

**CITY COUNCIL MEETING
McMinnville, Oregon**

AGENDA

**McMINNVILLE CIVIC HALL
200 NE SECOND STREET**

**December 8, 2015
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.*

CITY MANAGER'S SUMMARY MEMO

- a. City Manager's Summary Memorandum

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. INTERVIEW AND APPOINTMENT OF MEMBER TO THE BUDGET COMMITTEE
- 2. INTERVIEW AND APPOINTMENT OF MEMBER TO THE McMINNVILLE HISTORIC LANDMARKS COMMITTEE
- 3. OLD BUSINESS
 - a. Update from Zero Waste Regarding Fundraising Efforts to Meet Matching Funds

- b. Approval of Visit McMinnville Business Plan
 - c. Consideration of a Roundabout for the Intersection of Johnson and 5th Streets
4. NEW BUSINESS
- a. Presentation by Fred Stemmler of Recology Western Oregon regarding Reducing the Inflow of Material o Riverbend Landfill
 - b. Presentation by Neal Hulkower Regarding Ideas for a More Representative City Council
 - c. Confirmation of 2016 Committee Appointments
5. ORDINANCES
- a. **Ordinance No. 4998**: Granting a non-exclusive telecommunications franchise to Astound **(2nd Reading)**
 - b. **Ordinance No. 4999**: Granting a non-exclusive telecommunications franchise to Online NW ("Grantee" or "Franchisee")
6. ADVICE / INFORMATION ITEMS
- a. Reports from Councilors on Committee and Board Assignments
 - b. Department Head Reports
7. ADJOURNMENT



City Council- Regular

TO: Mayor and City Council
FROM: Rose Lorenzen, Administrative Assistant / HR Analyst
DATE: 12/08/2015
SUBJECT: City Manager's Summary Memorandum

SUMMARY:

M E M O R A N D U M

DATE: December 1st, 2015
TO: Mayor and City Council
FROM: Martha Meeker, City Manager
SUBJECT: Agenda for the Regular Council Session and Urban Renewal Agency for December 8th, 2015

Interviews and Confirmation of 2016 Committee Appointments

While the majority of members on the City's various committees remain unchanged going into 2016, there are upcoming vacancies on the Budget Committee and the Historic Landmarks Commission. To fill these voids the City advertised the openings and has since received multiple applications for the Council's consideration. To aid in the Council's decision making, the staff has arranged for interviews with each of the following candidates.

- Budget Committee
 - One opening for consideration
 - Applications from Meredith Nelson, Matt Newton, and Fred Stemmler
- Historic Landmarks Commission
 - One opening for consideration
 - Applications from Rebecca Quandt and JW Millegan

OLD BUSINESS

Item 1a: Update from Zero Waste on the Status of Matching Funds to the City's 2015 Grant; Initiative to Reduce Usage of Plastic Bags

Item 1b: Visit McMinnville Business Plan Approval

Visit McMinnville presented their business plan for the 2015/2016 fiscal year on November 24th. The

last step for the Council is approval as called for in VM's contract with the City.

Item 1c: Consideration of a Roundabout for the Intersection of Johnson and 5th Street

NEW BUSINESS

Item 2b: Presentation by Fred Stemmler of Recology Western Oregon regarding Reducing the Inflow of Material to Riverbend

Recology is the City's franchisee for solid waste collection and will provide the Council a look at the latest on their disposal contract with Waste Management, alternate landfill possibilities and a look at expanded recycling operations for 2016.

Item 2c: Presentation by Neal Hulkower on "Ideas for a More Representative City Council"

Dr. Neal Hulkower is an independent consultant and freelance writer in McMinnville, OR. His presentation will focus on the benefits of electing Council members at large versus by wards.

ORDINANCE

Item 3a: Ordinance Granting a non-exclusive telecommunications franchise to Astound (2nd reading)

Astound Broadband LLC is seeking to provide a variety of telecommunications, high speed data transmission, broadband Internet access and other similar services within McMinnville to businesses and other telecommunication providers. To facilitate this, Astound is seeking access to the City's Rights of Way which requires a franchise agreement.

Item 3b: Ordinance Granting a non-exclusive telecommunications franchise to Online NW

Online NW plans to provide telecommunication services to businesses across the City and in residential areas as depicted in the accompanying service area map listed at the end of the Franchise agreement. This Franchise agreement will allow them access to the City's Rights of Way in order to facilitate the infrastructure needed for this endeavor.

URBAN RENEWAL AGENCY

- Extending the Design Contract for Alpine St to include the area between 10th and 11th Streets
-



City Council- Regular

Meeting Date: 12/08/2015

TOPIC

INTERVIEW AND APPOINTMENT OF MEMBER TO THE BUDGET COMMITTEE

Attachments

Budget Committee Applications



APPLICATION FOR SERVICE ON BOARD OR COMMISSION

Thank you for your interest in serving your community. The information on this form will help the Mayor and City Council learn about the background of persons interested in serving on a particular board or commission.

Name: Meredith P. Nelson
Address: 331 NE 7th St
McMinnville, OR 97128
Email: Meredith.Nelson@CapellaHealth.Com

Phone:
Home:
Cell: 615-417-2884
Business: (503) 435-6322

Board or commission for which you are an applicant:

<input type="checkbox"/> City Council	<input type="checkbox"/> Historic Landmark Committee
<input type="checkbox"/> Advisory Board	<input type="checkbox"/> Landscape Review Committee
<input type="checkbox"/> Airport Commission	<input type="checkbox"/> McMinnville Urban Renewal
<input type="checkbox"/> Board of Appeals	<input type="checkbox"/> Advisory Committee (MURAC)
<input checked="" type="checkbox"/> Budget Committee	<input type="checkbox"/> Planning Commission
<input type="checkbox"/> Citizens' Advisory Committee	

****Ward in which you reside (if applicable):** _____

How many years have you lived in McMinnville? 2 Years

Educational and occupational background:

- 2001: MBA from Belmont University. Jack C. Massey School of Business, Nashville TN
- 1996: BA from Tulane University, New Orleans LA
- Currently, Chief Financial Officer at Willamette Valley Medical Center
- Certified CPA

Why are you interested in serving? I would love to help out my community. I am a numbers person so the budget committee is a natural fit. I look forward to learning more about the process and look forward to helping in any way I can.

Date 7/20/15 Signed 

Please return to City Hall, 230 NE Second Street, McMinnville, OR 97128



APPLICATION FOR SERVICE ON BOARD OR COMMISSION

Thank you for your interest in serving your community. The information on this form will help the Mayor and City Council learn about the background of persons interested in serving on a particular board or commission.

Name: Matthew A. Newton
 Address: 2315 SW Taylor Dr.
McMinnville, OR 97128
 Email: maNewton@ft.newyorklife.com

Phone: _____
 Home: 971-241-0050
 Cell: "/
 Business: "/

Board or commission for which you are an applicant:

<input type="checkbox"/> City Council	<input type="checkbox"/> Historic Landmark Committee
<input type="checkbox"/> Advisory Board	<input type="checkbox"/> Landscape Review Committee
<input type="checkbox"/> Airport Commission	<input type="checkbox"/> McMinnville Urban Renewal
<input type="checkbox"/> Board of Appeals	<input type="checkbox"/> Advisory Committee (MURAC)
<input checked="" type="checkbox"/> Budget Committee	<input type="checkbox"/> Planning Commission
<input type="checkbox"/> Citizens' Advisory Committee	

****Ward in which you reside (if applicable):** _____

How many years have you lived in McMinnville? 9

Educational and occupational background: Board of Directors, McMinnville
Noon Rotary; community service chair. Agent New York Life
6-14 - present. Assistant state Manager Verizon
wireless & Acting Assistant manager 2-12-3-14; Sales
Representative Verizon wireless 11-08 - 2-12; Solutions specialist 3-14-
6-14

Why are you interested in serving? I'm interested in serving on the
Budget Committee to gain a better understanding of the
inner workings & organization of the City of McMinnville. Being
on the committee will allow me to review all of the
city's departments and contribute to our community.

Date 8-5-15 Signed [Signature]

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Some college - Chemeketa.

High school - Snohomish High Snohomish, WA



APPLICATION FOR SERVICE ON BOARD OR COMMISSION

Thank you for your interest in serving your community. The information on this form will help the Mayor and City Council learn about the background of persons interested in serving on a particular board or commission.

Name: Fred Stemmler Phone: _____
Home: _____
Address: 977 NW meadows Dr Cell: (503) 781-4806
McMinnville OR 97128 Business: _____
Email: fstemmler@recology.com

Board or commission for which you are an applicant:

<input type="checkbox"/> City Council	<input type="checkbox"/> Historic Landmark Committee
<input type="checkbox"/> Advisory Board	<input type="checkbox"/> Landscape Review Committee
<input type="checkbox"/> Airport Commission	<input type="checkbox"/> McMinnville Urban Renewal
<input type="checkbox"/> Board of Appeals	<input type="checkbox"/> Advisory Committee (MURAC)
<input checked="" type="checkbox"/> Budget Committee	<input type="checkbox"/> Planning Commission
<input type="checkbox"/> Citizens' Advisory Committee	

****Ward in which you reside (if applicable):** _____

How many years have you lived in McMinnville? 3

Educational and occupational background: B.S Accounting '03 USC,
CPA (current - California), Deloitte '03 - '05,
General Manager Recology Western Oregon

Why are you interested in serving? Community service is an
important part of my personal + professional
values. The Budget Comm aligns with my skill
set + interests - I'd love to use these
to give back.

Date 8/25/15 Signed [Signature]

Please return to City Hall, 230 NE Second Street, McMinnville, OR 97128



City Council- Regular

Meeting Date: 12/08/2015

Subject: Appointment of Member to Historic Landmarks Committee

From: Doug Montgomery, Planning Director

AGENDA ITEM:

INTERVIEW AND APPOINTMENT OF MEMBER TO THE McMINNVILLE HISTORIC LANDMARKS COMMITTEE

BACKGROUND:

With the recent resignation of Marcia Mikesh from the McMinnville Historic Landmarks Committee (HLC), there exists a vacancy on that committee. Consistent with the requirements of McMinnville Ordinance No. 4401, appointment of persons to fill this position requires that they be appointed by the City Council. Wishing to be considered for appointment to this vacancy are two candidates: Ms. Rebecca Quandt; and Mr. J.W. Millegan. Both of these candidates have experience in the field of historic preservation, as noted in their submitted application materials, copies of which are attached.

By way of further background, the HLC is a five member committee that currently includes as its members Joan Drabkin, Bob McCann, John Mead, and Patti Webb. The committee is charged with reviewing building permit applications that involve alterations to historic structures, or their removal; conducting surveys and inventories of potential historic resources as budgeted; making recommendations to the Planning Commission and City Council regarding historic preservation issues; and promoting public awareness and appreciation of the City's historic resources.

RECOMMENDATION:

The candidates have been invited to attend the Council meeting to allow for questions to be asked regarding their interest and qualifications for this position. It is staff's opinion that both candidates have historic preservation related experience that would serve well the Historic Landmarks Committee. On balance, however, and based upon her current position and work with the McMinnville Downtown Association, relevant educational background, recent study and published work on McMinnville's historic downtown buildings, and involvement in other community activities, staff would recommend the appointment of Rebecca Quandt to this vacant position.

Attachments

HLC Candidate Applications



Thank you for your interest in serving your community. The information on this form will help the Mayor and City Council learn about the background of persons interested in serving on a particular board or commission.

Name: Rebecca Quandt Phone: _____
 Home: _____
 Address: 620 SW Taft St. Cell: 253-330-1273
McM OR 97128 Business: 503-472-3605
 Email: Rebecca@DowntownMcMinnville.com

Board or commission for which you are an applicant:

<input type="checkbox"/> City Council	<input checked="" type="checkbox"/> Historic Landmark Committee
<input type="checkbox"/> Advisory Board	<input type="checkbox"/> Landscape Review Committee
<input type="checkbox"/> Airport Commission	<input type="checkbox"/> McMinnville Urban Renewal
<input type="checkbox"/> Board of Appeals	Advisory Committee (MURAC)
<input type="checkbox"/> Budget Committee	<input type="checkbox"/> Planning Commission
<input type="checkbox"/> Citizens' Advisory Committee	

**Ward in which you reside (if applicable): _____

How many years have you lived in McMinnville? 1.5 years

Educational and occupational background: I have an undergrad degree from UW in Urban Planning/PLIS, and a Masters Degree from Clemson University, from in Historic Preservation. I have extensive historic preservation, urban design and architectural research. I work for the MDA currently.

Why are you interested in serving? My passion for historic preservation as well as my professional and academic experience make me a great fit for this position. My involvement with the downtown association and love for this community allow me the opportunity to ~~serve~~ utilize my skill sets.

Date 11-2-15 Signed Rebecca Quandt

Please return to City Hall, 230 NE Second Street, McMinnville, OR 97128



APPLICATION FOR SERVICE ON BOARD OR COMMISSION

Thank you for your interest in serving your community. The information on this form will help the Mayor and City Council learn about the background of persons interested in serving on a particular board or commission.

Name: JW Millegan

Phone:

Home: N/A

Address: PO Box 1610 (624 NE 2nd Street)

Cell: (503) 341-1098

McMinnville, Oregon 97128

Business: (503) 472-7045

Email: personalassistant@jwmillegan.com

Board or commission for which you are an applicant:

<input type="checkbox"/> City Council	<input checked="" type="checkbox"/> Historic Landmark Committee
<input type="checkbox"/> Advisory Board	<input type="checkbox"/> Landscape Review Committee
<input type="checkbox"/> Airport Commission	<input type="checkbox"/> McMinnville Urban Renewal
<input type="checkbox"/> Board of Appeals	Advisory Committee (MURAC)
<input type="checkbox"/> Budget Committee	<input type="checkbox"/> Planning Commission
<input type="checkbox"/> Citizens' Advisory Committee	

****Ward in which you reside (if applicable):** Ward 3

How many years have you lived in McMinnville? 17 years

Educational and occupational background: McMinnville HS class of 1975; Lewis and Clark College BS in Economics/Political Science 1979; Atkinsons School of Management - Willamette University (1 yr of a 2 yr program); Stockbroker since 1983; owner of JW Millegan Inc. Investment Banking & Brokerage since 1995; former land use planner with DLCD, Yamhill County, Metro, and Clackamas County; neighborhood land use & historic preservation volunteer.

Why are you interested in serving? I want to help the City identify and be proactive in protecting our historic fabric while at the same time providing for our future. As a volunteer I wrote and guided the adoption of Salem's first National Historic District and also obtained the funding for Portland's Alphabet National Historic District. Both Districts were created without City funding or staff and received widespread support. I also have practical experience restoring a turn of the century Victorian and a 1910 Jacobean.

Date [Signature]

Signed [Signature]

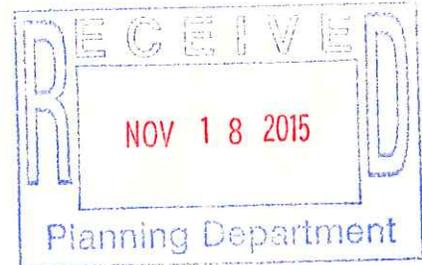
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INVESTMENT
BANKING AND BROKERAGE

November 18, 2015

Mayor Rick Olson
City Hall
230 NE 2nd Street
McMinnville, Oregon 97128



Via mail and email

Dear Mayor Olson,

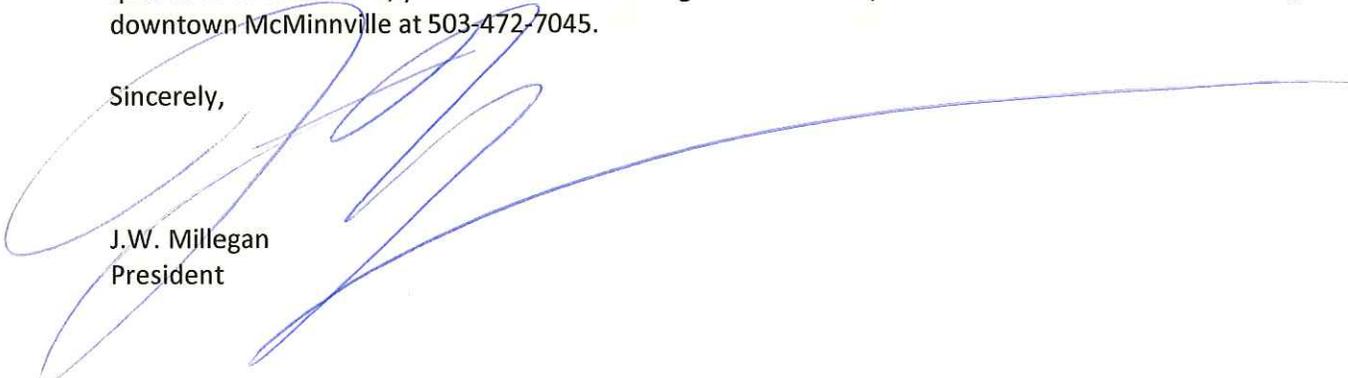
As we discussed, attached is my application to be a member of the City's Landmarks Commission.

My background is uniquely suited to help the city with its future growth while at the same time protect its historic fabric. This background includes work as paid staff for LCDC and Yamhill County Planning Department. As a volunteer I wrote and guided the development of National Historic Districts in Salem and Portland. With my understanding of neighborhood associations as a volunteer and paid staff these districts were developed, adopted, and nationally designated all without using city resources. Doing this not only saved the city's money and staff time, but also ensured that the districts enjoyed popular citizen involvement and support. In addition, as an owner of a private Broker/Dealer in McMinnville, I have a strong grounding in private enterprise.

As our Main Street has gained national recognition, so too has McMinnville grown dramatically since I graduated from McMinnville High School in 1975. I know that with this growth and recognition comes pressure that can sometimes destroy the very character we love. I want to help the city to be prepared for this eventuality before it becomes an issue. As such, I will encourage the landmarks commission to take a leading role in updating our historical inventory and processes. My background and experiences can help the city through this process while engaging citizens without stressing city resources and staff.

Thank you for the opportunity to volunteer my efforts for the citizens of McMinnville. If you have any questions or comments, you can reach me during the week at my office in the historic O'Dell Building in downtown McMinnville at 503-472-7045.

Sincerely,


J.W. Millegan
President



City Council- Regular

Meeting Date: 12/08/2015

TOPIC

Update from Zero Waste Regarding Fundraising Efforts to Meet Matching Funds

Attachments

Ban the Bag Information Sheet

Ban-the Bag background

(for inspiration, please view the short video “The Story of Solutions” at <https://youtu.be/cpkRvc-sOKk>)

Four cities in Oregon have passed an ordinance banning single-use plastic carryout bags:

Portland (October 2011 for large retailers, expanded to all retailers October 2013)

Corvallis (effective January 2013 for businesses with 50+ FTE, extended to all businesses July 2013)

Eugene (effective May 2013)

Ashland (effective November 2014)

Forest Grove is well into the planning process, anticipating a council vote in Feb-Mar 2016

The following features are commonly found in the ordinances:

- exemption for use of in-store plastic bags for produce, bulk items, prescriptions
- may exempt businesses based on size
- generally require businesses to charge for each paper bag (Portland allows, but does not require it; Eugene & Corvallis require 5c; Ashland requires 10c)
- requires that paper or reusable bags be provided to those holding a voucher issued under ORS 409.600, Women, Infants and Children Program
- encourages the use of non-disposable bags
- establishes penalties for non-compliance

Each city carried out a deliberate process of outreach and opinion gathering, for example:

- council work sessions
- business outreach via telephone calls, personal visits, web-based polls
- one or more stakeholders (businesses and business-promoting organizations) meetings
- one or more public meetings
- follow-up polling of business and customer satisfaction

We propose the following schedule for McMinnville:

- January – April 2016: Business outreach and stakeholders meetings
- Mid-April 2016: First public forum – draft ordinance presented
- April – October 2016: Further business and public outreach
- Mid-October 2016: Second public forum – draft ordinance discussed
- November - December 2016: Council vote
- Enactment: April 22, 2017 – Earth Day!



City Council- Regular

Meeting Date: 12/08/2015

Subject:

From: Rose Lorenzen, Administrative Assistant / HR Analyst

AGENDA ITEM:

Approval of Visit McMinnville Business Plan

BACKGROUND:

Attachments

Visit McMinnville Business Plan

VISIT MCMINNVILLE

BUSINESS PLAN & BUDGET

FISCAL YEAR 2016



INTRODUCTION

Dear Tourism Stakeholder,

In 2014, the McMinnville City Council enacted a citywide transient lodging tax (TLT) to raise funds to promote McMinnville as a world-class tourism destination. In doing so, they made a clear statement that tourism would be a primary pillar of the city's long-term economic development strategy.

Following that historic act of leadership, the City Council appointed a broad and diverse group of local leaders to design a plan to invest the city's TLT funds in a way that would generate the greatest return on investment for McMinnville's economy.

After nearly two years of research, collaboration, brainstorming, and tireless work from many dedicated citizens, the City Council approved the creation of Visit McMinnville, a full-service destination marketing organization (DMO) dedicated to enhancing McMinnville's economy through the promotion of tourism.

The business plan on the following pages reflects the marketing projects, programs, and services that Visit McMinnville will implement in the organization's inaugural year to attract visitors to McMinnville, and, in doing so, enhance all segments of the local economy.

As the team tasked with the City of McMinnville's tourism development program, we look forward to working with the community to achieve economic growth and prosperity for all McMinnvillians.

Sincerely,

The Visit McMinnville Board of Directors:

Jeff Knapp
Executive Director
Visit McMinnville

Erin Stephenson
Board Chair
Co-Owner
3rd Street Flats

Maria Stuart
Board Vice Chair
Partner
R. Stuart & Co.

Cassie Sollars
Board Treasurer (At-Large-Member)
Manager
Downtown Association

Ellen Brittan
Board Member
Co-Owner
Brittan Vineyards

Martha Meeker
Board Member (Non-Voting)
City Manager
City of McMinnville

Scott Hill
Board Member (Non-Voting)
City Councilor
City of McMinnville

Emily Howard
Board Member
Co-Owner
Thistle Restaurant

Courtney Cunningham
Board Member-At-Large
Co-Owner
Community Plate

Carmen Peirano
Board Member
Owner
Nick's Italian Cafe

Ty Rollins
Board Member
Owner
Comfort Inn

Cindy Lorenzen
Board Member
Owner
Sage Restaurant

TABLE OF CONTENTS



PETE ALPORT

- Introduction 1
- Visit McMinnville's Guiding Principles 3
- What is Visit McMinnville? 4-5
- How We Measure Success 6
- The Marketing Model - *The Community Tourism Funnel* 7
- Fiscal Year 2014 and 2015 In Review 8
- Fiscal Year 2016 Goals and Objectives 9
- The 2016 Budget 10-11



GARY THURMAN

VISIT MCMINNVILLE'S GUIDING PRINCIPLES

MISSION

Visit McMinnville's mission is to enhance the economic vitality of our community by promoting McMinnville as a year-round visitor, convention, and event destination by maximizing collaborative partnerships, efficiently activating transient lodging tax revenue into effective sales and marketing programs, and cultivating a world-class visitor experience.

VISION

Visit McMinnville's vision is to be the most effective Destination Marketing Organization (DMO) in the State of Oregon, to provide the best delivery of tourism service and information to McMinnville visitors, to be the tourism marketing resource of choice for businesses in McMinnville, and to be the industry leader in financial management and stewardship of public funds.

PURPOSE

Visit McMinnville is an economic development organization whose function is to create an effective mix of marketing, sales, and service programs which are designed to produce a positive economic impact of visitor spending in McMinnville. Developing and implementing these programs results in enhancing the City's livability by providing year-round employment. Visit McMinnville sells the entire City and works in good partnership with all sectors of the McMinnville and Yamhill Valley visitor and convention industry.

VALUES

Excellence in Stewardship of Public Funds

Optimum Trust and Relationship with the Citizens of McMinnville and McMinnville City Council

Innovation, Creativity, and Excellence in All That We Do

Collaboration with Key Partners

Highest Level of Ethical Standards

Reflect the Genuine Warm, Welcoming, and Authentic Character of the Community



WHAT IS VISIT MCMINNVILLE?

VISIT MCMINNVILLE is an innovative marketing organization dedicated to enhancing McMinnville's economy by attracting as many visitors as possible to the City, and once they're here, ensuring those visitors spend as much money as possible with local businesses.

PHOTO: PETE ALPORT



THINK OF US as a full-service marketing,
PR, and advertising agency with only ONE client:
The McMinnville Tourism Industry

HOW WE MEASURE SUCCESS

Visit McMinnville uses several metrics to gauge the ebbs and flows of McMinnville's tourism industry and to evaluate the effectiveness of Visit McMinnville's marketing efforts. When viewed cumulatively, these metrics provide a reliable approximation of the health of the industry and the effectiveness of Visit McMinnville's programs and services.

Listed below are the primary **TOURISM METRICS Visit McMinnville uses with a brief description of each.**

TRANSIENT LODGING TAX COLLECTIONS (TLT)

TLT collections serve as the primary metric Visit McMinnville uses to measure the ebbs and flows of the McMinnville tourism industry. Due to the demand-driven nature of lodging pricing (the higher the demand, the higher the lodging rates), TLT collections provide a **BLENDED METRIC** of rate and occupancy that effectively approximates the overall demand for a destination's lodging inventory.

CITYWIDE LODGING OCCUPANCY

Citywide lodging occupancy is the percentage of available lodging units occupied for a defined period of time. Smith Travel Research (STR) occupancy data is the industry standard used by Travel Oregon, The Oregon Employment Department, most lodging companies, and Visit McMinnville. Along with TLT data, citywide occupancy data helps Visit McMinnville gauge the ebbs and flows of the City's tourism industry.

WEBSITE TRAFFIC TO VISITMCMINNVILLE.COM

Visit McMinnville's marketing model is designed to drive customers and leads to visitmcminnville.com where they are converted to customers for local businesses. As a result, the volume of visitors to Visit McMinnville's website is a key metric used to evaluate interest in our destination and the effectiveness of our marketing.

REFERRAL TRAFFIC FROM VISITMCMINNVILLE.COM TO STAKEHOLDER WEBSITES

Visitmcminnville.com is designed to convert Visit McMinnville's marketing efforts to revenue for local businesses. Therefore, the volume of website referrals sent from visitmcminnville.com to the websites of tourism stakeholders is a primary metric used to evaluate the effectiveness of Visit McMinnville's marketing.



VISIT MCMINNVILLE'S MARKETING MODEL *(aka The Community Tourism Funnel)*

Virtually everything Visit McMinnville does is designed to drive traffic to VISITMCMINNVILLE.COM. Visit McMinnville's marketing model is founded on the fundamental strategy of generating customers through a comprehensive mix of **MARKETING**, **SALES**, and **PUBLIC RELATIONS** programs, then driving those customers to VISITMCMINNVILLE.COM where they are connected to McMinnville's tourism stakeholders.

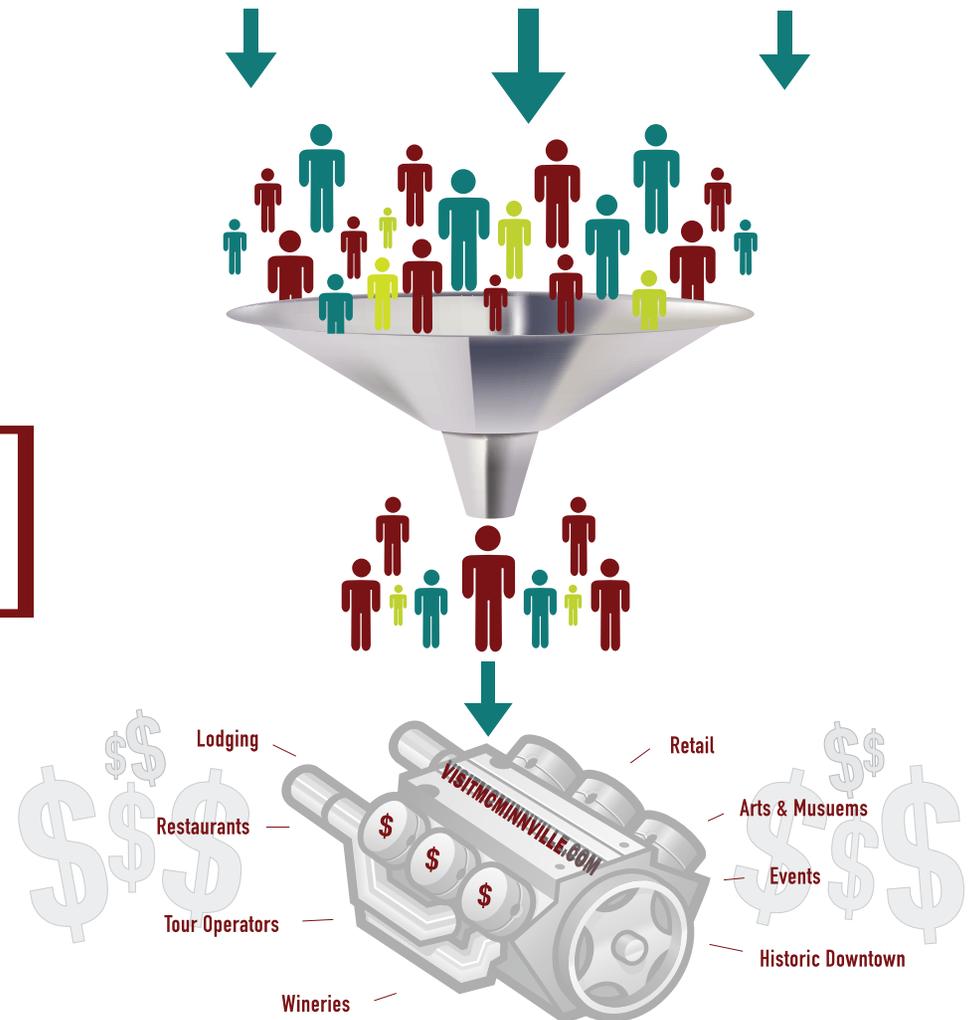
As a non-membership, publicly funded organization, Visit McMinnville offers **free listings** on visitmcminnville.com to tourism stakeholders to ensure transient lodging tax dollars benefit the entire tourism industry.

The premise is, we attract visitors to McMinnville and provide opportunities for local businesses to convert those visitors to customers.

VISIT MCMINNVILLE'S website is the engine that converts Visit McMinnville's marketing efforts to revenue for local businesses.



**TV ADVERTISING • RADIO ADVERTISING • PRINT ADVERTISING
SEO / SEM • CITYWIDE EVENTS • PUBLIC RELATIONS • SOCIAL MEDIA
ONLINE MARKETING • BROCHURE DISTRIBUTION
GROUP SALES AND RECRUITMENT • PROMOTIONS
ECONOMIC DEVELOPMENT BRIDGE CAMPAIGN**



FISCAL YEARS 2014 AND 2015 IN REVIEW

Over the past two years, the City of McMinnville has achieved significant and historical advancements in implementing a tourism development program that will enhance the local economy for many years to come. Listed below are a few of McMinnville's tourism accomplishments from 2014 and 2105.

- City Council worked closely with tourism leaders to implement McMinnville's first ever transient lodging tax (TLT) to generate economic development funds for tourism promotion.
- The City Council appointed a TLT Advisory Committee to develop and implement a tourism grant program.
- The TLT Advisory Committee implemented the grant program, and simultaneously reached out to tourism stakeholders and council members to work through a strategic planning process to determine the most effective long-term way to invest McMinnville's tourism promotion funds.
- In April of 2015, McMinnville's TLT Advisory Committee decided to launch a full-service destination marketing organization (DMO) to invest and manage the City's TLT funds.
- From May through June 2015, the TLT Advisory Committee worked with a team of City staff, tourism consultants, and elected officials to draft bylaws and a sole-source provider contract.
- In July of 2015, Visit McMinnville was officially incorporated as an Oregon 501(c)(6) dedicated to enhancing McMinnville's economy through the promotion of tourism.
- In July of 2015, Visit McMinnville signed a multi-year contract with the City of McMinnville, and City Council appointed the organization's first board of directors.
- In September of 2015, the Visit McMinnville Board of Directors approved the organization's fiscal year 2016 budget, and adopted official Financial Policies and Procedures.
- In September of 2015, the Visit McMinnville Board of Directors hired the organization's first Executive Director.
- In November of 2015, Visit McMinnville signed a lease for temporary office space in downtown McMinnville.
- In November of 2015, Visit McMinnville presented its Fiscal Year 2016 Business Plan and budget to City Council.



FISCAL YEAR 2016 GOALS & OBJECTIVES



- Achieve 10% YOY growth in TLT collections
- Achieve a 2.5 percentage point year-over-year growth in annualized citywide lodging occupancy
- Launch a full-service website and generate a minimum of 250,000 visits to that website
- Recruit and hire a highly effective marketing manager
- Produce an award-winning advertising campaign consisting of TV commercials, radio commercials, print advertisements, and digital advertisements
- Launch a multi-media advertising campaign in target markets
- Design and launch a compelling wine trail marketing promotion
- Produce a 90-second, cutting-edge destination marketing video
- Design and print a premium 12-page "mini-guide" to showcase McMinnville's tourism appeal and promote McMinnville as a year-round travel destination
- Contract with a highly-effective public relations agency to generate positive media coverage for McMinnville tourism
- Launch and maintain a comprehensive social media marketing program
- Work with community partners to recruit meetings, conventions, athletic events, and other travel groups to McMinnville
- Implement a highly effective, sophisticated, and transparent financial management program consistent with Visit McMinnville's financial policies and procedures
- Work with community economic development partners to design and produce a "bridge campaign" to leverage Visit McMinnville's tourism promotion efforts to enhance the community's broader economic development efforts

THE 2016 BUDGET

TOTAL

REVENUE

City Funding - FY 16	425,425
City Funding - FY 15 and Prior	400,000
Advertising Sales	5,000
Total	\$ 830,425

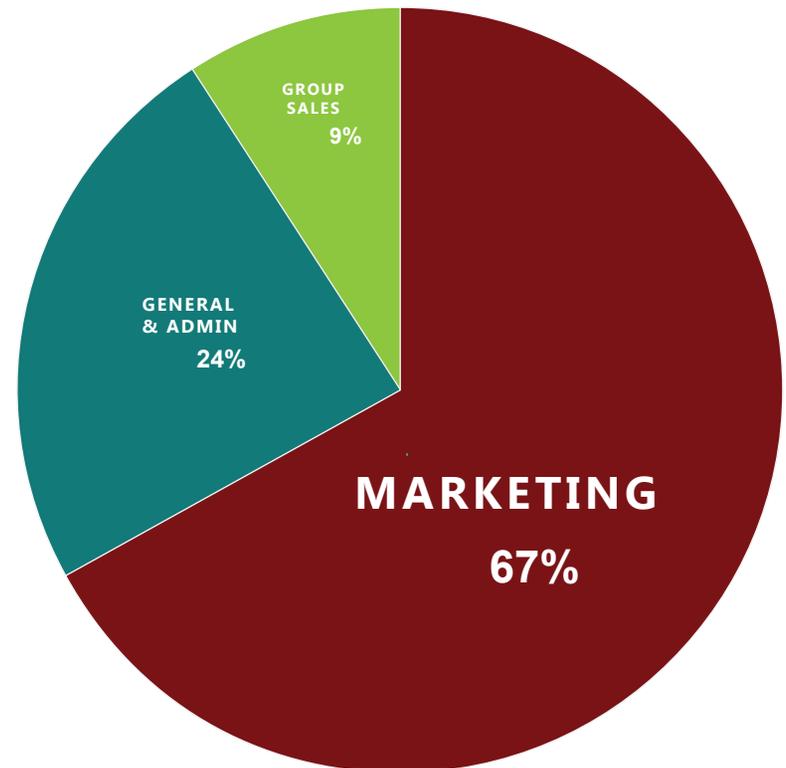
EXPENSES

Marketing	457,436
Group Sales	58,996
General & Administration	166,482
Total	\$682,914

RESERVE FUNDS

\$ 147,511

PRIMARY BUDGET ALLOCATIONS



PETE ALPORT

THE 2016 BUDGET

REVENUE	TOTAL \$	TOTAL %
City Funding - FY 16	425,425	51.2%
City Funding - FY 15 and Prior	400,000	48.2%
Retail Sales	0	0%
Advertising Sales	5,000	0.6%
Event Revenue	0	0%
Other Revenue	0	0%
TOTAL	\$ 830,425	100%

PERSONNEL EXPENSES	TOTAL \$	TOTAL %
Base Pay	96,875	11.7%
Incentive Pay	15,000	1.8%
Payroll Taxes	8,323	1.0%
Employee Benefits	16,328	2.0%
TOTAL	\$ 136,527	16.4%

SALES & MARKETING EXPENSES	TOTAL \$	TOTAL %
Visitor Development Fund	36,000	4.3%
Online Marketing	48,900	5.9%
Photo	16,000	1.9%
Print	16,000	1.9%
Production	91,500	11.0%
Radio	30,000	3.6%
Trade Shows	1,950	0.2%
TV	48,000	5.8%
Collateral	20,500	2.5%
Postage	9,000	1.1%
Public Relations	21,000	2.5%
Promotions	21,000	2.5%
Research	9,000	1.1%
Website Development	41,400	5.0%
Travel & Meals	7,200	0.9%
Retail Purchasing	0	0%
TOTAL	\$ 417,450	50.3%

OVERHEAD EXPENSES	TOTAL \$	TOTAL %
Building Lease	3,750	0.5%
Building Maintenance	750	0.1%
Equipment Lease & Maint.	4,410	0.5%
Professional Fees	89,050	10.7%
Office Supplies	4,767	0.6%
Utilities	0	0.0%
Bank Fees	600	0.1%
Dues & Subscriptions	3,750	0.5%
Insurance	3,600	0.4%
Licenses & Permits	2,700	0.3%
Education & Training	1,000	0.1%
Network & Telco	7,200	0.9%
Non-Capital IT	3,760	0.5%
Depreciation & Amortization	3,600	0.4%
TOTAL	\$ 128,937	15.5%

TOTAL EXPENSES
\$ 682,914



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City Council- Regular

Meeting Date: 12/08/2015

Subject:

From: Rose Lorenzen, Administrative Assistant / HR Analyst

AGENDA ITEM:

Consideration of a Roundabout for the Intersection of Johnson and 5th Streets

BACKGROUND:

Attachments

Roundabout Consideration Summary

Category	Criteria	Evaluation Comments	Conclusion
Safety			
Motor Vehicular Safety	Conflict Points (exposure) Severity (speed)	A single lane roundabout has fewer motor vehicle conflict points than a signal therefore reducing the exposure to potential collisions. A single lane roundabout would have less severe collisions than a signal because the geometry of the roundabout results in slower entry and circulating speeds. Traffic signal w/ four approaches = 32 Single lane roundabout with four approaches = 8 Posted speeds: 5 th Street = 25 mph; Lafayette Ave = 25 mph	Roundabout
Non-Motorized Vehicle Safety	Conflict Points (exposure) Severity (speed)	A single lane roundabout has fewer pedestrian conflict points therefore reducing the exposure to potential accidents. A single lane roundabout would provide a shorter pedestrian crossing distance than a traffic signal; another advantage is that pedestrians only have to cross one direction of traffic at a time with a refuge island in between for their protection. Pedestrians at roundabouts however must rely on drivers to yield as there is no designated red phase for a pedestrian crossing. A traffic signal would provide a protected pedestrian movement along all legs of the intersection.	Roundabout
Traffic Operations			
Peak Hour Traffic Operations	Volume – to – Capacity ratio Average delay/ LOS Queue lengths	Both a single lane roundabout and signal would meet the City's operational standards during the AM and PM peak hours for each respective intersection control. Moderate queues along the northbound and southbound approaches would be present under both single lane roundabout and traffic signal control.	Neutral
Anticipated Users			
Design Vehicles	Appropriate heavy vehicle, Buses, & Emergency Vehicles	Both a traffic signal and single lane roundabout would be designed using the same design / accommodated vehicle(s). It is assumed that the intersection would be designed for a WB-50 and a WB-67 would be accommodated for specific movements.	Neutral
Special User Needs	School children, Elderly, & ADA compliance	Both a traffic signal and single lane roundabout would be designed to accommodate the same special user needs at the intersection. A traffic signal would be easier to navigate for the visually or hearing impaired.	Neutral
System Context			
System Effects	Adjacent traffic control	There are 2 existing traffic signals located on the Lafayette; 1 north at 12 th Street and 1 south at 3 rd Street. Based on the spacing between the study intersection and the nearest traffic signal at 3 rd Street, it is assumed that under traffic signalization this intersection could operate as part of a coordinated signal system. The roundabout would not be able to be coordinated with the signal at 3 rd Street and would act independent to the signal.	Traffic Signal
Environmental Impacts	Land use context Number of stops/emissions	The land use zoning surrounding the intersection is residential and commercial. Neither a traffic signal nor roundabout is anticipated to have significant environmental impacts to the surrounding residential land use. Due to lower intersection delays and shorter queue lengths during non-peak periods, a roundabout could reduce the number of stops, therefore reducing noise and emissions associated with stop and go driving.	Neutral
Emergency Response	Response time / control delay	A traffic signal could be equipped with emergency vehicle preemption along all approaches. Emergency vehicles would be able to use the left turn lanes and opposing traffic lanes to maneuver through the intersection if necessary. The roundabouts 20 foot wide entrance and exit lane will allow emergency vehicles to enter around and pass vehicles stopped within the roundabout.	Neutral
Context at Intersection			
Intersection Footprint	Intersection proper (physical & operational influence area)	A roundabout would require realignment of the east and west bound approaches along 5 th Street to develop the curvature required to reduce entry speeds. This would require ROW acquisition. The traffic signal layout would remain the same and can be accommodated in the existing ROW. The roundabout impact has been reviewed with the School District, and they offer the following concerns / feedback: <ul style="list-style-type: none"> • The loss of parking and the impact to the existing bus lane between their existing parking lots is of significant concern; • The loss of buffer (landscaping and distance) between the road and the building (i.e. the roundabout moves the road closer to their building) is of significant concern; and • The location of the roundabout negatively impacts their future plans for the building frontage along Lafayette Ave, including their goals to restore the pedestrian ingress/egress for the building along that frontage. 	Traffic Signal
Intersection Influence Area	Driveway closures or impacts	There are three driveways that have to be modified on 5 th Street, 7 th Street would have to be closed and one driveway modified on Lafayette Street for the roundabout. No driveways need to be modified on 5 th Street, 7 th Street can remain and no driveways on Lafayette need to be modified for the traffic signal.	Traffic Signal
Costs			
Costs	Initial Costs Long Term Costs	Initial costs are approximately \$500,000 - \$750,000 greater for a concrete roundabout. Funding for the increased costs would likely need to come from the City's Street Fund, meaning that routine pavement overlays (approx \$400,000 - \$500,000 per year) would need to be eliminated. When long-term costs are considered, roundabouts eliminate hardware, maintenance and electrical costs associated with traffic signals, which can cost between \$5,000 and \$10,000 per year.	Traffic Signal
Constructability / Traffic impacts			
Construction impacts	Traffic impact during construction	With a traffic signal, some widening of Lafayette Avenue will happen to add a right-turn lane for southbound to westbound traffic. Likely much of the widening can be constructed with limited impact to through traffic on Lafayette Avenue. With a roundabout, the entire intersection will be reconstructed, and it is likely that through traffic will need to be detoured into the neighborhood (via 9th, Logan, and 4th Streets) for a significant period of time.	Traffic Signal



City Council- Regular

Meeting Date: 12/08/2015

TOPIC

Presentation by Fred Stemmler of Recology Western Oregon regarding Reducing the Inflow of Material o
Riverbend Landfill



City Council- Regular

Meeting Date: 12/08/2015

TOPIC

Presentation by Neal Hulkower Regarding Ideas for a More Representative City Council

Attachments

Council Representation Presentation

Some Ideas for a More Representative City Council

8 December 2015

**Neal D. Hulkower, Ph.D.
208 SW Eckman St.
McMinnville, OR 97128
nhulkower@yahoo.com**

Outline

- **Topics**
- **Case for At-Large Election of City Council Members**
- **Voting Methods**
- **Why Borda is Better**
- **Recommendations**
- **References**
- **Biography**

Topics

- **Election of council members by ward vs at-large**
- **Methods of expressing preferences and aggregating votes**

Case for At-Large Election of City Council Members

- Population of McMinnville is simply too small to elect by ward

	Small (25,000- 69,999)	Medium (70,000- 199,999)	Large (200,000 And Up)
At-Large	48.9%	43.7%	16.4%
Mixed-System	25.0%	25.4%	38.2%
District	26.1%	31.0%	45.5%

Source: Svara (2003)

- **At-Large election**
 - Will increase the likelihood of competitive races and eliminate uncontested seats
 - Should result in a wider field of candidates
 - In conjunction with the right voting method, will ensure best representation of the will of the public

Aggregation Method

Why the Choice is Important

“....the winner of an election may more accurately reflect the choice of a decision procedure rather than the views or preferences of the voters” (Saari, 2001b, p.13)

And all methods are NOT created equal

Positional Voting Methods

- Voters rank order candidates in order of preference with ties permitted
- Points are assigned based on rank with the candidate having the largest point total being declared the winner
- For three candidates, the notation for normalized points assigned in descending order of rank is $(1,s,0)$ where $0 \leq s \leq 1$
 - Plurality voting, assigns $(1,0,0)$ so $s = 0$
 - Anti-plurality voting, assigns $(1,1,0)$ so $s = 1$
 - The Borda Count, assigns $(1, \frac{1}{2}, 0)$ so $s = \frac{1}{2}$

Different Winners

Number of Voters	Ranking of Candidate A	Ranking of Candidate B	Ranking of Candidate C
4	1 st	2 nd	3 rd
2	3 rd	1 st	2 nd
1	2 nd	3 rd	1 st
2	1 st	3 rd	2 nd
0	2 nd	1 st	3 rd
4	3 rd	2 nd	1 st

- Notation: $A \succ B$ means A is preferred to B
- Candidate A is the Plurality winner, (1,0,0): $A \succ C \succ B$ with tally 6:5:2
- Candidate B is the Antiplurality winner, (1,1,0): $B \succ C \succ A$ with tally 10:9:7
- Candidate C is the Borda winner, $(1, \frac{1}{2}, 0)$: $C \succ A \succ B$ with tally 7:6½:6

Example based on Saari (2001b, Subsection 1.3.1), See also Hulkower (2011)

So How Do You Pick? (1 of 2)

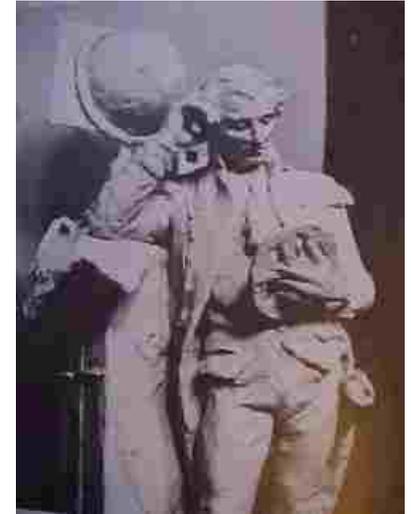
- Method should satisfy a few simple, rational properties:
 - **Unrestricted domain**: allow each voter to select any strictly transitive ranking of alternatives (if $A \succ B$ and $B \succ C$ then $A \succ C$)
 - **Societal (aggregated) outcome is transitive**
 - **Pareto condition**: if all voters have $A \succ B$ then the societal outcome also has $A \succ B$
 - **Binary Independence** or **Independence of Irrelevant Alternatives (IIA)**: “...if p_1 and p_2 are any two profiles for which each voter has the same relative ranking of some specified pair, then the societal ranking for this pair is the same for both profiles.” (Saari, 2008, p. 22)
 - Trouble is that by Arrow’s Theorem (Arrow, 1963), the only method satisfying these four properties is a dictatorship
 - Also, IIA is incompatible with transitivity
 - But there is hope.....

So How Do You Pick? (2 of 2)

- Looking only at the relative position of A and B and not considering the intensity ignores critical information.
 - In other words, it matters not only if $A \succ B$ but also whether $A \succ B \succ C \succ D$ or $A \succ C \succ D \succ B$; so replace IIA with:
- ***Intensity of Binary Independence (IBI) or Intensity form of Independence of Irrelevant Alternatives (IIIA):***
“society’s relative ranking of any two alternatives is determined only by each voter’s relative ranking of the pair and the intensity of that ranking [emphasis added]. That is, for any pair of alternatives..., if each voter’s relative ranking and intensity ranking is the same for two profiles p_1 and p_2 , then society’s ranking of this pair is the same for both profiles.” (Saari, 2008, pp. 189-190)

A Bit About Borda

- A positional voting method proposed by Jean-Charles de Borda in the late 18th century (Borda,1781)
- For n candidates, assigns $(n-1)$ points (called the **Borda Score**) to the highest ranked candidate, $(n-2)$ to the second highest,....., 0 to the candidate ranked last.* Candidates that are tied each get the average of the total of the points for the positions they occupy
- The societal outcome is the ranking of candidates based on the totaled Borda Scores and the **Borda Winner** is the candidate with the largest point total



* The actual number of points assigned can vary and the order can be descending or ascending as long as the difference in points assigned neighboring candidates is constant.

Why Borda is Better



- Saari proved that the Borda Count is
 - The only nondictatorial positional voting method that satisfies Unrestricted Domain, Pareto, transitivity, and IBI (IIIA)
 - Unique among all positional voting methods in that “all possible inconsistencies in Borda rankings over subsets of candidates are strictly due to Condorcet terms” (Saari, 2008, p.157)
 - **Condorcet *n*-tuples** are rankings that result in a complete tie
 - Condorcet 4-tuple is $A \succ B \succ C \succ D$, $B \succ C \succ D \succ A$, $C \succ D \succ A \succ B$, and $D \succ A \succ B \succ C$
 - Dropping D leaves the Condorcet triple $A \succ B \succ C$, $B \succ C \succ A$, $C \succ A \succ B$ and also $A \succ B \succ C$, the source of inconsistencies

References (Saari, 2000a, 2000b, 2001a, 2001b, 2008)

When the Borda Winner is not the Majority Winner (1 of 2)

Number of voters	Ranking of A	Ranking of B	Ranking of C
5	1st	2nd	3rd
4	3rd	1st	2nd

- The majority winner, determined by plurality voting which scores with $(1,0,0)$, is A with 5 votes, with B second with 4 votes, and C last with 0 votes
 - Plurality voting does not use all the information; in particular, the second choice of each voter plays no role in determining the majority winner
- The Borda Winner determined by scoring with $(1, \frac{1}{2}, 0)$ is B with a Borda Score of $2\frac{1}{2} + 4 = 6\frac{1}{2}$ followed by A with a Borda Score of $5 + 0 = 4$ and C with a Borda Score of $0 + 2 = 2$. All information is used

When the Borda Winner is not the Majority Winner (2 of 2)

- **While the majority winner, A, is the first choice of 5 of the 9 voters, he or she is the third choice of the rest**
- **The Borda Winner, B, is the first choice of 4 voters and second choice of the rest**
- **The goal of a voting method should be to use complete information to arrive at a societal outcome that best reflects the preferences of the voters**
 - **If we choose the majority winner over the Borda Winner when they disagree, we risk having a significant minority unhappy**
 - **If we choose the Borda Winner, this would not be the case**

Recommendations

- **City Council members should be elected at-large rather than by wards**
- **Implement rank ordering of all candidates, not “vote for one”**
- **Aggregate the rankings using the Borda Count**
- **Top ranking candidates are elected**

References

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Hulkower, Neal D. (2011) Borda is Better, *Oregon Wine Press*, October 2011, Issue no. 308, p. 36.

Saari, D. G. (2000a) Mathematical structures of voting paradoxes I: pairwise vote, *Economic Theory*, 15, 1-53.

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Saari, Donald G. (2008) *Disposing Dictators, Demystifying Voting Paradoxes, Social Choice Analysis*, New York: Cambridge University Press.

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Biography

Dr. Neal D. Hulkower is an independent consultant and freelance writer in McMinnville, OR. His areas of expertise include applied mathematics, decision analysis and support, technical assessment, cost and schedule analysis, risk assessment, process improvement, quality assessment and support, and executive management. He was a senior executive at MCR, LLC, a professional services company headquartered in McLean, VA, and held three executive positions including President and CEO at RAF Technology, Inc., a software company in Redmond, WA. He also held positions of increasing responsibility at the Jet Propulsion Laboratory, TRW, and The MITRE Corporation. Dr. Hulkower earned a B.A. in Astronomy, and an M.S. and Ph.D. in Applied Mathematics with a specialization in celestial mechanics, all from Northwestern University. He has taught Mathematics both full- and part-time at several colleges and universities. Dr. Hulkower is an author of numerous popular and technical articles on a range of subjects including the Borda Count.



City Council- Regular

Meeting Date: 12/08/2015

Subject:

From: Rose Lorenzen, Administrative Assistant / HR Analyst

AGENDA ITEM:

Confirmation of 2016 Committee Appointments

BACKGROUND:

Please see attached memorandum for background information.

Attachments

Committee Reappointments



M E M O R A N D U M

DATE: December 1, 2015
TO: Martha Meeker, City Manager
FROM: Rose A. Lorenzen, Administrative Assistant / HR Analyst
SUBJECT: Committee and Board Reappointments

The following people are members of the City's Boards and Commissions. Those individuals whose terms end on December 31, 2015 (noted in bold type) have expressed a desire to continue their positions on the respective committees and commissions. Unless otherwise noted, these are appointments made by the City Council. .

BUDGET COMMITTEE

(3-year term)

<u>NAME</u>	<u>TERM</u>
Robert Dodge	2016
Jerry Hart	2015
Brad Lunt	2015
John Mead	2017
Travis Parker	2016
Kris Stubberfield	2016

Mr. Hart and Mr. Lunt have stated that they would like to be reappointed to the Budget Committee. Mr. Robison has resigned from the Committee. This leaves one vacant position.

LANDSCAPE REVIEW COMMITTEE

(3-year term)

<u>NAME</u>	<u>TERM</u>
Joshua Kearns	2015
John Hall	2017
Sharon Gunter	2017
Rob Stephenson	2016
Alternate: Rosemarie Caughran	2016
Tim McDaniel	2018

Mr. Kearns has indicated he will serve another term on the Landscape Review Committee.

CITIZENS ADVISORY COMMITTEE

(4-year term)

<u>NAME</u>	<u>TERM</u>
Mark Davis	2017
Scott Roberts	2018
Marcie Rosenzweig	2015
Travis Orback	2015

I have been unable to contact Ms. Rosenzweig and Mr. Orback. Planning Director Montgomery is recommending them for reappointment.

BOARD OF APPEALS

(4-year term)

<u>NAME</u>	<u>TERM</u>
Wilmer Andrist	2015
Waldo Farnham	2017
Vince Haworth	2018
Bruce Kinney	2015

I have been unable to contact Mr. Andrist and Mr. Kinney. Building Official Poskin is recommending them for reappointment.

PLANNING COMMISSION

(4-year term)

<u>NAME</u>	<u>TERM</u>
Frank Butler	2015
Jack Morgan	2016
Erica Thomas	2018
Wendy Stassens	2016
Amanda Pietz	2018
Charles Hillestad	2016
John Tiedge	2015
Martin Chroust-Masin	2015
Roger Hall	2018

Mr. Tiedge and Mr. Chroust-Masin have both indicated their willingness to serve another term. Mr. Butler has announced his resignation at the end of this year. Because of Mr. Butler's resignation, there will be one vacancy in the Planning Commission.

HISTORIC LANDMARKS COMMITTEE

(4-year term)

<u>NAME</u>	<u>TERM</u>
Joan Drabkin	2017
Marcia Mikesh	2015
Patti Webb	2015
Bob McCann	2017
John Mead	2018

Ms. Webb has indicated her desire to serve another term on the Historic Landmarks Committee. Ms. Mikesh has announced her resignation from the Committee. Because of Ms. Mikesh's resignation, there will be one vacancy on the Historic Landmarks Committee.

AIRPORT COMMISSION

(4-year term)

<u>NAME</u>	<u>TERM</u>
Andy Benedict	2018
Jody Christensen	2015
Brad Berry	2018
John Lautenbach	2016
Robert Peacock	2017
Doug Hurl	2016

Ms. Christensen has indicated she is interested in serving another term on the Airport Commission.

WATER & LIGHT COMMISSION

(4-year term)

Appointments to this Commission are made by the Mayor and confirmed by the City Council.

<u>NAME</u>	<u>TERM</u>
Patrick Fuchs	2018
Mike Keyes	2015
Tom Tankersley	2017
Ed Gormley	2016

Mr. Keyes' term expires this year. Mayor Olson will contact him regarding reappointment



City Council- Regular

Meeting Date: 12/08/2015

Subject:

From: Rose Lorenzen, Administrative Assistant / HR Analyst

AGENDA ITEM:

Ordinance No. 4998: Granting a non-exclusive telecommunications franchise to Astound **(2nd Reading)**

BACKGROUND:

Please see attached ordinance

Attachments

Ordinance

ORDINANCE NO. 4998

An Ordinance granting a non-exclusive telecommunications franchise to Astound Broadband, LLC, d/b/a Wave ("Grantee" or "Franchisee")

RECITALS:

1. Whereas, pursuant to Federal law, State statutes, and City Charter and local ordinances, the City is authorized to grant non-exclusive franchises to occupy "public rights-of-way" as defined by McMinnville Municipal Code ("MMC") 3.18 (sometimes referred to as "Public Ways" in this Franchise), in order to construct, operate, and maintain a telecommunication systems within the municipal boundaries of the City of McMinnville ("Franchise Area" or "Service Area");
2. Whereas, the City has found that the Franchisee meets all lawful requirements to obtain a franchise, and therefore approves the application;
3. Whereas, both the City and the Franchisee expressly reserve all rights they may have under law to the maximum extent possible; neither the City nor the Franchisee shall be deemed to have waived any federal or state constitutional or statutory rights they may now have or may acquire in the future by entering into this agreement.

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

Section 1. Definitions For the purpose of this Franchise Agreement, terms, phrases, words, and abbreviations shall have the meanings ascribed to them in Chapter 3.18.010 of the McMinnville Municipal Code ("MMC") except as otherwise defined herein.

Section 2. Grant of Authority

2.1. Grant. The City of McMinnville ("Franchising Authority" or "City") hereby grants to the Grantee a nonexclusive right to conduct a general telecommunications business within the City and nonexclusive right to place, erect, lay, maintain and operate in, upon, under and over public rights of way within the City poles, wires, cables, fiber optics, conduit and other appliances and conductors (collectively, facilities) for the transmission of light, electricity, or other impulses for telecommunications purposes, including the provision of telecommunications, private line, and Internet access services (collectively, telecommunications services). Such facilities may be strung upon poles and other fixtures above ground or may be laid underground in pipes and conduits or otherwise protected. This ordinance does not grant Grantee authority to use its facilities to provide any non-telecommunications services. The facilities installed pursuant to the terms hereof shall be located so as to cause a minimum of interference with the proper use of public ways and with the rights and reasonable convenience of property owners who own property that adjoins any of such public ways.

2.2. Other Ordinances. The Grantee agrees to comply with the terms of any lawfully adopted generally applicable local ordinance. In the event of a conflict between Chapter 3.18 of the

MMC in effect as of the date of this Franchise and this Franchise, Chapter 3.18 of the MMC shall control, and the Grantee is subject to the lawful exercise of the police power of the Franchising Authority, including all provisions of MMC Chapter 3.18. In the event of a conflict between this Franchise and any amendment to MMC Chapter 3.18 effective after the date of this Franchise, this Franchise shall control. The City will administer this Franchise in a uniform, non-discriminatory manner with respect to other telecommunications franchises.

2.3. Non-Exclusive. The Franchising Authority reserves the right to grant one (1) or more additional franchises or other similar lawful organizations to provide telecommunications or telecommunications services within the Service Area.

2.4. Term. The Franchise granted hereunder shall be for a term of ten (10) years commencing on the effective date of the acceptance of this ordinance by Grantee, unless otherwise lawfully terminated in accordance with the terms of this Franchise.

2.5. Franchise Review. Upon the commencement of sale of telecommunications services within the city, and within sixty (60) days of the third anniversary or any of the subsequent anniversaries of the commencement of the sale of telecommunications services within the city, the Franchising Authority may, but is not required to, conduct a limited review of the Franchise. The purpose of the review shall be to ensure, with the benefit of full opportunity for public comment that the Grantee continues to effectively serve the public in light of new developments in telecommunications technology together with related developments in telecommunications law and regulations, and community needs and interests. Both the Franchising Authority and Grantee agree to make a full and good faith effort to participate in the review.

If after, completion of the review, the Franchising Authority and Grantee agree that the public interest will be served by modifying certain franchise obligations and/or extending the term of the Franchise, the Franchising Authority, with the express written agreement of the Grantee, shall modify the obligations and extend the term of the Franchise accordingly.

Section 3. Standards of Service

3.1. Conditions of Occupancy.

A. The telecommunications system installed by the Grantee pursuant to the terms hereof shall be located so as to cause a minimum of interference with the proper use of Public Ways. Prior to the commencement of any construction, extension or relocation of Grantee's telecommunications services in the Public Ways, Grantee agrees to obtain the necessary and required approvals from the Franchising Authority, including a right-of-way permit and payment of applicable fees.

B. Grantee's services shall be constructed and maintained in such a manner as not to interfere with sewers, water pipes, or any other property of the City, or with any other pipes, wires, conduits, cables or other facilities that may be in the Public Way by or under the City's authority. Grantee and City shall work together during any design process affecting the Public Way to establish suitable locations for Grantee's facilities, provided however, that all new installations serving new development shall access new lots and parcels through utility easements delineated on the approved partition or subdivision plat for such development.

3.2. Restoration of Public Ways. If during the course of the Grantee's construction, operation, or maintenance of the telecommunications services there occurs a disturbance of any Public Way by the Grantee, Grantee shall replace and restore such Public Way to a condition reasonably comparable to the condition of the Public Way existing immediately prior to such disturbance. In the event Grantee fails to restore the Public Way to a condition reasonably comparable to the condition existing immediately prior to such disturbance, the Franchising Authority may restore or cause to restore such Public Way at the expense of Grantee; provided, that the Franchising Authority provides Grantee with reasonable notice to restore and grantee fails to restore such Public Way within the time period given by the franchising authority.

3.3. Relocation at request of the Franchising Authority. Grantee, at its own expense, shall protect, support, temporarily disconnect, relocate in or remove from the Public Way, any property of the Grantee when lawfully required by the Franchising Authority by reason of traffic conditions, public safety, street abandonment, freeway and street construction, change or establishment of street grade, installation of sewers, drains, gas or water pipes, or any other type of structures or improvements by the Franchising Authority which are not used to compete with the Grantee's services, provided that:

A. The City Engineer or designee first makes a reasonable determination that such relocation, removal, disconnection, protection or support is convenient or necessary for a public purpose or a City improvement project;

B. The City provides Grantee with at least forty-five (45) days prior written notice describing the schedule for such relocation, removal, disconnection, protection or support; provided, however, that in the event of an Emergency, the City shall only be obligated to give Grantee written notice as soon as practicable under the circumstances; and

C. The City provides Grantee with copies of pertinent portions of the plans and specifications for such improvement project and a proposed location for Grantee's Facilities so that Grantee may relocate its Facilities in other City Rights-of-Way or other location in order to accommodate such improvement, provided however, that nothing in this section shall require City to obtain or guarantee the availability of an alternative location or compensate Grantee therefor.

3.4. Relocation for a Third Party. The Grantee shall, on the request of any Person holding a lawful permit issued by the Franchising Authority, protect, support, raise, lower, temporarily disconnect, relocate in or remove from the Public Way as necessary any property of Grantee, provided: (A) the expense of such shall be paid by the Person benefiting from the relocation, including, if required by the Grantee, making such payment in advance; and (B) the Grantee is given reasonable advance written notice to prepare for such changes. For purposes of this Section 3.4, "reasonable advance written notice" shall be no less than ten (10) business days in the event of a temporary relocation, and no less than 120 days for a permanent relocation.

3.5. Trimming of Trees and Shrubbery.

Subject to acquiring prior written permission of the Franchising Authority or the McMinnville Water and Light Commission, as applicable, including any required permit, the Grantee shall have the authority, but not the obligation, to trim trees that overhang a Public Right of Way of

the Grantor so as to prevent the branches of such trees from coming in contact with its facilities, in accordance with applicable codes and regulations.

3.6. Safety Requirements. Construction, operation, and maintenance of the telecommunications services shall be performed in an orderly and workmanlike manner. All such work shall be performed in substantial accordance with generally applicable federal, state, and local regulations, in compliance with all adopted building, construction safety and fire codes and standards and the National Electric Safety Code. The telecommunications services shall not endanger or unreasonably interfere with the safety of Persons or property in the Service Area.

3.7. Underground Construction. In those areas of the Service Area where all of the transmission or distribution facilities of the respective public utilities providing telephone communications and electric services are underground, the Grantee likewise shall construct, operate, and maintain its telecommunications services underground. The Franchising Authority shall not incur any construction or expense in the event Grantee is lawfully required by the Franchising Authority to place its distribution facilities underground as provided in this Section 3.7. Nothing contained in this Section 3.7 shall require the Grantee to construct, operate, and maintain underground any ground-mounted appurtenances.

3.8. Placement of Facilities Underground; Access to Open Trenches. Should it become a matter of public interest and convenience that a certain portion of the Grantee's aerial facilities and aerial facilities of other users of the Public Ways be placed underground, the Franchising Authority shall conduct a hearing to determine whether the underground placement of such facilities will serve said public interest and convenience. The Franchising Authority shall provide written notice of this hearing to Grantee, who shall be afforded a meaningful opportunity to comment at the hearing.

3.9. Required Extensions of the Telecommunications services for Residential Service. If Grantee offers telecommunications services to more than ten Residential Subscribers (as defined below) within the Service Area, Grantee agrees to provide telecommunications to all residents in the Service Area subject to the density requirements specified in the Section 3.9. If Grantee offers telecommunications services to more than ten Residential Subscribers within the Service Area and receives a request for telecommunications service from a Residential Subscriber in a contiguous unserved area where there are at least 12 residences within 1320 cable-bearing strand feet (one-quarter cable mile) from the portion of Grantee's trunk or distribution cable which is to be extended, it shall extend its telecommunications services to such, Residential Subscriber at no cost to said Residential Subscriber for the telecommunications services extension, other than the publicized Standard/non-Standard Installation fees charged to all Residential Subscribers. Notwithstanding the foregoing, the Grantee shall have the right, but not the obligation, to extend the telecommunications services into any portion of the Service Area, where another operator is providing telecommunications service. "Residential Subscriber" or "Subscriber" means an individual or household customer who subscribes to Grantee's telecommunications services for non-commercial use in a house, apartment, condominium, townhome, mobile home, or other residence in the Service Area and does not include any commercial, institutional, or governmental customer.

3.10. Subscriber Charges for Extensions of the Telecommunications services for Residential Service. If Grantee offers telecommunications services to more than ten Residential Subscribers within the Service Area, Grantee agrees to provide telecommunications services as specified in the Section 3.10. If Grantee offers telecommunications services to more than ten Residential Subscribers within the Service Area, no Residential Subscriber shall be refused service arbitrarily. However, if any area does not meet the density requirements of Section 3.9 above, the Grantee shall only be required to extend the telecommunications services to Residential Subscriber(s) in that area if the Residential Subscriber(s) are willing to share the capital costs of extending the telecommunications services. Specifically, the Grantee shall contribute a capital amount equal to the construction cost per mile, multiplied by a fraction whose numerator equals the actual number of residences per 1320 cable-bearing strand feet from Grantee's trunk or distribution cable, and whose denominator equals (12). Residential Subscribers who request service hereunder shall bear the remaining cost to extend the telecommunications services on a pro rata basis. The Grantee may require that payment of the capital contribution in aid of construction borne by such potential Residential Subscribers be paid in advance. Residential Subscribers shall also be responsible for any Standard/non-Standard Installation charges to extend the telecommunications services from the tap to the residence.

3.11. Omitted.

3.12. System Standards. This Section 3.12 will apply only if and to the extent that Grantee offers telecommunications services to more than ten Residential Subscribers. The telecommunications services shall meet or exceed all applicable technical and performance standards. The Grantee shall also comply with all applicable testing requirements. Upon request, Grantee shall advise the Franchising Authority of schedules and methods for testing the telecommunications services within the Service Area to determine compliance with the provisions of applicable technical standards. Representatives of the Franchising Authority may witness the tests. This first paragraph of Section 3.12 will apply only if and when federal or state law imposes technical and performance standards on the telecommunications services provided by Grantee, and Grantee and the City acknowledge that no such standards apply to telecommunications services as of the date of this Franchise.

Written records of all system tests required by applicable federal or state law to be performed by or for the Grantee shall be maintained at Grantees business office, and shall be available for inspection during Grantee's normal business hours by the Franchising Authority upon written request. Grantee, upon written request of Franchising Authority, shall provide a summary or complete copy of such test results.

Whenever it is necessary to shut off or interrupt service for the purpose of making repairs or maintaining the telecommunications services, Grantee shall do so at such times that will cause the least amount of inconvenience to Subscribers, and unless such interruption is unforeseen and immediately necessary, it shall give reasonable notice thereof to Subscribers.

Notwithstanding anything to the contrary, Grantees obligation to provide, replace, construct, maintain or operate the telecommunications services under this Franchise shall be excused for any period during with such service is prevented or interrupted by causes beyond the control of Grantee including acts of nature, fire, flood, unavoidable casualty, extra-ordinary delays in

transportation, strikes or power interruption or regulations. Telecommunications service shall thereafter be restored as soon as reasonably possible.

3.13. Customer Service Standards/Complaint Resolution. This Section 3.13 will apply only if and to the extent that Grantee offers telecommunications services to more than ten Residential Subscribers. Should a Subscriber have an unresolved complaint regarding telecommunications service with Grantee, the Subscriber may file a complaint with the Franchising Authority and thereafter to meet or discuss jointly with the representatives of the Franchising Authority and grantee within 30 days of filing the complaint with the franchising authority to address and resolve the Subscriber's complaint. For purposes of this paragraph, a "complaint" is a grievance related to the telecommunications service provided by the Grantee within the Service Area that is reasonably remedial by Grantee but does not include customer contacts resulting in routine service calls that resolve the subscriber's problem satisfactorily to subscriber

Section 4. Regulation by the Franchising Authority

4.1. Franchise Fee; Regulation of Rates.

A. The Grantee shall pay to the Franchising Authority a franchise fee equal to the greater of five percent of annual Gross Revenue or \$2,500.00. "Gross Revenues" shall mean any revenue received by Grantee from the provision of telecommunications services in the City, provided, however, that such phrase shall not include: (1) any tax, fee or assessment of general applicability collected by Astound Broadband from subscribers for pass-through to a government agency; (2) any revenue derived from the provision of Internet access services where such franchise revenue is expressly prohibited by federal or state law; and (3) unrecovered bad debt.

The franchise fee payment shall be due quarterly and payable within forty five days after the close of the preceding calendar quarter. Each payment shall be accompanied by a brief report prepared by a representative of the Grantee showing the basis for the computation. The percentage amount of the franchise fee may change, at the discretion of the Franchising Authority, if provided for by new federal law and upon ninety days' notice to Grantee by Franchising Authority.

With the approval of the Franchising Authority, Grantee may, in lieu of all or a portion of the minimum franchise fee payment required under Section 4.1(A), provide telecommunications or other services to the City. Any agreement for the provision of such services will be as mutually agreed by the parties in separate documentation and the offset value of any such services provided to the City will be determined based on the standard rates Grantee charges to third-party customers for substantially equivalent services.

B. Audit of Franchise Fee Payments

B.1. Franchising Authority or its designee may conduct an audit or other inquiry in relation to payments made by Grantee no more than once every two years during the Term. As a part of the audit process, Franchising Authority or Franchising Authority's designee may inspect Grantee's books of accounts relative to Franchising Authority at any time during regular business hours and after thirty (30) calendar days' prior written notice.

B.2. All records deemed by Franchising Authority for Franchising Authority's designee to be reasonably necessary for such audit shall be made available by Grantee in a mutually agreeable format. Grantee agrees to give its full cooperation in any audit and shall provide responses to inquiries within thirty (30) calendar days of written request. Grantee may provide such responses within a reasonable time that is mutually agreeable, after the expiration of the response period above, so long as Grantee has made a good faith effort to procure any such tardy response.

B.3. If the results of any audit undertaken which included gross revenue from the sales of telecommunications services within the city, indicate that Grantee (i) paid the correct franchise fee, (ii) overpaid the franchise fee and is entitled to a refund or credit, or (iii) underpaid the franchise fee by five percent (5%) or less, then the Franchising Authority shall pay the costs of the audit. If the results of the audit indicate Grantee underpaid the franchise fee by more than five percent (5%), then Grantee shall pay the reasonable, documented, independent third-party costs of the audit, which costs shall be limited to seven thousand five hundred dollars (\$7,500) if any audit discloses an underpayment of the franchise fee in any amount, Grantee shall pay Franchising Authority the amount of the underpayment, together with interest computed from the applicable due date, at a rate per annum equal to the highest Bank Prime Rate during the period of delinquency plus one percent (1%). The Bank Prime Rate shall mean the prime lending rate as it appears in the wall Street Journal during the period of delinquency.

C. Omitted.

4.2. Inspections for Compliance. This Section 4.2 will apply only if and to the extent that Grantee offers telecommunications services to more than ten Residential Subscribers. The Franchising Authority may inspect the telecommunications services within the Service Area, during reasonable times and in a manner that does not unreasonably interfere with the normal business operations of Grantee, in order to determine compliance with standards imposed by applicable federal or state law. Except in emergency circumstances, such inspections may be undertaken only after giving no less than five (5) days advance notice thereof and after giving Grantee an opportunity to be present during such inspections. In the event such inspection determines that Grantee's telecommunications services has substantially failed to comply with the applicable standards, the cost of the inspection shall be borne by the Grantee. Except in emergency circumstances, the Franchising Authority agrees that such inspection shall be undertaken no more than annually, and that the results thereof shall be provided to Grantee.

4.3. Renewal of Franchise.

A. The Franchising Authority and the grantee agree that any proceedings undertaken by the Franchising Authority that relate to the renewal for the grantee's Franchise shall be governed by and comply with MCC Sections 3.18.445 through MMC Sections 3.18.455.

B. Notwithstanding anything to the contrary set forth in this Section 4.3, the Grantee and the Franchising Authority agree that at any time during the term of the then current Franchise, while affording the public appropriate notice and opportunity to comment, the Franchising Authority and the Grantee may agree to undertake and finalize informal negotiations regarding renewal of the then current Franchise and the Franchising Authority may grant a renewal thereof.

4.4. Transfer of Franchise. The Grantee's right, title, or interest in the Franchise shall not be sold, transferred, assigned, or otherwise encumbered, other than to an entity controlling, controlled by, or under common control with the Grantee, without the prior consent of the Franchising Authority pursuant to MCC 3.18.460. Notwithstanding the foregoing, Grantee may, without the City's consent, pledge the Franchise to its lenders solely for the purpose of securing indebtedness, except that the City's consent shall be required before the lender assumes the Franchise.

Section 5. Books, Records and Maps

5.1. Books and Records. The Grantee agrees that the Franchising Authority, upon thirty (30) days written notice to the Grantee, may review such of its books and records at the Grantee's business office, during normal business hours and on a non-disruptive basis, as is reasonably necessary to ensure compliance with the terms of this Franchise. Such notice shall specifically reference the section of the Franchise which is under review, so that the Grantee may organize the necessary books and records for easy access by the Franchising Authority. Alternatively, if the books and records are not easily accessible at the local office of the Grantee, Grantee may, at its sole option, choose to pay the reasonable travel costs of the Franchising Authority's representative to view the books and records at the appropriate location or to provide the Franchising Authority to view certain books and records in electronic format. The Grantee shall not be required to maintain any books and records for Franchise compliance purposes longer than three (3) years. The Franchising Authority agrees to treat any information disclosed by the Grantee as confidential under applicable federal and state law, and only to disclose it to employees, representatives, and agents thereof that have a need to know, or in order to enforce the provisions hereof.

5.2. Maps. Grantee shall maintain "as built" drawings for the facilities at Grantee's business office, and make them available to the Franchising Authority for inspection during normal business hours upon written request. "As built" drawings shall be updated as changes occur in the facilities serving the Service Area. Upon written request of the Franchising Authority, Grantee shall provide the Franchising Authority copies of strand and trench maps showing the location of Grantee's lines within the Public Ways in the Service Area within sixty (60) days of request for the same. The Franchising Authority recognizes that the information contained in such maps is confidential and proprietary, and remains the property of the Grantee. To the extent provided under the Oregon Public Records Law, the Franchising Authority shall safeguard such information from public law.

Section 6. Insurance and Indemnification

6.1. Insurance Requirements. The Grantee shall maintain in full force and effect at its own cost, and expense, during the term of the Franchise, insurance as required by MCC 3.18.540.

6.2. Indemnification. The Grantee agrees to indemnify, save and hold harmless, and defend, the Franchising Authority, its officers, boards and employees, from and against any liability for damages and for any liability or claims resulting from property damage or bodily injury (including accidental death), which arise out of Grantee's construction, operation, or maintenance of its facilities.

6.3. Bonds and Other Surety. Except as may be required for construction purposes by MMC Chapter 3.18, no bond or other surety shall be required of the Grantee at the inception of the Franchise. In the event Grantee is required by the Franchising Authority to obtain a bond or other surety in the future, the Franchising Authority agrees to give Grantee at least sixty (60) days in advance written notice thereof stating the specific reasons for such requirement.

Section 7. Enforcement and Termination of Franchise

7.1. Notice of Violation. In the event that the Franchising Authority believes that the Grantee has not complied with the terms of the Franchise, the Franchising Authority shall informally discuss the matter with Grantee. If these discussions do not lead to resolution of the problem, the Franchising Authority shall notify the Grantee in writing of the exact nature of the alleged noncompliance.

7.2. The Grantee's Right to Cure or Respond. The Grantee shall have thirty (30) days from receipt of the notice described in Section 7.1: (A) to respond to the Franchising Authority, contesting the assertion of noncompliance, or (B) to cure such default, or (C) in the event that, by the nature of default such default cannot be cured within the thirty (30) day period, initiate reasonable steps to remedy such default and notify the Franchising Authority of the steps being taken and the projected date that they will be completed.

7.3. Public Hearing. In the event that the Grantee fails to respond to the notice described in Section 7.1 pursuant to the procedures set forth in Section 7.2, or in the event that the alleged default is not remedied within thirty (30) days or the date projected pursuant to 7.2(c) above, if it intends to continue its investigation into the default, then the Franchising Authority shall schedule a public hearing, which specifies the time, place and purpose of such hearing, and provide Grantee the opportunity to be heard.

7.4. Enforcement. Subject to applicable federal and state law and pursuant to MMC 3.18.480, in the event the Franchising Authority, after the hearing set forth in Section 7.3, determines that the Grantee is in default of any provision of the Franchise, the Franchising Authority may:

- A. Seek specific performance of any provision, which reasonable lends itself to such remedy, as an alternative to damages; or
- B. Commence an action at law of monetary damages or see other equitable relief; or
- C. In the case of a substantial default of material provision of the Franchise, seek to revoke the franchise in accordance with Section 7.5.

7.5. Revocation. Should the Franchising Authority seek to revoke the Franchise, the Franchising Authority shall give written notice to the Grantee of its intent. The notice shall set forth the exact nature of noncompliance. The Grantee shall have ninety (90) days from such notice to object in writing and to state its reasons for such objection. In the event the Franchising Authority has not received a satisfactory response from the Grantee, it may then seek termination of the Franchise at a public hearing. The Franchising Authority shall cause to be served upon the Grantee, at least thirty (30) days prior to such public hearing, a written notice specifying the time and place of such hearing and stating its intent to revoke the Franchise.

At the designated hearing, Grantee shall be provided a fair opportunity for full participation, including the right to be represented by legal counsel, to introduce relevant evidence, to require the production of evidence, to call the relevant officials, agents, employees or consultants of the Franchising Authority as permitted by law, to compel the testimony of other persons as permitted by law. A complete record consisting of all written exhibits, minutes and an audio tape shall be made of the hearing by the Franchising Authority.

Following the hearing, the Franchising Authority shall determine whether the franchise shall be revoked. If the Franchising Authority determines that the franchise shall be revoked, Grantee may appeal such determination to an appropriate court, which shall have the power to review the decision of the Franchising Authority de novo. Grantee shall be entitled to such relief as the court finds appropriate. Such appeal to the appropriate court must be taken within sixty (60) days of the issuance of the determination of the Franchising Authority.

The Franchising Authority may, at its sole discretion, take any lawful action which it deems appropriate to enforce the Franchising Authority's rights under the Franchise in lieu of revocation of the Franchise.

7.6. Force Majeure. The Grantee shall not be held in default under, or in noncompliance with, the provisions of the Franchise, nor suffer any enforcement or penalty relating to noncompliance or default, where such noncompliance or alleged defaults occurred or were caused by circumstances reasonable beyond the ability of the Grantee to anticipate and control. This provision includes work delays caused by waiting for utility providers to service or monitor their utility poles to which the Grantee's facilities within the Service Area is attached, as well as unavailability to materials and/or qualified labor to perform the work necessary.

7.7. Removal of Facilities after Revocation, Termination or Expiration of Franchise. After revocation, termination or expiration of the franchise, and upon reasonable notice from the Franchising Authority, Grantee shall remove from the Public ways all or a portion of its telecommunications services and property. The Franchising Authority's notice shall be in writing and shall state whether all or a portion of Grantee's facilities must be removed and the date by which removal shall be completed.

Section 8. Miscellaneous Provisions

8.1. Actions of Parties. In any action by the Franchising Authority or the Grantee that is mandated or permitted under the terms hereof, such party shall act in a reasonable, expeditious, and timely manner. Furthermore, in any instance where approval or consent is required under the terms hereof, such approval or consent shall not be unreasonable withheld.

8.2. Entire Agreement. When accepted in accordance with Section 8.6, this Franchise, as supplemented by the requirements of MMC Chapter 3.18 constitutes the entire agreement between the Grantee and the Franchising Authority. Amendments to this Franchise shall be valid if mutually agreed to in writing by the parties.

8.3. Notice. Unless expressly otherwise agreed between the parties, every notice or response require by this Franchise to be served upon the Franchising Authority of the Grantee shall be in writing, and shall be deemed to have been duly given to the required party when placed in a

properly sealed and correctly addressed envelope; a) upon receipt when hand delivered with receipt/acknowledgement, b) upon receipt when sent certified, registered mail, or c) within five (5) business days after having been posted in the regular mail.

The notices or responses to the Franchising Authority shall be addressed as follows:

City Manager
City of McMinnville
230 NE Second Street
McMinnville, OR 97128

Notices or responses to the Grantee shall be addressed as follows:

Astound Broadband, LLC
Attn: James A. Penney, EVP
401 Kirkland Parkplace
Suite 500
Kirkland, WA 98033

The Franchising Authority and the Grantee may designate such other address or addresses from time to time by giving notice to the other in the manner provided for in this Section.

8.4. Descriptive Headings. The captions to sections contained herein are intended solely to facilitate the reading thereof. Such captions shall not affect the meaning or interpretation of the text herein.

8.5. Severability. If any section, sentence, paragraph, term, or provision hereof is determined to be illegal, invalid, or unconstitutional, by any court of competent jurisdiction or by any state or federal regulatory authority having jurisdiction thereof, such determination shall have no effect on the validity of any other section, sentence, paragraph term or provision hereof, all of which will remain in full force and effect for the term of the franchise.

8.6. Acceptance of Franchise. This ordinance does not grant a franchise unless it is accepted in writing by Franchisee within sixty (60) days after its enactment.

Passed by the Council this 24th day of November 2015 by the following votes:

Ayes: Drabkin, Hill, Jeffries, Menke, Ruden, Yoder

Nays: _____

Second Reading: Read and passed by the Council this 8th day of December 2015, by the following votes:

Ayes: _____

Nays: _____

Approved this 8th day of December 2015.

MAYOR

Attest:

Approved as to form:

CITY RECORDER

CITY ATTORNEY



City Council- Regular

Meeting Date: 12/08/2015

Subject:

From: Rose Lorenzen, Administrative Assistant / HR Analyst

AGENDA ITEM:

Ordinance No. 4999: Granting a non-exclusive telecommunications franchise to Online NW ("Grantee" or "Franchisee")

BACKGROUND:

Please see attached ordinance

Attachments

Ordinance

ORDINANCE NO. 4999

An Ordinance granting a non-exclusive telecommunications franchise to Online NW (“Grantee” or “Franchisee”)

RECITALS:

1. Whereas, pursuant to Federal law, State statutes, and City Charter and local ordinances, the City is authorized to grant non-exclusive franchises to occupy “public rights-of-way” as defined by McMinnville Municipal Code (“MMC”) 3.18 (sometimes referred to as “Public Ways” in this Franchise), in order to construct, operate, and maintain a telecommunication systems within the municipal boundaries of the City of McMinnville (“Franchise Area”);
2. Whereas, the City has found that the Franchisee meets all lawful requirements to obtain a franchise, and therefore approves the application;
3. Whereas, both the City and the Franchisee expressly reserve all rights they may have under law to the maximum extent possible; neither the City nor the Franchisee shall be deemed to have waived any federal or state constitutional or statutory rights they may now have or may acquire in the future by entering into this agreement.

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

Section 1. Definitions For the purpose of this Franchise Agreement, terms, phrases, words, and abbreviations shall have the meanings ascribed to them in Chapter 3.18.010 of the McMinnville Municipal Code (“MMC”) except as otherwise defined herein.

Section 2. Grant of Authority

2.1. Grant. The City of McMinnville (“Franchising Authority” or “City”) hereby grants to the Grantee a nonexclusive right to conduct a general telecommunications business within the City and nonexclusive right to place, erect, lay, maintain and operate in, upon, under and over public rights of way within the City poles, wires, cables, fiber optics, conduit and other appliances and conductors (collectively, facilities) for the transmission of light, electricity, or other impulses for telecommunications purposes, including the provision of telecommunications, private line, and Internet access services (collectively, telecommunications services). Such facilities may be strung upon poles and other fixtures above ground or may be laid underground in pipes and conduits or otherwise protected. This ordinance does not grant Grantee authority to use its facilities to provide any non-telecommunications services. The facilities installed pursuant to the terms hereof shall be located so as to cause a minimum of interference with the proper use of public ways and with the rights and reasonable convenience of property owners who own property that adjoins any of such public ways.

2.2. Other Ordinances. The Grantee agrees to comply with the terms of any lawfully adopted generally applicable local ordinance. In the event of a conflict between Chapter 3.18 of the

MMC in effect as of the date of this Franchise and this Franchise, Chapter 3.18 of the MMC shall control, and the Grantee is subject to the lawful exercise of the police power of the Franchising Authority, including all provisions of MMC Chapter 3.18. In the event of a conflict between this Franchise and any amendment to MMC Chapter 3.18 effective after the date of this Franchise, this Franchise shall control. The City will administer this Franchise in a uniform, non-discriminatory manner with respect to other telecommunications franchises.

2.3. Non-Exclusive. The Franchising Authority reserves the right to grant one (1) or more additional franchises or other similar lawful organizations to provide telecommunications or telecommunications services within the Franchise Area.

2.4. Term. The Franchise granted hereunder shall be for a term of ten (10) years commencing on the effective date of the acceptance of this ordinance by Grantee, unless otherwise lawfully terminated in accordance with the terms of this Franchise.

2.5. Franchise Review. Upon the commencement of sale of telecommunications services within the city, and within sixty (60) days of the third anniversary or any of the subsequent anniversaries of the commencement of the sale of telecommunications services within the city, the Franchising Authority may, but is not required to, conduct a limited review of the Franchise. The purpose of the review shall be to ensure, with the benefit of full opportunity for public comment that the Grantee continues to effectively serve the public in light of new developments in telecommunications technology together with related developments in telecommunications law and regulations, and community needs and interests. Both the Franchising Authority and Grantee agree to make a full and good faith effort to participate in the review.

If after, completion of the review, the Franchising Authority and Grantee agree that the public interest will be served by modifying certain franchise obligations and/or extending the term of the Franchise, the Franchising Authority, with the express written agreement of the Grantee, shall modify the obligations and extend the term of the Franchise accordingly.

Section 3. Standards of Service

3.1. Conditions of Occupancy.

A. The telecommunications system installed by the Grantee pursuant to the terms hereof shall be located so as to cause a minimum of interference with the proper use of Public Ways. Prior to the commencement of any construction, extension or relocation of Grantee's telecommunications services in the Public Ways, Grantee agrees to obtain the necessary and required approvals from the Franchising Authority, including a right-of-way permit and payment of applicable fees.

B. Grantee's services shall be constructed and maintained in such a manner as not to interfere with sewers, water pipes, or any other property of the City, or with any other pipes, wires, conduits, cables or other facilities that may be in the Public Way by or under the City's authority. Grantee and City shall work together during any design process affecting the Public Way to establish suitable locations for Grantee's facilities, provided however, that all new installations serving new development shall access new lots and parcels through utility easements delineated on the approved partition or subdivision plat for such development.

3.2. Restoration of Public Ways. If during the course of the Grantee's construction, operation, or maintenance of the telecommunications services there occurs a disturbance of any Public Way by the Grantee, Grantee shall replace and restore such Public Way to a condition reasonably comparable to the condition of the Public Way existing immediately prior to such disturbance. In the event Grantee fails to restore the Public Way to a condition reasonably comparable to the condition existing immediately prior to such disturbance, the Franchising Authority may restore or cause to restore such Public Way at the expense of Grantee; provided, that the Franchising Authority provides Grantee with reasonable notice to restore and grantee fails to restore such Public Way within the time period given by the franchising authority.

3.3. Relocation at request of the Franchising Authority. Grantee, at its own expense, shall protect, support, temporarily disconnect, relocate in or remove from the Public Way, any property of the Grantee when lawfully required by the Franchising Authority by reason of traffic conditions, public safety, street abandonment, freeway and street construction, change or establishment of street grade, installation of sewers, drains, gas or water pipes, or any other type of structures or improvements by the Franchising Authority which are not used to compete with the Grantee's services, provided that:

A. The City Engineer or designee first makes a reasonable determination that such relocation, removal, disconnection, protection or support is convenient or necessary for a public purpose or a City improvement project;

B. The City provides Grantee with at least forty-five (45) days prior written notice describing the schedule for such relocation, removal, disconnection, protection or support; provided, however, that in the event of an Emergency, the City shall only be obligated to give Grantee written notice as soon as practicable under the circumstances; and

C. The City provides Grantee with copies of pertinent portions of the plans and specifications for such improvement project and a proposed location for Grantee's Facilities so that Grantee may relocate its Facilities in other City Rights-of-Way or other location in order to accommodate such improvement, provided however, that nothing in this section shall require City to obtain or guarantee the availability of an alternative location or compensate Grantee therefor.

3.4. Relocation for a Third Party. The Grantee shall, on the request of any Person holding a lawful permit issued by the Franchising Authority, protect, support, raise, lower, temporarily disconnect, relocate in or remove from the Public Way as necessary any property of Grantee, provided: (A) the expense of such shall be paid by the Person benefiting from the relocation, including, if required by the Grantee, making such payment in advance; and (B) the Grantee is given reasonable advance written notice to prepare for such changes. For purposes of this Section 3.4, "reasonable advance written notice" shall be no less than ten (10) business days in the event of a temporary relocation, and no less than 120 days for a permanent relocation.

3.5. Trimming of Trees and Shrubbery.

Subject to acquiring prior written permission of the Franchising Authority or the McMinnville Water and Light Commission, as applicable, including any required permit, the Grantee shall have the authority, but not the obligation, to trim trees that overhang a Public Right of Way of

the Grantor so as to prevent the branches of such trees from coming in contact with its facilities, in accordance with applicable codes and regulations.

3.6. Safety Requirements. Construction, operation, and maintenance of the telecommunications services shall be performed in an orderly and workmanlike manner. All such work shall be performed in substantial accordance with generally applicable federal, state, and local regulations, in compliance with all adopted building, construction safety and fire codes and standards and the National Electric Safety Code. The telecommunications services shall not endanger or unreasonably interfere with the safety of Persons or property.

3.7. Underground Construction. In those areas where all of the transmission or distribution facilities of the respective public utilities providing telephone communications and electric services are underground, the Grantee likewise shall construct, operate, and maintain its telecommunications services underground. The Franchising Authority shall not incur any construction or expense in the event Grantee is lawfully required by the Franchising Authority to place its distribution facilities underground as provided in this Section 3.7. Nothing contained in this Section 3.7 shall require the Grantee to construct, operate, and maintain underground any ground-mounted appurtenances.

3.8. Placement of Facilities Underground; Access to Open Trenches. Should it become a matter of public interest and convenience that a certain portion of the Grantee's aerial facilities and aerial facilities of other users of the Public Ways be placed underground, the Franchising Authority shall conduct a hearing to determine whether the underground placement of such facilities will serve said public interest and convenience. The Franchising Authority shall provide written notice of this hearing to Grantee, who shall be afforded a meaningful opportunity to comment at the hearing.

3.9. Required Extensions of the Telecommunications services for Residential Service. If Grantee initiates telecommunications services to Residential Subscribers within the Service Area as depicted in Exhibit A, Grantee agrees to provide telecommunications to all residents in the Service Area subject to the density requirements specified in the Section 3.9. If the Grantee receives a request for telecommunications service from a Residential Subscriber in a contiguous unserved area and there are at least 12 residences within 1320 cable-bearing strand feet (one-quarter cable mile) from the portion of Grantee's trunk or distribution cable which is to be extended, it shall extend its telecommunications services to such Residential Subscriber at no cost to said Residential Subscriber for the telecommunications services extension, other than the publicized Standard/non-Standard Installation fees charged to all Residential Subscribers. Notwithstanding the foregoing, the Grantee shall have the right, but not the obligation, to extend the telecommunications services into any portion of the Service Area, where another operator is providing telecommunications service. Except for the specified Service Area, Franchisee shall not be required to extend to any other areas within the Franchise Area during the term of this Franchise or any Renewals thereof. If Franchisee desires to add Additional Service Areas within the Franchise Area, Franchisee shall notify Franchising Authority in writing of such Additional Service Area at least ten (10) calendar days prior to providing services in such areas.

3.10. Subscriber Charges for Extensions of the Telecommunications services for Residential Service. If Grantee initiates telecommunications services to Residential Subscribers within the Service Area as depicted in Exhibit A, Grantee agrees to provide telecommunications as

specified in the Section 3.10. No Residential Subscriber shall be refused service arbitrarily. However, if any area does not meet the density requirements of Section 3.9 above, the Grantee shall only be required to extend the telecommunications services to Residential Subscriber(s) in that area if the Residential Subscriber(s) are willing to share the capital costs of extending the telecommunications services. Specifically, the Grantee shall contribute a capital amount equal to the construction cost per mile, multiplied by a fraction whose numerator equals the actual number of residences per 1320 cable-bearing strand feet from Grantee's trunk or distribution cable, and whose denominator equals (12). Residential Subscribers who request service hereunder shall bear the remaining cost to extend the telecommunications services on a pro rata basis. The Grantee may require that payment of the capital contribution in aid of construction borne by such potential Residential Subscribers be paid in advance. Residential Subscribers shall also be responsible for any Standard/non-Standard Installation charges to extend the telecommunications services from the tap to the residence.

3.11. Businesses within Residential Areas: Service provided to a business is not considered residential service even if the business is located in an individual's home.

3.12. System Standards. The telecommunications services shall meet or exceed all applicable technical and performance standards. The Grantee shall also comply with all applicable testing requirements. Upon request, Grantee shall advise the Franchising Authority of schedules and methods for testing the telecommunications services to determine compliance with the provisions of applicable technical standards. Representatives of the Franchising Authority may witness the tests. This first paragraph of Section 3.12 will apply only if and when federal or state law imposes technical and performance standards on the telecommunications services provided by Grantee, and Grantee and the City acknowledge that no such standards apply to telecommunications services as of the date of this Franchise.

Written records of all system tests required by applicable federal or state law to be performed by or for the Grantee shall be maintained at Grantees business office, and shall be available for inspection during Grantee's normal business hours by the Franchising Authority upon written request. Grantee, upon written request of Franchising Authority, shall provide a summary or complete copy of such test results.

Whenever it is necessary to shut off or interrupt service for the purpose of making repairs or maintaining the telecommunications services, Grantee shall do so at such times that will cause the least amount of inconvenience to Subscribers, and unless such interruption is unforeseen and immediately necessary, it shall give reasonable notice thereof to Subscribers.

Notwithstanding anything to the contrary, Grantees obligation to provide, replace, construct, maintain or operate the telecommunications services under this Franchise shall be excused for any period during which such service is prevented or interrupted by causes beyond the control of Grantee including acts of nature, fire, flood, unavoidable casualty, extra-ordinary delays in transportation, strikes or power interruption or regulations. Telecommunications service shall thereafter be restored as soon as reasonably possible.

3.13. Customer Service Standards/Complaint Resolution. Should a Subscriber have an unresolved complaint regarding telecommunications service with Grantee, the Subscriber may file a complaint with the Franchising Authority and thereafter to meet or discuss jointly with the

representatives of the Franchising Authority and grantee within 30 days of filing the complaint with the franchising authority to address and resolve the Subscriber's complaint. For purposes of this paragraph, a "complaint" is a grievance related to the telecommunications service provided by the Grantee that is reasonably remedial by Grantee but does not include customer contacts resulting in routine service calls that resolve the subscriber's problem satisfactorily to subscriber

Section 4. Regulation by the Franchising Authority

4.1. Franchise Fee; Regulation of Rates.

A. The Grantee shall pay to the Franchising Authority a franchise fee equal to the greater of five percent of annual Gross Revenue or \$2,500.00. "Gross Revenues" shall mean any revenue received by Grantee from the provision of telecommunications services in the City, provided, however, that such phrase shall not include: (1) any tax, fee or assessment of general applicability collected by Online NW from subscribers for pass-through to a government agency; (2) any revenue derived from the provision of Internet access services where such franchise revenue is expressly prohibited by federal or state law; and (3) unrecovered bad debt.

The franchise fee payment shall be due quarterly and payable within forty five days after the close of the preceding calendar quarter. Each payment shall be accompanied by a brief report prepared by a representative of the Grantee showing the basis for the computation. The percentage amount of the franchise fee may change, at the discretion of the Franchising Authority, if provided for by new federal law and upon ninety days' notice to Grantee by Franchising Authority.

With the approval of the Franchising Authority, Grantee may, in lieu of all or a portion of the minimum franchise fee payment required under Section 4.1(A), provide telecommunications or other services to the City. Any agreement for the provision of such services will be as mutually agreed by the parties in separate documentation and the offset value of any such services provided to the City will be determined based on the standard rates Grantee charges to third-party customers for substantially equivalent services.

B. Audit of Franchise Fee Payments

B.1. Franchising Authority or its designee may conduct an audit or other inquiry in relation to payments made by Grantee no more than once every two years during the Term. As a part of the audit process, Franchising Authority or Franchising Authority's designee may inspect Grantee's books of accounts relative to Franchising Authority at any time during regular business hours and after thirty (30) calendar days' prior written notice.

B.2. All records deemed by Franchising Authority for Franchising Authority's designee to be reasonably necessary for such audit shall be made available by Grantee in a mutually agreeable format. Grantee agrees to give its full cooperation in any audit and shall provide responses to inquiries within thirty (30) calendar days of written request. Grantee may provide such responses within a reasonable time that is mutually agreeable, after the expiration of the response period above, so long as Grantee has made a good faith effort to procure any such tardy response.

B.3. If the results of any audit undertaken which included gross revenue from the sales of telecommunications services within the city, indicate that Grantee (i) paid the correct franchise fee, (ii) overpaid the franchise fee and is entitled to a refund or credit, or (iii) underpaid the franchise fee by five percent (5%) or less, then the Franchising Authority shall pay the costs of the audit. If the results of the audit indicate Grantee underpaid the franchise fee by more than five percent (5%), then Grantee shall pay the reasonable, documented, independent third-party costs of the audit, which costs shall be limited to seven thousand five hundred dollars (\$7,500) if any audit discloses an underpayment of the franchise fee in any amount, Grantee shall pay Franchising Authority the amount of the underpayment, together with interest computed from the applicable due date, at a rate per annum equal to the highest Bank Prime Rate during the period of delinquency plus one percent (1%). The Bank Prime Rate shall mean the prime lending rate as it appears in the wall Street Journal during the period of delinquency.

C. Franchising Authority may regulate rates for the provision of telecommunications services and equipment as expressly permitted by federal or state law.

4.2. Inspections for Compliance. The Franchising Authority may inspect the telecommunications services, during reasonable times and in a manner that does not unreasonably interfere with the normal business operations of Grantee, in order to determine compliance with standards imposed by applicable federal or state law. Except in emergency circumstances, such inspections may be undertaken only after giving no less than five (5) days advance notice thereof and after giving Grantee an opportunity to be present during such inspections. In the event such inspection determines that Grantee's telecommunications services has substantially failed to comply with the applicable standards, the cost of the inspection shall be borne by the Grantee. Except in emergency circumstances, the Franchising Authority agrees that such inspection shall be undertaken no more than annually, and that the results thereof shall be provided to Grantee.

4.3. Renewal of Franchise.

A. The Franchising Authority and the grantee agree that any proceedings undertaken by the Franchising Authority that relate to the renewal for the grantee's Franchise shall be governed by and comply with MCC Sections 3.18.445 through MMC Sections 3.18.455.

B. Notwithstanding anything to the contrary set forth in this Section 4.3, the Grantee and the Franchising Authority agree that at any time during the term of the then current Franchise, while affording the public appropriate notice and opportunity to comment, the Franchising Authority and the Grantee may agree to undertake and finalize informal negotiations regarding renewal of the then current Franchise and the Franchising Authority may grant a renewal thereof.

4.4. Transfer of Franchise. The Grantee's right, title, or interest in the Franchise shall not be sold, transferred, assigned, or otherwise encumbered, other than to an entity controlling, controlled by, or under common control with the Grantee, without the prior consent of the Franchising Authority pursuant to MCC 3.18.460. Notwithstanding the foregoing, Grantee may, without the City's consent, pledge the Franchise to its lenders solely for the purpose of securing indebtedness, except that the City's consent shall be required before the lender assumes the Franchise.

Section 5. Books, Records and Maps

5.1. Books and Records. The Grantee agrees that the Franchising Authority, upon thirty (30) days written notice to the Grantee, may review such of its books and records at the Grantee's business office, during normal business hours and on a non-disruptive basis, as is reasonably necessary to ensure compliance with the terms of this Franchise. Such notice shall specifically reference the section of the Franchise which is under review, so that the Grantee may organize the necessary books and records for easy access by the Franchising Authority. Alternatively, if the books and records are not easily accessible at the local office of the Grantee, Grantee may, at its sole option, choose to pay the reasonable travel costs of the Franchising Authority's representative to view the books and records at the appropriate location or to provide the Franchising Authority to view certain books and records in electronic format. The Grantee shall not be required to maintain any books and records for Franchise compliance purposes longer than three (3) years. The Franchising Authority agrees to treat any information disclosed by the Grantee as confidential under applicable federal and state law, and only to disclose it to employees, representatives, and agents thereof that have a need to know, or in order to enforce the provisions hereof.

5.2. Maps. Grantee shall maintain "as built" drawings for the facilities at Grantee's business office, and make them available to the Franchising Authority for inspection during normal business hours upon written request. "As built" drawings shall be updated as changes occur in the facilities. Upon written request of the Franchising Authority, Grantee shall provide the Franchising Authority copies of strand and trench maps showing the location of Grantee's lines within the Public Ways within sixty (60) days of request for the same. The Franchising Authority recognizes that the information contained in such maps is confidential and proprietary, and remains the property of the Grantee. To the extent provided under the Oregon Public Records Law, the Franchising Authority shall safeguard such information from public law.

Section 6. Insurance and Indemnification

6.1. Insurance Requirements. The Grantee shall maintain in full force and effect at its own cost, and expense, during the term of the Franchise, insurance as required by MCC 3.18.540.

6.2. Indemnification. The Grantee agrees to indemnify, save and hold harmless, and defend, the Franchising Authority, its officers, boards and employees, from and against any liability for damages and for any liability or claims resulting from property damage or bodily injury (including accidental death), which arise out of Grantee's construction, operation, or maintenance of its facilities.

6.3. Bonds and Other Surety. Except as may be required for construction purposes by MMC Chapter 3.18, no bond or other surety shall be required of the Grantee at the inception of the Franchise. In the event Grantee is required by the Franchising Authority to obtain a bond or other surety in the future, the Franchising Authority agrees to give Grantee at least sixty (60) days in advance written notice thereof stating the specific reasons for such requirement.

Section 7. Enforcement and Termination of Franchise

7.1. Notice of Violation. In the event that the Franchising Authority believes that the Grantee has not complied with the terms of the Franchise, the Franchising Authority shall informally discuss the matter with Grantee. If these discussions do not lead to resolution of the problem, the Franchising Authority shall notify the Grantee in writing of the exact nature of the alleged noncompliance.

7.2. The Grantee's Right to Cure or Respond. The Grantee shall have thirty (30) days from receipt of the notice described in Section 7.1: (A) to respond to the Franchising Authority, contesting the assertion of noncompliance, or (B) to cure such default, or (C) in the event that, by the nature of default such default cannot be cured within the thirty (30) day period, initiate reasonable steps to remedy such default and notify the Franchising Authority of the steps being taken and the projected date that they will be completed.

7.3. Public Hearing. In the event that the Grantee fails to respond to the notice described in Section 7.1 pursuant to the procedures set forth in Section 7.2, or in the event that the alleged default is not remedied within thirty (30) days or the date projected pursuant to 7.2(c) above, if it intends to continue its investigation into the default, then the Franchising Authority shall schedule a public hearing, which specifies the time, place and purpose of such hearing, and provide Grantee the opportunity to be heard.

7.4. Enforcement. Subject to applicable federal and state law and pursuant to MMC 3.18.480, in the event the Franchising Authority, after the hearing set forth in Section 7.3, determines that the Grantee is in default of any provision of the Franchise, the Franchising Authority may:

- A. Seek specific performance of any provision, which reasonable lends itself to such remedy, as an alternative to damages; or
- B. Commence an action at law of monetary damages or see other equitable relief; or
- C. In the case of a substantial default of material provision of the Franchise, seek to revoke the franchise in accordance with Section 7.5.

7.5. Revocation. Should the Franchising Authority seek to revoke the Franchise, the Franchising Authority shall give written notice to the Grantee of its intent. The notice shall set forth the exact nature of noncompliance. The Grantee shall have ninety (90) days from such notice to object in writing and to state its reasons for such objection. In the event the Franchising Authority has not received a satisfactory response from the Grantee, it may then seek termination of the Franchise at a public hearing. The Franchising Authority shall cause to be served upon the Grantee, at least thirty (30) days prior to such public hearing, a written notice specifying the time and place of such hearing and stating its intent to revoke the Franchise.

At the designated hearing, Grantee shall be provided a fair opportunity for full participation, including the right to be represented by legal counsel, to introduce relevant evidence, to require the production of evidence, to call the relevant officials, agents, employees or consultants of the Franchising Authority as permitted by law, to compel the testimony of other persons as

permitted by law. A complete record consisting of all written exhibits, minutes and an audio tape shall be made of the hearing by the Franchising Authority.

Following the hearing, the Franchising Authority shall determine whether the franchise shall be revoked. If the Franchising Authority determines that the franchise shall be revoked, Grantee may appeal such determination to an appropriate court, which shall have the power to review the decision of the Franchising Authority de novo. Grantee shall be entitled to such relief as the court finds appropriate. Such appeal to the appropriate court must be taken within sixty (60) days of the issuance of the determination of the Franchising Authority.

The Franchising Authority may, at its sole discretion, take any lawful action which it deems appropriate to enforce the Franchising Authority's rights under the Franchise in lieu of revocation of the Franchise.

7.6. Force Majeure. The Grantee shall not be held in default under, or in noncompliance with, the provisions of the Franchise, nor suffer any enforcement or penalty relating to noncompliance or default, where such noncompliance or alleged defaults occurred or were caused by circumstances reasonable beyond the ability of the Grantee to anticipate and control. This provision includes work delays caused by waiting for utility providers to service or monitor their utility poles to which the Grantee's facilities is attached, as well as unavailability to materials and/or qualified labor to perform the work necessary.

Furthermore, the parties hereby agree that it is not the Franchise Authority's intention to subject Franchisee to penalties, fines, forfeitures or revocation of the Franchise for violations of the Franchise where the violation was a good faith error that resulted in no or minimal negative impact on Subscribers, or where strict performance would result in practical difficulties and hardship being placed upon Franchisee which outweigh the benefit to be derived by the Franchise Authority and/or Subscribers.

7.7. Removal of Facilities after Revocation, Termination or Expiration of Franchise. After revocation, termination or expiration of the franchise, and upon reasonable notice from the Franchising Authority, Grantee shall remove from the Public ways all or a portion of its telecommunications services and property. The Franchising Authority's notice shall be in writing and shall state whether all or a portion of Grantee's facilities must be removed and the date by which removal shall be completed.

Section 8. Miscellaneous Provisions

8.1. Actions of Parties. In any action by the Franchising Authority or the Grantee that is mandated or permitted under the terms hereof, such party shall act in a reasonable, expeditious, and timely manner. Furthermore, in any instance where approval or consent is required under the terms hereof, such approval or consent shall not be unreasonable withheld.

8.2. Entire Agreement. When accepted in accordance with Section 8.6, this Franchise, as supplemented by the requirements of MMC Chapter 3.18 constitutes the entire agreement between the Grantee and the Franchising Authority. Amendments to this Franchise shall be valid if mutually agreed to in writing by the parties.

8.3. Notice. Unless expressly otherwise agreed between the parties, every notice or response require by this Franchise to be served upon the Franchising Authority of the Grantee shall be in writing, and shall be deemed to have been duly given to the required party when placed in a properly sealed and correctly addressed envelope; a) upon receipt when hand delivered with receipt/acknowledgement, b) upon receipt when sent certified, registered mail, or c) within five (5) business days after having been posted in the regular mail.

The notices or responses to the Franchising Authority shall be addressed as follows:

City Manager
City of McMinnville
230 NE Second Street
McMinnville, OR 97128

Notices or responses to the Grantee shall be addressed as follows:

Online NW
Attn: Kathy Tate
1305 NE Lafayette Ave
PO Box 1357
McMinnville, OR 97128

The Franchising Authority and the Grantee may designate such other address or addresses from time to time by giving notice to the other in the manner provided for in this Section.

8.4. Descriptive Headings. The captions to sections contained herein are intended solely to facilitate the reading thereof. Such captions shall not affect the meaning or interpretation of the text herein.

8.5. Severability. If any section, sentence, paragraph, term, or provision hereof is determined to be illegal, invalid, or unconstitutional, by any court of competent jurisdiction or by any state or federal regulatory authority having jurisdiction thereof, such determination shall have no effect on the validity of any other section, sentence, paragraph term or provision hereof, all of which will remain in full force and effect for the term of the franchise.

8.6. Acceptance of Franchise. This ordinance does not grant a franchise unless it is accepted in writing by Franchisee within sixty (60) days after its enactment.

Passed by the Council this 8th day of December 2015 by the following votes:

Ayes: _____

Nays: _____

Approved this 8th day of December 2015.

MAYOR

Attest:

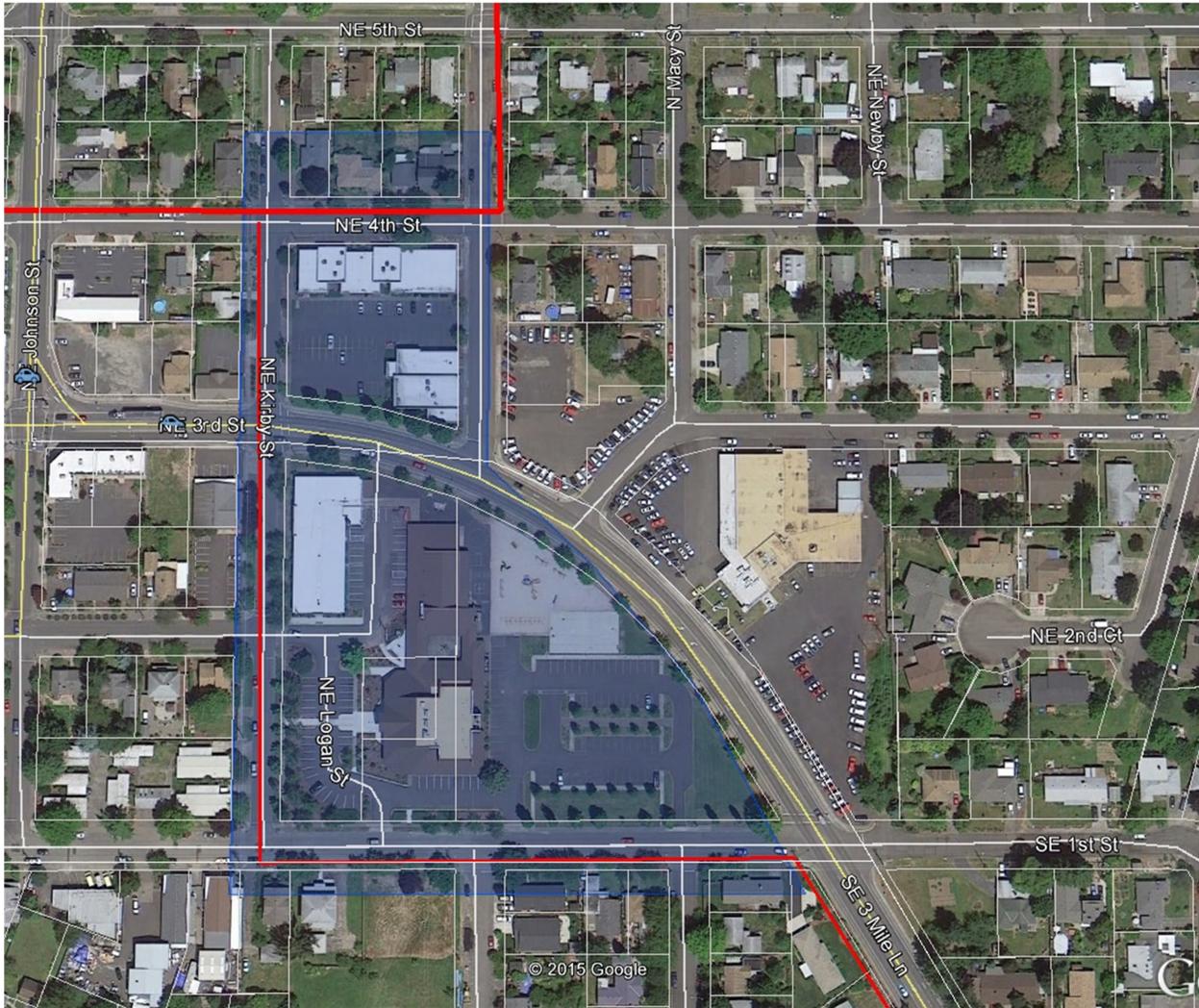
Approved as to form:

CITY RECORDER

CITY ATTORNEY

EXHIBIT A

Residential Service Area



(As depicted by the shaded area)

Accepted this _____ day of _____ 2015, subject to applicable federal, state and local law

Online NW

(Signature)

Name: _____

Title: _____

Date: _____