Soils Court Ste 110
Oregon City, OR 97045
503.655.8551
FAX 503.650.5688

Records Management Division
1810 Red Soils Court, Ste 120
Oregon City, OR 97045
503.655.8323
FAX 503.655.8195

Canvass Report

November 3, 2015 Special Election

Run Time 8:49 AM

Run Date 11/18/2015

Clackamas County, Oregon

Special Election

11/3/2015

Page 3 of 7

Official results

Registered Voters
18537 of 65640 = 28.24 %

Precincts Reporting
33 of 33 = 100.00 %

City of Wilsonville: Coffee Creek Urban Renewal

Precinct	YES	NO	Cast Votes	Overvotes	Undervotes	Write-in	Election Day Voting Ballots Cast	Total Ballots Cast	Registered Voters	Turnout Percentage
201	354	264	618	0	0	0	618	618	2401	25.74 %
202	393	385	778	0	1	0	779	779	4079	19.10 %
203	546	409	955	0	1	0	956	956	2167	44.12 %
204	257	302	559	0	0	0	559	559	2373	23.56 %
Totals	1550	1360	2910	0	2	0	2912	2912	11020	26.42 %

CERTIFIED COPY OF THE ORIGINAL
SHERRY HALL, COUNTY CLERK

BY: 

NUMBERED KEY CANVASS

Washington County, Oregon
Special Election
November 3, 2015

Official

RUN DATE:11/20/15 11:39 AM

REPORT-EL52 PAGE 0014

VOTES PERCENT

VOTES PERCENT

3-468 City of Wilsonville
Urban Renewal District Formation

VOTE FOR 1

01 = Yes

02 = No

28 62.22

17 37.78

03 = OVER VOTES

04 = UNDER VOTES

0

3

01	02	03	04
28	17	0	3

0432 432





**CITY COUNCIL MEETING
STAFF REPORT**

Meeting Date: December 7, 2015		Subject: Resolution No. 2559 Authorizing Third Extension of Franchise Agreement with Comcast Staff Member: Barbara Jacobson Department: Legal	
Action Required		Advisory Board/Commission Recommendation	
<input type="checkbox"/> Motion <input type="checkbox"/> Public Hearing Date: <input type="checkbox"/> Ordinance 1 st Reading Date: <input type="checkbox"/> Ordinance 2 nd Reading Date: <input checked="" type="checkbox"/> Resolution <input type="checkbox"/> Information or Direction <input type="checkbox"/> Information Only <input type="checkbox"/> Council Direction <input checked="" type="checkbox"/> Consent Agenda		<input type="checkbox"/> Approval <input type="checkbox"/> Denial <input type="checkbox"/> None Forwarded <input checked="" type="checkbox"/> Not Applicable Comments: Consent Agenda recommended	
Staff Recommendation: Approve Resolution No. 2559.			
Recommended Language for Motion: I move to adopt Resolution No. 2559.			
PROJECT / ISSUE RELATES TO: <i>[Identify which goal(s), master plans(s) issue relates to.]</i>			
<input type="checkbox"/> Council Goals/Priorities	<input type="checkbox"/> Adopted Master Plan(s)	<input checked="" type="checkbox"/> Not Applicable	

ISSUE BEFORE COUNCIL: Whether to extend the current Comcast Franchise Agreement, currently set to expire on January 31, 2016, to June 30, 2016.

EXECUTIVE SUMMARY: Last year the City Council approved a one year extension to the City’s current franchise agreement with Comcast in order to allow staff more time to negotiate a new agreement with Comcast. At the time, Comcast was in negotiations with several other Cities, including the Metropolitan Area Communication Commission (“MACC”) and it was the City Attorney’s belief that waiting to see how those negotiations went would be beneficial. Unfortunately, MACC negotiations took much longer than expected and, therefore, serious negotiations with Wilsonville have only recently begun.

EXPECTED RESULTS: The desired outcome is a better agreement with Comcast and less rushed and potentially contentious negotiations.

TIMELINE: Staff will continue negotiations in order to have an agreement in place on or before June 30, 2016.

CURRENT YEAR BUDGET IMPACTS: The current Agreement will remain in place. Thus, there is no anticipated budget impact.

FINANCIAL REVIEW / COMMENTS:

Reviewed by: _SCole_____ Date: _11/30/15_____

LEGAL REVIEW / COMMENT:

Reviewed by: MEK Date: 11/25/15
Legal Department provided Resolution and report.

COMMUNITY INVOLVEMENT PROCESS: N/A - legal contract negotiations.

POTENTIAL IMPACTS or BENEFIT TO THE COMMUNITY: An agreement with Comcast that provides the commitments with sufficient resources for public and government cable programming.

ALTERNATIVES: N/A

CITY MANAGER COMMENT:

ATTACHMENTS

- A. Resolution No. 2559
- B. Third Franchise Extension Agreement

RESOLUTION NO. 2559

A RESOLUTION OF THE CITY OF WILSONVILLE AUTHORIZING THE CITY MANAGER TO SIGN A FRANCHISE EXTENSION AGREEMENT WITH COMCAST, EXTENDING THE TERM OF THE CURRENT COMCAST CABLE FRANCHISE TO JUNE 30, 2016

WHEREAS, the Comcast Cable Franchise, effective February 1, 1999, expired on January 31, 2014; and

WHEREAS, the City required more time to complete the required ascertainment process and franchise negotiations than would be afforded by that current expiration date and, therefore, extended the contract via two prior extension agreements to January 31, 2016; and

WHEREAS, the City and Comcast require additional time to complete the foregoing negotiations and obtain approval from officials of both sides, and the parties wish to extend the contract to June 30, 2016 to ensure sufficient time to complete the ongoing negotiations;

NOW, THEREFORE, THE CITY OF WILSONVILLE RESOLVES AS FOLLOWS:

1. The City Manager is authorized to sign the Second Franchise Extension Agreement with Comcast, extending the term of the cable franchise to June 30, 2016, a copy of which is marked **Exhibit A**, attached hereto and incorporated by reference as if fully set forth herein.
2. This Resolution becomes effective upon the date of adoption.

ADOPTED by the Wilsonville City Council at a regular meeting thereof this 7th day of December, 2015, and filed with the Wilsonville City Recorder this date.

Tim Knapp, Mayor

ATTEST:

Sandra C. King, MMC, City Recorder

SUMMARY OF VOTES:

Mayor Knapp

Council President Starr

Councilor Fitzgerald

Councilor Stevens

Councilor Lehan

Attachments:

Exhibit A – Third Franchise Extension Agreement

**THIRD FRANCHISE EXTENSION AGREEMENT
for the
City of Wilsonville/Comcast Cable Franchise Agreement**

WHEREAS, Comcast of California/Colorado/Florida/Oregon, Inc. (“Comcast”) currently holds a cable franchise with the City of Wilsonville (“City”), with an effective date of February 1, 1999 and expiration date of January 31, 2014 (“City Franchise”); and

WHEREAS, by letter dated March 8, 2011, Comcast initiated the renewal process under Section 626 of the Cable Act and reserved its statutory rights related thereto; and

WHEREAS, by letter dated August 23, 2013, the City confirmed continuing to proceed with informal negotiations; and

WHEREAS, the City and Comcast determined that it is in both parties’ best interests to extend the term of the City Franchise from January 31, 2014 through January 31, 2015 and entered into an Extension Agreement to that effect; and

WHEREAS, in order to take advantage of the negotiations between Comcast and MACC, the City and Comcast determined that it was in both parties’ best interests to further extend the term of the City Franchise to January 31, 2016 to allow additional time for negotiations.

WHEREAS, since negotiations with MACC were only recently completed, the City and Comcast have determined that it will take an additional period of time to complete negotiations and receive agreement approval from City Council and Comcast officials;

NOW, THEREFORE, the City and Comcast agree as follows:

1. The City Franchise extended to January 31, 2016 shall be further extended to June 30, 2016.
2. All provisions of the City Franchise, other than the duration of the City Franchise as set forth in Section 2.3, shall remain in full force and effect through the extended date set forth herein.
3. The City and Comcast agree that execution of this extension does not waive any rights that either party has under Section 626 of the Cable Act.

ACCEPTED this ____ day of _____, 2015:

ACCEPTED this ____ day of _____, 2015:

Comcast of California/Colorado/Florida/Oregon, Inc.

City of Wilsonville

By: _____

By: _____

Bryan Cosgrove, City Manager

Print Name: _____

Title: _____



**CITY COUNCIL MEETING
STAFF REPORT**

<p>Meeting Date: December 7, 2015</p>	<p>Subject: Ordinance No. 776 Ordinance Amending Wilsonville Code Chapter 3, Adding Franchise Fees Section</p> <p>Staff Member: Mike Kohlhoff Department: Legal</p>	
<p>Action Required</p> <p><input checked="" type="checkbox"/> Motion <input type="checkbox"/> Public Hearing Date: <input checked="" type="checkbox"/> Ordinance 1st Reading Date: <input type="checkbox"/> Ordinance 2nd Reading Date: <input type="checkbox"/> Resolution <input type="checkbox"/> Information or Direction <input type="checkbox"/> Information Only <input type="checkbox"/> Council Direction <input type="checkbox"/> Consent Agenda</p>	<p>Advisory Board/Commission Recommendation</p> <p><input type="checkbox"/> Approval <input type="checkbox"/> Denial <input type="checkbox"/> None Forwarded <input checked="" type="checkbox"/> Not Applicable</p> <p>Comments:</p>	
<p>Staff Recommendation: Adopt Ordinance No. 776.</p>		
<p>Recommended Language for Motion: I move to adopt Ordinance No. 776.</p>		
<p>Project / Issue Relates To: <i>[Identify which goal(s), master plans(s) your issue relates to.]</i></p>		
<p><input type="checkbox"/> Council Goals/Priorities</p>	<p><input type="checkbox"/> Adopted Master Plan(s)</p>	<p><input checked="" type="checkbox"/> Not Applicable</p>

ISSUE BEFORE COUNCIL:

Adopt the proposed ordinance amending the Franchise Fee provisions of the Code for utility providers who benefit from using the City’s rights-of-way features.

EXECUTIVE SUMMARY:

The proposed ordinance provides:

- (1) A listing of cost factors which are involved in regulating the rights-of-way.

- (2) A franchise fee for utilities who serve Wilsonville customers of up to 5% of gross revenues derived from prices charged to Wilsonville customers.
- (3) A franchise fee for utilities who do not serve Wilsonville customers (pass-through without service delivery) based on a per cubic foot charge multiplied times the number of cubic feet used in occupying the right-of-way, plus for large pressure pipes transportation, 1% of gross revenue derived from the utility's transportation system located in Wilsonville multiplied times the fraction that the portion, in lineal feet, of the utility transportation system in Wilsonville occupying the City's rights-of-way bears to the full transportation system, in linear feet, that it is directly a part of.
- (4) A separate per lineal foot fee for one inch and below pipes and lines.
- (5) Provision that, based on the listed cost factors, the City Council may adjust the respective fees if they find it is warranted by individual circumstances.

The ordinance recitals recognize that rights-of-way are the foundation that, when developed, form the transportation system, and that it is a very complex and very valuable utility system unto itself. The administrative factors are widespread among several departments to achieve regulatory compliance and management oversight of the rights-of-way transportation system. Municipal utility pricing may include a portion for return of investment (profit). *Kliks v. Dalles City*, 216 Or. 160, 335 P.2d 366 (1959).

However, the recent Supreme Court Decision in *Rogue Valley Sewer Services v. City of Phoenix* has ruled that a franchise fee for a government utility that serves customers must be based on costs and not simply revenue generating, as that would amount to an unconstitutional tax on government. *Rogue Valley Sewer Services v. City of Phoenix*, 357 Or. 437 (2015).

Wilsonville is faced with developing a pass-through franchise fee that would cover a governmental utility that enters the City, benefits from the use of the City's rights-of-way without any service to Wilsonville customers, and is not of a lesser, intrusive size, such as a one-inch conduit for fiber, but rather is of 72 inches (6') in diameter size and approximately 3.5 miles in length to transport millions of gallons of pressurized water through Wilsonville. The right-of-way space it will occupy is extremely large and it will take away the City's ability to have other utilities in the same space that could generate return on investment for the City. This creates a recognized cost to the City known to economists as opportunity cost. This is a cost factor that is provided for in the ordinance.

Additionally, the transportation of large volumes of product under pressure can provide greater impacts upon leakage. This type of risk cost is also included in the factors. The cost of insurance to insure against the risk is not the only part of the risk cost. The City experienced such an issue after a design and construction defect resulted in a sinking road. In that case there was insurance, but the City encountered dispute by the insurance carriers over cost of cure and who would pay, causing the City to commence litigation. With the costs associated with litigation, the time elapsed between settlement and the construction season to be able to cure, and

compromises inherent in settlements of disputed claims, the City's out-of-pocket cost was quite high. Thus, it is reasonably foreseeable that the cost of insurance may not cover the full costs for claims of major damages. In this case, the pipeline will also be near a wetland, and impacts of chlorinated water and earth deposits from surging water could provide pollution issues, in turn affecting the cost of insurance for full coverage and potential additional costs to cure. Water line leaks and breaks over the time of a pipeline's life of 70 years are also reasonably foreseeable. A brief research of water line breaks has provided examples of major breaks and millions of dollars in claims. See attached. Given both experience and consensus, it is reasonable to build a risk fund in addition to cost of insurance or shifting responsibility through indemnification and insurance provisions by the utility provider in any franchise agreement.

Finally, the City has historically had franchise fee agreements or the use of privilege taxes for private utility use of the rights-of-way to serve Wilsonville utility customers. This typically has been at a charge of 5% of gross revenues from those served, with the City currently charging its own utilities 4%. Thus, following the existing guidelines of in-place agreements, the up to 5% of gross revenues was provided.

In the case of entry and pass-through use, staff explored several options and approaches by other cities, based on a review provided by ECONorthwest. Although simple to calculate, a lineal foot approach does not provide a true relationship to space occupied by large pipelines or the volume of water passing through the pipe. A proportionate percentage of gross revenue by proportioning the amount of line or other system equipment to the total line or other system equipment did not seem to fully capture the impacts and the opportunity cost of the large pipelines and the space they occupy. While the percentage can be increased beyond the historical 5% to better align with costs over the life of the facilities, such as a 40-year pipeline life, that, in turn, might be susceptible to more legal challenges due to appearances of being out of the norm.

The cubic foot of occupancy approach aligns to better capture the disproportional use being granted from that of the typical sized utility. It also captures better the potential impacts and associated costs of such use. It does not necessarily account for the volume of water, gas, etc. that might pass through it. Combining the cubic feet of occupancy approach with a lower, proportional percentage of gross revenues to account for the water flowing through the pipeline helps ensure that the City's total costs are recovered, as water will not flow through the pipeline for approximately 10 years, albeit a segment of the pipeline is scheduled to be constructed in Wilsonville during the summer of 2016.

Under the language of the proposed ordinance, the Council could enter into a Franchise Agreement that only required the cubic foot approach for each segment built and the percent of gross revenues provision to back it at the time water flows through the pipeline. With the provision that the Council could adjust the fees, the Council could do a lease based on a cubic foot formula and then waive this part of the fee while maintaining the 1% revenue portion as well. This provides for negotiating flexibility given the unusual particulars that pressurized large pass-through pipes may bring to bear on individual situations and routes.

To assist the Council, ECONorthwest provided the various fee scenarios under the different methodologies and the different cities, which have been provided to the City Council. Staff has

put together a cost analysis involved in regulating the City's rights-of-way and a reasonable method to apportion the various costs to the large pipeline in order for the Council to assess the reasonableness of the proposed franchise fee provisions.

EXPECTED RESULTS:

Efficient regulatory oversight of the City's rights-of-way.

TIMELINE:

N/A

CURRENT YEAR BUDGET IMPACTS:

N/A

FINANCIAL REVIEW / COMMENTS:

Reviewed by: _____ Date: _____

LEGAL REVIEW / COMMENT:

Reviewed by: MEK Date: November 30, 2015.
Report prepared by the Legal Department.

COMMUNITY INVOLVEMENT PROCESS:

N/A

POTENTIAL IMPACTS or BENEFIT TO THE COMMUNITY (businesses, neighborhoods, protected and other groups):

Protection of the City's rights-of-way.

ALTERNATIVES:

CITY MANAGER COMMENT:

ATTACHMENTS:

- A. Ordinance No. 776 Amending WC Chapter 3, Right-of-Way and Public Easement Management, Adding Franchise Fees Section

ORDINANCE NO. 776

AN ORDINANCE OF THE CITY OF WILSONVILLE AMENDING WILSONVILLE CODE CHAPTER 3, RIGHT-OF-WAY AND PUBLIC EASEMENT MANAGEMENT SECTION, BY AMENDING SECTION 3.410, FRANCHISE REQUIRED, AND ADDING A NEW SECTION 3.415, FRANCHISE FEES

WHEREAS, the Wilsonville transportation network is extremely complex. At its core is the City-acquired rights-of-way over which are located the City's asphalt and concrete streets and roads, sidewalks, bikeways, pedestrian paths, street lights, street trees, public art, signage, bus shelters, and signalized intersections; under which are located the majority of public and private utility services, such as electricity, gas, cable, fiber, water, sewer, and storm sewer; and connected to and made a part thereof are the City's bridges, crossings over railroad tracks, and intersections with Interstate 5 (I-5) interchanges; and

WHEREAS, as of 2014, 73 lane miles were a part of this complex transportation network, with an estimated value of over \$300 million dollars. The City is growing at a rapid pace. In 1968, when first incorporated, it had a population of 1,000; today it has an over 22,000 population and an employment base of 18,000. Yet to be annexed are two industrial areas in various stages of planning, as is approximately 500 acres for new housing, all of which will be adding needs to that transportation network; and

WHEREAS, the transportation network provides multimodal transportation and connectivity for pedestrian, bicyclists, vehicles, freight, and transit, and serves a variety of land uses, such as single-family homes, multi-family residences, commercial establishments, and industrial buildings and complexes; and

WHEREAS, governance of the transportation system is likewise complex. The City is subject to the State's Transportation Planning Rule, as well as the State Land Use Planning legislation and rules concerning Comprehensive Plans that provide for adequate infrastructure for development and to maintain a qualified staff adequate to support the various service functions of the City; and

WHEREAS, Comprehensive Plan Policy 3.1.13 provides:

“Policy 3.1.13 The City of Wilsonville shall coordinate planning activities with the utility companies to ensure orderly and efficient installation of needed service lines and equipment.

Implementation Measure 3.1.13.1. To enhance aesthetic quality, promote public safety and to protect service lines from damage (e.g., ice/wind storms or vehicle accidents), as new development occurs all utility service lines serving the development property shall be placed underground, in accordance with the City’s Public Works Standards.” * * *; and

WHEREAS, in implementing state laws and its Comprehensive Plan, the City has developed a Transportation System Plan, a Bicycle and Pedestrian Plan, and a Transit Plan. The City Development Code addresses concurrency and level of service standards to ensure timely, adequate, and functional transportation systems to serve current and future development; and

WHEREAS, the City has adopted Public Works Standards to ensure appropriate and functionally integrated construction, operation, and maintenance. Stormwater Standards to meet federal, state, and local environmental concerns for construction, operation, and maintenance of transportation projects also have been adopted and are currently being updated. Construction and repair improvements to the interchanges which merge into City streets and rights-of-way involve coordination with the US DOT and ODOT. Railroad crossing transportation improvements need to be coordinated with several governmental agencies as well as transportation improvements that cross wetlands; and

WHEREAS, rights-of-way to serve these surface and subsurface uses are a relatively limited and scarce asset that have been acquired at a significant cost and carry a high value, and need to be well managed with trained personnel from various departments and, in turn, to the extent reasonable, be funded by a combination of sources, including franchise fees from the beneficial users of the City’s rights-of-way; and

WHEREAS, the City finds its Code provision needs to be updated to provide for the factors to consider when establishing a franchise fee and to provide reasonable pricing for the value of using a scarce and limited asset;

NOW, THEREFORE, THE CITY OF WILSONVILLE ORDAINS AS FOLLOWS:

1. Wilsonville Code Section 3.410, Franchise Required, is amended as follows:
 - (a) Delete the words “Section 3.410 Franchise Required” underneath the Section 3.410 Franchise Required heading, as it is a typographical error.
 - (b) In Section 3.410(1), at the end of the first sentence, delete the phrase “as specifically set forth in City Code” and replace it with “as may be determined by the City Council.”
2. The following Wilsonville Code Section 3.415, Franchise Fees, is added to and made a part of Chapter 3, Right of Way and Public Easement Management section, as follows:

“3.415 Franchise Fees

(1) Factors

The City Council may consider one or more of the following factors in establishing franchise fees:

(a) Whether the service is being provided to Wilsonville residences and businesses or is the use such that Wilsonville residences and businesses would not receive the benefit of any services from User’s equipment and facilities (pass-through without service delivery) but would endure the disturbance of construction, maintenance, and repair and bear the risks associated with equipment and/or facilities failures, as well as the need to manage and coordinate the use with other users and any other applicable persons or agencies.

(b) The amount of space of right-of-way occupied:

- (i) The length of right-of-way occupied. The longer the equipment and facilities, such as a pipeline, are, generally means the greater the time of construction and the greater the time of related community, traffic, and business disruption, as well as the greater the City oversight, management, and coordination.
- (ii) The size of the equipment and facilities. Larger equipment and facilities occupy more space and may create the need for wider easements and greater size of any setbacks. The greater the size of equipment and facilities may also impose greater opportunity costs and increased oversight, management, and coordination.

(iii) Depth of equipment and facilities. City oversight, management, accounting for risk, and coordination associated with installing and repairing deeper placed equipment and facilities increases as the depth increases. Also, greater depth can cause greater community, traffic, and business interruption due to lengthier construction and repair times.

(c) The content being transported, its volume, and any pressurized means for its transportation. Natural gas and petroleum products can pose greater risks than potable water. However, large volumes of water being transported under pressure can pose greater risks to City residences and businesses than lower volume gravity feed lines. Planning and management for disasters and incident response increases cost contingences for utilities that impose greater risks.

(d) The risks of equipment and facilities failures associated with the size, content, characteristics, volume, or pressure, either independently or in combination upon the City's municipal services. Examples of such services and potential costs include, but are not limited to: services being diverted to spill response and clean-up; evacuation of residences and businesses; lost business revenues; road closures and diverted traffic, including re-routing transit routes; and managing the replacement of other users' equipment and facilities.

(e) The impacts to land uses along the rights-of-way used for the benefit of User's equipment and facilities.

(f) The length of time the rights-of-way are proposed to be used. All things being equal, the longer the use the greater the chance of a failure of equipment or facilities to occur.

(g) The probability that use of the rights-of-way will shorten the life of any City facility on, in, or over the rights-of-way.

(h) The City's costs, including personnel, materials, and services associated with managing, operating, maintaining, and repairing the rights-of-way used by User and in coordination with other uses and users, both in connection with the particular route used and as an integral part of the City's complex transportation network. The City's rights-of-way are a scarce and limited resource, with multiple service providers vying for space. Even though physical space may exist in a right-of-way, adding new services requires careful planning, mapping, approvals, and other efforts to ensure that a new service does not compromise existing services or cause undue difficulties for other users, including vehicle, freight, bicycle, and pedestrian traffic. Right-of-way congestion imposes costs, and right-of-way fees function as price signals, indicating the value of occupying a scarce and limited asset.

(i) The opportunity costs of foregoing the ability to use the right-of-way in the future. Occupying the space in the right-of-way will preclude the City and others from using the same space now and in the future. The greater the right-of-way space occupied, the greater the opportunity cost, all factors held constant.

(j) Existing franchise fees on comparable utility equipment and facilities as an indicator of the value placed on occupying a scarce and limited asset for the User's benefit. The weight, if any, such franchise fees shall be given shall be based on the various circumstances that may be applicable to any given situation.

(2) Franchise Fees

(a) To recover the costs for, the value of, and account for and mitigate risks of the use of the City's rights-of-way where services are provided to Wilsonville residences, businesses, and entities (customers), the annual Franchise Fee for use of the City's rights-of-way shall be 5% of the gross revenues derived from services provided to Wilsonville customers. The City Council reserves the right to determine if the Franchise Fee should be otherwise adjusted due to circumstances that affect one or more of the factors set forth in Section 3.415(1), above.

(b) To recover the costs for, the value of, and account for risks associated with the use of the City's rights-of-way where services are not provided to Wilsonville residences, businesses, and entities (customers), the annual Franchise Fee for such pass-through use of the City's rights-of-way shall be based on the cubic feet of right-of-way occupied, for pipes and lines from one inch in diameter, up to and including 24 inches in diameter, shall be \$0.75 per cubic foot; from 25 inches in diameter, up to and including 48 inches in diameter, shall be \$1.00 per cubic foot; from 49 inches and above shall be \$1.15 per cubic foot; and if the contents of the pipe or line greater than 48 inches in diameter are pressurized, an additional fee of 1% of gross revenues derived from the equipment and facilities in the City rights-of-way multiplied times a fraction, the denominator of which is the total amount of equipment and facilities in the User transportation system, measured in linear feet, which the use in the City's rights-of-way is a part of, and the numerator of which is the total amount of User's equipment and facilities in the City's rights-of-way, measured in linear feet, shall be charged. The City Council reserves the right to determine if the Franchise Fee should be otherwise adjusted due to one or more of the factors set forth in Section 3.415(1), above.

(c) To recover the costs for, the value of, and account for risks associated with the use of the City's rights-of-way where services are not provided to Wilsonville residences, businesses, and rights-of-way, the annual Franchise Fee for such pass-through use of the City's rights-of-way by cable, fiber, pipe, line, conduit, or like facilities of less than one inch in diameter, shall be \$0.75 per linear foot within the right-of-way."

3. The City Recorder is directed to amend Wilsonville Code Section 3.410, Franchise Required, as approved above, and to add Wilsonville Code Section 3.415, Franchise Fee, and to make such format, style, and conforming changes to match the format and style of the Right of Way and Public Easement Management section of the Wilsonville Code.
4. Except as set forth above, Chapter 3, Right of Way and Public Easement Management Section, of the Wilsonville City Code remains in full force and effect, as written.

SUBMITTED to the Wilsonville City Council and read for the first time at a meeting thereof on the ____ day of _____, 2015, and scheduled for second reading on _____, commencing at the hour of 7 p.m. at the Wilsonville City Hall, 29799 SW Town Center Loop East, Wilsonville, Oregon.

Sandra C. King, MMC, City Recorder

ENACTED by the City Council on the ____ day of _____, 2015, by the following votes: Yes: _____ No: _____

Sandra C. King, MMC, City Recorder

DATED and signed by the Mayor this ____ day of _____, 2015.

TIM KNAPP, MAYOR

SUMMARY OF VOTES:

- Mayor Knapp
- Council President Starr
- Councilor Fitzgerald
- Councilor Stevens
- Councilor Lehan



**CITY COUNCIL MEETING
STAFF REPORT**

<p>Meeting Date: December 7, 2015</p>	<p>Subject: Ordinance No. 778 Opt-Out Ordinances for Recreational and Medical Marijuana Activities</p> <p>Staff Member: Barbara Jacobson/Mike Kohlhoff Department: Legal</p>	
<p>Action Required</p> <p><input type="checkbox"/> Motion <input type="checkbox"/> Public Hearing Date: <input checked="" type="checkbox"/> Ordinance 1st Reading Date: <input type="checkbox"/> Ordinance 2nd Reading Date: <input type="checkbox"/> Resolution <input type="checkbox"/> Information or Direction <input type="checkbox"/> Information Only <input checked="" type="checkbox"/> Council Direction <input type="checkbox"/> Consent Agenda</p>	<p>Advisory Board/Commission Recommendation</p> <p><input type="checkbox"/> Approval <input type="checkbox"/> Denial <input type="checkbox"/> None Forwarded <input checked="" type="checkbox"/> Not Applicable</p> <p>Comments:</p>	
<p>Staff Recommendation:</p>		
<p>Recommended Language for Motion:</p>		
<p>Project / Issue Relates To: <i>[Identify which goal(s), master plans(s) your issue relates to.]</i></p>		
<p><input type="checkbox"/> Council Goals/Priorities</p>	<p><input type="checkbox"/> Adopted Master Plan(s)</p>	<p><input checked="" type="checkbox"/> Not Applicable</p>

ISSUE BEFORE COUNCIL:

Consideration of an ordinance that would authorize the City of Wilsonville to ban recreational and medical marijuana facilities within Wilsonville’s city limits, subject to voter referral for concurrence or rejection in the November 2016 General Election.

EXECUTIVE SUMMARY:

Pursuant to Oregon House Bill 3400 (HB 3400), passed last session, cities may prohibit, within the city limits, the establishment of recreational marijuana producers, processors, wholesalers, and retailers. Medical marijuana processors, wholesalers, and retail establishments may also be banned unless they are grandfathered. Wilsonville has no grandfathered medical marijuana operations. HB 3400 is silent on whether a city can ban medical marijuana growers from

operating within city limits. This allowed prohibition under HB 3400, however, has one catch: Cities that are not located within a county that voted NO on Measure 91 by 55 percent or more may enact such a ban only by referral to the voters at the next statewide general election of November 2016. In the meantime, however, the city may enact an ordinance temporarily banning all or any of the above, to be effective immediately and until the results of the general election are in. In light of Wilsonville's effective ban on marijuana-related operations through its business license requirements, the Council must now determine whether it wishes to take advantage of this state-sanctioned process or continue to rely on the business license ban, the legality of which is disputed by the state but is supported by the current federal law prohibition of all marijuana use.

Last month in work session, Council discussed options with respect to the above-described ban, referral to voters, and the implications with respect to tax revenue. A copy of the work session staff report is attached hereto for your reference and contains an executive summary applicable to this action. At work session, Council directed that an ordinance be drafted banning all allowable marijuana facilities for public hearing at the December 7 Council meeting.

In addition, during work session a concern was raised by Councilor Lehan regarding the banking issues that face the marijuana industry. Basically, most banks will not deal with marijuana businesses for fear of running afoul of federal law. There are a few credit unions, however, in the State of Washington that have recently elected to take the risk but have reported there are numerous hoops to jump through and, if anything goes awry, the bank can lose its charter, as well as any pledged security. In a recent article found in the *Credit Union Times* magazine, it is noted that a primary reason these credit unions decided to take a chance is that the Washington Liquor Control and Cannabis Control Board regulations were specifically written and adopted to address the U.S. Attorney General's "Cole Memo" priorities for enforcement of the Controlled Substance Act. (Note: the Cole Memo is a document issued by the prior attorney general, who has since been replaced, about enforcement priorities and, although the new attorney general has not repealed it, there is some indication that she may not be entirely in agreement with it.) The article does go on to state that in neighboring Oregon, financial institutions are staying away from serving the pot business. In Colorado, even though the State of Colorado itself chartered the Fourth Corner Credit Union last year as a dedicated bank for marijuana companies, the Federal Reserve rejected its application to open a master account (which is necessary for a bank to function). The Federal Reserve also rejected its application to establish an electronic payment system that would have allowed customers to buy marijuana products with a credit card. As a result, in December, the federal court is scheduled to hear a case brought by Fourth Corner seeking to force the Federal Reserve to give it access to a master account.

Councilor Lehan also asked about the tax revenue that might be lost. As noted, if the City elects to ban either one or all of the listed Marijuana Facilities, it will get no state tax revenue share. The tax revenue for recreational marijuana sold by OLCC retailers will be collected by the Department of Revenue and distributed according to the formula found in the statute (HB 2041, Section 14). Until July 1, 2017, 10% of the Marijuana Fund is distributed to cities based on population. After July 1, 2017, 5% of the Fund will be distributed based on the number of producing and processing licenses cities have granted, and the other 5% will be distributed based on the number of retail licenses cities have granted. Again, cities that ban marijuana are not

eligible to receive any distributions from the fund. Medical marijuana is tax free. Given how easy it is to obtain a medical marijuana card, however, it will be interesting to see how many more people opt to go that direction. That situation has been an issue in the State of Washington in terms of lost tax revenue.

EXPECTED RESULTS:

If an ordinance banning some or all of the marijuana operations was to be enacted and the people voted to support the ban, the issue would be resolved and the chances of legal challenges to the City's ban would be greatly reduced. If, on the other hand, the vote was in favor of allowing the operations, then the City Council would then need to decide whether to follow the direction of the voters or stand by the business license ban.

TIMELINE:

Recreational licenses will begin to be issued in January, and cities are therefore advised the wisest course of action is to get a ban in place prior to that date to avoid greater potential for legal disputes and disgruntled applicants. Because there is only one meeting in December, our second reading will occur on the first business day of the month of January. As a result, we have made the Ordinance an emergency so we can quickly get word to the OLCC, as they begin receiving and processing applications in January.

CURRENT YEAR BUDGET IMPACTS:

None immediately, but if a city elects to ban any of the marijuana operations legalized by state law, the city will not get any of the tax revenue collected from the sale of marijuana, nor can it impose a local tax. For the first year, revenue is distributed based on population. Thereafter, the formula is changed based on the number of marijuana facilities located in the city, as outlined above. Additionally, HB 3400 allows a local tax of up to 3%, if approved by voter referral. Although the City already passed a higher local tax than is included in HB 3400, the belief is that the taxation formula of HB 3400 is most likely preemptive.

FINANCIAL REVIEW / COMMENTS:

Reviewed by: SCole Date: 11/30/15

LEGAL REVIEW / COMMENT:

Reviewed by: Mike Kohlhoff Date: November 20, 2015

The legal department prepared this Report.

COMMUNITY INVOLVEMENT PROCESS:

This matter has been of ongoing discussion during past City Council meetings open to the public, including most recently at a work session held on November 16, 2015. There was also a town hall meeting conducted by Representative John Davis and Senator Kim Thatcher.

POTENTIAL IMPACTS or BENEFIT TO THE COMMUNITY:

If an ordinance ban is enacted and referred to the citizens for a vote in November 2016, there will be clarity for both citizens and the Council as to the will of the people on this issue. The issue of the conflict between state and federal law will, however, remain. Opting out precludes the City from collecting the marijuana tax at both the state and local level.

ALTERNATIVES:

The Council has the following options, or a combination thereof, for consideration:

- 1) Elect to enact an ordinance banning all or some of the above-listed operations and refer to the voters to determine the will of the people on this issue;
- 2) Take no action and rely solely on the business license ordinance to limit marijuana operations within the City;
- 3) Take other action, such as enacting reasonable time, place, and manner restrictions, if the Council elects to allow some marijuana operations to occur, which will also generate some tax revenue.
- 4) Regardless of which election is made above, including a local tax election on the November 2016 ballot is another option, keeping in mind that as long as marijuana facilities are not allowed to operate in Wilsonville, there will be no tax to collect. The alternative for taxation is to wait until the next general election to do this, if the ban is referred to the voters in November 2016, to avoid additional cost and possible voter confusion.

CITY MANAGER COMMENT:

ATTACHMENTS:

- A. Proposed Ordinance (banning all facilities allowed to be banned under HB 3400)
- B. Staff Report from November 2, 2015 Work Session

ORDINANCE NO. 778

AN ORDINANCE OF THE CITY OF WILSONVILLE DECLARING A BAN ON MEDICAL MARIJUANA PROCESSING SITES, MEDICAL MARIJUANA DISPENSARIES, RECREATIONAL MARIJUANA PRODUCERS, RECREATIONAL MARIJUANA PROCESSORS, RECREATIONAL MARIJUANA WHOLESALERS, AND/OR RECREATIONAL MARIJUANA RETAILERS; REFERRING ORDINANCE; AND DECLARING AN EMERGENCY.

WHEREAS, the Oregon Medical Marijuana Act, as amended by House Bill 3400 (2015), provides that the Oregon Health Authority will register medical marijuana processing sites and medical marijuana dispensaries; and

WHEREAS, Measure 91, which the voters adopted in November 2014, and as amended by HB 3400 (2015), directs the Oregon Liquor Control Commission to license the production, processing, wholesale, and retail sale of recreational marijuana; and

WHEREAS, Section 134 of HB 3400 provides that a city council may adopt an ordinance to be referred to the electors of the city prohibiting the establishment of certain state-registered and state-licensed medical and recreational marijuana businesses in the area subject to the jurisdiction of the city; and

WHEREAS, HB 3400 also directs that a city council that desires to adopt such an ordinance shall also refer the question of whether to prohibit recreational marijuana producers, processors, wholesalers, and retailers, as well as medical marijuana processors and medical marijuana dispensaries, to the voters; and

WHEREAS, the City believes Enrolled House Bill 3400 is not the only source of authority for the City to prohibit the establishment of marijuana facilities, and by enactment of this Ordinance the City expressly preserves all other authority and all other existing Ordinances that also regulate marijuana within the City limits, including the growing of marijuana for sale; and

WHEREAS, the City finds that the public health, safety, and general welfare of the City, its residents, and its visitors necessitates and requires the adoption of this Ordinance prohibiting the establishment and operation of marijuana facilities within City limits, in accordance with the requirements of HB 3400, and for it to take effect immediately upon its adoption;

NOW, THEREFORE, THE CITY OF WILSONVILLE ORDAINS AS FOLLOWS:

1. The following is added to **Chapter 6** of the Wilsonville City Code under the heading of:

“PROHIBITION OF MARIJUANA FACILITIES

6.600 Definitions.

For the purposes of this Section, and in accordance with HB 3400, the following definitions apply:

(1) “Marijuana” means the plant Cannabis family Cannabaceae, any part of the plant Cannabis family Cannabaceae, and the seeds of the plant Cannabis family Cannabaceae.

(2) A “Marijuana Facility” includes all of the following:

- (a) Marijuana processing sites registered with the Oregon Health Authority;
- (b) Medical marijuana dispensaries registered with the Oregon Health Authority;
- (c) Marijuana producers licensed by the Oregon Liquor Control Commission;
- (d) Marijuana processors licensed by the Oregon Liquor Control Commission;
- (e) Marijuana wholesalers licensed by the Oregon Liquor Control Commission.
- (f) Marijuana retailers licensed by the Oregon Liquor Control Commission.

6.605 Ban Declared.

As described in Section 134 of House Bill 3400 (2015), the City of Wilsonville hereby prohibits the establishment and operation of all of the above-listed Marijuana Facilities in all areas subject to the jurisdiction of the City.

6.610 Violation.

The City may prosecute a violation of this Section pursuant to Chapter 1 of the Wilsonville Municipal Code or it may pursue any other remedies available to it, including but not limited to an action seeking declaratory relief and/or injunctive relief.

6.615 Remedies.

The establishment, maintenance, or operation of a marijuana facility by a person, business, or any other entity within the City in violation of the requirements of this Section will be subject to any and all enforcement remedies available to the City under law and/or the Wilsonville Municipal Code. A first offense will be enforced as a violation of Wilsonville Municipal Code Chapter 1.013, with a fine not to exceed \$500. Thereafter, any further violation may be enforced as a misdemeanor pursuant to Chapter 1.014 of the Wilsonville Municipal Code and/or the filing of an appropriate action and pursuit of an appropriate remedy in a court of competent jurisdiction.”

2. Unless otherwise repealed or modified in the interim, this Ordinance shall be referred to the electors of the City of Wilsonville at the next statewide general election on Tuesday, November 8, 2016, in accordance with the requirements of HB 3400.
3. This Ordinance being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist and this Ordinance shall be in full force and effect on December 7, 2015.
4. In accordance with HB 3400, the City Recorder is directed to provide a copy of this Ordinance to the Oregon Health Authority and to the Oregon Liquor Control Commission in a form and manner that those entities may require.
5. The City Recorder is directed to add Wilsonville Code Sections 6.600 through 6.615, as approved above, and to make such format, style, and conforming changes to match the format and style of the Public Health and Welfare section of the Wilsonville Code.
6. Except as set forth above, Chapter 6 of the Wilsonville Municipal Code remains in full force and effect, as written.

SUBMITTED to the Wilsonville City Council and read for the first time at a meeting thereof on the 7th day of December, 2015, and scheduled for the second and final reading on January 4, 2016, commencing at the hour of 7 p.m., at the Wilsonville City Hall, 29799 SW Town Center Loop East, Wilsonville, Oregon.

Sandra C. King, MMC, City Recorder

ENACTED by the City Council on the ____ day of December, 2015, by the following votes: Yes: _____ No: _____

Sandra C. King, MMC, City Recorder

DATED and signed by the Mayor this ____ day of January, 2016.

TIM KNAPP, MAYOR

SUMMARY OF VOTES:

- Mayor Knapp
- Council President Starr
- Councilor Fitzgerald
- Councilor Stevens
- Councilor Lehan



**CITY COUNCIL MEETING
STAFF REPORT**

<p>Meeting Date: November 2, 2015</p>	<p>Subject: Opt-out Ordinances for Recreational and Medical Marijuana Activities</p> <p>Staff Member: Barbara Jacobson and Mike Kohlhoff</p> <p>Department: Legal</p>	
<p>Action Required</p> <p><input type="checkbox"/> Motion</p> <p><input type="checkbox"/> Public Hearing Date:</p> <p><input type="checkbox"/> Ordinance 1st Reading Date:</p> <p><input type="checkbox"/> Ordinance 2nd Reading Date:</p> <p><input type="checkbox"/> Resolution</p> <p><input type="checkbox"/> Information or Direction</p> <p><input type="checkbox"/> Information Only</p> <p><input checked="" type="checkbox"/> Council Direction</p> <p><input type="checkbox"/> Consent Agenda</p>	<p>Advisory Board/Commission Recommendation</p> <p><input type="checkbox"/> Approval</p> <p><input type="checkbox"/> Denial</p> <p><input type="checkbox"/> None Forwarded</p> <p><input checked="" type="checkbox"/> Not Applicable</p> <p>Comments:</p>	
<p>Staff Recommendation:</p>		
<p>Recommended Language for Motion:</p>		
<p>PROJECT / ISSUE RELATES TO: <i>[Identify which goal(s), master plans(s) issue relates to.]</i></p>		
<p><input type="checkbox"/> Council Goals/Priorities</p>	<p><input type="checkbox"/> Adopted Master Plan(s)</p>	<p><input checked="" type="checkbox"/> Not Applicable</p>

ISSUE BEFORE COUNCIL:

Pursuant to Oregon House Bill 3400 (HB 3400), passed last session, cities may prohibit, within the city limits, the establishment of recreational marijuana producers, processors, wholesalers and retailers. Medical marijuana processors, wholesalers and retail establishments may also be banned unless they are grandfathered. Wilsonville has no grandfathered medical marijuana operations. HB 3400 is silent on whether a city can ban medical marijuana growers from operating within city limits. This allowed prohibition under HB3400, however, has one catch: Cities that are not located within a county that voted NO on Measure 91 by 55 percent or more may enact such a ban only by referral to the voters at the next statewide general election of November 2016. In the meantime, however, the city may enact an ordinance temporarily

banning all or any of the above, to be effective immediately and until the results of the general election are in. In light of Wilsonville's effective ban on marijuana related operations through its business license requirements, the Council must now determine whether it wishes to take advantage of this state sanctioned process or continue to rely on the business license ban, the legality of which is disputed by the state but is supported by the current federal law prohibition of all marijuana use.

To make things more complicated, in addition to the opt-out election, Cities can also elect to impose up to a 3 percent (3 percent) local tax on the sales of marijuana items made by those with recreational retail licenses by referring an ordinance to the voters at a statewide election, meaning an election in November of an even-numbered year. Thus, in addition to referring the opt-out election to voters, the City could also refer this tax measure to the voters, either in November of 2016 or the Council could wait on the tax question referral until the next general election (2018). Wilsonville has already enacted a higher tax, as did several other cities, with the aspiration that it would be grandfathered. Thus far, the State's position is 3 percent is the highest local tax allowed and it must be voted on by the people. If the opt-out is approved by voters, no tax would be allowed. If the opt out is not approved and the business license ordinance is modified, a tax would be allowed but depending on the extent of enacted time place and manner restrictions, the number of retail operations in Wilsonville would likely be few and thus the local tax generation diminished.

EXECUTIVE SUMMARY:

In 2014, the City Council enacted Ordinance No. 734, which prohibits the issuance of a business license to any business that is, on its face, in violation of state or federal law. This Ordinance effectively bans any medical marijuana dispensaries or other marijuana related businesses from legally operating within the City limits. In addition, the City also took advantage of Senate Bill 1531c, passed by the Oregon Legislature during the short 2014 legislative session, which allowed for a one (1) year ban on registered medical marijuana facilities by local jurisdictions, provided that the ban was effective no later than May 1, 2014 and expiring on May 1, 2015.

Following the passage of Ballot Measure 91 the City has received numerous calls from the public asking if the City is changing its position and allowing marijuana related businesses to obtain a business license to operate in the City and, if so, what restrictions might be imposed. Federal law still holds that any use or sale of marijuana is illegal. The City had elected to wait to do anything further, hoping that the legislature would fully address the issue. Unfortunately, although the legislature came up with the above described compromise, it comes with restrictions.

The issue of Home Rule/local control was hotly debated during the last legislative session as the legislature made efforts to amend and clarify Measure 91 through several failed ballot measures. At the eleventh hour, HB 3400 was passed with opt-out language. The end result was a compromise that allowed cities located in counties that voted by 55 percent or more against Measure 91 to outright ban all of the above listed marijuana operations within the city simply by passage of a city council approved ordinance. Those cities located in counties that did not vote against Measure 91 by 55 percent or more may enact a temporary moratorium by ordinance

banning all or some of the above listed operations but must then refer the permanent ban to a vote of the people during the November 20126.

EXPECTED RESULTS:

If an Ordinance banning some or all of the marijuana operations was to be enacted and the people voted to support the ban, the issue would be resolved and the chances of legal challenges to the City's ban would be greatly reduced. If, on the other hand, the vote was in favor of allowing the operations, then the City Council would then need to decide whether to follow the direction of the voters or stand by the business license ban.

TIMELINE:

Recreational licenses will begin to be issued in January and cities are therefore advised the wisest course of action is to get a ban in place prior to that date to avoid greater potential for legal disputes and disgruntled applicants.

CURRENT YEAR BUDGET IMPACTS:

None immediately, but if a City elects to ban any of the marijuana operations legalized by State law, the City will not get any of the tax revenue collected from the sale of marijuana. For the first year revenue is distributed based on population. Thereafter, the formula is changed based on the number of dispensaries in a given location. Additionally, HB 3400 allows a local tax of up to 3 percent, if approved by voter referral. Although the City already passed a higher local tax than is included in HB 3400 the belief is that the taxation formula of HB 3400 is most likely preemptive.

FINANCIAL REVIEW / COMMENTS:

LEGAL REVIEW / COMMENT:

Reviewed by: Mike Kohlhoff Date: 10/22/2015_____

The legal department prepared this Report.

CITY MANAGER COMMENT:

COMMUNITY INVOLVEMENT PROCESS:

This matter has been of ongoing discussion during past City Council meetings, a town hall meeting conducted by Representatives John Davis and Senator Kim Thatcher, and past City Council work sessions and hearings open to the public.

POTENTIAL IMPACTS or BENEFIT TO THE COMMUNITY:

If an ordinance ban is enacted and referred to the citizens for a vote in November 16, there will be clarity for both citizens and the Council as to the will of the people on this issue. The issue of the conflict between state and federal law will, however, remain. Opting out precludes the City from collecting the marijuana tax at both the state and local level.

ALTERNATIVES:

The Council has the following options for consideration:

- 1) Elect to enact an ordinance banning all or some of the above listed operations (Note: the City Council can rescind such an ordinance at any time before the November 2016 election) and refer to the voters to determine the will of the people on this issue.
- 2) Take no action and rely solely on the business license ordinance to limit marijuana operations within the City;
- 3) Take other action, such as enacting reasonable time, place and manner restrictions, if the Council elects to allow some marijuana operations to occur, which will also generate some tax revenue, though likely nominal
- 4) Regardless of which election is made above, include a local tax election on the November 2016 ballot, keeping in mind that as long as recreational dispensaries are not allowed to operate in Wilsonville there will be no tax to collect.

ATTACHMENTS:

A sample packet of documents prepared by the League of Oregon Cities required for an opt-out by voter referral are attached for review, as well as documents for the local tax by voter referral option. Documentation would be customized for Wilsonville, depending on the Council's direction and determination concerning the preservation of existing ordinances.

APPENDIX C

Opt Out by Voter Referral

Cities that are not in a county that voted no on Measure 91 by 55 percent or more, or cities that desire to ban certain marijuana activities after December 24, 2015, may do so only by referral at a statewide general election, meaning an election in November of an even-numbered year. Cities should consult the Secretary of State's referral manual and work with the city recorder or similar official to determine the procedures necessary to refer an ordinance to the voters.

Once adopted, the city must submit the ordinance to the Oregon Health Authority (if banning medical marijuana businesses) and/or the Oregon Liquor Control Commission (if banning recreational marijuana businesses), and those agencies will then stop registering and licensing the prohibited businesses until the next statewide general election. In other words, for cities using the referral process, the council's adoption of an ordinance acts as a moratorium on new facilities until the election. Each agency has a form for submitting the ordinances.

Medical marijuana dispensaries are grandfathered and are able to operate despite a ban if they: (1) have applied to be registered by July 1, 2015 or were registered prior to the date on which the ordinance is adopted by the city council, and (2) successfully completed the land use application process (if applicable). Medical marijuana processors are grandfathered and are able to operate despite a ban if they: (1) were registered under ORS 475.300 to 475.346 and were processing usable marijuana on or before July 1, 2015 or (2) are registered under section 85 of HB 3400 prior to the date on which the ordinance is adopted by the governing body, and (3) have successfully completed a local land use application process (if applicable).

Cities that adopt an ordinance prohibiting the establishment of medical or recreational marijuana businesses are not eligible to receive a distribution of state marijuana tax revenues or to impose a local tax under section 34a of HB 3400.

In addition, it is important to note that once the elections official files the referral with the county election office, the ballot measure is certified to the ballot. At that point, the restrictions on public employees engaging in political activity will apply. Consequently, cities should consult the Secretary of State's manual *Restrictions on Political Campaigning by Public Employees* and their city attorney to ensure that public employees are complying with state elections law in their communications about the pending measure.

AN ORDINANCE OF THE CITY OF {NAME} DECLARING A BAN ON {MEDICAL MARIJUANA PROCESSING SITES, MEDICAL MARIJUANA DISPENSARIES, RECREATIONAL MARIJUANA PRODUCERS, RECREATIONAL MARIJUANA PROCESSORS, RECREATIONAL MARIJUANA WHOLESALERS, AND/OR RECREATIONAL MARIJUANA RETAILERS}; REFERRING ORDINANCE; AND DECLARING AN EMERGENCY

Whereas, the Oregon Medical Marijuana Act, as amended by House Bill 3400 (2015) provides that the Oregon Health Authority will register medical marijuana processing sites and medical marijuana dispensaries;

Whereas, Measure 91, which the voters adopted in November 2014, directs the Oregon Liquor Control Commission to license the production, processing, wholesale, and retail sale of recreational marijuana;

Whereas, section 134 of HB 3400 provides that a city council may adopt an ordinance to be referred to the electors of the city prohibiting the establishment of certain state-registered and state-licensed marijuana businesses in the area subject to the jurisdiction of the city;

Whereas, the city council wants to refer the question of whether to prohibit {recreational marijuana producers, processors, wholesalers, and/or retailers, as well as medical marijuana processors and/or medical marijuana dispensaries} to the voters of {City};

NOW THEREFORE, BASED ON THE FOREGOING, THE CITY OF {NAME} ORDAINS AS FOLLOWS:

DEFINITIONS.

Marijuana means the plant Cannabis family Cannabaceae, any part of the plant Cannabis family Cannabaceae and the seeds of the plant Cannabis family Cannabaceae.

Marijuana processing site means an entity registered with the Oregon Health Authority to process marijuana.

Marijuana processor means an entity licensed by the Oregon Liquor Control Commission to process marijuana.

Marijuana producer means an entity licensed by the Oregon Liquor Control Commission to manufacture, plant, cultivate, grow or harvest marijuana.

Marijuana retailer means an entity licensed by the Oregon Liquor Control Commission to sell marijuana items to a consumer in this state.

Marijuana wholesaler means an entity licensed by the Oregon Liquor Control Commission to purchase items in this state for resale to a person other than a consumer.

Medical marijuana dispensary means an entity registered with the Oregon Health Authority to transfer marijuana.

BAN DECLARED. As described in section 134 of House Bill 3400 (2015), the City of {Name} hereby prohibits the establishment {and operation}¹⁰ of the following in the area subject to the jurisdiction of the city {select desired options from the list below}:

- (a) Marijuana processing sites;

¹⁰ Include this wording if (1) there are existing recreational licensees operating within the city and (2) the city does not wish to grandfather in those activities.

- (b) Medical marijuana dispensaries;
- (c) Marijuana producers;
- (d) Marijuana processors;
- (e) Marijuana wholesalers;
- (f) Marijuana retailers.

EXCEPTION. The prohibition set out in this ordinance does not apply to a marijuana processing site or medical marijuana dispensary that meets the conditions set out in subsections 6 or 7 of section 134, section 136, or section 137 of House Bill 3400 (2015).

REFERRAL. This ordinance shall be referred to the electors of the city of {name} at the next statewide general election on {date – Tuesday, November 8, 2016 is the next statewide general election}.

EMERGENCY. This ordinance being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this ordinance shall be in full force and effect on {date/passage}.

A RESOLUTION APPROVING REFERAL TO THE ELECTORS OF THE CITY OF {NAME}
THE QUESTION OF BANNING {MEDICAL MARIJUANA PROCESSING SITES,
MEDICAL MARIJUANA DISPENSARIES, RECREATIONAL MARIJUANA PRODUCERS,
RECREATIONAL MARIJUANA PROCESSORS, RECREATIONAL MARIJUANA
WHOLESALEERS, AND/OR RECREATIONAL MARIJUANA RETAILERS} WITHIN THE
CITY¹¹

Whereas, section 134 of HB 3400 provides that a city council may adopt an ordinance to be referred to the electors of the city prohibiting the establishment of certain state-registered and state-licensed marijuana businesses in the area subject to the jurisdiction of the city;

Whereas, the CITY OF {NAME} city council adopted Ordinance {number}, which prohibits the establishment of {list of marijuana activities} in the area subject to the jurisdiction of the city;

NOW, THEREFORE, THE CITY OF {NAME} RESOLVES AS FOLLOWS:

MEASURE. A measure election is hereby called for the purpose of submitting to the electors of the CITY OF {NAME} a measure prohibiting the establishment of certain marijuana activities in the area subject to the jurisdiction of the city, a copy of which is attached hereto as “Exhibit 1,” and incorporated herein by reference.¹²

ELECTION CONDUCTED BY MAIL. The measure election shall be held in the CITY OF {NAME} on {date – November 8, 2016 for the next general election}. As required by ORS

¹¹ Some cities approve the ballot title, question, summary, and explanatory statement by adopting an ordinance, rather than by adopting a separate resolution.

¹² Exhibit 1 should include the question and summary.

254.465, the measure election shall be conducted by mail by the County Clerk of {county name} County, according to the procedures adopted by the Oregon Secretary of State.

DELEGATION. The CITY OF {NAME} authorizes the {City Manager, City Administrator, City Recorder, or other appropriate city official} or the {City Manager, City Administrator, City Recorder, or other appropriate city official} designee, to act on behalf of the city and to take such further action as is necessary to carry out the intent and purposes set forth herein, in compliance with the applicable provisions of law.

PREPARATION OF BALLOT TITLE. The City Attorney is hereby directed to prepare the ballot title for the measure, and deposit the ballot title with the {city elections officer} within the times set forth by law.¹³

NOTICE OF BALLOT TITLE AND RIGHT TO APPEAL. Upon receiving the ballot title for this measure, the {city elections officer} shall publish in the next available edition of a newspaper of general circulation in the city a notice of receipt of the ballot title, including notice that an elector may file a petition for review of the ballot title.

EXPLANATORY STATEMENT. The explanatory statement for the measure, which is attached hereto as “Exhibit 2,” and incorporated herein by reference, is hereby approved.

FILING WITH COUNTY ELECTIONS OFFICE. The {city elections officer} shall deliver the Notice of Measure Election to the county clerk for {name of county} County for inclusion on the ballot for the {date} election.¹⁴

EFFECTIVE DATE. This resolution is effective upon adoption.

As noted, the ballot title, question, summary, and explanatory statement may be approved by the council through ordinance or resolution.

BALLOT TITLE

A caption which reasonably identifies the subject of the measure
10 word limit under ORS 250.035(1)(a)

Prohibits certain marijuana registrants {and/or} licensees in {city}

QUESTION

A question which plainly phrases the chief purpose of the measure so that an affirmative response to the question corresponds to an affirmative vote on the measure

¹³ Alternatively, the council may prepare the ballot title and attach it to the resolution for approval. In that case, this section might say, “The ballot title for the measure set forth as Exhibit {number} to this resolution is hereby adopted.” A city’s local rules may dictate who will prepare the ballot title.

¹⁴ The Notice of Measure Election is a form provided by the Oregon Secretary of State where cities provide the ballot title, question, summary, and explanatory statement. The form can be found on the Secretary of State’s website at www.sos.oregon.gov.

20 word limit under ORS 250.035(1)(b)

Shall {city} prohibit {medical marijuana processors, medical marijuana dispensaries, recreational marijuana producers, processors, wholesalers, and retailers} in {city}?

SUMMARY

A concise and impartial statement summarizing the measure and its major effect
175 word limit under ORS 250.035(1)(c)

**Note: This summary may need to be modified depending on which activities a city proposes to ban and whether it will grandfather in existing retail activities. By law, certain medical marijuana businesses can continue operating.*

State law allows operation of registered medical marijuana processors, medical marijuana dispensaries and licensed recreational marijuana producers, processors, wholesalers, and retailers. State law provides that a city council may adopt an ordinance to be referred to the voters to prohibit the establishment of any of those registered or licensed activities.

Approval of this measure would prohibit the establishment {and operation}¹⁵ of {medical marijuana processors, medical marijuana dispensaries, recreational marijuana producers, processors, wholesalers, and retailers} within the area subject to the jurisdiction of the city {provided that state law allows for continued operation of medical marijuana processors and medical marijuana dispensaries already registered – or in some cases, that have applied to be registered – and that have successfully completed a local land use application process}.

If this measure is approved, the city will be ineligible to receive distributions of state marijuana tax revenues and will be unable to impose a local tax or fee on the production, processing or sale of marijuana or any product into which marijuana has been incorporated.

EXPLANATORY STATEMENT

An impartial, simple and understandable statement explaining the measure and its effect for use in the county voters' pamphlet

500 word limit under ORS 251.345 and OAR 165-022-0040(3)

Approval of this measure would prohibit the establishment {and operation}¹⁶ of certain marijuana activities within the city.

The Oregon Medical Marijuana Act, as amended by the Legislature in 2015, provides that the Oregon Health Authority will register medical marijuana processors and medical marijuana

¹⁵ Include this wording if (1) there are existing recreational licensees operating within the city and (2) the city does not wish to grandfather in those activities.

¹⁶ Include this wording if (1) there are existing recreational licensees operating within the city and (2) the city does not wish to grandfather in those activities.

dispensaries. Medical marijuana processors compound or convert marijuana into concentrates, extracts, edible products, and other products intended for human consumption and use. Medical marijuana dispensaries facilitate the transfer of marijuana and marijuana products between patients, caregivers, processors, and growers. Measure 91, approved by Oregon voters in 2014 and by the Legislature in 2015, provides that the Oregon Liquor Control Commission will license recreational marijuana producers (those who manufacture, plant, cultivate, grow or harvest marijuana), processors, wholesalers, and retailers.

A city council may adopt an ordinance prohibiting the establishment of any of those entities within the city, but the council must refer the ordinance to the voters at a statewide general election. The CITY OF {NAME} city council has adopted an ordinance prohibiting the establishment of {list of marijuana activities to be banned} within the city and, as a result, has referred this measure to the voters.

If approved, this measure would prohibit {medical marijuana processors, medical marijuana dispensaries, and/or recreational marijuana producers, processors, wholesalers, and/or retailers} within the city. Medical marijuana processors and medical marijuana dispensaries that were registered with the state before the city council adopted the ordinance, and medical marijuana dispensaries that had applied to be registered on or before July 1, 2015, can continue operating in the city even if this measure is approved, if those entities have successfully completed a local land use application process.

Approval of this measure has revenue impacts. Currently, ten percent of state marijuana tax revenues will be distributed to cities to assist local law enforcement in performing their duties under Measure 91. If approved, this measure would make the city ineligible to receive distributions of state marijuana tax revenues.

Currently, under the 2015 legislation, a city may impose up to a three percent tax on the sale of marijuana items by a marijuana retailer in the city. However, a city that adopts an ordinance prohibiting the establishment of medical marijuana processors, medical marijuana dispensaries, or recreational marijuana producers, processors, wholesalers, or retailers may not impose a local tax or fee on the production, processing or sale of marijuana or any product into which marijuana has been incorporated. Approval of this measure would therefore prevent a city from imposing a local tax on those activities.

This document is not a substitute for legal advice. City councils considering prohibiting or taxing any marijuana facilities should not rely solely on this sample. Any city council considering any form of regulation of marijuana should consult with its city attorney regarding the advantages, disadvantages, risks and limitations of any given approach.

Legal counsel can also assist a city in preparing an ordinance that is consistent with local procedures, existing ordinances and a city's charter, and advise on what process is needed to adopt the ordinance. The sample provided is intended to be a starting point, not an ending point, for any jurisdiction considering prohibiting or taxing marijuana.

APPENDIX D

Local Tax by Voter Referral

Under HB 3400, cities may impose up to a 3 percent tax on sales of marijuana items made by those with recreational retail licenses by referring an ordinance to the voters at a statewide general election, meaning an election in November of an even-numbered year.¹⁷

However, sections 133 and 134 of HB 3400, which provide a mechanism for prohibiting the establishment of certain marijuana businesses, state that a city that adopts a prohibition under those sections may not impose a tax or fee on the production, processing or sale of marijuana or any product into which marijuana has been incorporated. As a result, if a city refers a local tax ordinance to the voters at the same election that it refers a prohibition ordinance to the voters, the city will want to consult its attorney regarding the effect of those two ordinances. The sample below includes wording for cities that put both ordinances on that same ballot. However, a city planning to refer both measures to the ballot should work closely with its city attorney on preparing those ordinances and referral documents.

As with any revenue raising measure, it's important that the budget committee approve any proposed taxes as part of its approval of the budget. See the Department of Revenue "Tax Election Ballot Measures" manual for more information.

In addition, it is important to note that once the elections official files the referral with the county election office, the ballot measure is certified to the ballot. At that point, the restrictions on public employees engaging in political activity will apply. Consequently, cities should consult the Secretary of State's manual *Restrictions on Political Campaigning by Public Employees* and their city attorney to ensure that public employees are complying with state elections law in their communications about the pending measure.

AN ORDINANCE OF THE CITY OF {NAME} IMPOSING A {UP TO THREE} PERCENT TAX {OR FEE} ON THE SALE OF MARIJUANA ITEMS BY A MARIJUANA RETAILER AND REFERRING ORDINANCE¹⁸

Whereas, section 34a of House Bill 3400 (2015) provides that a city council may adopt an ordinance to be referred to the voters that imposes up to a three percent tax or fee on the sale of marijuana items by a marijuana retailer in the area subject to the jurisdiction of the city;

¹⁷ Cities that imposed marijuana taxes prior to the effective date of HB 3400 (2015) should talk to their city attorney about the status of those taxes.

¹⁸ No emergency clause is included in this ordinance because a city may not include an emergency clause in an ordinance regarding taxation. See *Advance Resorts v. City of Wheeler*, 141 Or App 166, 178, 917 P2d 61, rev den, 324 Or 322 (1996) (holding that a city may not include an emergency clause in an ordinance regarding taxation).

Whereas, the city council wants to impose a tax {or fee} on the sale of marijuana items by a marijuana retailer in the area subject to the jurisdiction of the city;

NOW THEREFORE, BASED ON THE FOREGOING, THE CITY OF {NAME} ORDAINS AS FOLLOWS:

DEFINITIONS.

Marijuana item has the meaning given that term in Oregon Laws 2015, chapter 614, section 1.

Marijuana retailer means a person who sells marijuana items to a consumer in this state.

Retail sale price means the price paid for a marijuana item, excluding tax, to a marijuana retailer by or on behalf of a consumer of the marijuana item.

TAX IMPOSED. As described in section 34a of House Bill 3400 (2015), the City of {Name} hereby imposes a tax {or fee} of {up to three} percent on the retail sale price of marijuana items by a marijuana retailer in the area subject to the jurisdiction of the city.

COLLECTION. The tax shall be collected at the point of sale of a marijuana item by a marijuana retailer at the time at which the retail sale occurs and remitted by each marijuana retailer that engages in the retail sale of marijuana items.¹⁹

REFERRAL. This ordinance shall be referred to the electors of {city} at the next statewide general election on {date – Tuesday, November 8, 2016 is the next statewide general election}.

A RESOLUTION APPROVING REFERAL TO THE ELECTORS OF THE CITY OF {NAME} THE QUESTION OF IMPOSING A {UP TO THREE} PERCENT TAX {OR FEE} ON THE SALE OF MARIJUANA ITEMS BY A MARIJUANA RETAILER WITHIN THE CITY²⁰

Whereas, section 34a of House Bill 3400 (2015) provides that a city council may adopt an ordinance to be referred to the voters that imposes up to a three percent tax or fee on the sale of marijuana items by a marijuana retailer in the area subject to the jurisdiction of the city;

Whereas, the city of {name} city council adopted Ordinance {number}, which imposes a tax of {up to three} percent on the sale of marijuana items by a marijuana retailer in the area subject to the jurisdiction of the city;

NOW, THEREFORE, THE CITY OF {NAME} RESOLVES AS FOLLOWS:

MEASURE. A measure election is hereby called for the purpose of submitting to the electors of the city of {name} a measure imposing a {up to three} percent tax on the sale of marijuana items

¹⁹ Cities may want to include information about where, how, and when the tax must be remitted.

²⁰ Some cities approve the ballot title, question, summary, and explanatory statement by adopting an ordinance, rather than by adopting a separate resolution.

by a marijuana retailer in the area subject to the jurisdiction of the city, a copy of which is attached hereto as “Exhibit 1,” and incorporated herein by reference.²¹

ELECTION CONDUCTED BY MAIL. The measure election shall be held in the city of {name} on {date – November 8, 2016 for the next general election}. As required by ORS 254.465, the measure election shall be conducted by mail by the County Clerk of {county name} County, according to the procedures adopted by the Oregon Secretary of State.

DELEGATION. The city of {name} authorizes the City Manager, or the City Manager’s designee, to act on behalf of the city and to take such further action as is necessary to carry out the intent and purposes set forth herein, in compliance with the applicable provisions of law.

PREPARATION OF BALLOT TITLE. The City Attorney is hereby directed to prepare the ballot title for the measure, and deposit the ballot title with the {city elections officer} within the times set forth by law.²²

NOTICE OF BALLOT TITLE AND RIGHT TO APPEAL. Upon receiving the ballot title for this measure, the {city elections officer} shall publish in the next available edition of a newspaper of general circulation in the city a notice of receipt of the ballot title, including notice that an elector may file a petition for review of the ballot title.

EXPLANATORY STATEMENT. The explanatory statement for the measure, which is attached hereto as “Exhibit 2,” and incorporated herein by reference, is hereby approved.

FILING WITH COUNTY ELECTIONS OFFICE. The {city elections officer} shall deliver the Notice of Measure Election to the county clerk for {name of county} County for inclusion on the ballot for the {date} election.²³

EFFECTIVE DATE. This resolution is effective upon adoption.

BALLOT TITLE

A caption which reasonably identifies the subject of the measure

10 word limit under ORS 250.035(1)(a)

Imposes city tax on marijuana retailer’s sale of marijuana items

²¹ Exhibit 1 should include the question and summary.

²² Alternatively, the council may prepare the ballot title and attach it to the resolution for approval. In that case, this section might say, “The ballot title for the measure set forth as Exhibit {number} to this resolution is hereby adopted.” A city’s local rules may dictate who will prepare the ballot title.

²³ The Notice of Measure Election is a form provided by the Oregon Secretary of State where cities provide the ballot title, question, summary, and explanatory statement. The form can be found on the Secretary of State’s website at www.sos.oregon.gov.

QUESTION

A question which plainly phrases the chief purpose of the measure so that an affirmative response to the question corresponds to an affirmative vote on the measure

20 word limit under ORS 250.035(1)(b)

Shall City of {name} impose a {up to three percent} tax on the sale in the City of {city} of marijuana items by a marijuana retailer?

SUMMARY

A concise and impartial statement summarizing the measure and its major effect

175 word limit under ORS 250.035(1)(c)

Under state law, a city council may adopt an ordinance to be referred to the voters of the city imposing up to a three percent tax or fee on the sale of marijuana items in the city by a licensed marijuana retailer.

Approval of this measure would impose a {up to three} percent tax on the sale of marijuana items in the city by a licensed marijuana retailer. The tax would be collected at the point of sale and remitted by the marijuana retailer.

{Under state law, a city that adopts an ordinance that prohibits the establishment in the area subject to the jurisdiction of the city of a medical marijuana processor, medical marijuana dispensary, or recreational marijuana producer, processor, wholesaler, or retailer may not impose a tax or fee on the production, processing or sale of marijuana or any product into which marijuana has been incorporated. This measure would become operative only if the measure proposing to prohibit the establishment of any of those marijuana entities does not pass by a majority of votes.}²⁴

EXPLANATORY STATEMENT

An impartial, simple and understandable statement explaining the measure and its effect for use in the county voters' pamphlet

500 word limit under ORS 251.345 and OAR 165-022-0040(3)

Approval of this measure would impose a {up to three} percent tax on the sale of marijuana items by a marijuana retailer within the city. If approved, the revenues from this tax are estimated to be \$_____. There are no restrictions on how the city may use the revenues generated by this tax. {However, this measure will become operative only if the ballot measure prohibiting the establishment of certain marijuana registrants and licensees fails.}

²⁴ Cities that desire to provide voters with the most options may wish to put both a measure banning certain activities and a tax measure before the voters at the same time. Cities that elect to do so should include this wording explaining the effect of the vote.

Under Measure 91, adopted by Oregon voters in November 2014 and amended by the Legislature in 2015, the Oregon Liquor Control Commission must license the retail sale of recreational marijuana. The 2015 Legislation provides that a city council may adopt an ordinance imposing up to a three percent tax on the sale of marijuana items (which include marijuana concentrates, extracts, edibles, and other products intended for human consumption and use) by retail licensees in the city, but the council must refer that ordinance to the voters at a statewide general election. The City of {name} city council has adopted an ordinance imposing a {up to three} percent tax on the sale of marijuana items by a retail licensee in the city, and, as a result, has referred this measure to the voters.

{However, this measure will become operative only if the ballot measure prohibiting the establishment of certain marijuana registrants and licensees fails. Under state law, a city that adopts an ordinance that prohibits the establishment in the area subject to the jurisdiction of the city of a medical marijuana processor, medical marijuana dispensary, or recreational marijuana producer, processor, wholesaler, or retailer may not impose a tax or fee on the production, processing or sale of marijuana or any product into which marijuana has been incorporated. As a result, if the voters pass a prohibition ordinance, this tax measure will not become operative, even if it also receives a majority of votes.}

This document is not a substitute for legal advice. City councils considering prohibiting or taxing any marijuana facilities should not rely solely on this sample. Any city council considering any form of regulation of marijuana should consult with its city attorney regarding the advantages, disadvantages, risks and limitations of any given approach.

Legal counsel can also assist a city in preparing an ordinance that is consistent with local procedures, existing ordinances and a city's charter, and advise on what process is needed to adopt the ordinance.

The sample provided is intended to be a starting point, not an ending point, for any jurisdiction considering prohibiting or taxing marijuana.



**CITY COUNCIL MEETING
STAFF REPORT**

Meeting Date: Dec.7, 2015		Subject: Resolution No. 2558 Intergovernmental Cooperative Agreement with West Linn-Wilsonville School District for Advance Road Middle School Site Infrastructure Staff Member: Michael Kohlhoff Department: Legal	
Action Required		Advisory Board/Commission Recommendation	
<input type="checkbox"/> Motion <input type="checkbox"/> Public Hearing Date: <input type="checkbox"/> Ordinance 1 st Reading Date: <input type="checkbox"/> Ordinance 2 nd Reading Date: <input checked="" type="checkbox"/> Resolution <input type="checkbox"/> Information or Direction <input type="checkbox"/> Information Only <input type="checkbox"/> Council Direction <input type="checkbox"/> Consent Agenda		<input type="checkbox"/> Approval <input type="checkbox"/> Denial <input type="checkbox"/> None Forwarded <input type="checkbox"/> Not Applicable Comments:	
Staff Recommendation: Approval of resolution and accompanying Intergovernmental Agreement.			
Recommended Language for Motion: I move to approve Resolution No. 2558.			
Project / Issue Relates To: <i>[Identify which goal(s), master plans(s) your issue relates to.]</i>			
<input type="checkbox"/> Council Goals/Priorities		<input type="checkbox"/> Adopted Master Plan(s)	<input checked="" type="checkbox"/> Not Applicable

ISSUE BEFORE COUNCIL: Action is needed to approve a cooperative agreement between the City of Wilsonville and West Linn-Wilsonville School District for Advance Road Middle School’s site infrastructure.

EXECUTIVE SUMMARY: This agreement provides for the necessary infrastructure for development of the middle school, including road improvements to Advance Road, signalization at the intersection of Advance/ Boeckman and Wilsonville/Stafford, a major sewer line, water

line, and that the property will be portioned to complete the exchange agreement and deed the City approximately ten acres of park land.

EXPECTED RESULTS:

The timely building of a middle school by fall 2017. The City owning approximately 10 acres for a park and sports fields.

TIMELINE:

CURRENT YEAR BUDGET IMPACTS:

FINANCIAL REVIEW / COMMENTS:

Reviewed by: SCole Date: 11/30/2015

This agreement will allow the City to partner with the West Linn-Wilsonville School District to cost-effectively provide necessary public capital infrastructure to serve the school and future development. Public capital infrastructure projects for this area have been programmed into the City's five-year Capital Improvement Program (CIP).

LEGAL REVIEW / COMMENT:

Reviewed by: MEK _____ Date: 11/24/2015

Resolution prepared by Legal and agreement prepared with engineering

COMMUNITY INVOLVEMENT PROCESS:

POTENTIAL IMPACTS or BENEFIT TO THE COMMUNITY (businesses, neighborhoods, protected and other groups): Less overcrowding of our schools and more recreational opportunities for our citizens.

ALTERNATIVES:

CITY MANAGER COMMENT:

ATTACHMENTS:

- A. Resolution 2558
- B. Intergovernmental Agreement

RESOLUTION NO. 2558

A RESOLUTION OF THE CITY OF WILSONVILLE AUTHORIZING INTERGOVERNMENTAL COOPERATIVE AGREEMENT FOR ADVANCE ROAD MIDDLE SCHOOL SITE INFRASTRUCTURE BETWEEN CITY OF WILSONVILLE AND WEST-LINN WILSONVILLE SCHOOL DISTRICT

WHEREAS, the City of Wilsonville (“City”), an Oregon municipal corporation, and the West Linn-Wilsonville School District (“District”), an Oregon school district, are authorized pursuant to ORS 190.003 et seq. to enter into intergovernmental agreements for the performance of any and all functions and activities that a party, or its officers or agencies, have authority to perform; and

WHEREAS, City and District are authorized pursuant to ORS 280.150 to “jointly, in such manner as they shall agree upon, construct, acquire, own, equip, operate and maintain facilities which will directly aid each participating governmental unit in performing a duty or duties imposed upon it or aid in exercising a power or powers conferred upon it, and may appropriate money and may issue bonds therefor”; and

WHEREAS, in the exercise of their respective duties and powers, the City and District have previously planned and conferred regarding the residential growth of the City, now and into the future, and the need to plan for, construct, and operate, among other things, school facilities, recreation field facilities, and infrastructure facilities to serve the planned school and recreation facilities in coordination with such growth; and

WHEREAS, to meet the City’s needs for future recreation field facilities to accommodate growth, as defined in the Master Parks and Recreation Plan, and the District’s needs for future schools, the City and District entered into an exchange agreement whereby the City caused to be acquired an approximate 10-acre site in the eastern section of the Villebois Village development and deeded it to the District, in consideration that the District would deed to the City an approximate 10-acre portion of a 40-acre parcel of land owned by the District along Advance Road and 60th Avenue, upon the District obtaining Metro approval to bring the parcel into the Urban Growth Boundary and annexing the parcel into the City; and

WHEREAS, in the exercise of its duties and powers, the City is currently developing a master concept plan for the Frog Pond Area located around and near the District’s 40-acre site,

and also will be developing a field development plan for the 10-acre site to be deeded to the City, but development of the fields is currently anticipated to be after the need to open the school, as described below; and

WHEREAS, the District, with cooperation and support of the City, has successfully petitioned Metro and caused the Advance Road site to be included within the Urban Growth Boundary, and the District has also caused the site to be annexed into the City; and

WHEREAS, the District plans to construct a middle school and a primary school on the remaining portion of the site; however, the City and District find the District has experienced an overcrowding at its Inza R. Wood Middle School site, which is being used to serve all of Wilsonville and surrounding areas, and that the District voters have approved a bond that includes the funds to construct a new Middle School at the Advance Road 40-acre site, with a scheduled opening in the fall of 2017, and with time being of the essence given increasing middle school overcrowding and the rules of arbitrage necessitating timely construction of the middle school, with the primary school not being needed to be constructed until a later date; and

WHEREAS, the development of this school site will require, as conditions for development approval, the construction of a public road system to access the site, improvements to connecting roads serving the site, installation of a signalized intersection, extension of water and sanitary sewer main lines, and providing of storm drainage systems; and

WHEREAS, due to the location of the school site and the need to extend roadway and utility services to the site, as well as needing to begin the school's construction by Fall 2017, cost savings for both parties can be achieved by the District also contracting to build the infrastructure, in that by avoiding having both the City and the District use separate contractors for construction of shared infrastructure, dual mobilization, coordination, and standby costs can be avoided with the District constructing its school site, and the District should be able to achieve better cost proposals if it also contracts the construction of the infrastructure required to service the site and provided for herein; and

WHEREAS, to the extent the infrastructure that is required for the District to provide to develop and serve the site also involves extra capacity to serve subsequent development, then the District is entitled to reimbursement by such development or by the City, as the case may be; and

WHEREAS, the terms "costs for construction" or "infrastructure costs" for streets and/or sewer, water, storm drainage, and associated facilities used herein shall be intended to include

both soft costs such as design, engineering, permitting, inspection, and management of construction, legal, bonding, and like costs (as set forth in Section 7.1), and hard costs such as the material, labor, contingency, overhead, and like costs, except as may otherwise be set forth; and

WHEREAS, the District has conferred with the City and duly reviewed the aforementioned conditions recited above, and finds it has the authority to proceed in mutual aid of cooperatively advancing the development of education of its District's children through well planned and funded schools and safe routes to schools, future recreational facilities for use by its school age population, and the necessity of having adequate and timely infrastructure facilities provided to serve schools and recreation facilities, and that such cooperative agreement can be prudently structured for funding appropriation to aid each participating government entity in carrying out its duties and powers and to advance the public's interest;

NOW, THEREFORE, THE CITY OF WILSONVILLE RESOLVES AS FOLLOWS:

1. The above recitals are incorporated by reference herein.
2. A copy of the Intergovernmental Cooperative Agreement for Advance Road Middle School Site Infrastructure Between City of Wilsonville and West Linn-Wilsonville School District is marked as Exhibit 1 and attached hereto and incorporated by reference as if fully set forth herein. The City Manager is authorized to execute the Intergovernmental Cooperative Agreement on behalf of the City, upon the City Attorney's approval as to form.
3. This Resolution becomes effective upon the date of adoption.

ADOPTED by the Wilsonville City Council at a regular meeting thereof this ____ day of _____, 2015, and filed with the Wilsonville City Recorder this date.

Tim Knapp, Mayor

ATTEST:

Sandra C. King, MMC, City Recorder

SUMMARY OF VOTES:

Mayor Knapp

Council President Starr

Councilor Fitzgerald

Councilor Stevens

Councilor Lehan

Attachments:

Exhibit 1 – Intergovernmental Cooperative Agreement for Advance Road Middle School Site Infrastructure between City of Wilsonville and West Linn-Wilsonville School District



**CITY COUNCIL MEETING
STAFF REPORT**

<p>Meeting Date: December 7, 2015</p>	<p>Subject: Resolution No. 2560 A Resolution Approving The Systems Development Charges Deferral Agreement Between The City Of Wilsonville And BL & DJ, LLC For The Subaru Development</p> <p>Staff Member: Nancy Kraushaar, PE, Community Development Director Department: Community Development</p>	
<p>Action Required</p>	<p>Advisory Board/Commission Recommendation</p>	
<p><input checked="" type="checkbox"/> Motion <input type="checkbox"/> Public Hearing Date: <input type="checkbox"/> Ordinance 1st Reading Date: <input type="checkbox"/> Ordinance 2nd Reading Date: <input checked="" type="checkbox"/> Resolution <input type="checkbox"/> Information or Direction <input type="checkbox"/> Information Only <input type="checkbox"/> Council Direction <input type="checkbox"/> Consent Agenda</p>	<p><input checked="" type="checkbox"/> Approval <input type="checkbox"/> Denial <input type="checkbox"/> None Forwarded <input type="checkbox"/> Not Applicable</p> <p>Comments: n/a</p>	
<p>Staff Recommendation: Staff recommends Council adopt Resolution No. 2560.</p>		
<p>Recommended Language for Motion: I move to adopt Resolution No. 2560.</p>		
<p>Project / Issue Relates To: <i>[Identify which goal(s), master plans(s) your issue relates to.]</i></p>		
<p><input type="checkbox"/> Council Goals/Priorities</p>	<p><input type="checkbox"/> Adopted Master Plan(s)</p>	<p><input checked="" type="checkbox"/> Not Applicable</p>

ISSUE BEFORE COUNCIL:

This resolution approves the Systems Development Charges Deferral Agreement between the City of Wilsonville and BL & DJ, LLC for the Subaru development.

EXECUTIVE SUMMARY:

The applicant for the Subaru development in Wilsonville, Oregon has requested that the SDCs be deferred until occupancy at which time additional funding will be available for their payment.

EXPECTED RESULTS:

The SDCs for the Subaru development will be deferred to the time of occupancy or June 30, whichever comes first.

TIMELINE:

n/a

CURRENT YEAR BUDGET IMPACTS:

The associated SDC revenues will be deferred approximately 6 months.

FINANCIAL REVIEW / COMMENTS:

Reviewed by: _____ Date: _____

LEGAL REVIEW / COMMENT:

Reviewed by: _____ Date: _____

COMMUNITY INVOLVEMENT PROCESS:

n/a

POTENTIAL IMPACTS or BENEFIT TO THE COMMUNITY (businesses, neighborhoods, protected and other groups):

n/a

ALTERNATIVES:

The City Council could choose to not defer the SDCs for the development in which case the applicant would pay them when the final building permit is issued.

CITY MANAGER COMMENT:

ATTACHMENTS:

Resolution No. 2560

RESOLUTION NO. 2560

A RESOLUTION APPROVING THE SYSTEMS DEVELOPMENT CHARGES DEFERRAL AGREEMENT BETWEEN THE CITY OF WILSONVILLE AND BL & DJ, LLC FOR THE SUBARU DEVELOPMENT

WHEREAS, pursuant to City requirements, a series of various Systems Development Charges (SDCs) are due to be paid to the City prior to the issuance of a building permit for the planned Subaru dealership (development), to be located in Wilsonville, Oregon, and

WHEREAS, the applicant for the development has asked that the SDCs payment be deferred until an occupancy permit is issued, when additional bank funding will be available, and

WHEREAS, the applicant has represented the development will be completed and ready for occupancy by no later than June 15, 2015, and

WHEREAS, the City has the discretion to defer payment of SDCs, and

WHEREAS, the City is agreeable to deferring SDCs for the development for no longer than until occupancy is applied for or June 30, 2016, whichever comes first, and

WHEREAS, the City has prepared an agreement to defer the SDCs for the development, attached hereto and incorporated herein as Exhibit A.

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

1. The City of Wilsonville approves the attached the Systems Development Charges Deferral Agreement between the City of Wilsonville and BL & DJ, LLC for the Subaru development.is agreeable to deferring certain SDCs for the development but for no longer than when occupancy is applied for or June 30, 2016, whichever occurs first.

ADOPTED by the City of Wilsonville City Council at their regular meeting on December 7, 2015, and filed with the Wilsonville City Recorder this date.

TIM KNAPP, Mayor

ATTEST:

Sandra C. King, MMC, City Recorder

SUMMARY OF VOTES:

Mayor Knapp

Councilor Starr

Councilor Fitzgerald

Councilor Stevens

Councilor Lehan

Attachments:

Exhibit A

SYSTEMS DEVELOPMENT CHARGES DEFERRAL AGREEMENT

This Agreement is made and entered into this ____ day of December, 2015, by and between the **City of Wilsonville**, a municipal corporation of the State of Oregon (the “City”), and **BL & DJ, LLC**, an Oregon limited liability company (“Applicant”).

RECITALS

A. Pursuant to City requirements, a series of various Systems Development Charges (“SDCs”) are due to be paid to the City prior to the issuance of a building permit for Applicant’s planned Subaru dealership (“Development”), to be located in Wilsonville, Oregon.

B. Applicant has asked that the payment of certain of the SDCs be deferred until an occupancy permit is issued, when additional bank funding will be available to it.

C. Applicant has represented to the City that the Development will be finished and ready for occupancy by no later than June 15, 2015.

D. The City has discretion to defer payment of only certain of the SDCs and is agreeable to doing so, as provided herein, but for no longer than until occupancy is applied for or June 30, 2016, whichever occurs first.

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and incorporating the above Recitals by reference herein, Applicant and the City agree as follows:

1. SDC Deferral. The City has agreed that Applicant may defer paying only those SDC charges listed on **Exhibit A** (Deferred SDCs), attached hereto and incorporated by reference herein, until June 30, 2015, or until an occupancy permit of any nature is requested, whichever shall occur first. The Deferred SDCs shall bear interest at the rate of one percent (1%) until paid in full. All of the Deferred SDCs, plus all interest due thereon, must be paid on or before the due date. Failure to pay by the Due Date shall be a default under this Agreement and, in such case, the Default Interest Rate shall be increased to twelve percent (12%) per annum and shall continue to accrue until the Deferred SDCs, plus all interest due thereon, including Default Interest, are paid in full. The amount of Deferred SDCs shall not exceed the sum of ONE MILLION SEVEN THOUSAND THREE HUNDRED SEVENTY-FOUR DOLLARS AND TWENTY-NINE CENTS (\$1,007,374.29), as more particularly described on **Exhibit A**.

2. Indemnification. Applicant agrees to defend, indemnify, and hold harmless the City, its officers, agents, and employees from any and all liability, causes of action, claims, losses, damages, judgments, or other costs or expenses in connection with any claim, demand, or cause of action made or brought by any party, including any claim in bankruptcy, which in any way jeopardizes the City’s right to timely collect the Deferred SDCs.

3. Issuance of Occupancy Permit. Applicant understands and agrees that the City will not issue any level of occupancy permit until all of the Deferred SDCs, plus all interest due and owing thereon, are paid in full.

4. Violation of this Agreement. In addition to not issuing any occupancy permit until any violation of this Agreement is fully cured, the City shall also have all remedies available to it for breach of contract, both at law and in equity, including but not limited to an action for damages, interest at the default rate, specific performance, and injunctive relief. Any judgment obtained as a result of any default will be filed as a lien against the Development.

5. Miscellaneous Provisions.

5.1. Integration. This Agreement, including all exhibits attached hereto, contains the entire and integrated agreement between the parties and supersedes all prior written or oral discussions, representations, or agreements.

5.2. Adherence to Law. Applicant shall adhere to all applicable federal and state laws and the Wilsonville Code. Applicant agrees that the deferral of the Deferred SDCs does not in any way change its obligations to pay all other SDCs and other applicable fees within the normally required times.

5.3. Legal Effect and Assignment. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors, and assigns. This Agreement may be enforced by an action at law or in equity.

5.4. No Assignment. This Agreement cannot be assigned. Any change in title to the Development shall be a default of this Agreement and shall immediately accelerate Applicant's obligation to pay the Deferred SDCs in full.

5.5. Governing Law/Jurisdiction. This Agreement shall be construed in accordance with and governed by the laws of the State of Oregon. Venue for any dispute will be in Clackamas County Circuit Court.

5.6. Legal Action/Attorney Fees. If a suit, action, or other proceeding of any nature whatsoever (including any proceeding under the U.S. Bankruptcy Code) is instituted in connection with any controversy arising out of this Agreement or to interpret or enforce any rights or obligations hereunder, the prevailing party shall be entitled to recover attorney, paralegal, accountant, and other expert fees and all other fees, costs, and expenses actually incurred and reasonably necessary in connection therewith, as determined by the court or body at trial or on any appeal or review, in addition to all other amounts provided by law. If the City is required to seek legal assistance to enforce any term of this Agreement, such fees shall include all of the above fees, whether or not a proceeding is initiated. Payment of all such fees shall also apply to any administrative proceeding, trial, and/or any appeal or petition for review.

5.7. Nonwaiver. Failure by either party at any time to require performance by the other party of any of the provisions of this Agreement shall in no way affect the party's rights

hereunder to enforce the same, nor shall any waiver by the party of the breach hereof be held to be a waiver of any succeeding breach or a waiver of this nonwaiver clause.

5.8. Severability. If any provision of this Agreement is found to be void or unenforceable to any extent, it is the intent of the parties that the rest of the Agreement shall remain in full force and effect, to the greatest extent allowed by law.

5.9. Modification. This Agreement may not be modified except by written instrument executed by Applicant and the City.

5.10. Interpretation. As a further condition of this Agreement, the City and Applicant acknowledge that this Agreement shall be deemed and construed to have been prepared mutually by each party and it shall be expressly agreed that any uncertainty or ambiguity existing therein shall not be construed against any party.

5.11. Entire Agreement. This Agreement and all documents attached to this Agreement represent the entire agreement between the parties.

5.12. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall constitute an original Agreement but all of which together shall constitute one and the same instrument.

5.13. No Waiver of Rights. Nothing in this Agreement shall be construed as a waiver of rights by either party with respect to any appeal that Applicant may make of the SDC charges. Any such appeal must be timely filed in accordance with all legal requirements.

5.14. Authority. Each party signing on behalf of Applicant and the City hereby warrants actual authority to bind their respective party.

IN WITNESS WHEREOF the City and Applicant caused this Agreement to be executed by its duly authorized undersigned officer or agent on the date hereinabove first written.

BL & DJ, LLC

CITY OF WILSONVILLE

By: _____

By: _____

Print Name: _____

Print Name: _____

As Its: _____

As Its: _____

APPROVED AS TO FORM:

Barbara A. Jacobson, City Attorney

EXHIBIT A

**DEFERRED SDCs
Subaru Development***

<u>Fee Description</u>	<u>Fee Amount</u>
Sewer SDC	\$ 34,854.08
Irrigation Water SDC	\$ 11,089.00
Domestic Water SDC	\$ 41,686.00
Parks SDC	\$ 9,264.66
Stormwater SDC	\$ 100,769.20
Street SDC	\$ 809,711.35
<hr/>	
TOTAL:	\$1,007,374.29

*There are other SDC charges that have not been deferred and must be paid in the normal course.