

**CITY COUNCIL MEETING  
McMinnville, Oregon**

**AGENDA**

**McMINNVILLE CIVIC HALL  
200 NE SECOND STREET**

**November 22, 2016  
6:00 p.m. – Informal Dinner Meeting  
7:00 p.m. – Regular Council Meeting**

Welcome! All persons addressing the Council will please use the table at the front of the Board Room. All testimony is electronically recorded. Public participation is encouraged. If you desire to speak on any agenda item, please raise your hand to be recognized after the Mayor calls the item. If you wish to address Council on any item not on the agenda, you may respond as the Mayor calls for "Invitation to Citizens for Public Comment."

***NOTE: The Dinner Meeting will be held at the McMinnville Civic Hall and will begin at 6:00 p.m. The Agenda for the evening will be reviewed during the Dinner Meeting. Staff will be present to answer questions.***

CALL TO ORDER

PLEDGE OF ALLEGIANCE

INVITATION TO CITIZENS FOR PUBLIC COMMENT – *The Mayor will announce that any interested audience members are invited to provide comments. Anyone may speak on any topic other than:*

- 1) a topic already on the agenda;*
- 2) a matter in litigation,*
- 3) a quasi judicial land use matter; or,*
- 4) a matter scheduled for public hearing at some future date.*

*The Mayor may limit the duration of these comments.*

1. PRESENTATIONS

- a. Update from Executive Director Marlena Bertram on Your Community Mediators of Yamhill County.
- b. Update from Executive Director Jody Christensen on McMinnville Economic Development Partnership
- c. Recognition of Jay Pearson for receiving the Oregon Recreation and Parks Association Dave E. Clark Honor Award.

2. CONSENT AGENDA

- a. **Resolution No. 2016-83**: A Resolution authorizing the acquisition of property for the Oregon Route 99W at 2<sup>nd</sup> Street Signal Replacement transportation bond project, and exercising the power of eminent domain.
- b. **Resolution No. 2016-84**: A Resolution approving the extension of a lease between the City of McMinnville and Good Olds Pace, LLC doing business as Cornerstone Coffee.

3. PUBLIC HEARING

- a. Public Hearing: To hear comments on the hiring standards, criteria and policy directives set forth in Exhibit 1 of Resolution No. 2016-86 (A Resolution confirming procedures for the hiring of a City Manager).

4. ORDINANCES

- a. **Ordinance No. 5015**: An Ordinance amending Ordinance Nos. 4594 and 3829 (McMinnville Municipal Code Section 2.04.010) pertaining to the starting time of regular City Council meetings, and declaring an emergency.
- b. **Ordinance No. 5016**: An Ordinance terminating a non-exclusive telecommunications franchise with CoastCom, Inc and repealing Ordinance 4996.
- c. **Ordinance No. 5017**: An Ordinance of the City of McMinnville amending the McMinnville Municipal Code, Chapter 5.42 Taxation of Cannabis and Cannabis Products to authorize contracting with a third party to collect taxes.

5. RESOLUTIONS

- a. **Resolution No. 2016-85**: A Resolution authorizing the City Manager to enter into and manage a Marijuana Tax Collection Agreement between the State of Oregon, acting by and through its Department of Revenue and the City of McMinnville for the collection and enforcement of local marijuana taxes.
- b. **Resolution No. 2016-86**: A Resolution confirming procedures for the hiring of a City Manager.

6. ADVICE / INFORMATION ITEMS

- a. Reports from Councilors on Committee and Board Assignments
- b. Department Head Reports
- c. City of McMinnville Building Division Report for the period ending October 31, 2016.
- d. McMinnville Community Media Financial Statements June 30, 2016 and 2015

7. EXECUTIVE SESSION: Pursuant to ORS 192.660(2)(h) to consult with Legal Counsel concerning legal rights and duties regarding current litigation or potential litigation.
8. ADJOURNMENT



**City Council- Regular**

**Meeting Date:** 11/22/2016

---

**TOPIC**

Update from Executive Director Marlena Bertram on Your Community Mediators of Yamhill County.

---

**Attachments**

Fall Letter

Case Update

---





Your Community Mediators  
of Yamhill County

P.O. Box 444, McMinnville, OR 97128

503-435-2835

www.ycmediators.org

*Empowering people to make positive changes in the way they respond to conflict*

November 15, 2016

Mayor Scott Hill & McMinnville City Council  
Candace Haines, Interim City Manager  
230 NE 2nd Street  
McMinnville, OR 97128

*Warm Greetings from Your Community Mediators!*

As we approach the Thanksgiving Holiday, the Board and staff of Your Community Mediators wish to express our profound appreciation to the City of McMinnville for partnering with us to provide free and low-cost conflict resolution services for local residents.

We are proud of how effectively we leverage the City's annual contribution to support our team of 30+ dedicated volunteer mediators, coordinated by one employee, to continue building a "culture of peace" in the McMinnville community.

To update the City Council on our case services for your residents in the past fiscal year, I've included with this letter a FY2015-16 Summary of McMinnville Cases served by our program, broken down by case type, number of residents served and volunteer mediator hours related to those cases. Program costs distributed to case types, and valuations of volunteer time provided by highly-trained community mediators are also identified.

In addition to mediating various types of community, family and small claims issues, our volunteers provide bi-monthly conflict resolution classes to youth at the Yamhill County Juvenile Detention Center, hold annual Basic Mediation Trainings to increase the public roster of trained conflict resolution "specialists," and make educational presentation to groups whenever possible (please ask if you'd like a presentation for a City department meeting).

This next year we will continue developing our School Truancy Mediation Program and plan videotape a Family Meeting Workshop to air on u-tube to help family members learn how to better communicate with each other skillfully and effectively.

We are excited about the advance of effective conflict resolution in the McMinnville community, look forward to a more in-depth discussion with you in the next year about our continued collaboration to provide these services.

*Best wishes and peace,*

Marlena I. Bertram, Executive Director

**FY2015-16 McMinnville Case Statistical Summary ~ YCM Community Mediation Program**

CASE TYPE	# of CASES	# McMinnville Residents Served	# MEDIATIONS	OPERATIONAL/STAFF EXPENSE distributed to McMinnville cases	VOLUNTEER VALUATION (state rate)	
					Vol Mediator Hrs @ \$32.50	\$ Volunteer Services Value
Small Claims	59	126	59	\$ 11,800	72	\$ 2,340
School Truancy Mediation	24	56	23	\$ 19,550	125	\$ 4,063
Community: Consumer-Merchant, Business	6	15	1	\$ 1,950	2	\$ 65
Community: Neighbor-to-Neighbor	4	9	4	\$ 1,800	15	\$ 488
Community: Landlord-Tenant	10	29	3	\$ 3,450	12	\$ 390
Community: Civil, Workplace	3	6	1	\$ 1,050	2	\$ 65
Family: Custody Disputes/Parenting Plans	19	57	4	\$ 9,200	24	\$ 780
Family: Parent/Adolescent	4	10	2	\$ 2,400	6	\$ 195
Family: Elder, Couples, other	2	5	-	\$ 800	-	\$ -
Facilitations	1	40	-	\$ 300	-	\$ -
	132	353	162	\$ 52,300	258	\$ 8,385

Case Referral Sources			
Couts, Courthouse referral	65	Law enforce, Gov't agency	8
Juvenile justice	24	Former client	5
Word of mouth, self-referral	12	Internet	5
Social services, housing agencies	11	Private attorney, counselor, mediator	2

\$ 60,685	<b>TOTAL CASE SERVICES VALUE during 2015-16</b>
\$ (8,385)	<b>LESS 16% donated volunteer mediator services</b>
\$ 52,300	<b>15-16 Case Value Supported by McMinnville funds</b>

**In the 2015-16 fiscal year 65% of YCM's caseload served McMinnville residents**

.....



**City Council- Regular**

**Meeting Date:** 11/22/2016

---

**TOPIC**

Update from Executive Director Jody Christensen on McMinnville Economic Development Partnership

---

**Attachments**

Summary

Newsletter

---



Date: November 22, 2016

To: The McMinnville City Council

From: Jody Christensen, Executive Director, MEDP

The McMinnville Economic Development Partnership (MEDP) had requested an increase in partnership funding from the McMinnville City Council in early-2016. The increased annual request was \$60,000. At that time, the Council confirmed \$42,000. They asked Executive Director Jody Christensen to revisit the full funding request with the Council after the tax revenues report.

In this memo, we have provided an overview of our current activity data and program information. In addition, MEDP has provided an article which was recently sent to over 1000 subscribers to The Spark, MEDP's monthly newsletter. This article highlights the five McMinnville MADE VIP tour hosts – Rapid Manufacturing, NWUAV, Betty Lou's, World Class Tech, and Meggitt Polymers & Composites.

- 1) MEDP's The Spark article – "The People Behind the Products"
- 2) MEDP OVERVIEW OF CURRENT PROJECTS
- 3) MEDP CURRENT ACTIVITY

## MEDP OVERVIEW OF CURRENT PROJECTS

MEDP has developed a strategy to increase our recruitment efforts. Our goal is to launch a sustainable strategy leveraging existing and new partnerships to elevate our reach. We are moving to a more targeted effort – less on general activities and more focused on qualified activities. This effort moves our organization from activities such as tradeshow attendance to more targeted activities like one-on-one meetings and appointments with decision makers and site selectors. MEDP is increasing its marketing to support the targeted recruitment effort. These efforts continue to support our retention and expansion work as well.

Our strategy requires more support from our investors. We have asked our partners – McMinnville Industrial Promotions, McMinnville Water & Light, and the City of McMinnville – to increase their support to help us meet our recruitment strategy goals. The MEDP staff has developed several initiatives designed to support our recruitment and expansion efforts. Below is a list of planned and proposed actions.

### October 2016- September 2017 Targeted Activity (planned and proposed)

- Focused recruitment lead generation activity includes two strategic partnerships.
  - #1 LEAD GEN in partnership with Greater Portland, Inc., SEDCOR, and Redmond Economic Development – launched September 2016. MEDP expects to be involved with up to six qualified leads and 1-2 prospect in-person meetings.
  - #2 LEAD GEN is part of our work with TEAM Oregon Advanced Manufacturing. The MEDP office leads TEAM Oregon which consists of over 19 statewide partners. We are working with an international consultant to identify up to 25 qualified business development leads. This contract was launched in September and will go to May 2017. The TEAM has four appointments set at FABTECH, the nation's largest metals manufacturing event.
    - Industry focused site consultant appointments and business prospect meetings (proposed) MEDP is planning to seek more opportunities to bring decision makers to McMinnville.
- Manufacturing growth activity
  - McMinnville MADE campaign launched in June 2016 – This is a targeted strategy to support our local manufacturing community and attract attention from the community and those businesses considering McMinnville. This campaign includes a four page/full color recruitment brochure in the Made in Yamhill County publication and MEDP's manufacturing event on October 7, 2016. Additional marketing components are in the planning stages.
    - McMinnville SITES events introduce developers, realtors, and businesses to the building opportunities in our community. In addition, we are planning to assess our current property readiness. This will help our marketing and to inform clients during the due diligence phase. MEDP is hosting its first event – the Urban Renewal Opportunities tour in early Dec. We have received interest from a national site selector and parties outside Oregon. We plan to host

more events in 2017. In addition, we are working to create a library of information on priority properties to better inform potential developers and businesses.

McMinnville WORKS, our community talent development strategy, is slated to expand beyond the summer internship program. During our strategic planning process, we heard from our industry partners they are still struggling to fill vacant positions. The MEDP is prepared to help. We are proposing a series of executive forums and trainings around industry driven topics such as best practices for employee retention, understanding the new generation of workers, and other topics identified during our strategic planning sessions. Our goal is to work with community partners to better identify workforce strategies that serve our business community's needs.

### MEDP CURRENT ACTIVITY REPORT

We have strong recruitment, retention, and expansion activity in our current workload. The MEDP Activity Report below shows the level of activity currently being managed by the MEDP staff and its partners. This list represents high levels of client services on the part of the MEDP staff. For example, one project may take numerous hours of research, follow up, and coordination. MEDP is not making the deals, but rather helps with information and data collection that informs the client's decision making process. MEDP's current list of projects are in various stages of development. The chart below reflects work in the pipeline.

- Type is how MEDP defines the project – recruitment (new) and retention/expansion (existing company).
- Stage of Development is defined as active, dormant, or complete (described below). MEDP staff monitors a project's information demands, possible decision timeframe, number of jobs, and potential capital expenditure. Active means that we have continued to work with the project/company. Dormant means the project is quiet, but not "dead", and that we have limited contact. Complete means resulting in investment in McMinnville.
- Company Decision Timeframe is gaged by our staff. We estimate the number of months to an expected decision by the company. The decision timeframe can change.
- In the pipeline refers to the level of activity as a total, but should not be considered a "done deal". These project timelines or ability to continue are often in flux. We adjust the numbers based on current information as of YTD contact and research. The projects are adjusted on a regular basis based on company intel.

The MEDP 2016 Retention and Recruitment Activity Report (Started Feb. 2016 - YTD 11.08.16)

Type	Stage of Development	Company Decision Timeframe	Retained Jobs	New Jobs	Total Cap Ex	Start Date
Recruit	Active	12-18 months		200	\$18,000,000	2014
Recruit	Dormant	24-36 months		110	\$10,000,000	2016
Recruit	Dormant	No activity		100	\$5,000,000	2014
Retain/ Expand	Active	6-12 months		15	\$2,000,000	2016
	Dormant	No activity	300	200	\$20,000,000	2013
In the pipeline			300	625	\$55,000,000	
	Complete	New Investment (est. total)	60	110	\$40,500,000	2012/2015/2016

General Activity is recorded based on our fiscal year time frame from October to September.  
 We record our October 2016 – September 2017 numbers under 2017.

The MEDP General Activity	2015	2016	2017
Inquiry (call, email, drop in)	156	191	19
Lead (appointment in- or outbound)	81	69	4
Prospect (visit, site, continued contact)	58	53	
Project (on-going, pre-app, due diligence)	18	25	25

Oct. -Sept timeframe





## **MEDP Spark – The People behind the Product**

*MEDP Spark, Volume 1, Issue 8 -- August 2016*



Envision a kitchen, a garage -- these spaces become ingrained in our minds as a common place to accomplish routine tasks. But sometimes, these spaces lead to a spark; a spark that produces creativity, ingenuity, and entrepreneurial spirit. Here in McMinnville, this spark led five leading manufacturers in our community on journeys of growth, creating products that stemmed from ideas formed in humble locations. We here at McMinnville Economic Development Partnership (MEDP) are celebrating both the ideas and the people behind the products.

On October 7, 2016 MEDP will host McMinnville | MADE Day in correlation with National Manufacturing Day. The event includes VIP company tours, a luncheon, and expo. The tours will give an insiders' look at five of McMinnville's leading manufacturers - Meggitt Polymers & Composites, NWUAV, NW Rapid Manufacturing, World Class Technology, and Betty Lou's, Inc.

In honor of McMinnville manufacturers' achievements and in celebration of MEDP's 10th anniversary supporting these businesses, we're focusing on how these companies have thrived.



Read on to take a tour with us and learn more about these companies and how they started from modest beginnings.

### **NWUAV: Soaring to New Heights**

In 2005, the entirety of the now 28,000 square foot NWUAV (Northwest Unmanned Aerial Vehicles) facility was contained in Chris Harris' garage. Working on the weekends, Chris, President of NWUAV, began assembling the engines that would lead him to creating NWUAV, the world's largest manufacturer of engines for unmanned aerial vehicles. To date, more than 11,000 engines have been built at NWUAV, leading to a highlight in his career. Today, NWUAV produces their own engine which boasts less weight and the ability to stay in the air longer when compared to competitors.

Heather Sorenson, Director/Compliance Officer at NWUAV, was there when the company was just beginning. Watching the company grow over the last 10 years from a garage and 4 employees to 63 employees and its own multi-building facility, Heather stresses the importance of the family culture they cultivate here: "That was critical for me as we were growing this business. Fostering a sincere dedication to our staff is essential to maintain a work environment and structure that encourages collaboration and significantly reduces turnover."



**Director/Compliance Officer Heather Sorenson and President Chris Harris stand in NWUAV's office. Heather has been with NWUAV since 2007.**

Walking around the facilities, this culture is obvious. Heather stops to greet all of the workers, asking questions about their life and remembering small details. Chris explains everything with a passion that makes it easy to see why he dedicated his life to this many years ago. Placing large, noise cancelling headphones over your ears while you watch the engines run, you begin to understand the immense work and importance of what the company has created.

In three years, Chris expects NWUAV to double in size: "Once the national airspace opens up, which is a big deal for us, for the UAVs, that's going to multiply quite a bit as well. We have our own engine, which is what we're really trying to highlight here."



**Chris Harris examines one of the engines he has designed and manufactured himself.**

With work and time comes expertise: “We have ten years of experience doing this, so we’ve got a lot of insight to what works and what doesn’t work.” As far as the future, NWUAV is primed to grow with the leadership and engineering vision of Chris Harris and his team. “In about three years’ time we’ll probably be a 45 million dollar a year business.” With the addition of new products and new markets NWUAV is poised to continue soaring to new heights.

### **Northwest Rapid Manufacturing: Designing Innovation**

When speaking with Heather Harris, Owner and President at NW Rapid Manufacturing (NW Rapid), one thing is apparent: she loves 3D printing. The company, started with her husband and partner, Chris Harris, was created to produce parts for NWUAV engines - it has quickly become an independent success that works within the community and with outside companies to create amazing things with mind blowing technology.

When purchasing machines in 2007, 3D printing was a relatively new technology. Heather continually praises her team and employees saying her top desire would be to recreate the people she’s already employed. Together, there is an excited energy surrounding the facilities, one that is fueled by trust: “I have to trust that things are getting done. And really, because there is no school of 3D printing to speak of, we need people to be present and just learn.”



**President Heather Harris stands in front one of NW Rapid MFG's 3D printers.**

Though 3D printing is a complicated process, listening to Heather explain it while talking with her hands and seeing the excitement written in her eyes, it becomes easier to understand. NW Rapid specializes in Selective Laser Sintering. This process uses a laser to take powder just below its melting point, causing it to sinter together to form an object based off of digital CAD designs.



**Heather holds one of the intricate and moveable objects created by one of NW Rapid MFG's 3D printers.**

As Heather stands next to the machines and lovingly calls one Gretel, and the other the Wicked Witch, you feel as though it's an old friend. Watching her describe the possibilities, you began to see the applicability 3D printing has to everything around us. 3D printing makes it easier to create and test designs for new products – and the number of items that can be “printed” is limitless. From the auto industry to eyewear, from high fashion to hydroponics and beyond, 3D printing serves a purpose. “What’s this good for?” Every industry I could probably think of something we could make. You know the wine industry. We’ve done all kinds of mockups for how to keep fruit flies out of the open bottle top,” stated Heather.

### **World Class Technology: Molding a Positive Future**

Walking into World Class Technology (WCT) you may think you’ve entered the wrong building. Behind the front door is a fully functioning orthodontist office where you can book an appointment and be fitted with the latest technology. But keep going. Behind another door is a large manufacturing plant where the latest technology and high quality products are being made, with a large focus on orthodontic appliances and accessories.

Speaking with Jeff Petcavich, Director of Medical Product Development at WCT, the history of the company and focus on future growth are stressed. The company started 20 years ago in a small garage in California by the Hagelganz family. The story of its growth and legacy are intact at the company today.





**WCT employees assemble various parts manufactured by the metal-injection molding process.**

Jeff speaks easily about complicated manufacturing equipment and procedures at length. CEO Rolf Hagelganz believes creating a better product promotes better health for the individuals who use them. This philosophy drives the growth and innovation that fuels the WCT manufacturing plant.

WCT thrives due to its metal injection technology. Metal injection molding effectively creates complicated net shaped 3D products. In fewer steps with less waste, it allows you to create a product that is more precise and cost-effective than traditional manufacturing practices. WCT has a niche in this industry due to their patented technologies.



**Director of Medical Product Development, Jeff Petcavich and CEO, Rolf Hagelganz stand inside WCT's facility.**

WCT is growing quickly. In just a few years, it has gone from 65 employees to 160 employees. "We are growing tremendously," said Rolf, "This year, I think we'll have about 28 percent growth." He also expects to reach 200 employees in the next couple of years. While growing, the company has not let go of an important component, caring for their employees. When walking through you may see a group of workers doing stretches together to prepare for their shifts working with intricate components. Throughout the building it seems there are always more doors to walk through with something interesting and exciting behind them.

## **Meggitt Polymers & Composites: Engineering Aerospace Solutions**

To learn about the history of the manufacturing plant that holds Meggitt Polymers & Composites (Meggitt), speak with Steve Fackler, the Director of Manufacturing Technology who has worked in the facilities for over 30 years. Walking around the plant he can point to different components and tell you the little known facts behind them: that a bag of silicone is called a pig, there was a famous record found in a machine the company purchased, and other details that are forged through a deep commitment to a company and product.

The Meggitt plant is in constant motion. It's not only the motion of seals being produced for airplanes, waterjets cutting through metal, or silicone being carefully formed; it's the motion of continuous improvement and thought being placed into every component. While Steve speaks about the products and the stories behind different systems, Craig Wilson, Director of Continuous Improvement, points out the different lean manufacturing principles the company has put into place and beams with pride when talking about efficiency.



**Meggitt interns placed through the McMinnville WORKS program, Matthew Richardson, Andrew Marino, and Madeline Keudell learn from three Meggitt executives: Craig Wilson, Jeremy Lodge and Steve Fackler.**

If you're sitting on a Boeing airplane, the biggest manufacturer of commercial jetliners, you're surrounded by multiple components made by the Meggitt plant in McMinnville. Look at any of the seals on the windows and doors, or panels on the walls to understand the work the company does. Producing 13,000 parts every day, this branch employs 300 people and has seen a minimum of 10 percent growth over the last three years. This growth comes from a focus on innovation and efficiency in the future. Currently, management is focusing on bringing in new technology predicting they will have their own 3D printer by August. Along with new technology, Vice President Jeremy Lodge focuses on cultivating future employees. Watching him speak to interns and workers, his dry humor shows a caring for not only the work they are producing, but the people behind the production. One thing Jeremy focuses on and makes a priority: "We promote internally."



**Craig Wilson discusses aviation manufacturing and how he is focused on enhancing Meggitt's manufacturing technologies.**

Walking past different components of the seals and products, Steve and Craig are able to identify them all. With a flourish, either can tell you what that piece is designed to do and where it will be in the airplane. The pride they take in creating a final product is obvious as they turn pieces in their hands, looking at the edges and production happening around them. With growth in the future and new technology on the horizon, you may find yourself pointing to multiple components and saying "tell me more about that."

### **Betty Lou's: Fueled by Family**

Betty Lou's, Inc. is a family business. It started for family and continues because of family, and you can feel that in the facilities. Walking through the plant, not only does your mouth water as you watch a chocolate waterfall cascade onto bars and nuts being rolled into protein balls, there's also a sense of making something better to make the world healthier.

Betty Lou Carrier began creating what would become Betty Lou's Nuts About Energy Balls nearly 40 years ago as a better snack option for her children. Quickly, making balls in her kitchen was not enough to meet the demand and after two years in her kitchen, she opened her first plant. Today, the company offers more than 50 products and has more than 250 employees. Through-out all this growth, the company always ensured that it felt like family. Dale Santa, the Production Manager dubbed the chocolate guy, states: "It's by far the happiest workforce I've seen."



**Founder Betty Lou Carrier, Vice President of Sales John Sizemore and Plant Manager Dale Santa stand in the lobby at Betty Lou's Inc.**



The care that goes into creating the products stems from a genuine desire to help people eat healthier and feel healthier. Betty was ahead of her time in recognizing many food sensitizers', like gluten, and eliminating most of them from her products. Throughout the peaks and valleys of the health food market, where fads like the no-carb diet come and go, Betty's focused on delivering products that she's passionate about. Betty explains: "We don't compromise; we never compromise on what we're doing. Our goal is to provide the highest quality, healthy snacks for everyone to enjoy." There seems to be a recent shift in consumer awareness which excites Betty and her son, John. People now, more than ever, are reading labels, looking for healthy options at the grocery store that accommodate food allergies and sensitivities. Betty Lou's, Inc. will continue to lead the charge on creating healthy alternatives through research and innovation.



**Plant Manager Dale Santa is in charge of overseeing the production of all products at Betty Lou's.**

Touring the facilities reveals just how much production happens on a daily basis. With Dale leading our visit, every piece of equipment is pointed at and explained with a smile. Dale calls the plant "my playground," and when you tour the facility with him, you start to understand why. Putting on the white coat and hairnet, the facility becomes a place to be explored and discovered with the chocolate guy leading the way.



**City Council- Regular**

**Meeting Date:** 11/22/2016

---

**TOPIC**

Recognition of Jay Pearson for receiving the Oregon Recreation and Parks Association Dave E. Clark Honor Award.

---





**City Council- Regular**

**Meeting Date:** 11/22/2016

**Subject:** 2nd Street signals project property acquisition

**From:** Mike Bisset, Community Development Director

---

**AGENDA ITEM:**

**Resolution No. 2016-83:** A Resolution authorizing the acquisition of property for the Oregon Route 99W at 2<sup>nd</sup> Street Signal Replacement transportation bond project, and exercising the power of eminent domain.

**BACKGROUND:**

The City is working on the project to improve NE 2nd Street, between Adams Street and Cows Street, including the installation of upgraded traffic signals, roadway widening to add turn lanes, pedestrian safety improvements, and pavement upgrades, consistent with the City's adopted 2010 Transportation System Plan. Funding for the project was included in the voter approved 2014 Transportation Improvement bond measure, and ODOT is providing \$500,000 of state funding to cover costs associated with the traffic signal upgrades.

The project has been planned in accordance with appropriate engineering standards for the construction, maintenance or improvement of transportation infrastructure so that property damage is minimized, transportation promoted, and travel safeguarded. To accomplish the project, it is necessary to acquire the fee title interest in one parcel of property located along the existing City right-of-way (see attached description and map).

The attached resolution provides City staff, and its consultants (Murray, Smith, and Associates, Inc.), the authorization to acquire the needed right-of-way parcel. The resolution is consistent with the terms of the project's Intergovernmental Agreement for Right of Way Services between the City and ODOT (attached).

**RECOMMENDATION:**

Staff recommends that the Council adopt the attached resolution authorizing the acquisition of property for the Oregon Route 99W at 2<sup>nd</sup> Street Signal Replacement transportation bond project.

---

**Attachments**

Resolution 2016-83

LEGAL DESCRIPTION AND MAP



RESOLUTION NO. 2016-83

A Resolution authorizing the acquisition of property for the OR 99W at 2<sup>nd</sup> Street Signal Replacement transportation bond project, and exercising the power of eminent domain.

RECITALS:

WHEREAS the City of McMinnville may exercise the power of eminent domain pursuant to ORS 223.105(2), ORS Chapter 35, and the Law of the State of Oregon generally, when the exercise of such power is deemed necessary by the City Council to accomplish public purposes for which the City has responsibility;

WHEREAS the City has the responsibility of providing safe transportation routes for commerce, convenience and to adequately serve the traveling public;

WHEREAS the OR 99W at 2<sup>nd</sup> Street Signal Replacement transportation bond project has been planned in accordance with appropriate engineering standards for the construction, maintenance or improvement of said transportation infrastructure such that property damage is minimized, transportation promoted, and travel safeguarded; and

WHEREAS to accomplish the project or projects set forth above it is necessary to acquire the interests in the property described in "Exhibit A," attached to this resolution and, by this reference incorporated herein; now, therefore

BE IT RESOLVED BY THE COMMON COUNCIL OF THE CITY OF McMINNVILLE, OREGON as follows:

1. The foregoing statements of authority and need are, in fact, the case. The project or projects for which the property is required and is being acquired are necessary in the public interest, and the same have been planned, designed, located, and will be constructed in a manner which will be most compatible with the greatest public good and the least private injury;
2. The power of eminent domain is hereby exercised with respect to each of the interests in property described in Exhibit A. Each is acquired subject to payment of just compensation and subject to procedural requirements of Oregon law;
3. The City's staff and the City's agents are authorized and requested to attempt to agree with the owner and other persons in interest as to the compensation to be paid for each acquisition, and, in the event that no satisfactory agreement can be reached, to commence and prosecute such condemnation proceedings as may be necessary to finally determine just compensation or any other issue appropriate to be determined by a court in connection with the acquisition. This authorization is not intended to expand the jurisdiction of any court to decide matters determined above or determinable by the City Council.
4. The City expressly reserves its jurisdiction to determine the necessity or propriety of any acquisition, its quantity, quality, or locality, and to change or abandon any acquisition.

Adopted by the Common Council of the City of McMinnville at a regular meeting held the 22nd day of November, 2016 by the following votes:

Ayes: \_\_\_\_\_

Nays: \_\_\_\_\_

Approved this 22<sup>nd</sup> day of November, 2016.

\_\_\_\_\_  
COUNCIL PRESIDENT

Approved as to form:

  
\_\_\_\_\_  
CITY ATTORNEY



Exhibit "A"  
Legal Description

Being a tract of land located in the Northeast Quarter of Section 20, Township 4 South, Range 1 West, Willamette Meridian, City of McMinnville, Yamhill County, Oregon, said tract of land being more particularly described as follows:

**BEGINNING AT** the Southwest corner of Lot 5, Block 3 of the plat "Original Town of McMinnville";

Thence North 01°48'22" East, along the Easterly right-of-way line of Adams Street (State Highway 99), for a distance of 13.36 feet;

Thence South 42°47'28" East, for a distance of 16.52 feet to a point that is 1.60 feet northerly of, when measured perpendicular to the Northerly right-of-way line of 2<sup>nd</sup> Street;

Thence South 88°09'43" East, along a line parallel with said Northerly right-of-way line, for a distance of 210.61 feet;

Thence North 46°42'07" East, for a distance of 24.90 feet to a point on the Westerly right-of-way line of Baker Street (State Highway 99);

Thence South 01°49'35" West, along said Westerly right-of-way line, for a distance of 19.25 feet to a point on the Northerly right-of-way line of 2<sup>nd</sup> Street, said point also being the Southeast corner of Lot 8, Block 3 of the plat "Original Town of McMinnville";

Thence North 88°09'43" West, along said Northerly right-of-way line, for a distance of 239.78 feet to the **TRUE POINT OF BEGINNING.**

Contains in all 608 square feet or 0.014 acres, more or less.

See Exhibit Map attached hereto.

REGISTERED  
PROFESSIONAL  
LAND SURVEYOR

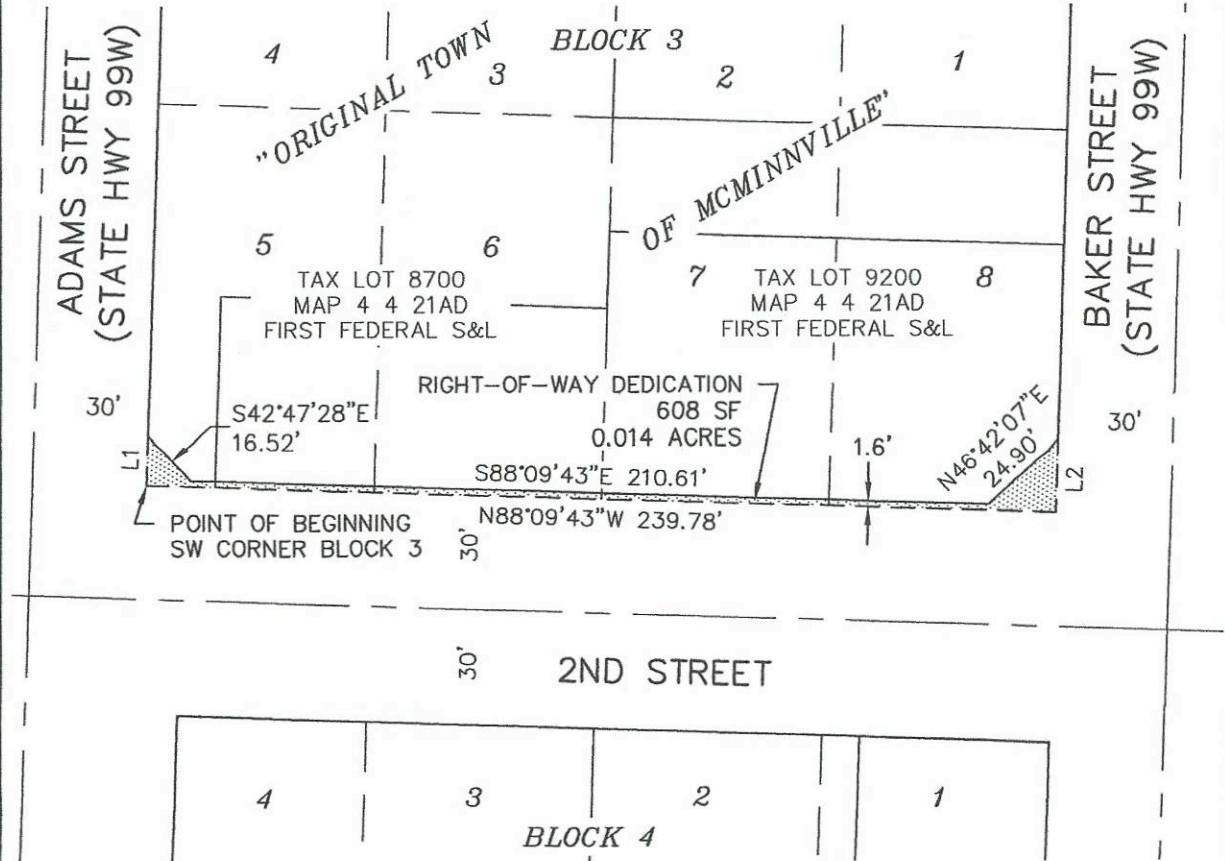
OREGON  
JULY 16, 1982  
TERRY GOODMAN  
1989

RENEWAL DATE: 6-30-17



# EXHIBIT MAP FOR LEGAL DESCRIPTION

NOVEMBER 3, 2016



LINE TABLE

LINE	LENGTH	DIRECTION
L1	13.36'	N01°48'22"E
L2	19.25'	S01°49'35"W



**HDJ**  
**DESIGN GROUP**  
engineers landscape architects planners surveyors

314 W 15th Street  
Vancouver, WA 98660-2927  
360.695.3488  
360.695.8767 fax

www.hdjdg.com

DRAWN BY: RFS	SCALE: 1"=50'	11/3/2016
CHECKED BY: TLG	JOB NO.: 4222-00	SHEET 1 OF 1

**INTERGOVERNMENTAL AGREEMENT  
FOR RIGHT OF WAY SERVICES**  
OR 99W at 2<sup>nd</sup> Street Signal Replacement  
City of McMinnville

THIS AGREEMENT is made and entered into by and between the STATE OF OREGON, acting by and through its Department of Transportation, hereinafter referred to as "State"; and the CITY OF MCMINNVILLE, acting by and through its elected officials, hereinafter referred to as "Agency," both herein referred to individually or collectively as "Party" or "Parties."

**RECITALS**

1. By the authority granted in Oregon Revised Statute (ORS) 190.110, 283.110, 366.572 and 366.576, state agencies may enter into agreements with units of local government or other state agencies for the performance of any or all functions and activities that a Party to the agreement, its officers, or agents have the authority to perform.
2. By the authority granted in ORS 366.425, State may accept deposits of money or an irrevocable letter of credit from any county, city, road district, person, firm, or corporation for the performance of work on any public highway within the State. When said money or a letter of credit is deposited, State shall proceed with the Project. Money so deposited shall be disbursed for the purpose for which it was deposited.
3. That certain 2<sup>nd</sup> Street is a city street under the jurisdiction and control of Agency and Agency may enter into an agreement for the acquisition of real property.
4. OR 99W is a part of the state highway system under the jurisdiction and control of the Oregon Transportation Commission (OTC).
5. This Agreement shall define roles and responsibilities of the Parties regarding the real property to be used as part of right of way for road, street or construction of public improvement. The scope and funding is further described in Cooperative Improvement Agreement number 30520. Hereinafter, all acts necessary to accomplish services in this Agreement shall be referred to as "Project."
6. As of this time there are no local public agencies (LPAs) certified to independently administer federal-aid projects for right of way services. Therefore, State is ultimately responsible for the certification and oversight of all right of way activities under this Agreement (except as provided under "Agency Obligations" for LPAs in State's certification program for consultant selection).

**NOW THEREFORE**, the premises being in general as stated in the foregoing Recitals, it is agreed by and between the Parties hereto as follows:

**TERMS OF AGREEMENT**

1. Under such authority, to accomplish the objectives in Agreement No. 30520, State and Agency agree to perform certain right of way activities shown in Special Provisions - Exhibit

A, attached hereto and by this reference made a part hereof. For the right of way services State performs on behalf of the Agency, under no conditions shall Agency's obligations exceed a maximum of \$5,000, including all expenses, unless agreed upon by both Parties.

2. The work shall begin on the date all required signatures are obtained and shall be completed no later than December 31, 2018, on which date this Agreement automatically terminates unless extended by a fully executed amendment.
3. The process to be followed by the Parties in carrying out this Agreement is set out in Exhibit A.
4. It is further agreed both Parties will strictly follow the rules, policies and procedures of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, ORS Chapter 35 and the "State Right of Way Manual."

#### **STATE OBLIGATIONS**

1. State shall perform the work described in Special Provisions - Exhibit A.
2. With the exception of work related to appraisals, State shall not enter into any subcontracts for any of the work scheduled under this Agreement without obtaining prior written approval from Agency.
3. State shall perform the service under this Agreement as an independent contractor and shall be exclusively responsible for all costs and expenses related to its employment of individuals to perform the work under this Agreement including, but not limited to, retirement contributions, workers compensation, unemployment taxes, and state and federal income tax withholdings.
4. State's right of way contact person for this Project is Keith Benjamin, Senior Right of Way Agent, ODOT, Region 2, 455 Airport Road SE, Building A, Salem, Oregon 97301-5395; telephone (503) 986-2609; email: Keith.S.Benjamin@odot.state.or.us, or assigned designee upon individual's absence. State shall notify the other Party in writing of any contact changes during the term of this Agreement.

#### **AGENCY OBLIGATIONS**

1. Agency shall perform the work described in Special Provisions - Exhibit A.
2. Agency certifies, at the time this Agreement is executed, that sufficient funds are available and authorized for expenditure to finance costs of this Agreement within Agency's current appropriation or limitation of current budget. Agency is willing and able to finance all, or its pro-rata share of all, costs and expenses incurred in the Project up to its maximum.
3. Agency's needed right of way services, as identified in Exhibit A, may be performed by qualified individuals from any of the following sources:
  - a. Agency staff,



- b. State staff,
- c. Staff of another local public agency, as described in ODOT's Right of Way Manual and approved by the State's Region Right of Way Office;
- d. Consultants from State's Full Service Architectural and Engineering (A&E) Price Agreement 2 Tier Selection Process. Tier 2 procurements must be requisitioned through State's Local Agency Liaison (LAL) with solicitation process administered by State Procurement Office. Forms and procedures for Tier 2 process are located at: <http://www.oregon.gov/ODOT/CS/OPO/docs/fs/tier2guide.doc>;
- e. \*Appraiser services procured by Agency from State's Qualified Appraiser List (on line at <http://www.oregon.gov/ODOT/HWY/ROW/Pages/index.aspx>);
- f. \*Other right of way related services procured by Agency from any source of qualified contractors or consultants.

\* Selections may be based on price alone, price and qualifications, or qualifications alone followed by negotiation. **Federally funded procurements** by Agency for right of way services must be conducted under State's certification program for consultant selection and must comply with requirements in the [LPA A&E Requirements Guide](#) (and must use the State's standard [A&E Contract Template for LPAs](#) which may be modified to include State-approved provisions required by Agency). **State and local funded procurements** by Agency must be in conformance with applicable State rules and statutes for A&E "Related Services" (and Agency may use its own contract document).

- 4. If Agency intends to use Agency staff, staff of another local public agency, consultants (except for consultants on State's Qualified Appraiser List), or contractors to perform right of way services scheduled under this Agreement, Agency must receive prior written approval from State's Region Right of Way Office.
- 5. The LPA A&E Requirements Guide and A&E Contract Template referenced above under paragraph 3 are available on the following Internet page: [http://www.oregon.gov/ODOT/CS/OPO/Pages/ae.aspx#Local\\_Public\\_Agency\\_\(LPA\)\\_Consultant\\_Templates\\_and\\_Guidance\\_Docs](http://www.oregon.gov/ODOT/CS/OPO/Pages/ae.aspx#Local_Public_Agency_(LPA)_Consultant_Templates_and_Guidance_Docs).
- 6. Agency or its subcontractor will strictly follow the rules, policies and procedures of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, ORS Chapter 35 and the "State Right of Way Manual."
- 7. Agency represents that this Agreement is signed by personnel authorized to do so on behalf of Agency.
- 8. Agency's right of way contact person for this Project is Michael Bisset, Community Development Director, City of McMinnville, 231 NE 5<sup>th</sup> Street, McMinnville, Oregon 97128; telephone (503) 434-7312 ext. 2750; email: [bissetm@ci.mcminnville.or.us](mailto:bissetm@ci.mcminnville.or.us), or assigned designee upon individual's absence. Agency shall notify the other Party in writing of any contact information changes during the term of this Agreement.

**PAYMENT FOR SERVICES AND EXPENDITURES:**

1. In consideration for the services performed by State (as identified in the attached Exhibit A), Agency agrees to pay or reimburse State a maximum amount of \$5,000. Said maximum amount shall include reimbursement for all expenses, including travel expenses. Travel expenses shall be reimbursed to State in accordance with the current Oregon Department of Administrative Services' rates. Any expenditure beyond federal participation will be from, or reimbursed from, Agency funds. Payment in Agency and/or federal funds in any combination shall not exceed said maximum, unless agreed upon by both Parties.
2. Agency agrees to reimburse salaries and payroll reserves of State employees working on Project, direct costs, costs of rental equipment used, and per-diem expenditures.

**GENERAL PROVISIONS:**

1. This Agreement may be terminated by either Party upon thirty (30) days' notice, in writing and delivered by certified mail or in person, under any of the following conditions:
  - a. If either Party fails to provide services called for by this Agreement within the time specified herein or any extension thereof.
  - b. If either Party fails to perform any of the other provisions of this Agreement or so fails to pursue the work as to endanger performance of this Agreement in accordance with its terms, and after receipt of written notice fails to correct such failures within ten (10) days or such longer period as may be authorized.
  - c. If Agency fails to provide payment of its share of the cost of the Project.
  - d. If State fails to receive funding, appropriations, limitations or other expenditure authority sufficient to allow State, in the exercise of its reasonable administrative discretion, to continue to make payments for performance of this Agreement.
  - e. If federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the work under this Agreement is prohibited or State is prohibited from paying for such work from the planned funding source.
2. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.
3. Agency acknowledges and agrees that State, the Oregon Secretary of State's Office, the federal government, and their duly authorized representatives shall have access to the books, documents, papers, and records of Agency which are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts, and transcripts for a period of six (6) years after final payment. Copies of applicable records shall be made available upon request. Payment for costs of copies is reimbursable by State.
4. Agency shall comply with all federal, state, and local laws, regulations, executive orders and ordinances applicable to the work under this Agreement, including, without limitation,

the provisions of ORS 279B.220, 279B.225, 279B.230, 279B.235 and 279B.270 incorporated herein by reference and made a part hereof. Without limiting the generality of the foregoing, Agency expressly agrees to comply with (i) Title VI of Civil Rights Act of 1964; (ii) Title V and Section 504 of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990 and ORS 659A.142; (iv) all regulations and administrative rules established pursuant to the foregoing laws; and (v) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.

5. All employers that employ subject workers who work under this Agreement in the State of Oregon shall comply with ORS 656.017 and provide the required workers' compensation coverage unless such employers are exempt under ORS 656.126. Employers Liability insurance with coverage limits of not less than \$500,000 must be included. Both Parties shall ensure that each of its subcontractors complies with these requirements.
6. If any third party makes any claim or brings any action, suit or proceeding alleging a tort as now or hereafter defined in ORS 30.260 ("Third Party Claim") against State or Agency with respect to which the other Party may have liability, the notified Party must promptly notify the other Party in writing of the Third Party Claim and deliver to the other Party a copy of the claim, process, and all legal pleadings with respect to the Third Party Claim. Each Party is entitled to participate in the defense of a Third Party Claim and to defend a Third Party Claim with counsel of its own choosing. Receipt by a Party of the notice and copies required in this paragraph and meaningful opportunity for the Party to participate in the investigation, defense and settlement of the Third Party Claim with counsel of its own choosing are conditions precedent to that Party's liability with respect to the Third Party Claim.
7. With respect to a Third Party Claim for which State is jointly liable with Agency (or would be if joined in the Third Party Claim), State shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by Agency in such proportion as is appropriate to reflect the relative fault of State on the one hand and of Agency on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of State on the one hand and of Agency on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. State's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if State had sole liability in the proceeding.
8. With respect to a Third Party Claim for which Agency is jointly liable with State (or would be if joined in the Third Party Claim), Agency shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by State in such proportion as is appropriate to reflect the relative fault of Agency on the one hand and of State on the other hand in

connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of Agency on the one hand and of State on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. Agency's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if it had sole liability in the proceeding.

9. The Parties shall attempt in good faith to resolve any dispute arising out of this Agreement. In addition, the Parties may agree to utilize a jointly selected mediator or arbitrator (for non-binding arbitration) to resolve the dispute short of litigation.
10. When federal funds are involved in this Agreement, Agency, as a recipient of federal funds, pursuant to this Agreement with the State, shall assume sole liability for Agency's breach of any federal statutes, rules, program requirements and grant provisions applicable to the federal funds, and shall, upon Agency's breach of any such conditions that requires the State to return funds to the Federal Highway Administration, hold harmless and indemnify the State for an amount equal to the funds received under this Agreement; or if legal limitations apply to the indemnification ability of Agency, the indemnification amount shall be the maximum amount of funds available for expenditure, including any available contingency funds or other available non-appropriated funds, up to the amount received under this Agreement.
11. The Parties hereto agree that if any term or provision of this Agreement is declared by a court of competent jurisdiction to be invalid, unenforceable, illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid.
12. This Agreement may be executed in several counterparts (facsimile or otherwise) all of which when taken together shall constitute one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of this Agreement so executed shall constitute an original.
13. This Agreement and attached exhibits and Agreement No. 30520 constitute the entire agreement between the Parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind either Party unless in writing and signed by both Parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of State to enforce any provision of this Agreement shall not constitute a waiver by State of that or any other provision.

**THE PARTIES**, by execution of this Agreement, hereby acknowledge that their signing representatives have read this Agreement, understand it, and agree to be bound by its terms and conditions.

**Signature Page to Follow**

CITY OF McMinnville, by and through its designated officials

By [Signature]  
City Manager

Date 2/29/2016

By \_\_\_\_\_

Date \_\_\_\_\_

**APPROVED AS TO LEGAL SUFFICIENCY**

By [Signature]  
Agency Counsel

Date 2-29-2016

**Agency Contact:**

Michael Blsset  
Community Development Director  
City of McMinnville  
231 NE 5<sup>th</sup> Street  
McMinnville, Oregon 97128  
Telephone (503) 434-7312 ext. 2750  
blssetm@ci.mcminnville.or.us

**State Contact:**

Keith Benjamin, Senior Right of Way Agent  
ODOT, Region 2  
455 Airport Road SE, Building A  
Salem, Oregon 97301-5397  
(503) 986-2609  
Keith.S.Benjamin@odot.state.or.us

STATE OF OREGON, by and through its Department of Transportation

By [Signature]  
State Right of Way Manager

Date 3/10/2016

**APPROVAL RECOMMENDED**

By [Signature]  
Region 2 Right of Way Manager

Date 3-3-16

By [Signature]  
Region 2 Manager

Date 3-8-16

**APPROVED AS TO LEGAL SUFFICIENCY**

By N/A  
Assistant Attorney General

Date \_\_\_\_\_

**APPROVED**

(If Litigation Work Related to Condemnation is to be done by State)

By N/A  
Chief Trial Counsel

Date \_\_\_\_\_



**SPECIAL PROVISIONS EXHIBIT A**  
**Right of Way Services**

**THINGS TO BE DONE BY STATE OR AGENCY**

1. Pursuant to this Agreement, the work performed on behalf of the Agency can be performed by the Agency, the Agency's consultant, the State or a State Flex Services consultant, as listed under Agency Obligations, paragraph 3 of this Agreement. The work may be performed by Agency staff or any of these representatives on behalf of Agency individually or collectively provided they are qualified to perform such functions and after receipt of approval from the State's Region 2 Right of Way Manager.
2. With the exception of work related to appraisals, State shall not enter into any subcontracts for any of the work scheduled under this Agreement without obtaining prior written approval from Agency.

**Instructions:** Insert either: State, Agency, or N/A on each line.

**A. Preliminary Phase**

1. Agency shall provide preliminary cost estimates.
2. Agency shall make preliminary contacts with property owners.
3. Agency shall gather and provide data for environmental documents.
4. Agency shall develop access and approach road list.
5. Agency shall help provide field location and Project data.

**B. Acquisition Phase**

1. General:
  - a. When doing the Acquisition work, as described in this Section, Agency shall provide State with a status report of the Project quarterly.
  - b. Title to properties acquired shall be in the name of the Agency.
  - c. The Agency shall adopt a resolution of intention and determination of necessity in accord with ORS 35.235 and ORS 35.610, authorizing acquisition and condemnation, such approval will be conditioned on passage of a resolution by Agency substantially in the form attached hereto as Exhibit B, and by this reference made a part hereof. If the Oregon Department of Justice is to handle condemnation work, prior approval evidenced by Chief Trial Counsel, Department of Justice, signature on this Agreement is required; and authorization for such representation shall be included in the resolution adopted by the Agency. Prior approval by Oregon Department of Justice is required.

2. Legal Descriptions:

- a. Agency shall provide sufficient horizontal control, recovery and retracement surveys, vesting deeds, maps and other data so that legal descriptions can be written.
- b. Agency shall provide construction plans and cross-section information for the Project.
- c. Agency shall write legal descriptions and prepare right of way maps. If the Agency acquires any right of way on a State highway, the property descriptions and right of way maps shall be based upon centerline stationing and shall be prepared in accordance with the current "ODOT Right of Way & Rail/Utility Coordination Contractor Services Guide" and the "Right of Way Engineering Manual." The preliminary and final versions of the property descriptions and right of way maps must be reviewed and approved by the State.
- d. Agency shall specify the degree of title to be acquired (e.g., fee, easement).

3. Real Property and Title Insurance:

- a. Agency shall provide preliminary title reports, if State determines they are needed, before negotiations for acquisition commence.
- b. Agency shall determine sufficiency of title (taking subject to). If the Agency acquires any right of way on a State highway, sufficiency of title (taking subject to) shall be determined in accordance with the current "State Right of Way Manual" and the "ODOT Right of Way & Rail/Utility Coordination Contractor Services Guide." Agency shall clear any encumbrances necessary to conform to these requirements, obtain Title Insurance policies as required and provide the State copies of any title policies for the properties acquired.
- c. Agency shall conduct a Level 1 Initial Site Assessment, according to State Guidance, within Project limits to detect presence of hazardous materials on any property purchase, excavation or disturbance of structures, as early in the Project design as possible, but at a minimum prior to property acquisition or approved design.
- d. Agency shall conduct a Level 2 Preliminary Site Investigation, according to State Guidance, of sufficient scope to confirm the presence of contamination, determine impacts to properties and develop special provisions and cost estimates, if the Level 1 Initial Site Assessment indicates the potential presence of contamination that could impact the properties.
  - If contamination is found, a recommendation for remediation will be presented to State.
- e. Agency shall be responsible for proper treatment and cost of any necessary remediation.



f. Agency shall conduct asbestos, lead paint and other hazardous materials surveys for all structures that will be demolished, renovated or otherwise disturbed. Asbestos surveys must be conducted by an AHERA (asbestos hazard emergency response act) certified inspector.

4. Appraisal:

- a. Agency shall conduct the valuation process of properties to be acquired.
- b. Agency shall perform the Appraisal Reviews to set Just Compensation.
- c. Agency shall recommend Just Compensation, based upon a review of the valuation by qualified personnel.

5. Negotiations:

- a. Agency shall tender all monetary offers to land-owners in writing at the compensation shown in the appraisal review. Agency shall have sole authority to negotiate and make all settlement offers. Conveyances taken for more or less than the approved Just Compensation will require a statement justifying the settlement. Said statement will include the consideration of any property trades, construction obligations and zoning or permit concessions.
- b. State and Agency shall determine a date for certification of right of way and agree to cosign the State's Right of Way Certification form. State and Agency agree possession of all right of way shall occur prior to advertising for any construction contract, unless exceptions have been agreed to by Agency and State.
- c. Agency agrees to file all Recommendations for Condemnation at least seventy (70) days prior to the right of way certification date if negotiations have not been successful on those properties.

6. Relocation:

- a. Agency shall perform any relocation assistance, make replacement housing computations, and do all things necessary to relocate any displaced parties on the Project.
- b. Agency shall make all relocation and moving payments for the Project.
- c. Agency shall facilitate the relocation appeal process.

**C. Closing Phase**

- 1. Agency shall close all transactions. This includes drawing of deeds, releases and satisfactions necessary to clear title, obtaining signatures on release documents, and making all payments. State shall submit all signed Final Report packets, information required by the Uniform Act, and agreements to the Agency.

2. Agency shall record conveyance documents, only upon acceptance by appropriate agency.

#### **D. Property Management**

1. Agency shall take possession of all the acquired properties. There shall be no encroachments of buildings or other private improvements allowed upon the State highway right of way.
2. Agency shall dispose of all improvements and excess land consistent with Agency prevailing laws and policies.

#### **E. Condemnation**

1. Agency may offer mediation if the Agency and property owners have reached an impasse.
2. Agency shall perform all administrative functions in preparation of the condemnation process, such as preparing final offer and complaint letters.
3. Agency shall perform all legal and litigation work related to the condemnation process. Agency is responsible for passage of a resolution substantially in the form attached hereto as Exhibit B, and by this reference made a part hereof, specifically identifying the property being acquired.
4. When State shall perform legal or litigation work related to the condemnation process, Agency acknowledges, agrees and undertakes to assure that no member of Agency's board or council, nor Agency's mayor, when such member or mayor is a practicing attorney, nor Agency's attorney nor any member of the law firm of Agency's attorney, board or council member, or mayor, will represent any party, except Agency, against the State of Oregon, its employees or contractors, in any matter arising from or related to the Project which is the subject of this Agreement.

#### **F. Transfer of Right of Way to State**

When right of way is being acquired in Agency's name, Agency agrees to transfer and State agrees to accept all right of way acquired on the State highway. The specific method of conveyance will be determined by the Agency and the State at the time of transfer and shall be coordinated by the State's Region Right of Way Manager. Agency agrees to provide the State all information and file documentation the State deems necessary to integrate the right of way into the State's highway system. At a minimum, this includes: copies of all recorded conveyance documents used to vest title in the name of the Agency during the right of way acquisition process, and the Agency's Final Report or Summary Report for each acquisition file that reflects the terms of the acquisition and all agreements with the property owner(s).

#### **G. Transfer of Right of Way to Agency**

When right of way is being acquired in State's name, State agrees to transfer and Agency agrees to accept all right of way acquired on the Agency's facility. The specific method of conveyance will be determined by the State and the Agency at the time of transfer and shall be coordinated by the State's Region Right of Way Manager. If requested, State agrees to provide Agency information and file documentation associated with the transfer.

**RESOLUTION EXERCISING THE POWER OF EMINENT DOMAIN EXHIBIT B**  
**Right of Way Services**

WHEREAS (insert title of agency) may exercise the power of eminent domain pursuant to (Agency's charter) (statutes conferring authority) and the Law of the State of Oregon generally, when the exercise of such power is deemed necessary by the (insert title of agency)'s governing body to accomplish public purposes for which (insert title of agency) has responsibility;

WHEREAS (insert title of agency) has the responsibility of providing safe transportation routes for commerce, convenience and to adequately serve the traveling public;

WHEREAS the project or projects known as (insert Project name) have been planned in accordance with appropriate engineering standards for the construction, maintenance or improvement of said transportation infrastructure such that property damage is minimized, transportation promoted, travel safeguarded; and

WHEREAS to accomplish the project or projects set forth above it is necessary to acquire the interests in the property described in "Exhibit A," attached to this resolution and, by this reference incorporated herein; now , therefore

BE IT HEREBY RESOLVED by (Agency's Council, Commission, or Board)

1. The foregoing statements of authority and need are, in fact, the case. The project or projects for which the property is required and is being acquired are necessary in the public interest, and the same have been planned, designed, located, and will be constructed in a manner which will be most compatible with the greatest public good and the least private injury;
2. The power of eminent domain is hereby exercised with respect to each of the interests in property described in Exhibit A. Each is acquired subject to payment of just compensation and subject to procedural requirements of Oregon law;
3. The (insert title of agency)'s staff and the (Agency's Attorney, Counsel, or District's Counsel (or The Oregon Department of Transportation and the Attorney General) are authorized and requested to attempt to agree with the owner and other persons in interest as to the compensation to be paid for each acquisition, and, in the event that no satisfactory agreement can be reached, to commence and prosecute such condemnation proceedings as may be necessary to finally determine just compensation or any other issue appropriate to be determined by a court in connection with the acquisition. This authorization is not intended to expand the jurisdiction of any court to decide matters determined above or determinable by the (Agency's Council, Commission, or Board).
4. (insert title of agency) expressly reserves its jurisdiction to determine the necessity or propriety of any acquisition, its quantity, quality, or locality, and to change or abandon any acquisition.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_

A Resolution authorizing the approval of an Intergovernmental Agreement for Right of Way Services (Agreement No. 31156), between the City of McMinnville and the Oregon Department of Transportation, regarding the Oregon Route 99W at 2<sup>nd</sup> Street Signal Replacement project.

RECITALS:

The voter approved 2014 transportation bond measure included a project to improve NE 2<sup>nd</sup> Street between Adams and Cowls streets, for the purpose of addressing traffic congestion in the area, by installing an additional turn lane, a westbound right turn lane, bike lanes, pedestrian improvements, and upgraded traffic signals.

The project will be completed in cooperation with the Oregon Department of Transportation (ODOT), which has jurisdiction over Adams and Baker Streets (Hwy 99W), whereby the City will manage the project, including completion of the design, acquisition of any needed right-of-way, bidding, contract administration, and project construction management, and ODOT will contribute up to \$500,000 in state funds to cover the signal upgrade costs, as outlined in the previously approved Cooperative Improvement Agreement No. 30520.

Agreement No. 30520 requires that the City and ODOT enter into a separate Right of Way Services Agreement, outlining the roles and responsibilities regarding the acquisition of property for the project.

NOW, THEREFORE, BE IT RESOLVED BY THE COMMON COUNCIL OF THE CITY OF McMINNVILLE, OREGON, as follows:

1. The Intergovernmental Agreement for Right of Way Services (Agreement No. 31156) with the State of Oregon, Department of Transportation, attached hereto as Exhibit A, is approved.
2. The City Manager is hereby authorized and directed to execute the agreement between the State of Oregon, acting by and through its Department of Transportation, and the City of McMinnville.
3. That this resolution shall take effect immediately upon passage and shall continue in full force and effect until modified, revoked, or replaced.

Adopted by the Common Council of the City of McMinnville at a meeting held the 23<sup>rd</sup> day of February 2016 by the following votes:

Ayes: Drabkin, Hill, Jeffries, Menke, Yoder

Nays: \_\_\_\_\_

Approved this 23<sup>rd</sup> day of February 2016.

  
MAYOR

Approved as to form:

  
CITY ATTORNEY



**City Council- Regular**

**Meeting Date:** 11/22/2016

**Subject:** Extension of lease agreement with  
Cornerstone Coffee

**From:** Melissa Grace, City Recorder / Legal  
Assistant

---

**AGENDA ITEM:**

**Resolution No. 2016-84:** A Resolution approving the extension of a lease between the City of McMinnville and Good Olds Pace, LLC doing business as Cornerstone Coffee.

**BACKGROUND:**

On May 10<sup>th</sup>, 2016 City Council adopted a resolution approving a lease with Good Olds Pace, LLC doing business as Cornerstone Coffee. The current lease will expire on December 31, 2016.

Because the planned construction on Second Street will be occurring later than originally expected, it is possible for the City to continue leasing this property. The tenant is interested in extending the term of the lease. Staff recommends extending the term of the lease through February 28, 2017.

The amended lease agreement is attached.

**RECOMMENDATION:**

Staff recommends that the Council adopt the attached resolution approving the extension of the lease between the City of McMinnville and Good Olds Pace, LLC (dba Cornerstone Coffee).

---

**Attachments**

Lease extension  
Resolution 2016-84

---

LEASE AMENDMENT

This agreement to amend a lease is entered into on this 22<sup>nd</sup> day of November, 2016, by and between the City of McMinnville, a municipal corporation of the State of Oregon, hereinafter referred to as the "Lessor," and Good Olds Pace, LLC, a limited liability corporation, hereinafter referred to as the "Tenant."

RECITALS:

The Lessor and Tenant are parties to a lease agreement entered into on the 10<sup>th</sup> day of May, 2016, the "Premises" described as "That certain real property described as Parcel I (The North one-half of Lot 5, Block 8, in the ORIGINAL TOWN OF McMINNVILLE in Yamhill County, Oregon) and Parcel II (The South one-half of Lot 5, Block 8 in the ORIGINAL TOWN OF McMINNVILLE in Yamhill County, Oregon)."

The original term of that agreement will expire on December 31, 2016, and the parties desire to extend the term of the lease to February 28, 2017.

NOW THEREFORE, the Parties agree as follows:

1. Section 1.1 is deleted and replaced with the following language:

Section 1.1 Original Term. This lease shall commence on May 10, 2016, and shall end on February 28, 2017, subject to the provisions of section 11.

2. All remaining terms and conditions of the Lease shall remain unchanged.

CITY OF MCMINNVILLE

GOOD OLDS PACE, LLC

\_\_\_\_\_  
By: Candace Haines, Interim City Manager

\_\_\_\_\_  
By: Mike Pace, Member

Approved as to Form:

\_\_\_\_\_  
City Attorney

\_\_\_\_\_  
By: Jason Olds, Member

RESOLUTION NO. 2016- 84

A Resolution approving the extension of a lease between the City of McMinnville and Good Olds Pace, LLC doing business as Cornerstone Coffee.

RECITALS:

Good Olds Pace, LLC currently leases the City owned property described as Parcel I (The North one-half of Lot 5, Block 8, in the ORIGINAL TOWN OF McMINNVILLE in Yamhill County, Oregon) and Parcel II (The South one-half of Lot 5, Block 8 in the ORIGINAL TOWN OF McMINNVILLE in Yamhill County, Oregon). Because, planned construction on Second Street will be occurring later than originally forecast, it is possible for the City to continue leasing this property through February 28, 2017.

NOW, THEREFORE, BE IT RESOLVED BY THE COMMON COUNCIL OF THE CITY OF McMINNVILLE, OREGON, as follows:

1. That the City Manager is authorized to execute a lease amendment with Good Olds Pace, LLC for the property described as Parcel I (The North one-half of Lot 5, Block 8, in the ORIGINAL TOWN OF McMINNVILLE in Yamhill County, Oregon) and Parcel II (The South one-half of Lot 5, Block 8 in the ORIGINAL TOWN OF McMINNVILLE in Yamhill County, Oregon).
2. That this resolution will take effect immediately upon passage.

Adopted by the Common Council of the City of McMinnville at a meeting held the 22<sup>nd</sup> day of November, 2016 by the following votes:

Ayes: \_\_\_\_\_

Nays: \_\_\_\_\_

Approved this 22<sup>nd</sup> day of November, 2016.

\_\_\_\_\_  
COUNCIL PRESIDENT

Approved as to form:



\_\_\_\_\_  
CITY ATTORNEY





**City Council- Regular**

**Meeting Date:** 11/22/2016

**Subject:** Public Hearing on hiring standards, criteria and policy directives for City Manager.

**From:** Melissa Grace, City Recorder / Legal Assistant

---

**AGENDA ITEM:**

Public Hearing: To hear comments on the hiring standards, criteria and policy directives set forth in Exhibit 1 of Resolution No. 2016-86 (A Resolution confirming procedures for the hiring of a City Manager).

**BACKGROUND:**

---

**Attachments**

Exhibit 1 of Resolution No. 2016-86

---

## EXHIBIT 1

### Standards, Criteria and Policy Directives for hiring City Manager

#### THE POSITION

---

The City Manager acts under the general direction of the City Council and executes all Council policies. Operating in concert with department heads, the City Manager plans, organizes, and directs City operations, and provides assistance to the Council regarding policy decisions and their implementation.

The City Manager will be required to reside within the 97128 zip code no later than six months after hire.

In addition, the City Manager:

- Manages and coordinates projects and programs to accomplish goals and objectives of the City Council.
- Facilitates the City's long-standing tradition of collaborative relationships between City Council, Manager, and staff.
- Subject to municipal code, state statutes, and federal laws, provides administrative direction to all City employees, directly or through department heads. Ensures satisfactory resolution of personnel issues. Reviews and provides final approval on hiring, discipline, and termination recommendations.
- Confers with City Council, department heads, and others on varied operating and administrative problems. Reviews departmental plans, programs, and procedures. Suggests new innovations or methods to improve the standard of services provided by the City.
- Administers approved budget and monitors overall expenditures to ensure compliance with budget. Maintains a balanced approach to the needs of all departments.
- Works with various citizen and business groups to encourage and develop economic opportunities. Attends meetings and represents the City in various organizations and groups. Explains City issues and projects, and encourages citizen participation and support.
- Maintains excellent lines of open communication with City Council, staff, and citizens.

#### IDEAL CANDIDATE PROFILE

---

The City of McMinnville is seeking a progressive, visionary manager who has a broad knowledge and understanding of all aspects of municipal government and intergovernmental relationships. The ideal candidate will have a strong background in public finance, budgeting, and forecasting; the principles and practices of public administration; public relations; and general management. The candidate will be able to demonstrate creativity in finding financing solutions and alternative revenue streams.

The City of McMinnville is a stable, well managed City with a seasoned and knowledgeable department head team and staff and a cohesive City Council. The ideal candidate will be prepared to first take time to listen, learn, and build relationships within the organization and community. This individual will be someone who can take the City into the future while preserving the best of who we are.

The ideal candidate will bring an egoless leadership style and build consensus with staff and community, through trust and demonstrated integrity. The candidate will fully embrace city management as a

vocation. The new Manager will need to be a positive person who is approachable and who can maintain and nurture relationships at all levels.

Citizen volunteers play a large role in the City's government so the next manager will have to appreciate and embrace the connectivity the City has with the community. Community involvement will be of high importance and a proven track record showing community involvement will be a plus.

#### EXPERIENCE & EDUCATION

---

This position requires a bachelor's degree from an accredited college or university in public administration or a closely related field. A master's degree in public administration or business management is preferred. Competitive candidates should have at least seven to ten years of senior public sector management experience in a city, county, or other applicable public sector agency of similar or greater complexity and size. Any combination of experience and education which provides the applicant with the level of required knowledge and abilities may be considered.



**City Council- Regular**

**Meeting Date:** 11/22/2016

**Subject:** Time of Regular City Council meetings

**From:** Melissa Grace, City Recorder / Legal Assistant

---

**AGENDA ITEM:**

**Ordinance No. 5015:** An Ordinance amending Ordinance Nos. 4594 and 3829 (McMinnville Municipal Code Section 2.04.010) pertaining to the starting time of regular City Council meetings, and declaring an emergency.

**BACKGROUND:**

The City Council discussed changing the starting time of the regular City Council meetings from 7:30 p.m. to 7:00 p.m on August 11, 2009. On August 25, 2016, the City Council began meeting at 7:00 p.m and has continued to do so since that time. The amendments in Ordinance No. 5015 will bring the Municipal Code up to date with current practice.

**RECOMMENDATION:**

Staff recommends Council approve Ordinance No. 5015 amending Ordinance Nos. 4594 and 3829 pertaining to the starting time of regular City Council meetings, and declaring an emergency.

---

**Attachments**

Ordinance 5015

---

ORDINANCE NO. 5015

An Ordinance amending Ordinance Nos. 4594 and 3829 (McMinnville Municipal Code Section 2.04.010) pertaining to the starting time of regular City Council meetings, and declaring an emergency.

RECITALS:

At the August 11, 2009 Council meeting, the Council discussed the feasibility of changing the starting time of the regular City Council meetings from 7:30 p.m. to 7:00 p.m. This change was initiated On August 25, 2009 and this ordinance merely reflects that change.

Now, therefore, THE COMMON COUNCIL FOR THE CITY OF McMINNVILLE ORDAINS AS FOLLOWS:

1. Section 1 (a) of Ordinance No. 4594 is amended to read as follows:
  - a. The Common Council shall meet at 7:00 p.m. on the second Tuesday of each month in the Council Chambers except on holidays, in which event the Council shall schedule the next Council meeting.
2. Section 1 (b) of Ordinance No. 3829 is amended to read as follows:
  - b. The Common Council shall also meet at 7:00 p.m. on the fourth Tuesday of each month in the Council Chambers except on holidays, in which the meeting shall be cancelled unless the Council calls for a special Council meeting.
3. That inasmuch as this new meeting time has gone into effect and this ordinance is merely a housekeeping issue, this ordinance shall be in full force and effect from and after its passage by the Council and approval by the Mayor.

Passed by the Council this 22<sup>nd</sup> day of November, 2016, by the following votes:

Ayes: \_\_\_\_\_

Nays: \_\_\_\_\_

Approved this 22<sup>nd</sup> day of November, 2016.

\_\_\_\_\_  
COUNCIL PRESIDENT

Attest:

Approved as to form:

\_\_\_\_\_  
CITY RECORDER

  
\_\_\_\_\_  
CITY ATTORNEY



**City Council- Regular**

**Meeting Date:** 11/22/2016

**Subject:** Termination of non-exclusive telecommunications franchise

**From:** Melissa Grace, City Recorder / Legal Assistant

---

**AGENDA ITEM:**

**Ordinance No. 5016:** An Ordinance terminating a non-exclusive telecommunications franchise with CoastCom, Inc and repealing Ordinance 4996.

**BACKGROUND:**

November 10, 2015, City Council approved Ordinance 4996, granting a non-exclusive telecommunications franchise to CoastCom, Inc. The following month, City Council approved Ordinance 4998, granting a non-exclusive telecommunications franchise to Astound Broadband, LLC.

CoastCom recently sold its assets and operations to Astound Broadband, LLC and is no longer an operating entity. Astound Broadband, LLC continues to operate under the terms of Ordinance 4998. The City Attorney spoke with representatives from Astound Broadband, LLC and they have agreed to the termination of the CoastCom franchise agreement.

**RECOMMENDATION:**

Staff recommends approval of Ordinance No. 5016 terminating a non-exclusive telecommunications franchise with CoastCom, Inc. and repealing Ordinance 4996.

---

**Attachments**

Ordinance 5016

---



ORDINANCE NO. 5016

An Ordinance of the City of McMinnville terminating a non-exclusive telecommunications franchise with CoastCom, Inc. and repealing Ordinance 4996.

RECITALS:

On November 10, 2015, the City Council approved Ordinance 4996, granting a non-exclusive telecommunications franchise to CoastCom, Inc. ("CoastCom").

On December 8, 2015, the City Council approved Ordinance 4998, granting a non-exclusive telecommunications franchise to Astound Broadband, LLC ("Astound").

On June 2, 2016, CoastCom entered into a purchase agreement to sell its assets and operations to Astound Broadband, LLC ("Astound"), a wholly owned subsidiary of WaveDivision Holdings, LLC ("Wave").

CoastCom subsequently completed the sale of its assets and operations, and is no longer an operating entity. Astound assumed control of CoastCom's assets and operations within the City of McMinnville, and continues to operate under the terms of Ordinance 4998.

Astound consents to the termination of the CoastCom franchise and repeal of Ordinance 4996.

Now, therefore, THE COMMON COUNCIL FOR THE CITY OF McMINNVILLE ORDAINS AS FOLLOWS:

1. Ordinance 4996 is repealed in its entirety.
2. This Ordinance shall become effective December 22, 2016.

Passed by the Council this 22<sup>nd</sup> day of November, 2016, by the following votes:

Ayes: \_\_\_\_\_

Nays: \_\_\_\_\_

Approved this 22<sup>nd</sup> day of November, 2016.

\_\_\_\_\_  
COUNCIL PRESIDENT

Attest:

Approved as to form:

\_\_\_\_\_  
CITY RECORDER

  
\_\_\_\_\_  
CITY ATTORNEY



**City Council- Regular**

**Meeting Date:** 11/22/2016

**Subject:** Amending the McMinnville Municipal Code, Chapter 5.42 Taxation of Cannabis & Cannabis products

**From:** Melissa Grace, City Recorder / Legal Assistant

---

**AGENDA ITEM:**

**Ordinance No. 5017:** An Ordinance of the City of McMinnville amending the McMinnville Municipal Code, Chapter 5.42 Taxation of Cannabis and Cannabis Products to authorize contracting with a third party to collect taxes.

**BACKGROUND:**

On April 26, 2016, the City Council adopted Ordinance 5004 imposing a three percent tax on the sale of marijuana items by a marijuana retailer and on November 8th, electors of McMinnville approved the tax authorizing the imposition of such tax.

Approximately 100 cities had a local marijuana tax proposal on the November 8th ballot. The League of Oregon Cities has worked with local cities and the Oregon Department of Revenue to develop an intergovernmental agreement that permits the Department of Revenue to collect and enforce local marijuana taxes on behalf of local governments.

The proposed Ordinance adds a new section to the McMinnville Municipal Code allowing an option for the the collection of tax through a third party.

**RECOMMENDATION:**

Staff recommends City Council approve Ordinance No. 5017 amending the McMinnville Municipal Code, Chapter 5.42 Taxation of Cannabis and Cannabis Products to authorized contracting with a third party to collect taxes.

---

**Attachments**

Ordinance 5017

---



ORDINANCE NO. 5017

An Ordinance of the City of McMinnville amending the McMinnville Municipal Code, Chapter 5.42, Taxation of Cannabis and Cannabis Products to authorize contracting with a third party to collect taxes.

RECITALS:

On April 26, 2016, the City Council adopted Ordinance 5004 (codified as MMC Ch. 5.42) imposing a three percent tax on the sale of marijuana items by a marijuana retailer and establishing procedures for the collection of such tax, and Resolution 2016-19, submitting the question of whether to impose the three percent tax to the electors to be decided at the November 8, 2016, general election, pursuant to Oregon Revised Statutes (ORS) 475B.345.

On November 8, 2016, the electors of McMinnville approved the referred measure, authorizing the City to impose a three percent tax on the sale of marijuana items by a marijuana retailer.

The State of Oregon, acting by and through its Department of Revenue, is authorized to contract with local jurisdictions for the purpose of collecting local taxes on the sale of marijuana items by marijuana retailers.

An amendment of Ordinance 5004 is necessary to authorize alternative procedures for collecting the tax approved by the electors by allowing the City to contract with the State of Oregon for that purpose.

Now, therefore, THE COMMON COUNCIL FOR THE CITY OF McMINNVILLE ORDAINS AS FOLLOWS:

1. The McMinnville Municipal Code Chapter 5.42, Taxation of Cannabis and Cannabis Products is amended as outlined in Exhibit 1.
2. This Ordinance will take effect January 1, 2017.
3. The provisions of Ordinance 5004 that are not expressly amended by this Ordinance shall remain in effect.

Passed by the Council this 22<sup>nd</sup> day of November, 2016, by the following votes:

Ayes: \_\_\_\_\_

Nays: \_\_\_\_\_

Approved this 22<sup>nd</sup> day of November, 2016.

---

COUNCIL PRESIDENT

Attest:

Approved as to form:

---

CITY RECORDER

  
\_\_\_\_\_  
CITY ATTORNEY

## EXHIBIT 1

### CHAPTER 5.42

#### TAXATION OF CANNABIS AND CANNABIS PRODUCTS

- 5.42.010 Definitions for Chapter 5.42
- 5.42.020 Imposition of tax on retail sale of marijuana items
- 5.42.025 Procedure for Collection of Tax**
- 5.42.030 Collection of tax
- 5.42.035 Refund; credit
- 5.42.040 Deficiencies; redeterminations
- 5.42.050 Registry
- 5.42.060 Administration
- 5.42.070 Appeals
- 5.42.080 Penalties and Interest
- 5.42.090 Expenditure of funds
- 5.42.100 Notice
- 5.42.110 Violations
- 5.42.120 Penalty

#### TAXATION OF CANNABIS AND CANNABIS PRODUCTS

##### 5.42.010 Definitions.

As used in Chapter 5.42:

- A. "Cannabinoid concentrate," "cannabinoid edible," "cannabinoid extract," "cannabinoid product," "consumer," "immature marijuana plant," "marijuana flowers," "marijuana items," "marijuana leaves" and "marijuana retailer" have the meanings given those terms in ORS 475B.015.
- B. "Retail sale" and "Retail sales price" have the meanings given those terms in ORS 475B.700.
- C. "Finance Department" means the Finance Department of the City of McMinnville.
- D. "Finance Director" means the Finance Director of the City of McMinnville.
- E. "City" means the City of McMinnville, Oregon.

##### 5.42.020 Imposition of tax on retail sale of marijuana items.

A. A tax is hereby imposed upon the retail sale of marijuana items in the City. The tax imposed by this section is a direct tax on the consumer, for which payment upon retail sale is required to achieve convenience and facility in the collection and administration of the tax. 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.

- B. The tax imposed under this section shall be imposed at the rate of:
  - 1. 3 percent of the retail sales price of marijuana leaves;
  - 2. 3 percent of the retail sales price of marijuana flowers;
  - 3. 3 percent of the retail sales price of immature marijuana plants;
  - 4. 3 percent of the retail sales price of a cannabinoid edible;
  - 5. 3 percent of the retail sales price of a cannabinoid concentrate;
  - 6. 3 percent of the retail sales price of a cannabinoid extract;
  - 7. 3 percent of the retail sales price of a cannabinoid product that is intended to be used by applying the cannabinoid product to the skin or hair; and



8. 3 percent of the retail sales price of cannabinoid products other than those described in subsection (B)(7) of this section.

C. If the tax imposed under this section does not equal an amount calculable to a whole cent, the tax shall be equal to the next higher whole cent.

D. The amount of the tax shall be separately stated on an invoice, receipt or other similar document that the marijuana retailer provides to the consumer, or shall be otherwise disclosed to the consumer.

E. A person may not knowingly sell, purchase, install, transfer or possess software programs or other electronic devices intended to hide or to remove records of retail sales of marijuana items or to falsify records of retail sales of marijuana items.

**5.42.025 Procedure for Collection Tax.**

**A. Except as provided in subsection B of this section, the provisions of Sections 5.42.030 through 5.42.120, shall be used by the City for the purpose of imposing the tax imposed by Section 5.42.020.**

**B. Notwithstanding the provisions set forth in subsection A of this section, the City may contract with the State of Oregon for the purpose of collecting the tax imposed by Section 5.42.020, and the provisions of any such contract shall be used for the purpose of imposing such tax.**

**5.42.030 Collection of tax.**

A. Except as otherwise provided in this Chapter, the tax imposed upon the consumer under 5.42.020 shall be collected at the point of sale and remitted by each marijuana retailer that engages in the retail sale of marijuana items. The tax is considered a tax upon the marijuana retailer that is required to collect the tax, and the marijuana retailer is considered a taxpayer.

B. The marijuana retailer shall submit a return to the Finance Department on or before the last day of January, April, July and October of each year for the previous calendar quarter, or if the last day is not a business day, the next business day thereafter.

C. The marijuana retailer shall pay the tax to the Finance Department in the form and manner prescribed by the Finance Department, but not later than with each quarterly return, without regard to extensions under subsection (E) of this section.

D. Marijuana retailers shall file the returns required under this section regardless of whether any tax is owed.

E. The Finance Director for good cause may extend the date for making any return under this section. The extension may be granted at any time if a written request is filed with the Finance Department during or prior to the period for which the extension may be granted. The Finance Department may not grant an extension of more than 30 days.

**5.42.035 Refund; credit.**

A. Whenever the amount of any Tax imposed under this Chapter has been paid more than once or has been erroneously or illegally collected or received by the Finance Department, it may be refunded, provided a verified claim in writing, stating the specific reason upon which the claim is refunded, is filed with the Finance Director within three (3) years from the date of payment. The claim shall be made on forms provided by the Finance Department.

B. The Finance Director shall have thirty (30) days from the date of the receipt of a claim to make a written determination as to its validity.

C. If the claim is approved then, at the discretion of the Finance Director, either:



- 1) The excess amount collected or paid may be refunded to the marijuana retailer from whom it was collected or by whom it was paid, or the marijuana retailer's administrators, executors or assignees; or,
- 2) The refund may be credited toward any amounts then due and payable from the marijuana retailer from whom it was collected or by whom it was paid, and the balance, if any, may be refunded to the marijuana retailer or the marijuana retailer's administrators, executors, or assignees.

5.42.040 Deficiencies; redeterminations.

A. Every person who collects any amount under 5.42.030 shall hold the same in trust for the City of McMinnville and for the payment thereof to the Finance Department in the manner and at the time provided in 5.42.030.

B. If the Finance Director determines that a return is incorrect, the Finance Director may compute and determine or estimate the amount required to be paid based on the facts contained in the return or returns or any other information within the Finance Director's possession. One or more deficiency determinations may be made on the amounts due for one or more periods.

1. In making a deficiency determination, the Finance Director may offset overpayments, if any, which may have been previously made for a period or periods against any deficiency for a subsequent period or periods, or against penalties, and interest on the deficiency.

2. Once a deficiency determination is made, the Finance Director shall serve a written deficiency notice on the marijuana retailer. The notice may be given personally or sent by United States mail. If sent by mail, the notice shall be addressed to the marijuana retailer at his/her address as it appears on the records of the City or as the City can best determine.

3. Any deficiency is due and payable ten (10) days after the Finance Director serves the written deficiency notice. If not paid by the tenth day after service of a deficiency notice, the amount shall be delinquent and penalties and interest shall be applied as established in this Chapter.

4. The marijuana retailer may petition for a redetermination provided that the petition is filed within ten (10) days of service of the deficiency notice. Nothing prohibits the Finance Director from extending the time for petition beyond ten (10) days at his/her discretion.

5. Except as provided in this Chapter, every deficiency determination shall be made and notice mailed within three (3) years after a return was originally filed or subsequently amended, whichever period expires later. In the case of the filing of a false or fraudulent return with the intent to evade this Chapter, a failure to file a required return, or a willful refusal to collect and remit the Tax, a deficiency determination may be made, or a proceeding for the collection of the deficiency may be commenced at any time.

6. If the Finance Director believes that the collection of any Tax required to be collected and paid to the City will be jeopardized by delay, or if any determination will be jeopardized by delay, the Finance Director may make a determination of the Tax or amount of Tax required to be collected. The Finance Director will serve a written deficiency notice and demand for immediate payment on the marijuana retailer. The amount shall be immediately due and payable, and the marijuana retailer shall immediately pay such determination to the City after service of the notice, provided, however, the marijuana retailer may petition, after payment has been made, for a redetermination of the Finance Director's assessment, provided that the petition is filed within ten (10) days of service of the deficiency notice.

C. If a petition for redetermination, and refund is filed within the requisite time period, the Finance Director shall reconsider the determination, and, if the person has so requested in his/her petition shall grant the person an oral hearing and shall give him/her ten (10) days'



notice of the time and place of the hearing. The Finance Director may continue the hearing from time to time as necessary.

#### 5.42.050 Registry

A. Every person engaging or about to engage in business involving the retail sale of marijuana items in this City shall register with the City on a form provided by the Finance Department. Marijuana retailers starting business or engaging in collection of the Tax described in Section 5.42.020 must register within 15 calendar days after commencing business or engaging in collection of the Tax. The privilege of registration after the date of imposition of the Tax shall not relieve any person from the obligation of payment or collection of Tax regardless of registration. Registration forms shall require the name under which a marijuana retailer transacts or intends to transact business, the location of the place of business, and other similar additional information required by the Finance Department to facilitate the collection of the Tax. The registration shall be signed by the marijuana retailer.

B. The Finance Department shall, within ten business days after registration, issue without charge a certificate of authority to each marijuana retailer to collect the Tax, together with a certificate for each additional place of business of each Marijuana Retailer. Certificates shall be non-assignable and nontransferable and shall be surrendered immediately to the Finance Department upon the cessation of business at the location named, or upon the business sale or transfer. Each certificate shall state the place of business to which it is applicable and shall be prominently displayed.

C. The certificate shall state, at minimum, the following:

1. The name of the Marijuana Retailer,
2. The address of the premises,
3. The date upon which the certificate was issued, and
4. This statement: "This Marijuana Retailer Registration Certificate signifies that the person named has fulfilled the requirements of McMinnville Municipal Code Chapter 5.42 for the purpose of collecting and remitting the Marijuana Items Tax. This certificate does not authorize any person to conduct any unlawful business or to conduct any lawful business in an unlawful manner, or to operate a Licensed Premises without strictly complying with all local applicable laws, including but not limited to those requiring a permit from any board, commission, department or office of the City. This certificate does not constitute a permit."

D. A Marijuana Retailer that has not registered with the Finance Department will not be issued a Marijuana Retailer Registration Certificate.

#### 5.42.060 Administration.

A. Every marijuana retailer shall keep accounting books, invoices, accounts, and other records. These records shall be retained for three (3) years and six (6) months after they come into being.

B. The Finance Director may examine, during normal business hours, the books, papers and accounting records relating the marijuana retailer's liable for the Tax, after notification to the marijuana retailer, and may investigate the business of the marijuana retailer in order to verify the accuracy of any return made, or if no return is made by the marijuana retailer, to ascertain and determine the amount required to be paid.

C. A formal audit of all the marijuana retailer's records shall be performed at the discretion of the Finance Director



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

1. The disclosure to, or the examination of, financial records by City officers, employees, or agents for the purpose of administering or enforcing the terms of this Chapter, or collecting Taxes imposed under the terms of the Chapter;

2. The disclosure to the marijuana retailer or his/her authorized representative of financial information, including amounts of Marijuana Tax, penalties, or interest, after filing of a written request by the marijuana retailer or his/her authorized representative and approval of the request by the Finance Director;

3. The disclosure of the names and addresses of any person to whom this Chapter applies;

4. The disclosure of general statistics in a form which would prevent the identification of financial information regarding any particular marijuana retailer's return or application; or

5. The disclosure of financial information to the City Attorney or other legal representative of the City to the extent the Finance Director deems disclosure or access necessary for the performance of the duties of advising or representing the Finance Director, the Finance Department, or the City.

#### 5.42.070 Appeals

Any person aggrieved by any decision of the Finance Director may appeal to the City Manager (or their designee) by filing a notice of appeal with the Finance Director within ten (10) days of the serving or mailing of the notice of the decision. The Finance Director shall transmit the notice, together with the file of the appealed matter, to the City Manager, who shall fix a time and place for hearing the appeal. The City Manager shall give the appellant not less than ten (10) days' written notice of the time and place for hearing the appeal. The City Manager may continue the hearing from time to time as necessary.

#### 5.42.080 Penalties and Interest.

A. A penalty will be imposed on a marijuana retailer who mails or hand delivers the return and the Tax payment after the due date. The penalty is five percent (5%) of the unpaid tax. If the marijuana retailer files and/or pays more than thirty days after the due date, an additional twenty percent (20%) penalty will be added to the unpaid tax. Interest at the rate of one percent (1%) per month will be imposed on any unpaid tax from the due date until the date payment in full is received by the Finance Department.

B. If the Finance Director determines that the nonpayment of any remittance due under this Chapter is due to fraud or intent to evade the provisions of this Chapter, a penalty of twenty-five (25) percent of the amount of the Tax shall be added, in addition to the penalties above.

#### 5.42.090 Expenditure of funds.

All money collected pursuant to this Chapter shall be general funds of the City and shall be used to support public safety operations.

#### 5.42.100 Notice.

In case of service by mail of any notice required by this Chapter, the service is complete three days after deposit with the United States Post Office.

#### 5.42.110 Violations.



A. No marijuana retailer or other person required to do so may fail or refuse to, in the time periods prescribed by this Chapter, furnish any return required to be made under this Chapter or furnish a supplemental return or other data required by the Finance Director, or make the remittance to the Finance Director of the amount of the Taxes, penalties, or interest due. No person may render a false or fraudulent return under this Chapter. No person required to make, render, sign, or verify any report regarding the Tax may make any false or fraudulent report.

B. At any time within three (3) years after any Tax required to be collected becomes due and payable, at any time within three years after any determination by the Finance Director or City Manager under this Chapter becomes final, or at any time within three (3) years after any person who is required to do so fails to furnish true and non-fraudulent information within the time periods prescribed by this Chapter, the City may bring an action in the McMinnville Municipal Court or in the courts of this state, any other state, or the United States, in the name of the City.

5.42.120 Penalty.

Any person violating any of the provisions of this Chapter shall, upon conviction, be punished by a fine of not more than \$500 for each violation. This fine shall be in addition to any and all administrative penalties and interest assessed pursuant to this Chapter.



**City Council- Regular**

**Meeting Date:** 11/22/2016

**Subject:** Marijuana Tax Collection Agreement  
with the State of Oregon,  
Department of Revenue

**From:** Melissa Grace, City Recorder / Legal  
Assistant

---

**AGENDA ITEM:**

**Resolution No. 2016-85:** A Resolution authorizing the City Manager to enter into and manage a Marijuana Tax Collection Agreement between the State of Oregon, acting by and through its Department of Revenue and the City of McMinnville for the collection and enforcement of local marijuana taxes.

**BACKGROUND:**

On April 26, 2016, the City Council adopted Ordinance 5004 imposing a three percent tax on the sale of marijuana items by a marijuana retailer and on November 8th, electors of McMinnville approved the tax authorizing the imposition of such tax.

Approximately 100 cities had a local marijuana tax proposal on the November 8th ballot. The League of Oregon Cities has worked with local cities and the Oregon Department of Revenue to develop an intergovernmental agreement that permits the Department of Revenue (DOR) to collect and enforce local marijuana taxes on behalf of local governments. In order for the DOR to begin administering the local tax effective January 1, 2017, Cities must sign and return the attached agreement to the DOR by January 15, 2017.

The proposed Resolution authorizes the City Manager to enter into an agreement with the State of Oregon through its Department of Revenue to collect and enforce local marijuana taxes on behalf of the City of McMinnville.

**RECOMMENDATION:**

Staff recommends Council approve Resolution No. 2016-85 authorizing the City Manager to enter into and manage a Marijuana Tax Collection Agreement between the State of Oregon, acting by and through its Department of Revenue and the City of McMinnville for the collection and enforcement of local marijuana taxes.

---

**Attachments**

Intergovernmental Agreement

---

## 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 the City of McMinnville, Oregon, 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 the City of McMinnville.

**(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 the City of McMinnville or similar factors, and any other information exchanged between the Department and the City of McMinnville 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 the City of McMinnville, 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 the City of McMinnville may assess against its Local Taxpayers.

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

(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 the City of McMinnville and approved by the voters of the City of McMinnville on November 8, 2016, 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. The City of McMinnville 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 the City of McMinnville of the need and obtain the City of McMinnville’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 the City of McMinnville**. Beginning at the end of the first full quarter after execution of this Agreement, the Department shall remit to the City of McMinnville 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 the City of McMinnville 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 the City of McMinnville 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 the City of McMinnville. 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 the City of McMinnville 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 =  $(\$99/\text{hour} * 60 \text{ hours}) / 250 \text{ Marijuana Taxpayer} = \$23.76 \text{ per Local Taxpayer per year}$

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

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

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

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

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 the City of McMinnville 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 the City of McMinnville 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 the City of McMinnville of the amount by which the Department has determined the Fees must increase. If the Department and the City of McMinnville 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 the City of McMinnville 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 the City of McMinnville 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 the City of McMinnville for the unpaid amount of the Department's Fees.

**(7) Recovery of Overpayments.** If the amount of Local Taxes paid to the City of McMinnville under this Agreement, exceed the amount to which the City of McMinnville is entitled, the Department may, after notifying the City of McMinnville in writing, withhold from



later payments due the City of McMinnville 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 the City of McMinnville 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 the City of McMinnville's jurisdiction. The information in this report must be treated as potentially revealing Confidential Information, and shall be protected as described in Section 15. The City of McMinnville should make all efforts to prevent Confidential Information from being released. The Department and the City of McMinnville 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 the City of McMinnville 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. The City of McMinnville should make all efforts to prevent Confidential Information from being released. The Department and the City of McMinnville 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) The City of McMinnville Reports.** Within sixty (60) days of the effective date of this Agreement, the City of McMinnville 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. The City of McMinnville shall provide an updated list of Local Taxpayers to the Department each calendar quarter thereafter. The City of McMinnville 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, the City of McMinnville 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 of McMinnville'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 the City of McMinnville. The Department shall promptly notify the City of McMinnville of any matter arising in the administration of the Marijuana Tax that would require any legislative change or affect the City of McMinnville'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 the City of McMinnville, 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 the City of McMinnville as principal, by the Department as its agency, for purposes of carrying out the administration of the Local Tax imposed by the City of McMinnville. Requests for Confidential Information shall be made by the City of McMinnville 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 the City of McMinnville.

(b) ORS 314.840(3) requires that employees and representatives of the City of McMinnville 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 the City of McMinnville 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 the City of McMinnville 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, the City of McMinnville 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, the City of McMinnville shall return or destroy all copies of Confidential Information provided by DOR to the City of McMinnville, and the City of McMinnville 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, the City of McMinnville 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 the City of McMinnville 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 the City of McMinnville 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 the City of McMinnville for each calendar quarter commencing after this Agreement is executed; provided, however, if this Agreement is fully executed on or before the 15<sup>th</sup> 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 of McMinnville	Oregon Department of Revenue
City Manager	Marijuana Tax Program
230 NE Second Street	PO Box 14630
McMinnville, OR 97128	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 the City of McMinnville 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 the City of McMinnville 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: Candace Haines, Interim City Manager

Signature:

Date signed:



**EXHIBIT A**

**DOR**

**SECURITY CLAUSE**

**and**

**SECURITY LAWS CERTIFICATE**

**This page intentionally left blank**



## 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:

150-800-033 (Rev. 2-11)

• 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

150-800-033 (Rev. 2-11)

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.

3



## SECRECY 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 <b>X</b>	Date

### REVENUE EMPLOYEES

PRINT your full name	Date
Signature <b>X</b>	

### AGENCY USE

In Compliance
  Not in Compliance



**City Council- Regular**

**Meeting Date:** 11/22/2016

**Subject:** Procedures for hiring of a City  
Manager

**From:** Melissa Grace, City Recorder / Legal  
Assistant

---

**AGENDA ITEM:**

**Resolution No. 2016-86:** A Resolution confirming procedures for the hiring of a City Manager.

**BACKGROUND:**

The City of McMinnville has contracted with Prothman, an employment search firm, to assist in the process of hiring a new City Manager. City Council discussed the time line and hiring procedures with Prothman and on October 20, 2016, Prothman began advertising the position.

The attached proposed Resolution confirms the hiring standards, criteria and policy directives related to the hiring of a new City Manager as described in Exhibit A.

**RECOMMENDATION:**

Staff recommends Council approve Resolution No. 2016-86 confirming procedures for the hiring of a City Manager.

---

**Attachments**

Resolution No. 2016-86

Exhibit 1

---



RESOLUTION NO. 2016- 86

A Resolution confirming procedures for the hiring of a City Manager

RECITALS:

Through a contract with the employment search firm, Prothman, the City of McMinnville has begun the process of hiring a new City Manager.

Prothman began advertising the vacancy on October 20, 2016.

The City Council has discussed hiring procedures and a time line for the hiring process with Prothman. The hiring standards, criteria and policy directives pertaining to the employment of a new City Manager are set forth in the attached Exhibit 1.

At its meeting held November 22, 2016, the Council held a public hearing during which it provided the public with an opportunity to comment on the hiring standards, criteria and policy directives set forth in Exhibit 1.

NOW THEREFORE, BE IT RESOLVED BY THE COMMON COUNCIL OF THE CITY OF McMINNVILLE, OREGON as follows:

1. The Council hereby adopts the hiring standards, criteria and policy directives pertaining to the employment of a new City Manager are set forth in the attached Exhibit 1.
2. This Resolution will take effect immediately upon passage.

Adopted by the Common Council of the City of McMinnville at a regular meeting held the 22<sup>nd</sup> day of November, 2016 by the following votes:

Ayes: \_\_\_\_\_

Nays: \_\_\_\_\_

Approved this 22<sup>nd</sup> day of November, 2016.

\_\_\_\_\_  
COUNCIL PRESIDENT

Approved as to form:

  
\_\_\_\_\_  
CITY ATTORNEY



## EXHIBIT 1

### Standards, Criteria and Policy Directives for hiring City Manager

#### THE POSITION

---

The City Manager acts under the general direction of the City Council and executes all Council policies. Operating in concert with department heads, the City Manager plans, organizes, and directs City operations, and provides assistance to the Council regarding policy decisions and their implementation.

The City Manager will be required to reside within the 97128 zip code no later than six months after hire.

In addition, the City Manager:

- Manages and coordinates projects and programs to accomplish goals and objectives of the City Council.
- Facilitates the City's long-standing tradition of collaborative relationships between City Council, Manager, and staff.
- Subject to municipal code, state statutes, and federal laws, provides administrative direction to all City employees, directly or through department heads. Ensures satisfactory resolution of personnel issues. Reviews and provides final approval on hiring, discipline, and termination recommendations.
- Confers with City Council, department heads, and others on varied operating and administrative problems. Reviews departmental plans, programs, and procedures. Suggests new innovations or methods to improve the standard of services provided by the City.
- Administers approved budget and monitors overall expenditures to ensure compliance with budget. Maintains a balanced approach to the needs of all departments.
- Works with various citizen and business groups to encourage and develop economic opportunities. Attends meetings and represents the City in various organizations and groups. Explains City issues and projects, and encourages citizen participation and support.
- Maintains excellent lines of open communication with City Council, staff, and citizens.

#### IDEAL CANDIDATE PROFILE

---

The City of McMinnville is seeking a progressive, visionary manager who has a broad knowledge and understanding of all aspects of municipal government and intergovernmental relationships. The ideal candidate will have a strong background in public finance, budgeting, and forecasting; the principles and practices of public administration; public relations; and general management. The candidate will be able to demonstrate creativity in finding financing solutions and alternative revenue streams.

The City of McMinnville is a stable, well managed City with a seasoned and knowledgeable department head team and staff and a cohesive City Council. The ideal candidate will be prepared to first take time to listen, learn, and build relationships within the organization and community. This individual will be someone who can take the City into the future while preserving the best of who we are.

The ideal candidate will bring an egoless leadership style and build consensus with staff and community, through trust and demonstrated integrity. The candidate will fully embrace city management as a

vocation. The new Manager will need to be a positive person who is approachable and who can maintain and nurture relationships at all levels.

Citizen volunteers play a large role in the City's government so the next manager will have to appreciate and embrace the connectivity the City has with the community. Community involvement will be of high importance and a proven track record showing community involvement will be a plus.

#### EXPERIENCE & EDUCATION

---

This position requires a bachelor's degree from an accredited college or university in public administration or a closely related field. A master's degree in public administration or business management is preferred. Competitive candidates should have at least seven to ten years of senior public sector management experience in a city, county, or other applicable public sector agency of similar or greater complexity and size. Any combination of experience and education which provides the applicant with the level of required knowledge and abilities may be considered.



**City Council- Regular**

**Meeting Date:** 11/22/2016

**Subject:** Building Division Report

**From:** Melissa Grace, City Recorder / Legal  
Assistant

---

**AGENDA ITEM:**

City of McMinnville Building Division Report for the period ending October 31, 2016.

**BACKGROUND:**

---

**Attachments**

Building Division Report - October, 2016

---

# City of McMinnville

## C404 - Privately Owned

Between 10/01/2016 and 10/31/2016

	Class Code	Permits	Bldgs	Houses	Valuation
		79	49	49	\$136,506
	<b>Sub-Totals:</b>	<b>79</b>	<b>49</b>	<b>49</b>	<b>\$136,506</b>
<b><u>Section I - Residential HouseKeeping Buildings</u></b>					
One-Family Houses Detached	101	4	4	4	\$1,090,719
One-Family Houses Attached	102	2	2	2	\$432,997
	<b>Sub-Totals:</b>	<b>6</b>	<b>6</b>	<b>6</b>	<b>\$1,523,715</b>
<b><u>Section III - New Non-Residential Buildings</u></b>					
Office, Bank & Professional Buildings	324	1	1	0	\$353,621
Other Nonresidential Building	328	2	1	0	\$29,298
	<b>Sub-Totals:</b>	<b>3</b>	<b>2</b>	<b>0</b>	<b>\$382,919</b>
<b><u>Section IV - Additions &amp; Alterations</u></b>					
Add or Alter Dwellings	434	1	0	0	\$57,452
Add or Alter All Other Buildings and Structures	437	2	0	0	\$525,000
	<b>Sub-Totals:</b>	<b>3</b>	<b>0</b>	<b>0</b>	<b>\$582,452</b>
	<b>Grand-Totals:</b>	<b>91</b>	<b>57</b>	<b>55</b>	<b>\$2,625,592</b>

# Activity Summary Totals Report

Category: BLDG

Issued: 10/01/2016 - 10/31/2016

Type	# of Permits	Total Fees	Total Valuation
<b>BLDCOMBO</b>			
ACOM	1	\$5,365.39	\$500,000.00
ASFR	1	\$760.08	\$57,451.50
NIND	1	\$17,021.54	\$353,620.80
NSFA	2	\$19,208.14	\$432,996.62
NSFR	4	\$39,324.99	\$1,090,718.87
<b>BLDMAJOR</b>			
ACOM	1	\$450.07	\$25,000.00
NGAR	1	\$390.65	\$20,798.40
NOTH	1	\$192.36	\$8,500.00
<b>BLDMINOR</b>			
PATI	1	\$144.05	\$5,460.84
ROOF	5	\$1,272.85	\$112,745.00
<b>FLS</b>			
ALRM	2	\$261.22	\$12,500.00
SPRK	2	\$81.40	\$5,800.00
<b>MECH</b>			
COM	11	\$2,323.61	\$0.00
PUB	1	\$44.80	\$0.00
RES	31	\$1,189.12	\$0.00
<b>MISC</b>			
	13	\$1,962.25	\$0.00
<b>PLUM</b>			
COM	1	\$8,925.48	\$0.00
RES	12	\$585.76	\$0.00
<b>Total:</b>	<b>91</b>	<b>\$99,503.76</b>	<b>\$2,625,592.03</b>

# Activity Summary Totals Report

Category: BLDG

Issued: 07/01/2016 - 10/31/2016

Type	# of Permits	Total Fees	Total Valuation
<b>BLDCOMBO</b>			
ACOM	9	\$46,136.94	\$2,630,930.00
AINS	1	\$3,824.36	\$240,000.00
ASFR	9	\$6,254.63	\$373,269.20
NCOM	2	\$28,733.50	\$2,726,800.00
NDUP	2	\$23,314.02	\$474,932.40
NIND	1	\$17,021.54	\$353,620.80
NOTH	2	\$2,522.01	\$189,441.30
NSFA	2	\$19,208.14	\$432,996.62
NSFR	31	\$289,976.74	\$8,405,795.06
<b>BLDMAJOR</b>			
ACOM	2	\$562.07	\$25,000.00
APUB	1	\$6,785.34	\$1,100,000.00
NGAR	3	\$1,047.87	\$51,736.02
NOTH	1	\$192.36	\$8,500.00
<b>BLDMINOR</b>			
DECK	8	\$1,748.33	\$83,110.80
FOUN	2	\$428.80	\$21,710.00
OTHR	9	\$2,628.28	\$204,800.00
PATI	3	\$366.29	\$13,895.24
ROOF	13	\$4,237.12	\$460,599.00
WALL	2	\$517.38	\$30,500.00
<b>DEMO</b>			
RES	1	\$80.95	\$4,600.00
<b>FLS</b>			
ALRM	4	\$1,089.56	\$73,860.00
SPRK	8	\$1,003.40	\$51,610.00
SUPP	1	\$87.68	\$2,424.00
<b>MECH</b>			
COM	18	\$3,544.90	\$0.00
PUB	2	\$247.52	\$0.00
RES	83	\$3,376.12	\$0.00
<b>MISC</b>			
	66	\$38,889.00	\$0.00
<b>PLUM</b>			
COM	9	\$13,850.26	\$0.00
IND	1	\$201.60	\$0.00

Type	# of Permits	Total Fees	Total Valuation
PUB	3	\$0.00	\$0.00
RES	70	\$3,699.67	\$500.00
<b>Total:</b>	369	\$521,576.38	\$17,960,630.44



# City of McMinnville - Account Summary Report

For Post Dates 10/01/2016 - 10/31/2016

For Category: BLDG

Fee Items: 1000,1010,1020,1100,1200,1210,1220,1230,1300,1310,

Posted Amount

Account Code: **ESCROW ACCT**	1500 STATE SURCHG-GENERAL	\$2,447.48
		<hr/>
		\$2,447.48
Account Code: 70-4400-05	1000 PERMIT FEES-BUILDING	\$12,296.00
Account Code: 70-4400-05	1300 PLAN REVIEW-BUILDING	\$4,065.85
Account Code: 70-4400-05	1400 PLAN REV-FIRE LIFE SAFTY	\$1,224.84
		<hr/>
		\$17,586.69
Account Code: 70-4400-10	1100 PERMIT FEES-MECHANICAL	\$4,496.35
Account Code: 70-4400-10	1310 PLAN REVIEW-MECHANICAL	\$365.00
		<hr/>
		\$4,861.35
Account Code: 70-4400-15	1200 PERMIT FEES-PLUMBING	\$3,560.00
Account Code: 70-4400-15	1320 PLAN REVIEW-PLUMBING	\$241.75
		<hr/>
		\$3,801.75
Total Posted Amount:		\$28,697.27

# City of McMinnville - Account Summary Report

For Post Dates 07/01/2016 - 10/31/2016

For Category: BLDG

Fee Items: 1000,1010,1020,1100,1210,1220,1230,1300,1310,1320,

		Posted Amount
Account Code: **ESCROW ACCT**	1500 STATE SURCHG-GENERAL	\$14,011.49
		<hr/> \$14,011.49
Account Code: 70-4400-05	1000 PERMIT FEES-BUILDING	\$82,438.84
Account Code: 70-4400-05	1300 PLAN REVIEW-BUILDING	\$61,844.75
Account Code: 70-4400-05	1400 PLAN REV-FIRE LIFE SAFTY	\$5,904.34
		<hr/> \$150,187.93
Account Code: 70-4400-10	1100 PERMIT FEES-MECHANICAL	\$13,308.90
Account Code: 70-4400-10	1310 PLAN REVIEW-MECHANICAL	\$1,021.50
		<hr/> \$14,330.40
Account Code: 70-4400-15	1320 PLAN REVIEW-PLUMBING	\$1,068.50
		<hr/> \$1,068.50
Total Posted Amount:		\$179,598.32



**City Council- Regular**

**Meeting Date:** 11/22/2016

**Subject:** McMinnville Community Media  
Financial Statements June 30, 2016  
and 2015

**From:** Melissa Grace, City Recorder / Legal  
Assistant

---

**AGENDA ITEM:**

McMinnville Community Media Financial Statements June 30, 2016 and 2015

**BACKGROUND:**

---

**Attachments**

Financial Statements

---

**MCMINNVILLE COMMUNITY MEDIA**  
**McMinnville, Oregon**

**FINANCIAL STATEMENTS**  
**June 30, 2016 and 2015**

Schrock & Selby CPAs LLP  
1815 SW Baker Street  
*McMinnville, OR 97128*  
*Phone (503) 435-1955*  
Fax (503) 434-5583

**MCMINNVILLE COMMUNITY MEDIA**  
**McMinnville, Oregon**

**TABLE OF CONTENTS**  
**June 30, 2016 and 2015**

	<u>PAGE</u>
Accountant's Review Report	1
Financial Statements:	
Statement of Financial Position	2
Statement of Activities	3
Statement of Cash Flows	4
Notes to Financial Statements	5 – 9

*Schrock & Selby CPA's LLP*  
*1815 SW Baker St.*  
*McMinnville, OR 97128*  
*Phone 503-435-1955*  
*Fax 503-434-5583*

Accountant's Review Report

To the Board of Directors of  
McMinnville Community Media  
McMinnville, Oregon

We have reviewed the accompanying financial statements of McMinnville Community Media (a nonprofit organization), which comprise the statements of financial position as of June 30, 2016 and 2015, and the related statements of activities and cash flows for the years then ended, and the related notes to the financial statements. A review includes primarily applying analytical procedures to management's financial data and making inquiries of management. A review is substantially less in scope than an audit, the objective of which is the expression of an opinion regarding the financial statements taken as a whole. Accordingly, we do not express such an opinion.

**Management's Responsibility for the Financial Statements**

Management is responsible for the preparation and fair presentation of these financial statements in accordance with accounting principals generally accepted in the United States of America; this includes the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement whether due to fraud or error.

**Accountant's Responsibility**

Our responsibility is to conduct the review engagement in accordance with Statements on Standards for Accounting and Review Services promulgated by the Accounting and Review Services Committee of the AICPA. Those standards require us to perform procedures to obtain limited assurance as a basis for reporting whether we are aware of any material modifications that should be made to the financial statements for them to be in accordance with accounting principals generally accepted in the United States of America. We believe that the results of our procedures provide a reasonable basis for our conclusion.

### **Accountant's Conclusion**

Based on our review, we are not aware of any material modifications that should be made to the accompanying financial statements in order for them to be in accordance with accounting principles generally accepted in the United States of America.

Douglas Selby, CPA  
Schrock & Selby CPA's LLP  
McMinnville, Oregon  
October 20, 2016



**MCMINNVILLE COMMUNITY MEDIA**  
**STATEMENTS OF FINANCIAL POSITION**  
**JUNE 30, 2016 AND 2015**

	<u>2016</u> <u>(Reviewed)</u>	<u>2015</u> <u>(Reviewed)</u>
<i>Assets</i>		
Cash and cash equivalents	\$ 168,651	\$ 166,719
Investments	64,505	64,361
Prepaid expenses	3,833	3,516
Building and improvements, furniture and equipment, net	553,390	538,405
<i>Total Assets</i>	<u>\$ 790,379</u>	<u>\$ 773,001</u>
 <i>Liabilities and Net Assets</i>		
<i>Liabilities</i>		
Payroll liabilities payable	\$ 14,262	\$ 11,886
 <i>Net Assets</i>		
Net investment in furniture and equipment	553,390	538,405
Unrestricted, available for general activities	199,872	203,156
Temporarily restricted	22,855	19,554
<i>Total Net Assets</i>	<u>776,117</u>	<u>761,115</u>
 <i>Total Liabilities and Net Assets</i>	 <u>\$ 790,379</u>	 <u>\$ 773,001</u>

See accompanying accountant's report.

**MCMINNVILLE COMMUNITY MEDIA**  
**STATEMENTS OF ACTIVITIES AND CHANGES IN NET ASSETS**  
**YEARS ENDED JUNE 30, 2016 AND 2015**

	<u>Unrestricted</u>	<u>2016 (Reviewed) Temporarily Restricted</u>	<u>Total</u>	<u>2015 (Reviewed) Total</u>
<b>Revenue</b>				
Franchise Fees	\$ 164,686	\$ -	\$ 164,686	\$ 162,419
PEG Access	-	71,408	71,408	72,125
Production Services	423	-	423	641
Interest	171	-	171	205
Other Income	1,522	-	1,522	2,504
Net assets released from restriction	68,107	(68,107.00)	-	-
Total Revenue	<u>234,909</u>	<u>3,301</u>	<u>238,210</u>	<u>237,894</u>
<b>Expense</b>				
Advertising	245	-	245	700
Depreciation Expense	53,123	-	53,123	39,872
Dues & Subscriptions	1,436	-	1,436	1,098
Insurance & Fees	6,981	-	6,981	7,558
Miscellaneous Expense	129	-	129	342
Office Supplies	897	-	897	2,423
Payroll Taxes and Benefits	15,106	-	15,106	21,112
Printing & Postage	320	-	320	351
Production Supplies	1,453	-	1,453	1,664
Professional Fees	6,304	-	6,304	12,550
Rent	1,297	-	1,297	1,680
Repair & Maintenance	795	-	795	411
Salaries	131,509	-	131,509	109,289
Telephone	1,568	-	1,568	1,579
Training	-	-	-	436
Travel & Milage	315	-	315	670
Utilities	1,730	-	1,730	1,707
Total Expense	<u>223,208</u>	<u>-</u>	<u>223,208</u>	<u>203,442</u>
<b>Change in Net Assets</b>	<b>\$ 11,701</b>	<b>\$ 3,301</b>	<b>\$ 15,002</b>	<b>\$ 34,452</b>
<b>Net Assets, Beginning of Year</b>	<b>741,561</b>	<b>19,554</b>	<b>761,115</b>	<b>726,663</b>
<b>Net Assets, End of Year</b>	<b><u>\$ 753,262</u></b>	<b><u>\$ 22,855</u></b>	<b><u>\$ 776,117</u></b>	<b><u>\$ 761,115</u></b>

See accompanying accountant's report.

# MCMINNVILLE COMMUNITY MEDIA

## STATEMENTS OF CASH FLOW

YEARS ENDED JUNE 30, 2016 AND 2015

	<u>2016</u> <u>(Reviewed)</u>	<u>2015</u> <u>(Reviewed)</u>
<b><i>Cash Flows From Operating Activities</i></b>		
Change in net assets	\$ 15,002	\$ 34,452
Adjustments to reconcile change in net assets to net cash provided by operating activities:		
Depreciation	53,123	39,872
Accrued investment income	(145)	(143)
Gain on sale of assets	-	(1,205)
Change in cash due to assets and liabilities:		
Prepaid expenses	(317)	(212)
Payroll liabilities payable	2,376	3,556
<i>Net cash provided by Operating Activities</i>	70,039	76,320
<b><i>Cash Flows From Investment Activities</i></b>		
Purchase of property and equipment	(68,107)	(70,813)
<i>Net cash used by Investment Activities</i>	(68,107)	(70,813)
<b><i>Net Change In Cash And Cash Equivalents</i></b>	1,932	5,507
<b><i>Cash And Cash Equivalents, Beginning of year</i></b>	166,719	161,212
<b><i>Cash And Cash Equivalents, End of year</i></b>	<u>\$ 168,651</u>	<u>\$ 166,719</u>

See accompanying accountant's report.

**MCMINNVILLE COMMUNITY MEDIA**  
*NOTES TO FINANCIAL STATEMENTS*  
*YEARS ENDED JUNE 30, 2016 AND 2015*

***SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES***

*Nature of the Organization*

McMinnville Community Media (the Organization) operates the community access cable channels for the City of McMinnville. The cable providers; Comcast and Frontier, by franchise agreement with the City of McMinnville allocate these cable channels for community access. The Organization exists to make media tools, education, and distribution systems for use by the community over these cable channels available to the public.

*Basis of Accounting and Presentation*

The financial statements have been prepared on the accrual basis of accounting. In compliance with financial accounting standards for not-for-profit organizations, the Organization reports its financial position and activities according to three classes of net assets: unrestricted, temporarily restricted, and permanently restricted.

*Unrestricted:* Those net assets and activities which represent the portion of expendable funds that is available to support the Organization's operations. A portion of these net assets may be designated by the Board of Directors for specific purposes.

*Temporarily Restricted:* Those assets and activities which are donor restricted for (a) support of specific operating activities; (b) investment for a specified term; (c) use in a specified future period; or (d) acquisition of long-lived assets.

*Permanently Restricted:* Those net assets and activities which are permanently donor restricted for holdings of (a) assets donated with stipulations that they be used for a specified purpose, be preserved, and not be sold; or (b) asset donated with stipulations that they be invested to provide a permanent source of income.

For the years ended June 30, 2016 and 2015, the Organization had temporarily restricted net assets due to capital purpose restrictions and had no permanently restricted net assets.

*Cash and Cash Equivalents*

The Organization considers all highly liquid investments with a maturity of three months or less when purchased to be cash equivalents. Cash and cash equivalents that are restricted as to their use are not included as cash equivalents, regardless of liquidity. Cash and cash equivalents held in certificates of deposit are intended for investment purposes and are classified under investments.

Cash in deposit and money market accounts is considered cash and cash equivalents for the purposes of the statement of cash flows.

*Concentration of Risk*

Financial instruments which potentially subject the Organization to the concentrations of credit risk consist principally of cash, cash equivalents, and certificates of deposit. The Organization maintains its cash in various bank deposit accounts which, at times, may exceed federally insured limits. The Organization has not experienced any losses in such accounts. Management believes that the Organization is not exposed to any significant credit risk related to concentrations.

For the year ended June 30, 2016, 99% of the Organization's revenue was generated from its contract with the City of McMinnville.

**MCMINNVILLE COMMUNITY MEDIA**  
*NOTES TO FINANCIAL STATEMENTS*  
*YEARS ENDED JUNE 30, 2016 AND 2015*

*Revenue Recognition*

*Contract Revenue*

The Organization entered into a contract with the City of McMinnville to operate public, educational, and government (PEG) access channels. Revenue is recognized as restricted for capital or operating expenditures in accordance with the provisions of the contract. The contract is funded through franchise agreements between the City and the cable providers, Comcast and Frontier, and is based on 2.25% of gross revenues. Additionally, \$1 per subscriber per month is paid to the Organization, which per the Federal Cable Act, can be used for PEG access capital purposes. Payments to the Organization are contingent upon the City of McMinnville receiving their funding from the franchise agreement. The contract is in effect for a ten year period, ending June 2023 at which point the contract may be renewed.

There are certain reporting requirements to the City of McMinnville related to this contract.

*Production Services and Equipment Rental*

The Organization provides studio facilities, production services, and certain equipment to qualified residents, students, and organizations within the City of McMinnville. Production services revenue is recorded when earned, and equipment rentals are generally for a short-term and revenue is recorded when received.

*Contributions*

The Organization recognizes all contributions in the year of receipt, regardless of compliance with restrictions. Contributions without donor-imposed restrictions are reported as unrestricted support. Contributions with donor-imposed restrictions are reported as either temporarily restricted or permanently restricted support, depending upon the type of restriction. Contributions are recorded in "other income."

*Contributed Goods and Services*

Donated materials and equipment are recorded as contributions at their estimated value on the date of receipt. Such donations are reported as unrestricted support unless the donor has restricted the donated asset to a specific purpose. Assets donated with explicit restrictions regarding their use are reported as restricted support. Absent donor stipulations regarding how long the donated assets must be maintained, the Organization reports the expirations of donor restrictions when the donated or acquired assets are placed in service.

At that time, the Organization reclassifies temporarily restricted net assets to unrestricted net assets. The Organization records contribution revenue for certain services received at the fair value of those services, if the services (a) created or enhance nonfinancial assets, or (b) require specialized skills, are provided by individuals possessing those skills, and would be purchased if not donated.

For the years ending June 30, 2016 and 2015, there were no contributed services received.

*Certificates of Deposit*

Investments are comprised of certificates of deposit and are recorded in the financial statements at cost plus accrued interest. All investment income and gains/losses are unrestricted and are included in the change in net assets.

**MCMINNVILLE COMMUNITY MEDIA**  
*NOTES TO FINANCIAL STATEMENTS*  
*YEARS ENDED JUNE 30, 2016 AND 2015*

*Property and Equipment*

The Organization capitalized acquisitions of property and equipment with a cost or value in excess of \$1,000 and with an estimated useful life of greater than one-year. Purchased assets are recorded at costs; donated assets are recorded at estimated fair value or appraised value at the date of donation. Depreciation and amortization is calculated using the straight-line method based on estimated useful lives ranging from 5-39 years. Maintenance and repairs are charged to expense as incurred; major renewal and betterments are capitalized. The cost and accumulated depreciation and amortization of assets sold or retired are removed from the respective accounts and any gain or loss is reflected in the statements of activities and changes in net assets.

Pursuant to the agreement with the City of McMinnville, the Organization owns all of its capital assets. Upon termination or non-renewal, the assets transfer to the city of McMinnville or another non-profit organization designated by the City of McMinnville.

*Income Taxes*

The Organization is a qualified organization exempt from federal income and state franchise taxes under 501(c)(3) of the Internal Revenue Code.

The Organization follows the accounting standard on accounting for uncertainty in income taxes, which prescribes a recognition threshold and measurement attribute for the financial statement recognition and measurement of a tax position taken, or expected to be taken, in a tax return and requires the affirmative evaluation that is more-likely-than-not, based on the technical merits of a tax position, that an enterprise is entitled to economic benefits resulting from tax positions taken in income tax returns. For tax exempt entities, favorable tax status itself is deemed to be an uncertainty, as events could potentially occur to jeopardize their tax-exempt status. If a tax position does not meet the more-likely-than-not recognition threshold, the benefit of that position is not recognized in the financial statements. This standard also requires the Organization to disclose additional quantitative and qualitative information in their financial statements about uncertain tax positions.

The Organization's evaluation on June 30, 2016 and 2015 revealed no tax positions that would have a material impact on the financial statements. The 2012 through 2015 tax years remain subject to examination by the Internal Revenue Service. The Organization does not believe that any reasonably possible changes will occur within the next twelve months that will have a material impact on the financial statements.

*Use of Estimates*

The preparation of financial statements in conformity with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liability at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates.



**MCMINNVILLE COMMUNITY MEDIA**  
**NOTES TO FINANCIAL STATEMENTS**  
**YEARS ENDED JUNE 30, 2016 AND 2015**

***CERTIFICATES OF DEPOSIT***

The following is a summary of Certificates of Deposit as of June 30:

	2016 (Reviewed)	2015 (Reviewed)
Certificate of deposit, matures June 9, 2017, .15%	\$ 46,400	\$ 46,329
Certificate of deposit, matures February 27, 2019, .40%	18,105	18,032
	<u>\$ 64,505</u>	<u>\$ 64,361</u>

***PROPERTY AND EQUIPMENT***

	2016 (Reviewed)	2015 (Reviewed)
Building and improvements	\$ 417,337	\$ 417,337
Furniture and equipment	536,882	513,797
	954,219	931,134
Less accumulated depreciation	(400,829)	(392,729)
	<u>\$ 553,390</u>	<u>\$ 538,405</u>

Depreciation expense was \$53,123 and \$39,872 for the years ended June 30, 2016 and 2015, respectively.

***CABLE ACCESS MANAGEMENT AGREEMENT COMMITMENT***

*Contract Terms*

The Organization maintains a contract with the City of McMinnville to operate, manage and administer the local cable channels. The contract can be terminated, at will, by either party due to breach of contract. The terminating party must give written notice to the other party three days before the desired termination date. The contract term extends to June 6, 2023. Comcast of Oregon II, Inc. and Verizon (now Frontier) has contractually agreed to pay the City of McMinnville 5% of total cable subscription fees received from customer sin the McMinnville subscriber area. Of that 5%, the City of McMinnville has agreed to distribute 2.25% to the Organization. The City also pays 100% of the \$1 per subscriber PEG fee that Comcast pays to the City.

**MCMINNVILLE COMMUNITY MEDIA**  
*NOTES TO FINANCIAL STATEMENTS*  
*YEARS ENDED JUNE 30, 2016 AND 2015*

***TEMPORARILY RESTRICTED NET ASSETS***

The cable providers pay a fee of \$1.00 per subscriber per month to the City of McMinnville, which are passed on to the Organization. These fees are restricted for public, educational, government (PEG) access capital purposes.

***RETIREMENT PLAN***

The Organization provides a SIMPLE IRA to all employees whom are regularly scheduled to work more than 20 hours per week. These employees are immediately eligible to participate in the plan. The Organization may contribute up to 3% of an employee's eligible salary in each year. Contributions to the plan paid by the Organization for the years ended June 30, 2016 and 2015 were \$2,981 and \$3,156, respectively.

***SUBSEQUENT EVENTS***

Management has evaluated subsequent events through October 20, 2016, the date on which the financial statements were available to be issued.



**City Council- Regular**

**Meeting Date:** 11/22/2016

**Subject:**

**From:** Melissa Grace, City Recorder / Legal  
Assistant

---

**AGENDA ITEM:**

EXECUTIVE SESSION: Pursuant to ORS 192.660(2)(h) to consult with Legal Counsel concerning legal rights and duties regarding current litigation or potential litigation.

**BACKGROUND:**

---