

CITY OF DUNDEE
CITY COUNCIL MEETING
Fire Hall Community Room

Phone (503) 538-3922 ~ Fax (503) 538-1958

Email: DundeeCity3@comcast.net Website: DundeeCity.org

The Mission of City Government is to provide essential, quality public services in support of the livability, safety and viability of the Dundee community.

NOVEMBER 15, 2016 7 - 9 PM.

Times printed are estimates. Actual time may vary.

1. Open Regular City Council Meeting
2. Pledge of Allegiance
3. Amendments to the Agenda, if any
4. Public Comment: Each speaker will be allowed up to 5 minutes to speak after being recognized by the Mayor. Out of courtesy for the speaker, please refrain from talking.
5. Consent Agenda: The following items are considered to be routine and will be enacted by one motion. There will be no separate discussion of these items unless a Council member (or a citizen through a Council member) so requests, in which case the item will be removed from the Consent Agenda and considered separately. If any item involves a potential conflict of interest, Council members should so note before adoption of the Consent Agenda.
 - 5.1 City Council Minutes, November 1, 2016 Pages 1-8
Action Required: Motion to Accept the Consent Agenda
6. Old Business:
 - 6.1 Charles Street Storm Improvements Pages 9-10
Action Required
7. New Business:
 - 7.1 Potential TSP Amendment – 9th to 11th Linden Connection Pages 11-16
Discussion
 - 7.2 Marijuana Tax Collection Agreement Pages 17-46
Discussion
8. Council Concerns & Committee Reports
9. Mayor's Report
10. City Administrator Report
11. Public Comment: Each speaker will be allowed up to 5 minutes to speak after being recognized by the Mayor. Out of courtesy for the speaker, please refrain from talking.
12. Executive Session: In accordance with ORS 192.660(2)(e) to conduct deliberations with persons designated by the governing body to negotiate real property transactions.
13. Adjourn

Pending Business:

1. Public Works
 - 1.1 Highway 99W Sidewalk/Streetscape
 - 1.2 Inflow & Infiltration Program
 - 1.3 Charles Street Storm System
 - 1.4 Locust Street Waterline Replacement

2. Planning/Land Use
 - 2.1 Dundee Riverside Master Plan – Future Actions
 - 2.2 Exterior Lighting – Code Update/Street Light Standards
 - 2.3 Helipad Standards

3. City Council
 - 3.1 Update SDC Methodologies
 - 3.2 LID 2013-01 Final Assessment Ordinance
 - 3.3 Urban Renewal Plan

4. Parks & Trails
 - 4.1 Viewmont Greenway Park Improvement
 - 4.2 Harvey Creek Trail Property Rehabilitation
 - 4.3 WWTP Nature Park Grant Application

5. Next Available Ordinance & Resolution No's.
 - 5.1 Ordinance No. 552-2016
 - 5.2 Resolution No. 2016-24

The meeting location is accessible to persons with disabilities. A request for an interpreter for the hearing impaired, or for other accommodations for persons with disabilities, should be made at least 48 hours in advance of the meeting to the Assistant City Recorder at City Hall (503) 538-3922.

**CITY COUNCIL MEETING
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City of Dundee
City Council Meeting Minutes
November 1, 2016

Call to Order

Mayor David Russ called the meeting to order at 7:00 P.M.

Council and Staff Attendance

Present: Mayor David Russ; Councilors Jeannette Adlong, Storr Nelson, Tim Weaver, Kristen Svicarovich, Doug Pugsley, and Ted Crawford. Staff members: Rob Daykin, City Administrator; Shelby Rihala, City Attorney; and Melissa Lemen, Administrative Assistant.

Public Attendance

Sean Maddox, Project Manager, MD7 and representing Verizon Wireless; Tom Schaad, 610 SW Alder Street; Michelle Cannon; John Stock, Dundee Fire Chief; and Andrew Thomas, 359 SW 11th Street.

Agenda Changes

None.

Public Comment

Tom Schaad, 610 SW Alder Street, approached the Council with continued concerns regarding the parking situation in front of his house on Alder Street. He further expressed his opinion that he would like the “no parking” signs removed as he can no longer park in front of his house. Mayor Russ advised that the signs were placed out of concern for safety in that area, especially with regard to two vehicles being able to safely pass one another in that location. Mayor Russ along with Councilors Crawford and Pugsley suggested further discussion be scheduled regarding the Alder Street area as well as other collector streets in Dundee. Topics of concern noted were pedestrian safety, parking availability on the street, and also consistency in how these issues are managed. Mayor Russ summarized that the Council would like to review an analysis of the collector streets, parking availability, street widths, etc. Councilor Nelson suggested this discussion and review be held at a City Council meeting after the first of the year which Mayor Russ favored as well.

Consent Agenda

The motion was made and seconded to approve Consent Agenda items 5.1 City Council Minutes, October 18, 2016, and 5.2 Financial Report Ending September 30, 2016. **The motion** passed unanimously.

Old Business

Resolution No. 2016-23, Repealing Fence Permit Requirement

Mayor Russ reviewed that a discussion was held previously regarding fence permits. He advised that a recommendation has been received from the Planning Commission to repeal our fence permit requirement and, therefore, not requiring a permit process. Councilor Adlong mentioned the recent granting of a temporary license agreement to a property owner who had placed a fence in the public right-of-way by mistake, and expressed concerns regarding the potential for property owners to come forward in the future with similar requests because they may be unaware of the fence standards. She expressed concerns that the information be properly communicated to property owners so that this doesn't happen. City Administrator Daykin explained that he has

discussed this with Staff, and that because the fence regulation refers to other sections in the Code, it may be hard for a layperson to locate the applicable information. He suggested that developing the City website further to include more specifics on targeted topics of interest would be helpful. The addition of this type of information to the website has been discussed as an update is being considered. C.A. Daykin informed that the Planning Commission discussed that fences in front yard and particularly those near intersections are frequently observed by the Public Works crews as they are being built. It was noted that the Planning Commission felt that if Public Works note that a fence is not in compliance with the vision clearance, they can make contact at that time. C. Svicarovich advised that she is in favor of adding commonly asked question information to the website. She inquired about what the most commonly asked questions are from those phoning the City from our community. C. Adlong reiterated the importance of communication, and felt strongly that a process for providing information pertaining to fences should be in place moving forward. She suggested that moving forward without a fence permit process will likely result in more nonconforming fences being built. Discussion ensued regarding potential issues with the fence permit process, and the fact that this will not likely prevent all nonconforming fences. C.A. Daykin advised that there is no sanction in place if a property owner does not choose not to take out a permit; the resolution is not an enforcement action. C.A. Daykin further explained that if a fence permit process is desired, it was suggested to be added as part of the Development Code and, therefore, if a permit is not obtained it would subsequently be a violation of the Development Code which would have sanctions. C. Svicarovich suggested the potential option of leaving our present permit process in place until the City website is updated to provide this information more clearly. C. Nelson suggested the idea of information added quarterly to the website that addresses common and seasonal concerns. C. Weaver agreed with this as well and added that the quarterly newsletter also offers the opportunity to communicate that information as well. Thoughts and ideas for the further development of the City website were reviewed and discussed at length. Discussion ensued regarding the fact that presently there is no enforcement for not having a fence permit, but there is enforcement for a non-conforming fence. C.A. Daykin advised that the vast majority of fence permits are for new home construction. Additionally, he advised that the vast majority of nonconforming fences are brought to attention by way of a complaint. C. Crawford indicated that he has not seen a large amount of nonconforming fences in the City that have remained over time. He is in support of the permit process. C. Adlong suggested that the biggest issue comes from fences placed in the front or side yard, especially with regard to appropriate height of the fence. She supported expanding the website to include this information. C. Pugsley inquired about the present City website and further discussion continued regarding potential upcoming changes to it. C.A. Daykin advised that due to heavy workloads and new office staff, the process of moving forward with updating the website hasn't occurred yet. Conversation ensued regarding the present functionality of the City website. C. Nelson suggested the idea of outsourcing the website update. C. Crawford pointed out the time consuming process involved in maintaining the site as well. C.A. Daykin informed that the purpose of this resolution is to repeal the original resolution, although this doesn't have to be done at this time. C. Nelson supported the idea of not repealing it until there is additional communication provided to property owners. The consensus of Council was to defer taking action on Resolution No. 2016-23, a resolution repealing Resolution No. 06-14, relating to requiring a permit for the construction of a fence.

OTIF Street Improvements Loan

C.A. Daykin advised that this is one of the last opportunities to take advantage of the current local street improvement loan through the Oregon Transportation Infrastructure Fund (OTIF). C.A. Daykin also briefly discussed the importance and benefits of moving forward with the draw, which are further addressed in his report. **The motion** was made and seconded to authorize the city administrator to execute a final draw of \$65,000 on the OTIF loan for local street improvements. **The motion** passed unanimously.

New Business

Verizon Tower Lease Proposal

Mayor Russ briefly reviewed the objectives for the presentation regarding the proposed Verizon Tower Lease. Sean Maddox, project manager, MD7, and representing Verizon Wireless, provided a Powerpoint presentation to the Council regarding the Verizon Tower Lease Proposal. The intent of the presentation was to show what the project might look like, and discuss some other issues that City Council may be interested in. If the Council is interested in moving forward and pursuing a lease, a discussion regarding potential lease arrangements would commence during Executive Session. Sean Maddox introduced himself and reviewed the site design, describing the options of a mono-pine versus a monopole design. Mr. Maddox explained that a mono-pine is not favored by Verizon for the reasons outlined in the letter from Meagan Dockter, Site Acquisition Manager from MD7. Mayor Russ inquired as to why the mono-pine design is noted to be more difficult to maintain. Mr. Maddox explained that mono-pine design makes completing the required maintenance and necessary technological upgrades more difficult, as well as can make troubleshooting and getting to the equipment more of a challenge when compared with the monopole design. Discussion ensued regarding the potential maintenance requirements of the tower, as well as pros and cons of the tower design. C. Svicarovich inquired about how much additional equipment and/or attachments are allowable on a tower. Mr. Maddox explained that this is dependent on several factors including landlord preference, structural capacity (which varies based on the geotechnical analysis of the soils), tower height and wind load. Topography of the area is also a factor. He further advised that a 10-20 foot clearance area is needed between the levels of radius/antennas to avoid interference. The RF Engineers are tasked with determining the best site selection and radius height to determine what the most optimal functioning network would be.

C. Crawford inquired about this proposed tower with regard to the potential communications upgrade that the Newberg City Manager discussed at the October 18, 2016 Dundee City Council meeting. Chief Stock indicated that this is indeed being looked at as a possible benefit to that system; County Communications has also expressed an interest in the tower space as well. Mayor Russ inquired about whether or not the above mentioned components could all work together on the same tower. Mr. Maddox informed that most likely their engineers would be able to sort out the details of the arrangement on the tower such that there would be no interference. Discussion ensued further pertaining to the details of having multiple components on the tower using different frequencies and bands which Mr. Maddox reassured the Council was typical and workable. Mr. Maddox further informed that even the addition of the new Digital 4G Communications System should not pose a problem; it could be arranged in such a way that Dundee Communications gets first priority. C. Crawford inquired about the amount of space required at the base of the tower, as he feels the information is not clearly provided. Mr. Maddox advised that site plans should be available soon which will show the details of this more clearly. The area at the base is noted as being 8 feet wide by 37 feet long with a landscaping buffer as well; the details of which were described further. C. Crawford inquired about the height of the fence to which Mr. Maddox advised are generally 6-8 feet tall, but they can accommodate particular specifications for the landlord or to meet code requirements if necessary. Discussion ensued further regarding this. C. Adlong inquired about whether the proposed tower height of 110 feet was the lowest height possible allowable. Mr. Maddox advised that the engineers have requested the tower be of this height, but that if the Council was not in favor of a tower this tall it could be brought to the attention of the engineers but could potentially pose a problem. C. Nelson inquired as to whether or not towers are designed with the anticipation that there is going to be another carrier to help defray the costs. Mr. Maddox advised that is not necessarily the design in mind because the carrier who might defray the costs is a competitor to Verizon. He further pointed out that it is a competitive advantage for Verizon to have their own tower.

However, it was also noted that the City Code requires that colocation be the first priority. C. Nelson further inquired as to why then Verizon wouldn't propose a tower which would prevent colocation. Mr. Maddox explained that City Code would prevent that, and that a new tower that is over 35 feet tall is required to be designed specifically to allow for colocation in the future.

Mr. Maddox shared his Powerpoint presentation further, specifically the slides reflecting the viewpoints alternating between the use of a tree camouflage tower and a monopole design. He also advised that the monopole design could be painted to any color desired. C. Pugsley expressed concerns about whether or not the top of the tower would be red in color or have a light in place. Mr. Maddox advised that unless it's specifically required, Verizon doesn't place lights at the top. C. Weaver inquired about whether they would be tapping into the onsite generator or have their own source of power. Mr. Maddox advised that the plan would be to tap into the generator already in place which wouldn't rob them of much power. C. Crawford inquired as to the height of the power poles along Highway 99W. Mr. Maddox felt they were typically about 40 feet tall; C. Svicarovich added that she believes them likely to be 60 feet tall. C. Nelson inquired as to whether this tower would have any benefit for the City's SCADA system (radio based data acquisition and controls) or for other communications that we need. C.A. Daykin advised that the City Engineer did meet with Verizon Engineers to discuss the site considerations. He further advised, as the Chief already noted, that we would want to let Verizon know our desire to reserve at least the possibility of two emergency communication antennae on the tower for the Washington County System and the Yamhill County System. He advised that he has not looked into the tower being a platform for the SCADA system; he is unaware if it's needed or not. C.A. Daykin informed that all of our facilities are communicating right now without any difficulty. C. Nelson advised that he is in favor of moving forward with this and is in favor of the mono-pine style of pole. C.A. Daykin advised that he was made aware that there is this type of pole at a location in Washington County; once he is able to obtain the address he will forward that information to the City Council members. C. Pugsley noted that he favors a lower tower option. C. Pugsley inquired about the height of the tower on Fulquartz Landing Road. Mr. Maddox advised that he will check into that.

C. Svicarovich inquired as to whether or not the public works property was considered for the tower as it's further off of Highway 99W. Mr. Maddox advised that the Fire Department property was in the very center of the search ring identified from RF, zoned appropriately, and further noted that only public use property may allow for a pole height of over 45 feet. C. Weaver expressed his opinion that it seems appropriate for a communication tower of this nature to be placed at the proposed location of the Dundee Fire Department. Mr. Maddox advised that he finds this to be true in his experience as well, and reviewed some of the benefits of this placement including providing some revenue to the City as well. C. Adlong inquired about whether or not lights will be placed on the top of this tower to which Mr. Maddox indicated that there are no planned lights to be placed; lights are only placed on the top if it's close enough to an airport that the FAA requires it. C. Adlong expressed concerns about hot air balloons as well. C. Crawford inquired about the height of the surrounding trees to which Mr. Maddox estimated to be 75-90 feet in height. Tom Schaad added, in comparison, that he believes the wind turbine on the top of Chehalem Mountain to be a total height of 120 feet tall. He further suggested that it stands alone and there are no lights on it even though aircraft and hot air balloons travel in the area. **The motion** was made and seconded to authorize the city administrator to negotiate a lease with Verizon for use of Dundee Fire Station property for a cell phone tower facility on Fire Station property. **The motion** passed unanimously.

Council Concerns and Committee Reports

Councilor Pugsley proposed having a future discussion pertaining specifically to Habitat for Humanity having waived SDC charges within our development code by the end of this year or

early 2017. He further advised that Newberg has a similar situation and indicated that there was a recent Summit with builders, the Austin Family and other service industries to discuss the crisis in median income and median housing in this area. Mayor Russ supported having this conversation as well. C. Crawford noted that Newberg does place a limit of no more than two houses per year. C.A. Daykin advised that this topic could be added to the City Council Agenda in early 2017.

C. Crawford noted that with regard to the bypass, there is some black chain-linked fencing that has begun being placed around the Bypass water quality pond area next to 99W. He noted that the fence was slated to be lower than 6 feet in height. C. Crawford also advised that this fence is also not supposed to go completely around the pond, and he is hopeful that they won't continue the installation in such a fashion. He further advised that upon reviewing the original discussion on the Fishhook, he noted it stated that low trees were to be included, with a fence only in a portion of the area. C. Adlong added that there are supposed to be trees planted along the Neiderberger road edge as well. C. Crawford suggested that they likely just haven't been planted yet. C.A. Daykin advised that he did forward an email today to ODOT Project Manager Kelly Amador, and also requested the Site Plan but have not heard back yet.

C. Svicarovich advised that she has been emailing with C.A. Daykin regarding the lighting issue in the Fishhook area, after being able to take a look at the existing lighting present. She also indicated that she was able to take a look at the ODOT record drawings for the area. She informed that they are working on formulating an email to send back to ODOT about the light fixtures. She advised that from her general observation of the plans that it appears everyone else is getting LED lights except for us in our area. She advised that she believes it has to do with the fact that much of what's going on at the Newberg end is within the City limits, and our end in Dundee is technically outside of the City limits. She felt there is a very good argument with regard to us having LED lights as it's a continuous roadway that should be lit consistently with the same type of light. She suggested her point further due to the present bright orange light at the south entrance of the City which then changes to nice white lights as you proceed through town. C. Adlong pointed out that it wouldn't be that expensive to change out the lights.

C. Weaver announced that the Strategic Economic Vitality Summit will be held on Monday, November 14, 2016 from 9:00a.m. to 3:00p.m. at the Newberg Cultural Center. The cost is \$20.00. He advised that he and C. Svicarovich have already registered for the event.

Mayor's Report

None.

City Administrator's Report

City Administrator Daykin informed that we did receive a draft funding agreement for the additional \$900,000 for Dundee's phase of the sidewalk/streetscape project yesterday. He advised that he and City Engineer Reid are reviewing it and they will get comments back to them before they forward it on to the Department of Justice. He indicated that he is unsure how long the process will take moving forward, but is pleased that we have a draft agreement in place. C.A. Daykin advised that he and C.E. Reid have discussed the importance of being prepared to go out to bid following signing off on that. C.A. Daykin explained that once we approve the agreement, it typically takes only a week for them to sign and return it to us. C. Crawford noted that McMinnville made mention at the Parkway Meeting that bids for their transportation work have come in at or below their estimates.

Public Comment

Andrew Thomas, 359 SW 11th Street, approached the Council and advised that he is Ron Claassen's neighbor. He indicated they live on flag lots with a shared driveway. He advised that last week it was brought to his attention that he was in violation with regard to storage of items on his property. He advised that he has cleaned up the problems and is hopeful that he is now in compliance. He also expressed concerns regarding his driveway and requested clarification as to whether his driveway is private or a fire lane. He further advised that he'd like to put his house up for rent hopefully at the beginning of the year and would like to be able to provide accurate information to renters regarding his property. C.A. Daykin advised that there is a "no parking" sign on one side of the driveway next to his property, although it applies to the entire width of the lane. He further advised that Mr. Thomas has taken care of the problems with regard to his property and he doesn't believe there to be any further issues at this time. Discussion ensued further regarding the width of the driveway. Chief Stock advised that there is a fire easement in place and the driveway width is 19 feet; a width of 26 feet is required before parking can be allowed on one side. Chief Stock clarified that no parking is allowed on either side of the driveway. He further indicated that he will follow up and review the signage.

Mr. Thomas advised that he helps troubled youth and has two boys residing at his home presently. He described the fact that one of them is presently working while the other is trying to obtain his G.E.D. He expressed his support for Habitat for Humanity and additional low income housing in the Dundee area.

The meeting was adjourned at 9:10 PM.

Executive Session

The City Council entered Executive Session at 9:11 P.M. in accordance with ORS 192.660(2)(e) to conduct deliberations with persons designated by the governing body to negotiate real property transactions. Executive Session ended at 9:41 PM and the Council did not reconvene.

David Russ, Mayor

Attest:

Rob Daykin, City Administrator/Recorder

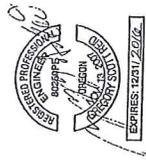
REPORT

To: Mayor Russ and City Council
From: Rob Daykin, City Administrator
Date: November 10, 2016
Re: Charles Street Storm Improvements

On November 8, bids have been solicited from the following five contractors: C&M Excavation, K&E Excavation, Weitman Excavation, Bridge City Siteworks, and The Saunders Company, for construction of storm system improvements at Charles Street. This project was originally envisioned to address the recurring flooding at a low point on Charles Street that was inundating the residence at 1491 Charles Street during significant storm events. Following a closer review of the topography challenges, City Engineer Reid was able to include additional improvements that will redirect the flow of storm water in the ditch on the north side of Neiderberger just west of Charles Street to the south side of Neiderberger. Moving the storm water to the south side will improve the performance of the undersized storm line on Myrtle Street, which was a project element in one of the options previously recommended by Engineer Michael Humm in December 2014. Also this improvement will allow for the future replacement of the ditch on the north side located between Charles and Myrtle with a connecting pedestrian facility. Attached is the proposed improvement plan. A large tree located on the south side of Neiderberger across from Charles Street will have to be removed to accommodate these improvements. The tree is about five feet from the edge of the road and is leaning precariously over Neiderberger. Project construction costs are estimated to be under the \$50,000 BOLI limit for using prevailing wage. Unless additional time is allowed by the City Engineer, the plan is to bring bids to the November 15 meeting for review and award by the City Council.



ATTN: CITY OF DUNDEE
 400 WEST 5th Street
 Portland, OR 97114
 Tel: 503.586.2222
 Fax: 503.586.1988



CONSULTANT:

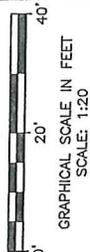
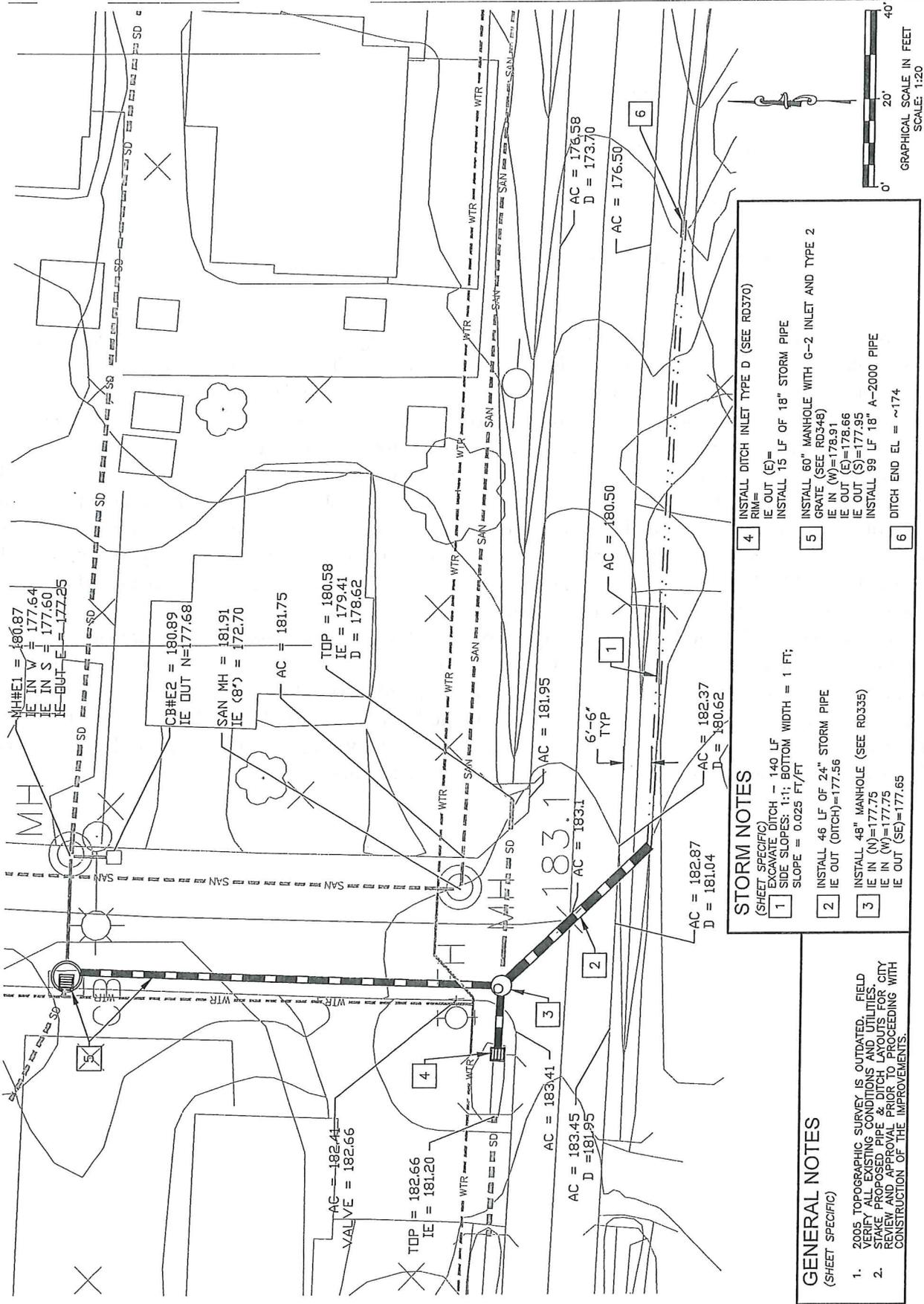
PROJECT NUMBER: 16001
 2016 STREET & WATER
 IMPROVEMENTS PROJECT
 PUBLIC IMPROVEMENTS
 DUNDEE, OR 97115

REGION:
 ABBEYDUM 1

DRAWN BY:
 ISSUE DATE: OCTOBER 31, 2016
 FILE NAME:
 BID DOCUMENTS

SHEET:
 PROPOSED SITE
 PLAN

201



STORM NOTES
 (SHEET SPECIFIC)
 1 EXCAVATE DITCH - 140 LF
 SIDE SLOPES: 1:1; BOTTOM WIDTH = 1 FT;
 SLOPE = 0.025 FT/FT
 2 INSTALL 46 LF OF 24" STORM PIPE
 IE OUT (DITCH) = 177.56
 3 INSTALL 48" MANHOLE (SEE R0335)
 IE IN (N) = 177.75
 IE IN (W) = 177.75
 IE OUT (SE) = 177.65
 4 INSTALL DITCH INLET TYPE D (SEE R0370)
 RIM =
 IE OUT (E) =
 INSTALL 15 LF OF 18" STORM PIPE
 5 INSTALL 60" MANHOLE WITH G-2 INLET AND TYPE 2
 GRATE (SEE R0348)
 IE IN (W) = 178.91
 IE OUT (E) = 178.66
 IE OUT (S) = 177.95
 INSTALL 99 LF 18" A-2000 PIPE
 DITCH END EL = ~174

GENERAL NOTES
 (SHEET SPECIFIC)
 1. 2005 TOPOGRAPHIC SURVEY IS OUTDATED. FIELD VERIFY ALL EXISTING CONDITIONS AND UTILITIES.
 2. STAKE PROPOSED PIPE & DITCH LAYOUTS FOR CITY REVIEW AND APPROVAL PRIOR TO PROCEEDING WITH CONSTRUCTION OF THE IMPROVEMENTS.



Memorandum

TO: Dundee City Council
FROM: Jessica Pelz, AICP, Planner
CC: Rob Daykin, City Administrator
DATE: November 15, 2016
SUBJECT: Potential Transportation System Plan Amendment – Change Linden connection between 9th Street & 11th Street to a bike/pedestrian pathway?

Rob Daykin, City Administrator, and Doug Rux, Newberg Community Development Director, met with a potential developer about a potential project on property at 459 SW 9th Street (southeastern corner of 9th Street and Alder Street). The recently adopted Transportation System Plan (TSP) includes a new road that would extend Linden Lane to add a connection between 11th Street and 9th Street; any new development on this property would need to dedicate the right-of-way and build the roadway through the property. Part of the discussion with the potential developer was whether the city would be amenable to a potential TSP amendment to remove the roadway connection and replace it with a bike/pedestrian connection instead. An amendment to the TSP would require initiation by the City Council or Planning Commission as the TSP is a supporting document to the Comprehensive Plan. An amendment would be a Type V Legislative action pursuant to DMC 17.405 and would require findings to the statewide planning goals and applicable state law, including the transportation planning rule (i.e. a change to the roadway network would require traffic analysis to ensure such a change would not significantly affect the function and capacity of the transportation network).

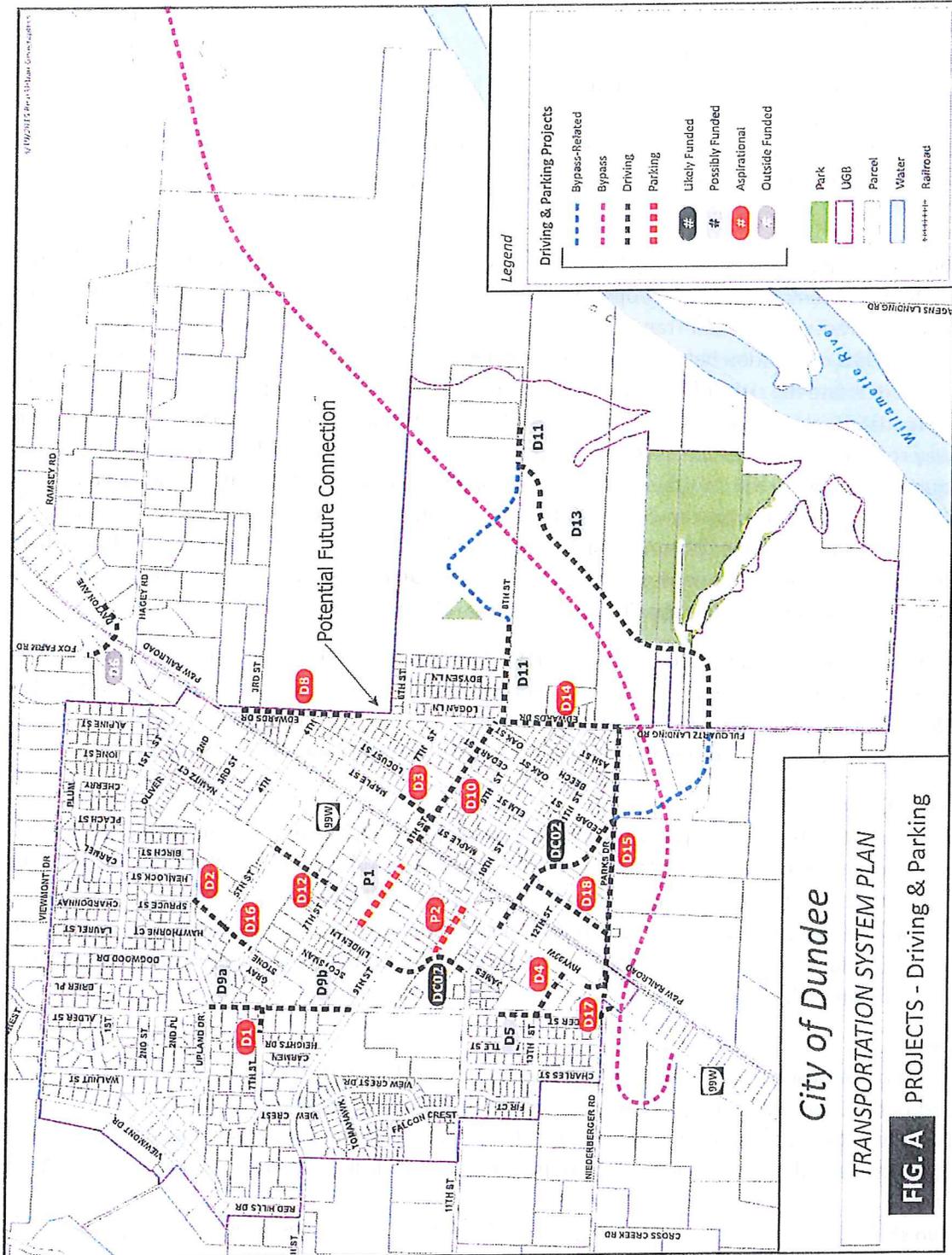
If the City Council chooses to initiate the proposed TSP amendment, that does not constitute a decision to adopt an amendment. Initiation would direct the developer to prepare the necessary application materials and would direct staff to work with the developer on the TSP amendment process, including reviewing application materials, preparing required notice materials, and preparing the staff report and recommendation.

Proposed City Council actions:

- Make a motion to initiate a potential amendment to the Transportation System Plan to change the Linden connection between 9th Street and 10th Street from a full roadway to a bike/pedestrian pathway. This option would require a dedicated public access easement with a paved pathway.
- Decline to make a motion to initiate a potential amendment to the Transportation System Plan. This option would mean that any development of the property would require right-of-way dedication and construction of the roadway.

Attachments:

1. Transportation System Plan Figure A (Projects – Driving & Parking). The Linden connection is included as part of the overall DC02 project (Downtown Connectivity – 11th Street Connection).
2. Two site plans – one close view of the Alder St/9th St area and one longer view showing the entire block. Both site plans show what a development pattern might look like with the roadway built through the site.
3. Two site plans – one close view of the Alder St/9th St area and one longer view showing the entire block. Both site plans show what a development pattern might look like with the potential bike/pedestrian pathway connection built through part of the site.

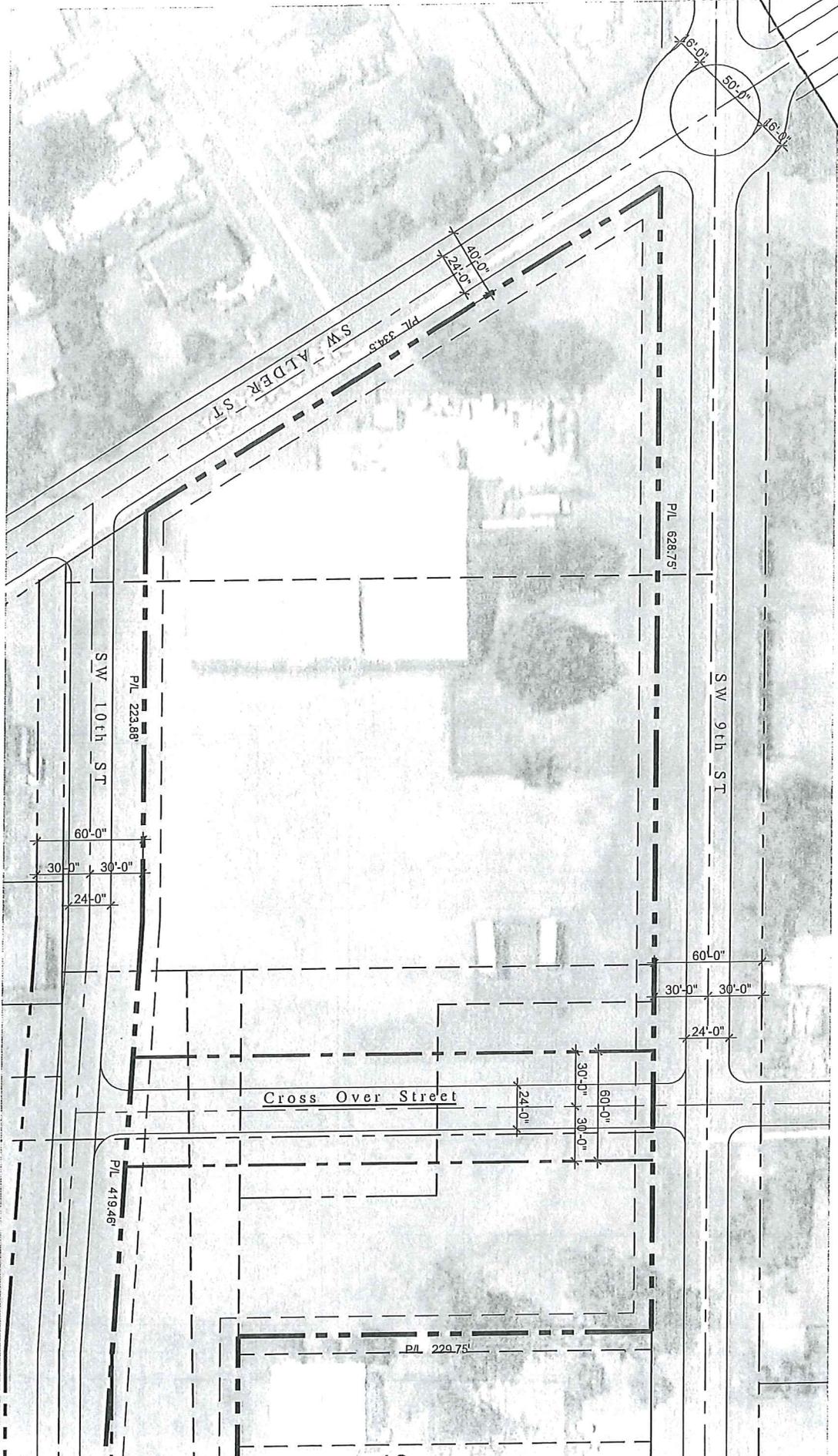


City of Dundee
TRANSPORTATION SYSTEM PLAN
FIG. A PROJECTS - Driving & Parking

PARTIN AND HILL ARCHITECTS, LLC
DATE: 1-08-16
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9TH AND ALDER MASTER PLAN
DUNDEE, OREGON

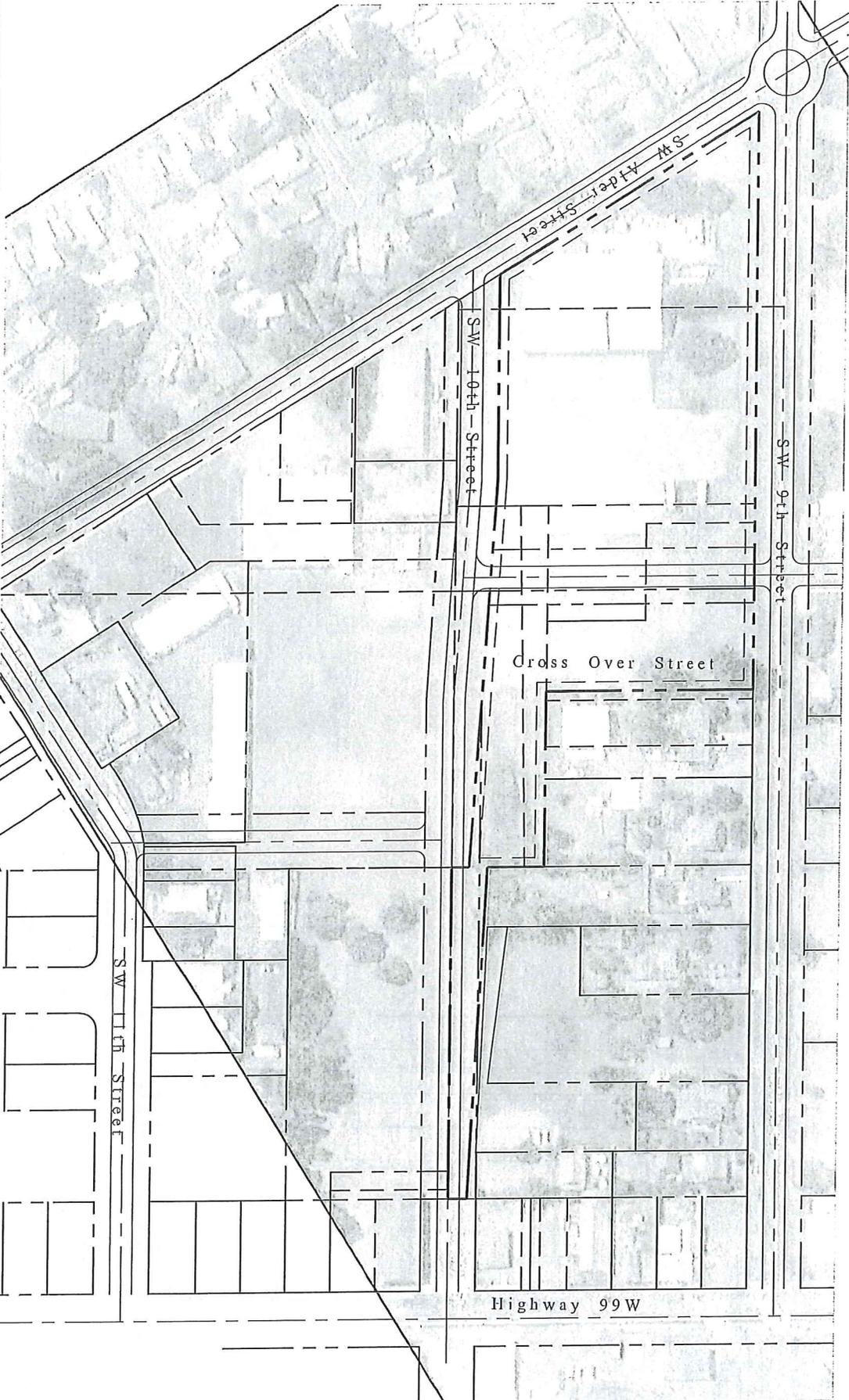
SCALE: 1" = 50'-0"
GRID: N/A



PARTIN AND HILL ARCHITECTS, LLC
DATE: 11-06-16
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9TH AND ALDER MASTER PLAN
DUNDEE, OREGON

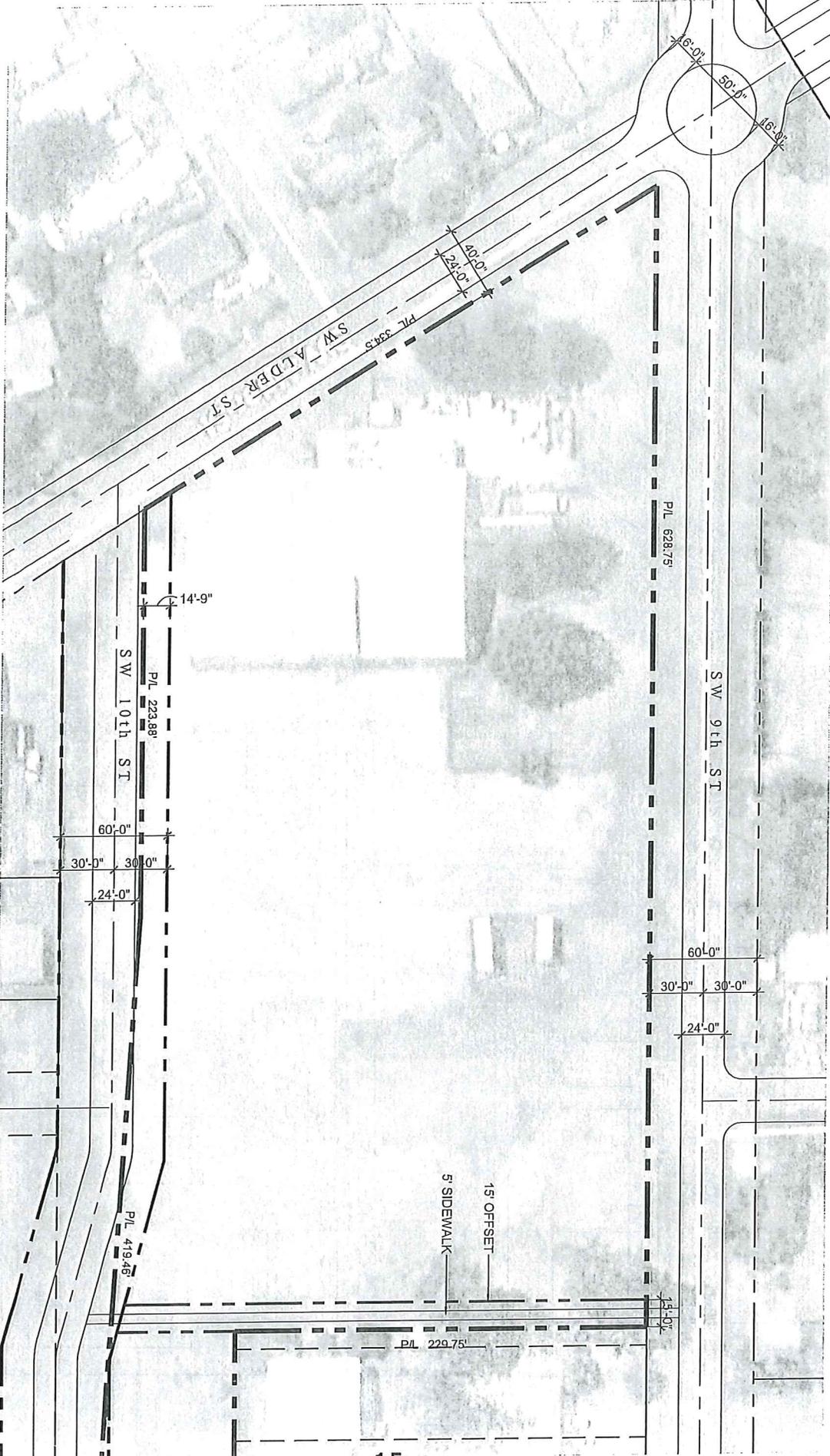
SCALE: 1" = 100'-0"
GRID: NA



PARTIN AND HILL ARCHITECTS, LLC
DATE: 11-07-16
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9TH AND ALDER MASTER PLAN
DUNDEE, OREGON

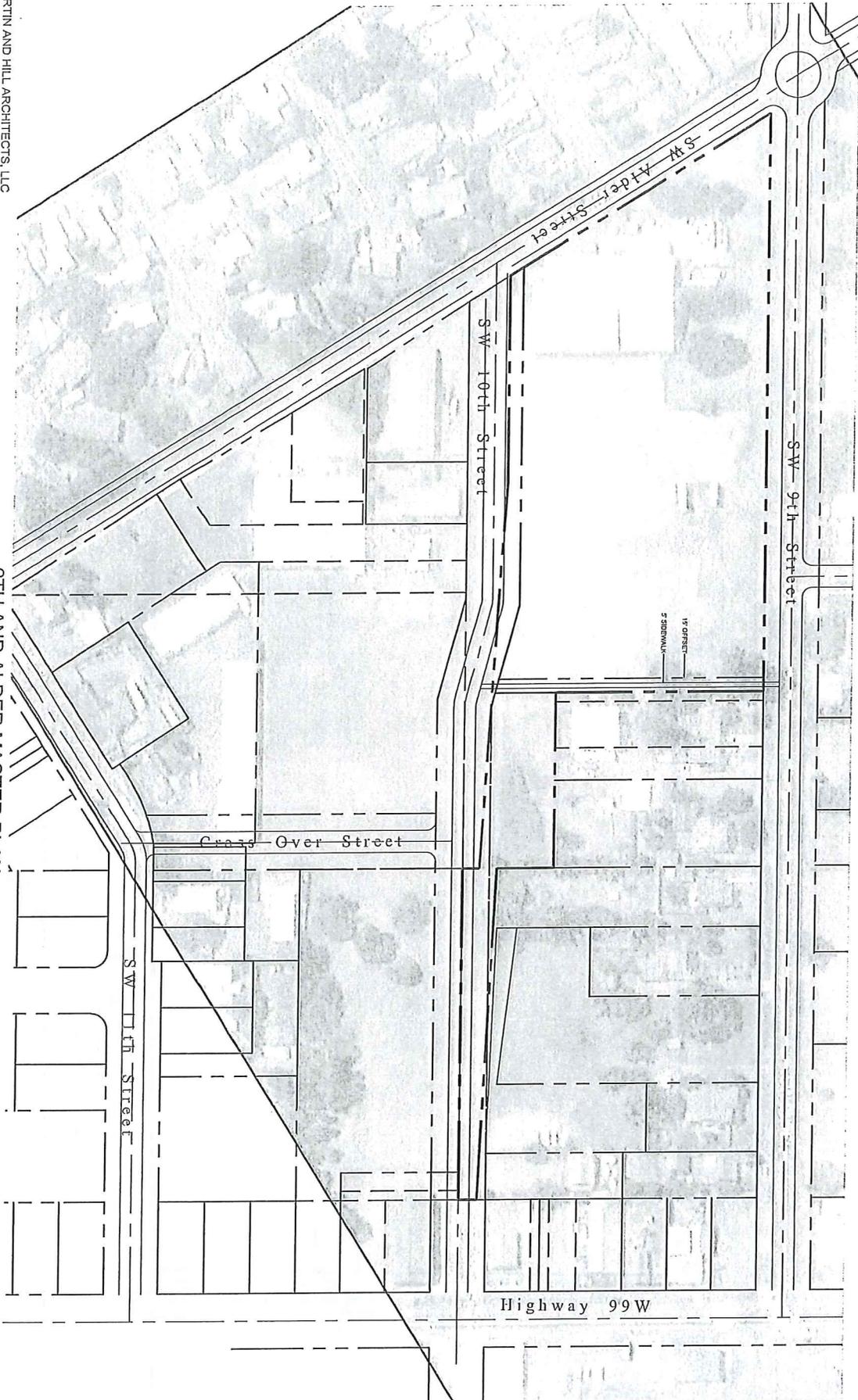
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PARTIN AND HILL ARCHITECTS, LLC
DATE: 11-07-16
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9TH AND ALDER MASTER PLAN
DUNDEE, OREGON

SCALE: 1" = 100'-0"
GRID: N/A



REPORT

To: Mayor Russ and City Council
From: Rob Daykin, City Administrator
Date: November 10, 2016
Re: Marijuana Tax Collection Agreement

The City's measure for approval of Ordinance No. 550-2016, imposing the maximum local tax allowed under State law (currently 3%) on the retail sale of marijuana was passed by a 74% majority vote. Ordinance No. 550-2016 will go into effect upon certification of the election results by the Yamhill County Clerk. City Attorney Rihala will prepare an ordinance repealing Chapter 3.06 of the Dundee Municipal Code for consideration at the December 6 meeting. Chapter 3.06 represents the ordinance imposing a 5% tax on medical marijuana sales and 10% tax on general retail marijuana sales in the City of Dundee, which was adopted prior to the filing of Measure 91 in November 2014.

The State also authorizes the Oregon Department of Revenue (DOR) to collect the local 3% retail marijuana tax for cities under separate agreement. While taxes are remitted monthly to DOR by retail marijuana businesses, the quarterly reports for the remitted taxes are not due until 30 days following the end of the quarter. Following review of the quarterly reports, DOR will then determine the amount of local tax and make payment to the cities within 60 days after the quarterly report due date. DOR will also collect any late payment penalties and interest from the retailers (using the State's schedule). DOR will withhold 4% of the local taxes collected to offset their administrative costs. If the actual collection costs by DOR exceed 4%, then the local agency will withhold the difference in the subsequent year or in the case that actual collection costs are less than the 4%, then the difference is rebated to the local agency. The intent is DOR will only recover their actual cost of providing tax collection services to the local agencies.

Currently, we only have one marijuana retailer in Dundee and collection of the local tax has been generally coordinated well with the City. Under the current 10% retail tax regulation, the retailer is allowed to retain 5% of the taxes due to defray bookkeeping and remittance costs, and is remitted quarterly. The voter approved 3% tax does not allow the taxpayer to retain any portion of the tax collected. The 3% tax and accompanying report must be remitted to the City by the 25th of each month for the preceding month. Also, the penalty and interest provisions are different from the State and would have to be amended to reflect the State's schedule in order for DOR to provide collection of the local tax. Staff does not see an advantage to entering into an agreement with DOR for collection of the local tax, but wanted to bring the option to the Council's attention.

Attachments:

- League of Oregon Cities Memo
- Draft Marijuana Tax Collection Agreement
- Exhibit A to Ordinance No. 550-2016 (3% retail marijuana tax)



1201 Court Street NE, Suite 200 • Salem, Oregon 97301
(503) 588-6550 • (800) 452-0338 • Fax: (503) 399-4863
www.orcities.org

To: League of Oregon Cities Members
From: Wendy Johnson, Intergovernmental Relations Associate
Date: November 4, 2016
RE: Marijuana Tax Collection Agreement FAQ

A copy of a model Marijuana Tax Collection Agreement provided by the Oregon Department of Revenue (DOR) is available on the League's website under "[Marijuana Resources](#)" in the A-Z Index. This is an optional intergovernmental agreement (IGA) that cities may choose to enter into with the DOR if the city elects to have the DOR collect and enforce their local marijuana tax. The option of state administration of the local tax was sought by the League during the 2016 session for efficiency, and to address concerns related to public safety and banking. This Frequently Asked Questions (FAQ) memo is intended to further explain and highlight the following six key components of the IGA.

1. Timing of Payments from the State (paragraph 4)

Under the agreement, local governments will receive payment of local marijuana taxes from the DOR each quarter; however, the quarterly payment will not be for the quarter that just finished, but the quarter before that. The delayed payment will occur due to the time retailers have to pay the taxes and file their returns, and the time DOR needs to process the payments and returns. Specifically, retailers must file a return each quarter and make payments each month. The terms of the IGA provide that DOR will make payment within 60 days AFTER the quarterly return due date.

Example: The first quarter for 2017 runs from January 1 to March 31. The tax return for that first quarter is due to the DOR on May 1 (30 days after the quarter). The tax payments to the DOR are due February 28, March 31, and May 1 for the tax collected for the corresponding previous month. The DOR will send tax payments to the local government within 60 days after the return due date of May 1, and thus payment to local government is due by June 30. This is three months after the end of the first quarter, March 31.

The DOR is in discussions with the Oregon Department of Administrative Services (DAS), but Paragraph 4 (last sentence) would permit the DOR to have DAS send the actual quarterly local marijuana tax payments to local governments. This payment may or not be made along with the state shared revenue payments of the state marijuana tax. The DAS already has the infrastructure to do the payments and mailings, etc. since they handle several other state shared revenue payments (for example, liquor and cigarette). The state is working out details, but don't be surprised that you may be working with DAS and not the DOR on the actual local marijuana tax payments.

2. Cost to Local Governments for DOR to Collect and Enforce (paragraphs 5 and 6)

The legalization of recreational marijuana and the taxation of the product is still very new to the state and costs for tax administration have not been adequately calculated since the program is still evolving. Thus, for ease of administration, the IGA simply provides for 4 percent of local tax revenues to be withheld each month by the DOR to approximate the state's costs. Then, once a year, the DOR will figure out their actual costs and use the three fees described in paragraph 5(a) to (c) to calculate each local government's share of the costs. The DOR recognizes local governments would like more specificity on what the costs will be before signing an agreement, but details simply are not available yet. The draft IGA has been improved a great deal over recent months. Specifically, paragraph 5(g) was recently added to make it clear that the DOR will only recover costs to administer the local marijuana tax. In addition, more details and limits on the administrative service fee and the business fee were added to the IGA. Cities may consider adjusting their ordinances to help offset the DOR fees. For example, license fees for retailers could be adjusted. See the League's Model Ordinances, Appendix E, available under "Marijuana Resources" in the League's online A-Z index.

3. Interest and penalties for late payment (paragraphs 1(d) and 2)

The DOR will collect interest and penalties for local governments on local marijuana taxes, following the same method and using the same rates as they do for the state marijuana tax. Beginning in 2017, the interest rate will be 5 percent (annual) or 0.4167 percent (monthly). In addition, there are 5, 20, and 100 percent penalties that escalate over time for failing to file or failing to pay. Local governments may need to revise their local ordinances, notices, etc. if the interest and penalties conflict with the state provisions. The IGA specifically provides that the DOR will not collect additional penalties or fees that a city may assess. (See paragraph 1(d)). See also page 2 of the Oregon Quarterly Marijuana Tax Return that discusses late filing and penalties, available here: https://www.oregon.gov/DOR/forms/FormsPubs/marijuana-tax-return_610-001_2016.pdf

4. Start Date of Agreement (paragraph 16)

Approximately 100 cities have local marijuana taxes on the November 8 ballot. Election results will not generally be certified until December 8, and both the DOR and taxpayers need some lead time to start this new tax collection. With this in mind, the IGA provides that for those local governments that sign the agreement by the deadline, collection and enforcement by

the DOR would begin January 1, 2017. Local governments need to sign and submit the agreement by January 15, 2017 for the DOR to collect for the first quarter of 2017. (See paragraph 16, last sentence). Signing in November or December 2016 is encouraged in order to assist the DOR in preparation. The DOR is permitting signing the agreement after the first quarter starts (until January 15) because payment for January taxes is not due until February 28. Cities that sign after the January 15 deadline would have start dates of the next applicable quarter. Cities may need to amend their ordinance if the ordinance included information about where, how, and when the tax must be remitted that conflicts with the IGA.

5. Confidentiality (paragraph 15)

Marijuana tax information is largely confidential. ORS 314.835 provides that “particulars” in reports and returns of local taxes collected pursuant to ORS 305.620 (the provision permitting the DOR collection through an intergovernmental agreement) are confidential. “Particulars” are defined in statute. The IGA references this statute and provides limited employee access and use in paragraph 15. The League’s model ordinance also contains a confidentiality provision. See the League’s Model Ordinances, Appendix E, available under “Marijuana Resources” in the League’s online A-Z index. Cities will need to follow the confidentiality protocols carefully. Note also that the DOR has alerted the League that published financials and proposed budgets may need to have local marijuana tax revenues combined with other revenues if a city has such few retailers such that individual retailer information would be inadvertently disclosed. Questions should be directed to the DOR.

6. City’s Responsibilities (paragraphs 10-12)

Cities that enter into the model IGA would have the following key responsibilities:

1. Shall provide the DOR with a **list of the local taxpayers** (licensed marijuana retailers) in their jurisdiction within 60 days of signing the agreement, and then update the list each quarter. (Note: the DOR will receive taxpayer information from OLCC on marijuana retailers too, but the list from the cities will help with boundary issues and provide a double-check.)
2. Shall provide the DOR with a **list of zip codes** in their taxing jurisdiction within 60 days of signing the agreement. (This will particularly help with boundary issues, e.g. incorporated or unincorporated locations, and provide a double-check as well.)
3. Shall **review reports and reconciliations each quarter** and promptly notify the DOR of any perceived errors or omissions.
4. Shall **maintain its records** under Oregon public records laws and provide records upon request. (This would include business registration records primarily.)
5. Shall **provide a copy of the ordinance** that imposes the local marijuana tax to the DOR along with the signed agreement. Cities also must provide the DOR with updates on ordinance changes.

This document is not a substitute for legal advice. City councils considering using the Oregon Department of Revenue to collect local marijuana taxes should not rely solely on this memo or League sample ordinances. Any city council considering any form of regulation or taxing 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 state law, local procedures, existing ordinances and a city's charter, and advise on what process is needed to adopt the ordinance.

The memo is intended to be a starting point, not an ending point, for any jurisdiction considering entering into an agreement with the Oregon Department of Revenue.

MARIJUANA TAX COLLECTION AGREEMENT

This Marijuana Tax Collection Agreement (“Agreement”) is entered into between the State of Oregon, acting by and through its Department of Revenue (the “Department”) and [insert City of /County of], (“[City/County]”), under the authority of ORS 305.620.

In consideration of the conditions and promises hereinafter contained, it is mutually agreed by the parties that the Department shall supervise and administer, according to the terms and conditions set forth in this Agreement, the Local Tax on sales of marijuana items by Marijuana Retailers authorized under ORS 475B.345 and approved by the voters of [City/County].

(1) Definitions. As used in this Agreement the following terms have the meanings ascribed to them:

(a) “Confidential Information” means the information on Local Tax returns administered pursuant to ORS 305.620, any information in the reports required under Sections 8 and 9 of this Agreement from which information about a particular Local Taxpayer is discernable from the report due to a small number of Local Taxpayers in [City/County] or similar factors, and any other information exchanged between the Department and [City/County] related to this Agreement, that is confidential under ORS 314.835.

(b) “Fees” means collectively the Administrative Services Fee, the Business Fee and the Core Systems Replacement Fee described in Section 5 of this Agreement.

(c) “Local Government” means a city or county that has entered into a form of this agreement with the Department under the authority of ORS 305.620 for the Department to collect Local Taxes authorized under ORS 475B.345.

(d) “Local Tax” or “Local Taxes” means the Marijuana Tax imposed by [City/County], together with any additional interest or penalties provided for by statute or the Department’s rules; it does not include any additional penalties or fees that [City/County] may assess against its Local Taxpayers.

(e) “Local Taxpayer” means a licensed Marijuana Retailer located in the taxing jurisdiction of [City/County].

(f) “Marijuana Retailer” has the meaning given in ORS 475B.015.

(g) “Marijuana Tax” means the tax imposed on sales of marijuana items by Marijuana Retailers pursuant to ORS 475B.345.

(h) “Marijuana Taxpayer” means a licensed Marijuana Retailer that is subject to the Marijuana Tax imposed by a Local Government.

(i) "Ordinance" means the ordinance adopted by the governing body of [City/County] and approved by the voters of [City/County] on [insert election date], a copy of which is attached hereto as Exhibit A and by this reference incorporated herein.

(2) **General Administration.** The Department shall be responsible for all aspects of Local Tax administration, including, but not limited to, adopting administrative rules; auditing returns; assessing deficiencies and collecting the Local Tax and penalties and interest under applicable statutes, including but not limited to ORS 305.265, ORS 305.220, and ORS 314.400; making refunds; holding conferences with Local Taxpayers; handling appeals to the Oregon Tax Court; issuing warrants for the collection of unpaid taxes; determining the minimum amount of Local Tax economically collectible; and taking any other action necessary to administer and collect the Local Taxes. The Department has adopted rules addressing the requirements for paying taxes with currency and other matters related to the taxation of marijuana under ORS chapter 475B. [City/County] understands and agrees that such rules will be applied to Local Taxpayers.

(3) **Level of Service.** In performing its duties, the Department may in its sole discretion determine what action shall be taken to enforce provisions of the law and to collect the Local Tax. In exercising its discretion, the Department shall provide a level of services that are comparable to the level of services it provides in the administration of the State of Oregon marijuana tax laws and the collection of such taxes owed to the State of Oregon. If the Department deems it necessary to vary substantially from this standard, the Department shall first notify [City/County] of the need and obtain [City's/County's] consent. The Department shall provide all forms necessary for implementation of the Local Tax, including forms for Marijuana Tax returns, exemptions and refunds.

(4) **Transfer of Taxes to [City/County].** Beginning at the end of the first full quarter after execution of this Agreement, the Department shall remit to [City/County] the amount of Local Taxes collected in the preceding quarter less amounts withheld to pay the Department's Fees and other costs as described in this Agreement within 60 days of the return due date for the quarter. The Department shall notify [City/County] if, because of inability to move funds electronically or otherwise through the banking system, a force majeure event described in Section 26 of this Agreement or other exigent circumstance, the Department is unable to transfer the Local Tax collected to [City/County] as provided in this Section. In that event, the Department shall provide an estimate, if possible, of when it expects to be able to transfer the Local Taxes collected to [City/County]. The Department may enter into an agreement with another state government agency to fulfill the requirements of this Section 4, provided that said government agency can comply with the requirements of this section.

(5) **Costs.** In order to recover its costs to collect and transfer the Local Tax as provided in this Agreement the Department shall be paid the following three fees:

(a) "Administrative Services Fee": Pays for the establishment and maintenance of financial systems needed to administer and distribute Local Taxes. The fee shall be calculated annually as a percentage of the equivalent of 60 hours of work conducted for the Department of Revenue by the Department of Administrative Services, divided among the Local Governments in proportion to the number of Marijuana Taxpayers in each Local Government.

(b) "Business Fee": Pays for the Local Tax administration activities set forth in this Agreement. The fee shall be calculated as a percentage of the Department's Business Division annual expenses for the administration of all marijuana taxes, with the total fee increasing in direct proportion to the number of Local Taxpayers. The total amount per Local Taxpayer billed to [City/County] under the Business Fee shall not exceed 0.05 percent of the Department's Business Division expenses for the administration of all marijuana taxes;

(c) "Core Systems Replacement fee": Charged only one time after execution of this Agreement and calculated as a flat fee per Local Taxpayer. The total Core Systems Replacement Fee shall not exceed two hundred dollars (\$200.00) per Local Taxpayer in the first full quarter following execution of this Agreement.

FOR EXAMPLE, in a hypothetical with the following assumptions:

250 Marijuana Taxpayers

50 Local Taxpayers in the City of Mainville

2 Local Taxpayers in the City of Middletown

Business Division's Marijuana Expenses: \$500,000 per year

Hourly DAS rate: \$99/hour

The fees would be calculated as follows:

Administrative Services Fee = $(\$99/\text{hour} * 60 \text{ hours}) / 250 \text{ Marijuana Taxpayer} =$
\$23.76 per Local Taxpayer per year

Business Fee = $\$500,000 \text{ in marijuana expenses per year} * 0.05\% =$ \$250 per
Local Taxpayer per year

Core Systems Replacement Fee = \$200 per Local Taxpayer, one time

City of Mainville, year 1: $(\$23.76 \text{ Administrative Services Fee} + \$250 \text{ Business Fee} + \$200 \text{ Core Systems Replacement Fee}) * 50 \text{ Local Taxpayers} =$ \$23,688 in costs

City of Mainville, subsequent years: $(\$23.76 \text{ Administrative Services Fee} + \$250 \text{ Business Fee}) * 50 \text{ Local Taxpayers} =$ \$13,688 in costs

City of Middletown, year 1: (\$23.76 Administrative Services Fee + \$250 Business Fee + \$200 Core Systems Replacement Fee) * 2 Local Taxpayers = \$947.52 in costs

City of Middletown, subsequent years: (\$23.76 Administrative Services Fee + \$250 Business Fee) * 2 Local Taxpayers = \$547.52 in costs

(e) In addition to the Fees described above, the Department may withhold or invoice [City/County] for the Department's costs to administer extraordinary services not described in this Agreement related to the Local Tax; such extraordinary costs may include, without limitation, requests for audits from [City/County] that exceed the scope of the Department's normal audit procedures, requests for research or advice from the Department or the Oregon Department of Justice attorneys, or specially appointed counsel, regarding the Local Tax.

(f) If the Department determines that its costs cannot be covered by the maximum fees outlined in this Section 5, the Department will notify [City/County] of the amount by which the Department has determined the Fees must increase. If the Department and [City/County] do not agree upon a Fee increase and related amendment to this Agreement, then this Agreement may be terminated by either party in accordance with Section 16 of this Agreement.

(g) The Department shall not collect more in fees than its costs to administer the Local Tax, per ORS 305.620(5). It is using the above formula in the interests of producing its best estimate of costs.

(6) Withholding for Fees and Rebate. The Department shall withhold from the Local Taxes collected and each transfer to [City/County] an amount equal to four percent (4%) of the Local Taxes collected. In the first quarter of each calendar year the Department will reconcile the amounts withheld in the previous year with the total fees assessed, and provide such reconciliation in the Department's annual report described in Section 10 of this Agreement. If the amount withheld in a calendar year exceeds the amount of the Department's Fees, the Department will rebate the balance of the Local Taxes withheld to [City/County] by the end of the first quarter following the year of withholding. If the amount withheld does not cover the Department's Fees for the preceding year, the amount of the shortfall will be withheld from subsequent transfers of Local Taxes collected until the Department's Fees are fully paid, or in its discretion the Department may invoice [City/County] for the unpaid amount of the Department's Fees.

(7) Recovery of Overpayments. If the amount of Local Taxes paid to [City/County] under this Agreement, exceed the amount to which [City/County] is entitled, the Department may, after notifying [City/County] in writing, withhold from later payments due [City/County] under this Agreement, such amounts, over such periods of time, as are necessary to recover the amount of the overpayment.

(8) Department Quarterly Reports. Beginning with the first full calendar quarter after the execution of this Agreement and continuing each calendar quarter thereafter, within sixty (60) days after the due date for quarterly Local Tax returns, the Department shall provide [City/County] with a report indicating the amount of Local Taxes collected, any extraordinary costs assessed, the amount withheld under Section 6 of this Agreement and the cumulative amount of delinquent Local Taxes for each Marijuana Retailer in [City/County's] jurisdiction. The information in this report must be treated as potentially revealing Confidential Information, and shall be protected as described in Section 15. [City/County] should make all efforts to prevent Confidential Information from being released. The Department and [City/County] shall disclose any non-confidential information in a report when required to do so by law, including the Oregon Public Records Law, ORS 192.410 to 192.505.

(9) Department Annual Reports. In the first calendar quarter of each year, the Department shall make a written annual report of the preceding calendar year to [City/County] showing the total amount of Local Taxes collected, refunds paid, the expenses of administering and collecting the Local Tax, and other pertinent information. The report shall show the total amount withheld by the Department under Section 6 of this Agreement, and shall show the Department's expenses by its Fee categories. In such report, the Department shall also make recommendations concerning changes in Local Tax Ordinances, procedures, policies, Local Tax administration and related matters, as the Department deems necessary and appropriate. The information in this report must be treated as potentially Confidential Information, and shall be protected as described in Section 15. [City/County] should make all efforts to prevent Confidential Information from being released. The Department and [City/County] shall disclose any non-confidential information in the report when required to do so by law, including the Oregon Public Records Law, ORS 192.410 to 192.505.

(10) [City/County] Reports. Within sixty (60) days of the effective date of this Agreement, [City/County] shall provide the Department with a list of Local Taxpayers in its jurisdiction and a list of zip code areas that are within its jurisdiction for purposes of imposing the Local Tax. [City/County] shall provide an updated list of Local Taxpayers to the Department each calendar quarter thereafter. [City/County] shall review all reports and reconciliations provided by the Department and promptly notify the Department of any perceived errors or omission in such reports.

(11) Records Maintenance and Access. Each party shall maintain its records relevant to this Agreement, the Local Taxes and Local Taxpayers for the period of time specified and in the manner required under the document retention and archiving requirements applicable to it that are established under ORS 192.005 to 192.170. Upon written request, each party may examine the records of the other party at a time and location that is convenient and without extra cost to the holder to the records; provided, however, any requests for records made in connection with litigation or other efforts to collect the Local Tax shall be immediately provided in the time and manner requested.

(12) Ordinance and Notification of Changes. Contemporaneous with the execution of this Agreement, [City/County] shall provide a copy of the Ordinance to Department for incorporation into this Agreement as Exhibit B. In order to insure consistency in administration of the Local Tax, each party shall notify the other of any change in the Ordinance and any state or local regulations or rulings interpreting the Local Tax or the Ordinance, any changes in rates or changes in the [City's/County's] boundary at least ninety (90) days prior to the effective change, unless it is not legally possible to provide ninety (90) days' notice or both parties mutually agree to effect such changes in less than ninety (90) days. Each party shall notify the other of any change in administration of the Local Tax under this Agreement. The parties shall cooperate in amending the Ordinance or in seeking amendments to ORS 475B.345 or ORS 305.620 which they deem necessary.

(13) Information. The parties will cooperate in the exchange of information and making public announcements to facilitate effective administration of the Local Tax and maintain consistency in public announcements and information. Policy announcements, announcement of changes in the Ordinance, and all correspondence relating to public relations will be handled by [City/County]. The Department shall promptly notify [City/County] of any matter arising in the administration of the Marijuana Tax that would require any legislative change or affect [City/County's] policy, including any policy that relates to the amount of Local Tax collected. Nothing in this section shall prohibit the Department from conducting its own outreach activities to increase awareness and knowledge of local tax obligations.

(14) Limits and Conditions. To the extent limited by applicable provisions of Article XI of the Oregon Constitution or other governing law, and within the limits of the Oregon Tort Claims Act applicable respectively to the Department and [City/County], each party shall indemnify the other for damage to life or property arising from their respective duties and obligations under this Agreement, provided neither party shall be required to indemnify the other for any such liability arising out of a party's own negligent or wrongful acts.

(15) Confidentiality.

(a) Confidential Information may be disclosed only to [City/County] as principal, by the Department as its agency, for purposes of carrying out the administration of the Local Tax imposed by [City/County]. Requests for Confidential Information shall be made by [City/County] by giving not less than ten (10) days' notice to the Department, stating the information desired, the purposes of the request, and the use to be made of such information. If the compilation of information is not feasible, the Department shall so advise [City/County].

(b) ORS 314.840(3) requires that employees and representatives of [City/County] who receive Confidential Information must be advised in writing of the provisions of ORS 314.835 and 314.991(3), relating to the penalties for unlawful disclosure. Prior to being given access to Confidential Information, all [City/County] employees involved in the performance of this

Agreement must review the DOR Secrecy Clause and sign the DOR Secrecy Laws Certificate (substantially in the form of Exhibit A, attached hereto and by this reference incorporated herein) certifying the employee understands the confidentiality laws and the penalties for violating them. Annually thereafter, (on or before a date specified by the Department), such [City/County] employees must review and sign the latest versions of the Secrecy Clause and the Secrecy Laws Certificate. All signed Secrecy Laws Certificates must be immediately emailed to both the designated Department Authorized Representative (indicated below) and the Department's Disclosure Office (disclosure.office@oregon.gov). When the employee terminates, [City/County] will forward the certificate to the Department's Disclosure Officer. A listing of every person authorized to request and receive Confidential Information identified in this Agreement will be sent to the following designated representative:

John Galvin, Marijuana Tax Program Manager, marijuanatax.DOR@oregon.gov

(c) Upon request and pursuant to the instructions of DOR, [City/County] shall return or destroy all copies of Confidential Information provided by DOR to [City/County], and [City/County] shall certify in writing the return or destruction of all such Confidential Information.

(d) The administrative rules implementing ORS 314.835 and ORS 314.840 as amended from time to time during the term of this Agreement, shall apply to this Agreement.

(16) Term. The term of this Agreement shall be from the date it is executed by all parties and until it is terminated by operation of law or by either party at its discretion upon at least ninety (90) days prior written notice. Prior to the termination date specified in written notice provided under this section or Section 17 below, [City/County] and the Department will continue to perform their respective duties and obligations of under this Agreement. After the termination date, the Department will cease all collection and other activities under this Agreement, unless prior to the termination date the Department and [City/County] agree in writing that the Department may continue actions that are pending before the Oregon Tax Court or the Oregon Supreme Court, or are being collected after judgment or stipulation. In addition, after the termination date the Department will continue to remit to [City/County] any Local Taxes received by the Department, after deduction of the Department's actual costs, until all matters pending on the date of termination have been resolved or collected. The Department will administer the Local Tax for [City/County] for each calendar quarter commencing after this Agreement is executed; provided, however, if this Agreement is fully executed on or before the 15th day of the calendar quarter, the Department will administer the Local Tax for the quarter in which this Agreement is executed.

(17) Default and Remedies. A party shall be in default under this Agreement if it fails to perform any of its duties and obligations under this Agreement, and fails to cure such nonperformance within ninety (90) days after the other party provides written notice specifying

the nature of the nonperformance. If the nonperforming party does not cure its nonperformance, or provide a satisfactory explanation to the other party of its performance under this Agreement, the other party may terminate this Agreement immediately or at a later date specified in written notice provided to the nonperforming party. In addition to termination of this Agreement, in the event of default by a nonperforming party, the other party may pursue any remedies available in law or equity, including an action for specific performance.

(18) **Notices.** All notices, documents, and information shall be sent as follows:

[City/County full name] Oregon Department of Revenue
Marijuana Tax Program
PO Box 14630
Salem, OR 97309

(19) **Amendments.** The provisions of this Agreement shall not be waived, altered, modified, supplemented, or amended, in any manner whatsoever, except by written instrument signed by both parties.

(20) **Successors and Assigns.** This Agreement shall be binding and inure to the benefit of the parties, their assigns, and successors.

(21) **Severability.** If any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

(22) **Representations.** Each party represents to the other that the making and performance of this Agreement: (a) have been duly authorized by its governing body or official, (b) does not and will not violate any provision of any applicable law, rule, regulation, or order of any court, regulatory commission, board or other administrative agency or any provision of any applicable local charter or other organizational document, and (c) do not and will not result in the breach of, or constitute a default or require any consent under any other agreement or instrument to which the party is bound.

(23) **Governing Law, Consent to Jurisdiction.** This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively "Claim") between the Department and [City/County] regarding the enforcement or interpretation of this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Marion County for the State of Oregon. The parties understand and agree that any action brought to determine the amount of Local Tax owed by a Local Taxpayer, whether brought solely by the Department or in conjunction with [City/County] shall be brought solely in the Oregon Tax Court.

(24) **Nonappropriation.** The obligation of each party to perform its duties under this Agreement is conditioned upon the party receiving funding, appropriations, limitation, allotment, or other expenditure authority sufficient to allow the party, in the exercise of its reasonable administrative discretion, to meet its obligations under this Agreement. Nothing in this Agreement may be construed as permitting any violation of Article XI, sections 7 or 10 of the Oregon Constitution or any other law limiting the activities, liabilities or monetary obligations of each party.

(25) **Survival.** All rights and obligations of the parties under this Agreement will cease upon termination of the Agreement, other than the rights and obligations arising under Sections 14, 16 and 17, and those rights and obligations that by their express terms survive termination of this Agreement; provided, however, that termination of this Agreement will not prejudice any rights or obligations accruing to a party prior to termination.

(26) **Force Majeure.** Neither party is responsible for any failure to perform or any delay in performance of an obligation under this Agreement caused by fire, civil unrest, labor unrest, natural causes, or war, which is beyond that party's reasonable control. Each party shall, however, make all reasonable efforts to remove or eliminate such cause of failure to perform or delay in performance and shall, upon the cessation of the cause, diligently pursue performance of its obligation under this Agreement.

(27) **Counterparts.** This Agreement may be executed in counterparts, all of which when taken together shall constitute one agreement, notwithstanding that all parties are not signatories to the same counterpart. Each copy of this Agreement so executed constitutes an original.

(28) **Merger.** This Agreement and any exhibits constitute the entire agreement between the parties on the subject matter hereof. There are no understandings, agreements or presentations, oral or written, not specified herein regarding this Agreement.

Each party represents that this Agreement, when fully executed and delivered will constitute a legal, valid and binding obligation of the party in accordance with its terms, and that the person signing below is the authorized representative of the party with full power and authority to bind his/her principal to this Agreement.

Oregon Department of Revenue

Name/Title:

Signature:

Date signed:

City/County:

Name/Title:

Signature:

Date signed:

EXHIBIT A

DOR

SECURITY CLAUSE

and

SECURITY LAWS CERTIFICATE

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SECRECY CLAUSE

Taxpayer information is confidential and protected by Oregon law. Only authorized persons may have access to taxpayer information, or to secure buildings where taxpayer information is handled. Oregon law requires that you sign a Secrecy Certificate before being allowed access to this confidential information or secure areas. By signing the certificate, you certify that you understand the confidentiality laws and the penalties for violating them.

This applies to everyone with access to taxpayer information, including:

- Department of Revenue employees
- Employees of other government agencies
- Vendors and contractors
- Business partners

Penalties for unauthorized disclosure of state tax information

- Income tax*—Class C felony; up to \$125,000 fine; up to five years imprisonment; dismissal from state employment; no public office for five years. [ORS 314.991(2)]
- Inheritance tax—Class C felony; up to \$125,000 fine; up to five years imprisonment; dismissal from state employment; no public office for five years. [ORS 118.990(3)]
- Industrial property tax—Up to \$10,000 fine; up to one year imprisonment. [ORS 308.990(5)]
- Timber tax—Up to \$5,000 fine; dismissal from state employment. (ORS 321.686)
- Employment Department—May result in dismissal from state employment, or other discipline. [ORS 657.665(6)]

* These provisions also apply to transient lodging tax (ORS 320.330), cigarette tax (ORS 323.403), tobacco products tax (ORS 323.595), emergency communications tax (ORS 403.230), oil and gas production tax (ORS 324.170), hazardous substances tax (ORS 453.410), and petroleum products tax (ORS 465.124).

Penalties for unauthorized disclosure of federal tax information

- IRC Sect. 7213—Felony; up to \$5,000 fine; imprisonment of up to five years; cost of prosecution, damages**.
- IRC Sect. 7213A—Up to \$1,000 fine; imprisonment of up to one year; cost of prosecution, damages**.

** Damages may include \$1,000 per act, actual damages, punitive damages, cost of legal action, attorney fees. See Section 7431.

Instructions

Please read the following laws. They explain the types of information that are confidential. If you have questions during your employment or performance of duties, ask your supervisor or a Disclosure officer before accessing or disclosing information.

After reading this information, fill out the last page and return it to the Department of Revenue. Keep the other pages for your records.

Oregon Income Tax Laws

ORS 314.835

(1) Except as otherwise specifically provided in rules adopted under ORS 305.193 or in other law, it shall be unlawful for the Department of Revenue or any officer or employee of the department to divulge or make known in any manner the amount of income, expense, deduction, exclusion or credit or any particulars set forth or disclosed in any report or return required in the administration of ORS 310.630 to 310.706, required in the administration of any local tax pursuant to ORS 305.620, or required under a law imposing a tax upon or measured by net income. It shall be unlawful for any person or entity to whom information is disclosed or given by the department pursuant to ORS 314.840 (2) or any other provision of state law to divulge or use such information for any purpose other than that specified in the provisions of law authorizing the use or disclosure. No subpoena or judicial order shall be issued compelling the department or any of its officers or employees, or any person who has acquired information pursuant to ORS 314.840 (2) or any other provision of state law to divulge or make known the amount of income, expense, deduction, exclusion or credit or any particulars set forth or disclosed in any report or return except where the taxpayer's liability for income tax is to be adjudicated by the court from which such process issues.

(2) As used in this section:

(a) "Officer," "employee" or "person" includes an authorized representative of the officer, employee or person, or any former officer, employee or person, or an authorized representative of such former officer, employee or person.

(b) "Particulars" includes, but is not limited to, a taxpayer's name, address, telephone number, Social Security number, employer identification number or other taxpayer identification number and the amount of refund claimed by or granted to a taxpayer.

ORS 314.991

(2) Violation of ORS 314.835 is a Class C felony. If the offender is an officer or employee of the state the offender shall be dismissed from office and shall be incapable of holding any public office in this state for a period of five years thereafter.

Applicability to other tax programs

The above provisions of ORS 314, concerning the confidentiality of returns and penalties, also apply to:

• Transient lodging tax	ORS 320.330
• Cigarette tax	ORS 323.403
• Tobacco products tax	ORS 323.595
• Emergency communications tax	ORS 403.230
• Oil and gas production tax	ORS 324.170
• Hazardous substances tax	ORS 453.410
• Petroleum products tax	ORS 465.124

Oregon Inheritance Tax Laws

ORS 118.525

(1) It shall be unlawful for the Department of Revenue or any of its officers or employees to divulge or make known in any manner any particulars disclosed in any return or supporting data required under this chapter. Except for executors or beneficiaries and their authorized representatives, it shall be unlawful for any person or entity who has acquired information pursuant to subsections (3) and (4) of this section to divulge or make known such information for any purpose other than that specified in the provisions of law authorizing the use or disclosure. No subpoena or judicial order shall be issued compelling the department, or its officers or employees, or persons described in subsections (3) and (4) of this section, to divulge or make known any particulars disclosed in any such return or supporting data except where the liability for inheritance taxes is to be adjudicated by the Oregon Tax Court. Nothing in this section shall prohibit the publication of statistics so classified as to prevent the identification of particulars in any return or supporting data covered by this section.

(2) As used in this section:

(a) "Officer," "employee" or "person" includes an authorized representative of the officer, employee or person, or former officer, employee or person, or an authorized representative of such former officer, employee or person.

(b) "Particulars" includes, but is not limited to, a taxpayer's name, address, telephone number, Social Security number and the amount of refund claimed by or granted to a taxpayer.

ORS 118.990

(3) Violation of ORS 118.525 is a Class C felony. If the offender is an officer or employee of the state the offender shall be dismissed from office and shall be incapable of holding any public office in this state for a period of five years thereafter.

Oregon Property Tax Laws

ORS 308.290

(11)(a) All returns filed under the provisions of this section and ORS 308.525 and 308.810 are confidential records of the Department of Revenue or the county assessor's office in which the returns are filed or of the office to which the returns are forwarded under paragraph (b) of this subsection.

ORS 308.413

(1) Any information furnished to the county assessor or to the Department of Revenue under ORS 308.411 which is obtained upon the condition that it be kept confidential shall be confidential records of the office in which the information is kept, except as follows:

(a) All information furnished to the county assessor shall be available to the department and all information furnished to the department shall be available to the county assessor.

(b) All information furnished to the county assessor or department shall be available to any reviewing authority in any subsequent appeal.

(c) The department may publish statistics based on the information furnished if the statistics are so classified as to prevent the identification of the particular industrial plant.

(2) The Department of Revenue shall make rules governing the confidentiality of information under this section.

(3) Each officer or employee of the Department of Revenue or the office of the county assessor to whom disclosure or access of the information made confidential under subsection (1) of this section is given, prior to beginning employment or the performance of duties involving such disclosure, shall be advised in writing of the provisions of this section and ORS 308.990 (5) relating to penalties for the violation of this section, and shall as a condition of employment or performance of duties execute a certificate for the department or the assessor in a form prescribed by the department, stating in substance that the person has read this section and ORS 308.990 (5), that these sections have been explained to the person and that the person is aware of the penalties for violation of this section.

ORS 308.990

(5) Subject to ORS 153.022, any willful violation of ORS 308.413 or of any rules adopted under ORS 308.413 is punishable, upon conviction, by a fine not exceeding \$10,000, or by imprisonment in the county jail for not more than one year, or by both.

Forestland Tax Laws

ORS 321.682

(1) Except as otherwise specifically provided by law, it shall be unlawful for the Department of Revenue or any officer or employee of the department to divulge or make known in any manner the amount of the tax or any particulars set forth or disclosed in any report or return required to be filed under ORS 321.045 or 321.741 or any appraisal data collected to make determinations of specially assessed value of forestland pursuant to ORS 321.201 to 321.222. It shall be unlawful for any person or entity to whom information is disclosed or given by the department pursuant to ORS 321.684 (2) or any other provision of state law to divulge or use such information for any purpose other than that specified in the provisions of law authorizing the use or disclosure. No subpoena

or judicial order shall be issued compelling the department or any of its officers or employees, or any person who has acquired information pursuant to ORS 321.684 (2) or any other provision of state law, to divulge or make known the amount of tax or any particulars set forth or disclosed in any report or return except where the taxpayer's liability for timber tax is to be adjudicated by the court from which such process issues.

(2) As used in this section, "officer," "employee" or "person" includes an authorized representative of the officer, employee or person, or any former officer, employee or person, or an authorized representative of such former officer, employee or person.

ORS 321.686

Violation of ORS 321.682 is subject to a fine not exceeding \$5,000 or, if committed by an officer or employee of the state, dismissal or removal from office or employment, or both fine and dismissal or removal from office or employment.

Oregon Employment Department Laws

ORS 657.665

(4)The Employment Department may: ... (i) Disclose information to the Department of Revenue for the purpose of performing its duties under ORS 293.250 or under the revenue and tax laws of this state. The information disclosed may include the names and addresses of employers and employees and payroll data of employers and employees. The information disclosed is confidential and may not be disclosed by the Department of Revenue in any manner that would identify an employing unit or employee except to the extent necessary to carry out the department's duties under ORS 293.250 or in auditing or reviewing any report or return required or permitted to be filed under the revenue and tax laws administered by the department. The Department of Revenue may not disclose any information received to any private collection agency or for any other purpose. If the information disclosed under this paragraph is not prepared for the use of the Employment Department, the costs of disclosing the information shall be paid by the Department of Revenue.

(6) Any person or any officer or employee of an entity to whom information is disclosed by the Employment Department under this section who divulges or uses the information for any purpose other than that specified in the provision of law or agreement authorizing the use or disclosure may be disqualified from performing any service under contract or disqualified from holding any appointment or employment with the state agency that engaged or employed that person, officer or employee. The Employment Department may immediately cancel or modify any information sharing agreement with an entity when a person or an officer or employee of that entity discloses confidential information, other than as specified in law or agreement.



SECURITY LAWS CERTIFICATE

Required by ORS 314.840(3), ORS 118.525(6),
ORS 308.413(3), ORS 321.684

I have read the laws prohibiting disclosure of confidential information for the tax programs below.
The laws have been explained to me.
I have been furnished with a copy of the laws.
I understand Oregon's disclosure laws and the penalties for violating them.

Income tax	ORS 314.835; ORS 314.991(2)
Inheritance tax	ORS 118.525(1); ORS 118.990(3)
Industrial property tax	ORS 308.290(11); ORS 308.413; ORS 308.990(5)
Forestland tax	ORS 321.682; ORS 321.686
Employment Department tax	ORS 657.665(4)(i) and (6)
Transient lodging tax	ORS 320.330
Cigarette tax	ORS 323.403
Tobacco products tax	ORS 323.595
Emergency communications tax	ORS 403.230
Oil and gas production tax	ORS 324.170
Hazardous substances tax	ORS 453.410
Petroleum products tax	ORS 465.124
Federal tax laws	IRC Sections 7213, 7213A, 7431

VENDORS, CONTRACTORS, BUSINESS PARTNERS	
PRINT your full name	Business telephone number
Print full name of business or organization for which you are acting in an official capacity	
Address of business or organization	SSN (Collection agency employees only)
What is the nature of your business?	Duration of contract or visit
Revenue contact	Area where you'll be working
Signature	Date
X	

REVENUE EMPLOYEES	
PRINT your full name	Date
Signature	
X	

AGENCY USE	
<input type="checkbox"/> In Compliance	<input type="checkbox"/> Not in Compliance

SECRET

SECRET

Exhibit A

Chapter 3.24 RECREATIONAL MARIJUANA TAX

- 3.24.010 Purpose
- 3.24.015 Definitions
- 3.24.020 Tax Imposed
- 3.24.025 Amount and Payment, Deductions
- 3.24.030 Marijuana Retailer Responsible for Payment of Tax
- 3.24.035 Penalties and Interest
- 3.24.040 Appeal
- 3.24.045 Refunds
- 3.24.050 Actions to Collect
- 3.24.055 Violation
- 3.24.060 Confidentiality
- 3.24.065 Audit of Books, Records, or Persons
- 3.24.070 Forms and Regulations
- 3.24.075 Intergovernmental Agreement

3.24.010 Purpose

The purpose of this chapter is to impose a three percent tax upon the retail sale of marijuana items by marijuana retailers in the City of Dundee.

3.24.015 Definitions

As used in this ordinance, unless the context requires otherwise:

“Consumer” means a person who purchases, acquires, owns, holds or uses marijuana items other than for the purposes of resale.

“Director” means the City Administrator for the City of Dundee or his or her designee.

“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.

“Marijuana item” has the meaning given that term in ORS 475B.015(16).

“Person” means natural person, joint venture, joint stock company, partnership, association, club, company, corporation, business, trust, organization, or any group or combination acting as a unit, including the United States of America, the State of Oregon and any political subdivision thereof, or the manager, lessee, agent, servant, officer or employee of any of them.

“Retail sale” or “Sale” means the exchange, gift or barter of a marijuana item by any person to a consumer.

“Marijuana retailer” means any person who is required to be licensed or registered or has been licensed or registered by the State of Oregon to provide marijuana items to consumers for money, credit, property or other consideration.

“Tax” means either the tax payable by the marijuana retailer or the aggregate amount of taxes due from a marijuana retailer during the period for which the marijuana retailer is required to report collections under this chapter.

“Taxpayer” means any person obligated to account to the Director for taxes collected or to be collected, or from whom a tax is due, under the terms of this chapter.

3.24.020 Tax Imposed

A tax is hereby levied and shall be paid by every marijuana retailer exercising the taxable privilege of selling marijuana items as defined in this chapter. The Director is authorized to exercise all supervisory and administrative powers with regard to the enforcement, collection, and administration of the tax.

3.24.025 Amount and Payment, Deductions

In addition to any fees or taxes otherwise provided for by law, every marijuana retailer engaged in the sale of marijuana items in the City of Dundee shall pay a tax of three percent (3%) of the retail sale price paid to the marijuana retailer of marijuana items, or the maximum amount allowed under state law, whichever is greater. 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.

3.24.030 Marijuana Retailer Responsible for Payment of Tax

A. Every marijuana retailer shall obtain a business license from the City of Dundee pursuant to DMC 5.04.

B. Every marijuana retailer shall, on or before the twenty-fifth day of each month, make a return to the Director, on forms provided by the City, specifying the total sales subject to this chapter and the amount of tax collected under this chapter for the preceding month. The marijuana retailer may request, or the City may establish, shorter reporting periods for any marijuana retailer if the marijuana retailer or City deems it necessary in order to ensure collection of the tax and the City may require further information in the return relevant to payment of the tax. A return shall not be considered filed until it is actually received by the Director.

C. At the time the return is filed, the full amount of the tax collected shall be remitted to the City.

D. Payments shall be applied in the order of the oldest liability first, with the payment credited first toward any accrued penalty, then to interest, then to the underlying tax until the payment is exhausted. Crediting of a payment toward a specific reporting period will be first applied against any accrued penalty, then to interest, then to the underlying tax. If the Director, in his or her sole discretion, determines that an alternative order of payment application would be in the best

interest of the City in a particular tax or factual situation, the Director may order such a change. The Director may establish shorter reporting periods for any marijuana retailer if the Director deems it necessary in order to ensure collection of the tax. The Director also may require additional information in the return relevant to payment of the liability. When a shorter return period is required, penalties and interest shall be computed according to the shorter return period. Returns and payments are due immediately upon cessation of business for any reason. All taxes collected by marijuana retailers pursuant to this chapter shall be held in trust for the account of the City until payment is made to the City. A separate trust bank account is not required in order to comply with this provision.

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

3.24.035 Penalties and Interest

A. Any marijuana retailer who fails to remit any portion of any tax imposed by this chapter within the time required shall pay a penalty of ten percent (10%) of the amount of the tax, in addition to the amount of the tax.

B. If the City determines that the nonpayment of any remittance due under this chapter is due to fraud, a penalty of twenty-five percent (25%) of the amount of the tax shall be added thereto in addition to the penalties stated in subparagraphs 1 and 3 of this section.

C. In addition to the penalties imposed, any marijuana retailer who fails to remit any tax imposed by this chapter shall pay interest at the rate of one percent (1%) per month or fraction thereof on the amount of the tax, exclusive of penalties, from the date on which the remittance first became delinquent until paid.

D. Penalties imposed, and such interest as accrues for violation of this chapter are separate from, and in addition to, the tax imposed on the sale of marijuana items.

E. All sums collected pursuant to the penalty provisions in this section shall be distributed to the City of Dundee General Fund to offset the costs of auditing and enforcement of this tax.

3.24.040 Appeal

Any marijuana retailer aggrieved by any decision of the Director with respect to the amount of such tax, interest and penalties, if any, may appeal to the City Council by filing a notice of appeal to the Director within fourteen (14) days of the decision. The Director shall transmit the notice of appeal, together with the file of the appealed matter, to the City Council, and shall schedule a time and place for hearing such appeal. The City Council shall give the appellant not less than fourteen (14) days' written notice of the time and place of the hearing. The City

Council shall consider the matter de novo and may approve, revise or remand the Director's decision. The City Council's decision shall be by written order and shall be subject to writ of review proceedings pursuant to ORS 34.010 et seq.

3.24.045 Refunds

A. Whenever the amount of any tax, interest or penalty has been overpaid or paid more than once, or has been erroneously collected or received by the City under this chapter, it may be refunded as provided in subparagraph 2 of this section, provided a claim in writing, stating under penalty of perjury the specific grounds upon which the claim is founded, is filed with the Director within one (1) year of the date of payment. The claim shall be on forms furnished by the City.

B. The Director shall have twenty (20) calendar days from the date of receipt of a claim to review the claim and make a determination in writing as to the validity of the claim. The Director shall notify the claimant in writing of the Director's determination. Such notice shall be mailed to the address provided by claimant on the claim form. In the event a claim is determined by the Director to be a valid claim, in a manner prescribed by the Director a marijuana retailer may claim a refund, or take as credit against taxes collected and remitted, the amount overpaid, paid more than once or erroneously collected or received. The marijuana retailer shall notify Director of claimant's choice no later than fifteen (15) days following the date Director mailed the determination. In the event claimant has not notified the Director of claimant's choice within the fifteen (15) day period and the marijuana retailer is still in business, a credit will be granted against the tax liability for the next reporting period. If the marijuana retailer is no longer in business, a refund check will be mailed to claimant at the address provided in the claim form.

C. No refund shall be paid under the provisions of this section unless the claimant established the right by written records showing entitlement to such refund and the Director acknowledged the validity of the claim.

3.24.050 Actions to Collect

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

3.24.055 Violation

A. Violation of this chapter is punishable by a fine not to exceed five hundred dollars (\$500.00) per day for each continuing day of violation. It is a violation of this chapter for any marijuana retailer or other person to:

1. Fail or refuse to comply as required herein;
2. Fail or refuse to furnish any return required to be made;
3. Fail or refuse to permit inspection of records;
4. Fail or refuse to furnish a supplemental return or other data required by the City;
5. Render a false or fraudulent return or claim; or
6. Fail, refuse or neglect to remit the tax to the city by the due date.

B. The remedies provided by this section are not exclusive and shall not prevent the City from exercising any other remedy available under the law, nor shall the provisions of this chapter prohibit or restrict the City or other appropriate prosecutor from pursuing criminal charges under state law or city ordinance.

3.24.060 Confidentiality

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

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

3.24.065 Audit of Books, Records, or Persons

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

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

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

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

E. Every marijuana retailer shall keep a record in such form as may be prescribed by the City of all sales of marijuana items. The records shall at all times during the business hours of the day be subject to inspection by the City or authorized officers or agents of the Director.

F. Every marijuana retailer shall maintain and keep, for a period of three (3) years, or until all taxes associated with the sales have been paid, whichever is longer, all records of marijuana items.

3.24.070 Forms and Regulations

The Director is hereby authorized to prescribe forms and promulgate rules and regulations to aid in the making of returns, the ascertainment, assessment and collection of said marijuana tax and in particular and without limiting the general language of this chapter, to provide for:

- A. A form of report on sales and purchases to be supplied to all vendors; and
- B. The records which marijuana retailers are to keep concerning the tax imposed by this chapter.

3.24.075 Intergovernmental Agreement

The City Council may enter into an IGA with any department or agency of the State of Oregon whereby the State is responsible for the administration, collection, distribution, or enforcement of the tax authorized under this chapter, either in full or in part. The terms of that agreement shall apply in lieu of and shall supersede conflicting provisions of this chapter but shall not be construed as repealing any provision of this chapter.

