

*"Making a difference through excellence of service"*



## **CITY OF WARRENTON**

### **AGENDA**

CITY COMMISSION OF THE CITY OF WARRENTON  
REGULAR MEETING  
October 25, 2016 – 6:00 P.M.  
Warrenton City Commission Chambers – 225 South Main Avenue  
Warrenton, OR 97146

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1. **CALL TO ORDER**
2. **PLEDGE OF ALLEGIANCE**
3. **ROLL CALL**
4. **COMMISSIONER COMMENTS/COMMUNICATIONS/AGENDA ADDITIONS**
5. **CONSENT CALENDAR**

- A. Commission Regular Meeting – 9.27.16
- B. Commission Regular Meeting Minutes – 10.11.16
- C. Police Dept. Monthly Statistics Report – September 2016
- D. Fire Dept. Monthly Activity Report – September 2016

Items on the Consent Calendar have previously been discussed and/or are considered routine. Approval of the Consent Calendar requires a motion, a second, and no discussion, unless requested by a member of the City Commission.

6. **BUSINESS ITEMS**
  - A. Consideration of Recommendations from Legal Counsel Akin Blitz regarding the 8<sup>th</sup> Street Dam
  - B. City Engineer Presentation on FEMA Levees and the 8<sup>th</sup> Street Dam
  - C. Consideration of Request from NW Natural for Franchise rather than ROW

D. Consideration of City Manager Contract

E. Discussion on Opportunities for a Drug K-9 for Warrenton Police Dept.

7. **PUBLIC COMMENT**

At this time, anyone wishing to address the City Commission concerning items of interest not already on the Agenda may do so. The person addressing the Commission will, when recognized, give his or her name and address for the record. All remarks will be addressed to the whole City Commission and limited to 3 minutes per person. The Commission reserves the right to delay any action, if required, until such time as they are fully informed on a matter.

8. **EXECUTIVE SESSION**

9. **ADJOURNMENT**

**CITY HALL IS ACCESSIBLE TO THE DISABLED. AN INTERPRETER FOR THE HEARING IMPAIRED MAY BE REQUESTED UNDER THE TERMS OF ORS 192.630, BY CONTACTING LINDA ENGBRETSON AT LEAST 48 HOURS IN ADVANCE OF THE MEETING**

MINUTES  
Warrenton City Commission  
Regular Meeting – September 27, 2016  
6:00 p.m.  
Warrenton City Hall - Commission Chambers  
225 S. Main  
Warrenton, Or 97146

Mayor Kujala called the meeting to order at 6:00 p.m. and then led the public in the Pledge of Allegiance.

Commissioners Present: Mayor Mark Kujala, Henry Balensifer, Pam Ackley, Tom Dyer and Rick Newton

Staff Present: City Manager Pro tem Linda Engbretson, Fire Chief Tim Demers, Public Works Director Jim Dunn, Public Works Foreman Craig Walter, Finance Director April Clark and Administrative Assistant Dawne Shaw

COMMISSIONER COMMENTS

Commissioner Newton brought several newspapers back from his vacation in Alaska and noted two articles, one noting a \$1.4 million deficit in the Kodiak marina and another article about an ordinance that was passed in regards to discharging dangerous weapons within in city limits. Mayor Kujala noted that last Friday Harbor Master Jane Sweet had an interview with “Fishing News” and they were very interested in all the improvements we are making to our marina that are funded by the Urban Renewal District.

Commissioner Dyer welcomed everyone and said he was glad to be back, noting that he has been down in weather and in the hospital. He has decided that after 32 years with the State Troopers, he will retire. Mayor Kujala stated he knows it was a big decision but he is happy for him.

Commissioner Balensifer welcomed back Commissioners Newton and Dyer.

Commissioner Ackley also welcomed the Commissioners back and congratulated Commissioner Dyer on his retirement. She also noted the Delaura Beach bike path is coming along nicely.

City Manager Pro tem Linda Engbretson stated City Engineer Collin Stelzig met with Coast and Harbor Consultants to prepare for tomorrow’s meeting with FEMA. She also noted that she will be at the League of Oregon Cities conference Thursday and Friday along with Commissioner Balensifer.

Mayor Kujala said he talked briefly with Public Works Director Jim Dunn about the core conveyance project which is under way and also stated he would like to have a discussion about our water rights extension on the Lewis and Clark at a future meeting. Mr. Dunn stated GSI is currently looking at fish persistence, which is a new regulation. He explained we are acquiring more data such as looking at fish counts and how much water comes through in the summer months. They are trying to get a years' worth of data to make a better argument in the future if we need to push back on water rights. The water master plan will come before the Commission on October 11<sup>th</sup>. The consultant for the master plan will work with GSI and iron out the water rights issues for us.

#### CONSENT CALENDAR

- A. Commission Work Session Minutes – 9.13.16
- B. Commission Regular Meeting Minutes – 9.13.16
- C. Community Library Advisory Board Minutes – 9.9.16
- D. Monthly Finance Report – June 2016
- E. Monthly Finance Report – July 2016
- F. Police Dept. Statistics – August 2016
- G. Fire Dept. Activity Report – August 2016
- H. Planning Dept. Activity Report – January – July 2016
- I. Marinas Monthly Report – August 2016

**Commissioner Balensifer made the motion to accept the consent calendar as presented. Motion was seconded and passed unanimously.**

**Balensifer – aye; Kujala – aye; Dyer – aye; Ackley – aye; Newton – aye**

#### BUSINESS

Finance Director April Clark explained the review of the Sanitation Capital Reserve Funds. A review is required this year, per ORS 294.346. The fund is active and is serving the purpose for which it was intended. The fund was established on September 26, 2006 by Resolution 2161. Since the fund was established a total of \$875,208 has been transferred from the Sanitation Fund to the Sanitation Capitol Reserve Fund to act as a savings account for the purpose of purchasing capital equipment and making capital improvements. During the past 10 years the city has been able to purchase two garbage trucks and pay a pro-rated share of seven public works service trucks, as well as contribute to a fuel pump card-lock system and a data connection with City Hall. Staff recommends continuation of the reserve funds.

**Commissioner Ackley made the motion to continue the Sanitation Capitol Reserve Fund. Motion was seconded and passed unanimously.**

#### MINUTES

Warrenton City Commission  
Regular Meeting – 9-27-16  
Page: 2

**Balensifer – aye; Kujala – aye; Dyer – aye; Ackley – aye; Newton – aye**

City Manager Pro tem Linda Engbretson explained Ordinance No. 1208-A, Amending Section 29, Sunset Clause of Ordinance No. 1108-A, An Ordinance Concerning a \$0.03 Per Gallon Business License Tax on Motor Vehicle Fuel Dealers, Providing for Administration, Enforcement and Collection of the Tax. She noted Ord. No. 1108-A was previously approved in 2007 and does not expire until next year but Astoria is currently renewing theirs so we thought it best to renew at the same time. This will extend it for another 10 years.

**Commissioner Ackley made the motion to conduct the first reading of Ordinance No. 1208-A, by title only. Motion was seconded and passed unanimously.**

**Balensifer – aye; Kujala – aye; Dyer – aye; Ackley – aye; Newton – aye**

**Mayor Kujala conducted the first reading by title of Ordinance No. 1208-A; *“Amending Section 29, Sunset Clause of Ordinance No. 1108-A, An Ordinance Concerning a \$0.03 Per Gallon Business License Tax on Motor Vehicle Fuel Dealers, Providing for Administration, Enforcement and Collection of the Tax.”***

Mayor Kujala introduced Akin Blitz of Bullard Law. Mr. Blitz was engaged to conduct an initial investigation related to the 8<sup>th</sup> Street Dam. Mayor Kujala noted for full disclosure that he has a business near the dam and his mother owns property there but feels he can be part of conversation. Commissioner Balensifer noted for the record that this is a public meeting and the presentation material states the information is “Privileged and Confidential”. Mr. Blitz stated the material he is presenting is not privileged. Mr. Blitz presented an in depth power point presentation with his findings and recommendations. He stated the consequences of removing the dam are unclear at this point; the conclusion is unless there is immediate reason to remove it, given the current climate with FEMA litigation, anyone would say do not remove it. He also noted the dam is an asset and something the city should hold on to. Mr. Blitz stated in regards to ownership of the dam, the State of Oregon/DSL claims no interest in the dam itself or the lands beneath it. There is no documentation that supports that the Skipanon Water Control District (SWCD) has ownership interest in the dam or the underlying lands. The City easement was forfeited once they stopped operating it and ultimately removed the tide gates. He stated nothing in the record explains the SWCD’s choice to advocate for removal rather than proper maintenance and operation. CREST’s interests include funding implications for SBU’s. His recommendation is that the City should request the Skipanon Water Control District and its board of directors to convey or surrender to the city the tide gates and all interests in control and responsibilities for the 8<sup>th</sup> street dam. He said it appears the 8<sup>th</sup> street dam presents issues of maintenance and operation not obsolescence and deterioration. Mr. Blitz also noted it is technically not a dam; it is part of the levee system (a reach) and is not in the national inventory

of dams. The discussion continued on who is now liable. Mr. Blitz explained the options going forward and his fees/budget accordingly. Mayor Kujala thanked Mr. Blitz for the information and noted that the Commission would review it and have City Engineer Collin Stelzig weigh in.

The Mayor opened the discussion for public comment. Christine Bridgens stated she would keep her comments short in respect to time but she wanted to put on record that the Planning Commission is in support of what was discussed tonight. She submitted a written copy of the complete comments that she was going to make. John Nygaard stated that Mr. Blitz' report supports the information they have been bringing forward, and he is happy that the fraud of the Skipanon Water Control District and CREST are being exposed. Stan Johnson who owns property on the Skipanon stated he wishes the Commission "not drop the ball" on this corruption and conspiring of agencies, and to make sure the investigation is ongoing until the end.

Mayor Kujala stated they have the budget presented and they have Mr. Blitz' recommendations. The Commission thanked Mr. Blitz for the information and noted the Commission needs time to review everything and decide the next steps. Commissioner Newton requested a brief executive session.

There being no further business Mayor Kujala recessed the regular meeting at 9:00 p.m.; and announced an executive session, under the authority of ORS 192.660(2)(h); *to consult with counsel concerning the legal rights and duties of a public body with regard to current litigation or litigation likely to be filed.* He stated the Commission will likely return to regular session to take action on items discussed during executive session.

At the conclusion of the executive session the Commission did not return to take any action.

APPROVED:

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Mark Kujala, Mayor

ATTEST:

\_\_\_\_\_  
Dawne Shaw, Administrative Assistant

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MINUTES  
Warrenton City Commission  
Regular Meeting – October 11, 2016  
6:00 p.m.  
Warrenton City Hall - Commission Chambers  
225 S. Main  
Warrenton, Or 97146

Mayor Kujala called the meeting to order at 6:00 p.m. and then led the public in the Pledge of Allegiance.

Commissioners Present: Mayor Mark Kujala, Henry Balensifer, Tom Dyer and Rick Newton  
Absent: Pam Ackley

Staff Present: City Manager Pro tem Linda Engbretson, Fire Chief Tim Demers, Police Chief Mathew Workman, Public Works Director Jim Dunn, Library Site Manager Nettie Lee Calog, Public Works Foreman Craig Walter, Finance Director April Clark, Wastewater Treatment Plant Superintendent Kyle Sharpsteen and Administrative Assistant Dawne Shaw

CONSENT CALENDAR

- A. Commission Work Session Minutes – 9.27.16
- B. WBA Meeting Minutes – April 2016
- C. WBA Meeting Minutes – May 2016
- D. WBA Meeting Minutes – June 2016
- E. WBA Meeting Minutes – August 2016
- F. Community Center Annual Report – FY 15/16
- G. Monthly Finance Report – August 2016
- H. Planning Dept. Permit Report – January – July 2016

Commissioner Newton asked for clarification on the Marina portion of the Finance report which shows 25% are 90 days past due. Finance Director April Clark noted there are boats that Harbor Master Jane Sweet is in the process of seizing. These boats make up a majority of the past due moorage fees. Brief discussion continued.

**Commissioner Dyer made the motion to accept the consent calendar as presented. Motion was seconded and passed unanimously.**

**Balensifer – aye; Kujala – aye; Dyer – aye; Newton – aye**

BUSINESS

City Manager Pro tem Linda Engbretson explained the proposed Street Vacation for a portion of

SE Galena, noting the Home Depot property is in the affected area. The petitioners, Ken Yuill and John Yuill have been unsuccessful in reaching Home Depot for consent. The only option to proceed is if the Commission will initiate vacation proceedings, authorized by ORS 271.130, on its own motion. The Yuill's have completed the petition requirements and have done their due diligence, except they have been unable to get a response from Home Depot. Mayor Kujala introduced Ken Yuill who wished to speak on the matter. Mr. Yuill thanked the Commission for the opportunity to request this street vacation. He discussed the wetlands area in line with Galena Ave, noting the wetland area cannot be crossed so there will be no impact. The vacation will allow them to combine 2 city lots.

**Commissioner Dyer made the motion to set a public hearing date of November 8, 2016, for consideration of the vacation of a portion of SE Galena. Motion was seconded and passed unanimously.**

**Balensifer – aye; Kujala – aye; Dyer – aye; Newton – aye**

Library Advisory Board Chair, Kelsey Balensifer explained the urgent need to find a temporary home for the library noting the inadequacy and safety concerns of the current building. The library subcommittee identified a building for lease at 346 S. Main, which would be a good option for a temporary home for the library. Library Board members, Building Inspector Chuck Goodwin, City Manager Pro tem Linda Engbretson and Library Site Manager Nettie Lee Calog did a walk-through of the building and it seems like a good fit for a temporary location. The Library Board held a special meeting on October 3<sup>rd</sup> to discuss making the recommendation to the City Commission. The next step will be to raise funds for a permanent home. A brief discussion continued on the funds that will be used for the lease for the remainder of the fiscal year.

**Commissioner Dyer made the motion to authorize City staff to negotiate a lease agreement for the building at 346 S. Main as a safe temporary new home for the Warrenton Community Library. Motion was seconded and passed unanimously.**

**Balensifer – aye; Kujala – aye; Dyer – aye; Newton – aye**

Public Works Director Jim Dunn discussed the financing for meter replacement, noting that many of areas in Warrenton's water service area have manual read meters which are obsolete, difficult to read and the majority have reached the end of their useful life. Old/obsolete meters do not accurately measure water use and our current meter reading program is costly and inefficient. Staff recently drafted a Letter of Interest with IFA. IFA responded and the City may now apply for funding. IFA funding will allow the department to install automated meters, reducing costs, improving reliability and increasing overall productivity. Brief discussion continued on the cost savings and labor hours spared by replacing the meters.

**Commissioner Balensifer made the motion to authorize City staff to apply for IFA funding**

**for the Meter Replacement Project. Motion was seconded and passed unanimously.  
Balensifer – aye; Kujala – aye; Dyer – aye; Newton – aye**

Public Works Director Jim Dunn presented the Water Master Plan request for qualifications. The City's recent water system Capacity Assessment by the Oregon Health Authority and OAR 333-061-0060 (5) requires a 20 year update to the City's Water Master Plan. The current plan was updated in 1997. To meet these requirements the City will need to update the Water Master Plan by the beginning of 2018. Staff anticipates this work may take up to a year to complete. Staff has developed a draft RFQ for the Commission's review. Discussion continued the master plan and the estimated cost for the update.

**Commissioner Balensifer made the motion to approve Staff's request to solicit professional service providers to develop a new Water Master Plan for the City of Warrenton. Motion was seconded and passed unanimously.**

**Balensifer – aye; Kujala – aye; Dyer – aye; Newton – aye**

Public Works Director Jim Dunn discussed the SW 3rd Street Improvement Project Change Order, noting on July 26<sup>th</sup> the SW 3rd Street Improvement Project was awarded to Big River Excavation. During the construction phase of the project, Big River Construction could not get proper compaction of a section of the road base. A change order was approved in the field so the project would not be significantly delayed.

**Commissioner Balensifer made the motion to approve the 3rd Street Project Change Order in the amount of \$4570.10 to Big River Construction. Motion was seconded and passed unanimously.**

**Balensifer – aye; Kujala – aye; Dyer – aye; Newton – aye**

Public Works Director Jim Dunn explained the contract for the SE Ensign Pump Station Rebuild and the New Force Main Construction Project, noting on September 22<sup>nd</sup> bids were opened for the Ensign Pump Station project. Big River Construction was the lowest responsive bidder. He noted the bid summary and recommendation for bid award letter for the project, which are included in the meeting packet.

**Commissioner Balensifer made the motion to approve awarding the contract for the SE Ensign Pump Station Rebuild and New Force Main Construction Project to Big River Construction for the amount of \$1,247,655. Motion was seconded and passed unanimously.**

**Balensifer – aye; Kujala – aye; Dyer – aye; Newton – aye**

Public Works Director Jim Dunn explained the contracts for the 4<sup>th</sup> Street Pump Station and Change Order #1. On September 1<sup>st</sup> a bid opening was held for the 4th Street Pump Station

project. Rognlin's Inc. was the lowest responsible bidder. These two motions effectively reduce the CIP budgeted amount by \$16,000; from \$203,000 (budgeted amount) to \$187,000 after Change Order # 1. Brief discussion followed.

**Commissioner Balensifer made the motion to approve awarding Rognlin's Inc. a contract for the amount of \$229,000 for the 4th Street Pump Station project. Motion was seconded and passed unanimously.**

**Balensifer – aye; Kujala – aye; Dyer – aye; Newton – aye**

**Commissioner Dyer made the motion to approve Change Order # 1 for the 4th Street Pump Station Project, for a reduction in the amount of \$42,000. Motion was seconded and passed unanimously.**

**Balensifer – aye; Kujala – aye; Dyer – aye; Newton – aye**

City Manager Pro tem Linda Engbretson presented Ordinance No. 1208-A for the second reading and adoption, noting the City conducted the first reading by title only at its September 27, 2016 meeting. Discussion continued on the tax amount.

**Commissioner Balensifer made the motion to conduct the second reading of Ordinance No. 1208-A, by title only. Motion was seconded and passed unanimously.**

**Balensifer – aye; Kujala – aye; Dyer – aye; Newton – aye**

**Mayor Kujala conducted the second reading by title of Ordinance No. 1208-A; *“Amending Section 29, Sunset Clause of Ordinance No. 1108-A, An Ordinance Concerning a \$0.03 Per Gallon Business License Tax on Motor Vehicle Fuel Dealers, Providing for Administration, Enforcement and Collection of the Tax.”***

**Commissioner Dyer made the motion to adopt Ordinance No. 1208-A. Motion was seconded and passed unanimously.**

**Balensifer – aye; Kujala – aye; Dyer – aye; Newton – aye**

Public Works Director gave an update and power point presentation on the recent FEMA meeting that took place on September 28<sup>th</sup>. He stated City Engineer Collin Stelzig will be back on the 25<sup>th</sup> to give further updates. He noted the adjustment the FEMA team used to correct the modeling has many inconsistencies and errors. The discussion continued on the faulty data point FEMA has been using. Mr. Dunn continued his presentation noting FEMA's next steps. Mayor Kujala stated he would be strongly in favor of rejecting anything that comes back with the incorrect numbers and noted in the meantime, the city should continue work to get the levees certified. Commissioner Balensifer requested a strategy session/work session to discuss the path

forward for the city. Brief discussion followed.

Mayor Kujala began the discussion on Ballot Measure 4-181, a Charter Amendment Requiring Voter Approval for Transfer of City Assets. He explained the ballot measure and noted what the Commission can and cannot do in regards to making a public statement on ballot measures and voting. Commissioner Balensifer stated it is important for the Commission to be unified and would like the Mayor to speak for the commission as he is the leader and spokesman of the City. The discussion on the ballot measure continued and the Commission consensus is in opposition to the measure. Mayor Kujala will draft a letter for the newspapers and go on Talk Radio to address the citizens.

PUBLIC COMMENT – Bruce Francis spoke in favor of Public Works decision to use Big River Construction for projects. He also asked if the city is moving towards getting a new city manager. Mayor Kujala announced that Linda Engbretson will continue on as the City Manager at this point. Mr. Francis noted he is the Vice Chair of the Skipanon Water Control District but was speaking as a citizen on the matter of the 8<sup>th</sup> Street Dam and would like to bring to attention of the Commission that litigation is expensive and ugly and that negotiation can be a valuable tool to save the city money. Bert Little spoke in regards to the VFW monument project and noted the Parks Grant request has to be presented by City. Mayor Kujala stated they are really pleased with the work that has been done. They are excited for the monument and agreed they will present the request for the grant. Mr. Little explained the monument and the fundraising efforts. He stated to buy bricks you can go online to the VFW webpage [www.vfwfortstevens10580.com](http://www.vfwfortstevens10580.com). Steve Fulton, Port Commissioner stated he also participated in the September 28 FEMA meeting, noting that FEMA has a funding issue and may not be able to do much in regards of getting new maps out. Mr. Fulton quoted a letter sent by David Ratte which noted “if the city is interested in initiating a local levee partnership to further assist in levee risk and economic vulnerabilities in support of ongoing levee improvement plans and projects, we ask the city make a request to FEMA in writing. As discussed there may be grant opportunities through FEMA’s cooperating technical partner program for the city to conduct and oversee some of this work.” Mr. Fulton stated this may be another avenue to help with the funding issue. Brief discussion followed on funding.

There being no further business Mayor Kujala adjourned the regular meeting at 7:17 p.m.; and announced an executive session, under the authority of ORS 192.660(2)(e); *to conduct deliberations with persons designated by the governing body to negotiate real property transactions, and ORS 192.660(2) to consider the employment of a public officer, employee, staff member or individual agent*. He stated the Commission is not expected to return to regular session to take action on any item considered in the executive session.

MINUTES

Warrenton City Commission

Regular Meeting – 10-11-16

Page: 5

APPROVED:

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Mark Kujala, Mayor

ATTEST:

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Dawne Shaw, Administrative Assistant

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**WARRENTON POLICE DEPARTMENT**  
**SEPTEMBER 2016 STATISTICS**  
**OCTOBER 25, 2016**



**News & Events:**

- On September 16<sup>th</sup> the North Coast Christian Kindergarten class visited the station to show their appreciation for the police. They brought lots of goodies and made several cards for the officers. Officer Pierce handed out badge stickers to everyone and then posed with Chief Workman and the class for a photo.
- Chief Workman, Officer Riley, and Officer Pierce helped the WHS students and staff with their tsunami evacuation drill on the 16<sup>th</sup>.
- Chief Workman attended a webinar sponsored by CIS insurance company on officer-involved shootings on the Sept. 22<sup>nd</sup>.
- On the 25<sup>th</sup> Chief Workman had a table at the Safe Kids North Coast safety fair out at Nutel Landing at Fort Clatsop. The fair ran in conjunction with a 5k run/walk event they were having.
- On the 28<sup>th</sup> and 29<sup>th</sup> Chief Workman attended several training sessions at the OACP/OSSA Annual Fall Conference in Salem.
- Officer Johnston and Officer Pierce represented the WPD at the Costco Heroes night event on October 1<sup>st</sup>. Chief Workman was also there but just as a participant.
- On October 6<sup>th</sup> two WGS 2<sup>nd</sup> grade classes visited the police department as part of a tour of city government and were addressed by Chief Workman. On October 7<sup>th</sup> two more 2<sup>nd</sup> grade classes visited and were addressed by Chief Workman, Officer Wirt, and Officer Johnston.
- On October 8<sup>th</sup> Chief Workman participated in the Healthy Homes 5k Walk/Run. He WALKED!!
- On October 18<sup>th</sup> Officer Berndt presented the ALICE active shooter training at WGS.
- October 20<sup>th</sup> the WPD assisted the WGS students and staff with their tsunami evac drill.

September Statistics (% changes are compared to 2016)							
Category	2016	2015	% Chg	2014	% Chg	2013	% Chg
Calls for Service	<b>691</b>	663	<b>4%</b>	863	<b>-20%</b>	973	<b>-29%</b>
Incident Reports	<b>161</b>	142	<b>13%</b>	148	<b>9%</b>	112	<b>44%</b>
Arrests/Citations	<b>84</b>	61	<b>38%</b>	85	<b>-1%</b>	57	<b>47%</b>
Traffic Events	<b>199</b>	177	<b>12%</b>	210	<b>-5%</b>	166	<b>20%</b>
DUII Calls	<b>4</b>	0	<b>400%</b>	0	<b>400%</b>	0	<b>400%</b>
Traffic Accidents	<b>17</b>	26	<b>-35%</b>	22	<b>-23%</b>	28	<b>-39%</b>
Property Crimes	<b>56</b>	59	<b>-5%</b>	100	<b>-44%</b>	123	<b>-54%</b>
Disturbances	<b>72</b>	66	<b>9%</b>	60	<b>20%</b>	148	<b>-51%</b>
Drug/Narcotics Calls	<b>9</b>	3	<b>200%</b>	5	<b>80%</b>	0	<b>900%</b>
Animal Complaints	<b>27</b>	35	<b>-23%</b>	38	<b>-29%</b>	50	<b>-46%</b>
Officer O.T.	<b>135</b>	84.5	<b>60%</b>	174.8	<b>-23%</b>	126.3	<b>7%</b>
Reserve Hours	<b>32</b>	48	<b>-33%</b>	60.5	<b>-47%</b>	38.5	<b>-17%</b>

Category	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep
Calls for Service	637	647	716	685	737	696	763	690	691
Incident Reports	124	125	143	132	160	166	173	146	161
Arrests/Citations	64	69	111	88	113	83	90	63	84
Traffic Events	254	231	260	279	249	179	175	158	199
DUII Calls	2	3	5	2	7	3	2	1	4
Traffic Accidents	16	15	13	24	21	14	18	23	17
Property Crimes	46	68	92	39	58	92	130	78	56
Disturbances	66	58	73	62	76	62	93	76	72
Drug/Narcotics Calls	8	4	6	3	8	4	4	5	9
Animal Complaints	19	18	27	30	29	29	27	40	27
Officer O.T.	148.25	236.75	107.5	45	55.75	57	124.75	137	135
Reserve Hours	30	82	57	125	65	55.5	34	35	32

Oct	Nov	Dec	2016 YTD	2016 Estimate	2015	2016 v 2015	2014	2016 v. 2014	2013	2016 v. 2013
			6262	8349	8239	1%	8317	0%	7132	17%
			1330	1773	1749	1%	1515	17%	1364	30%
			765	1020	925	10%	994	3%	841	21%
			1984	2645	2353	12%	2220	19%	2075	27%
			29	39	15	158%	14	176%	33	17%
			161	215	291	-26%	408	-47%	498	-57%
			659	879	805	9%	1374	-36%	1312	-33%
			638	851	781	9%	1359	-37%	1372	-38%
			51	68	42	62%	80	-15%	69	-1%
			246	328	311	5%	318	3%	329	0%
			1047	1396	1249	12%	997.5	40%	999	40%
			515.5	687	901.75	-24%	804.75	-15%	1016	-32%

The following is a graphic representation of statistics for October 2016 using our [CrimeReports.com](http://CrimeReports.com) membership. If you go to the website you can zoom in on each incident for more details.

**Violent**

- Assault
- Assault with Deadly Weapon
- Homicide
- Kidnapping
- Robbery
- Other Sexual Offense
- Sexual Assault
- Sexual Offense

**Property**

- Breaking & Entering
- Property Crime
- Property Crime Commercial
- Property Crime Residential
- Theft
- Theft from Vehicle
- Theft of Vehicle

**Quality Of Life**

- Disorder
- Quality of Life
- Drugs
- Liquor

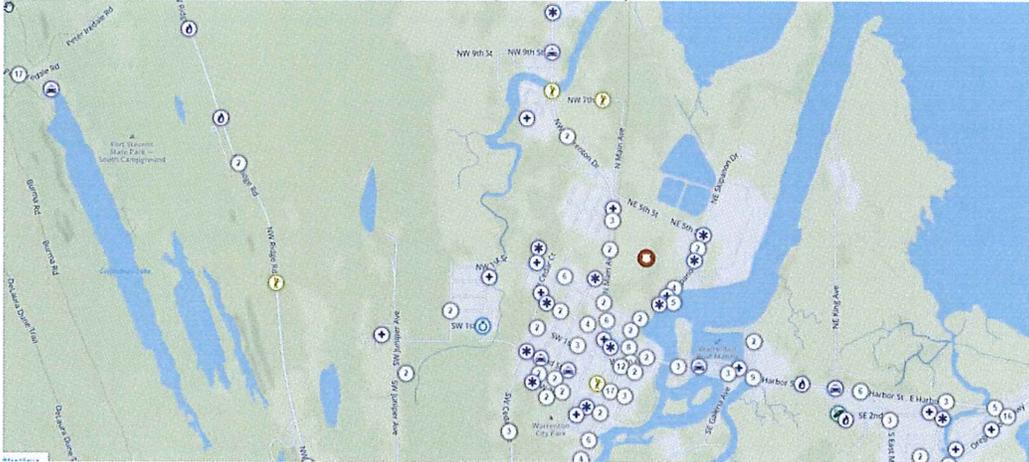
**911 & Other**

- Alarm
- Arson
- Death
- Family Offense
- Missing Person
- Other
- Pedestrian Stop
- Vehicle Recovery

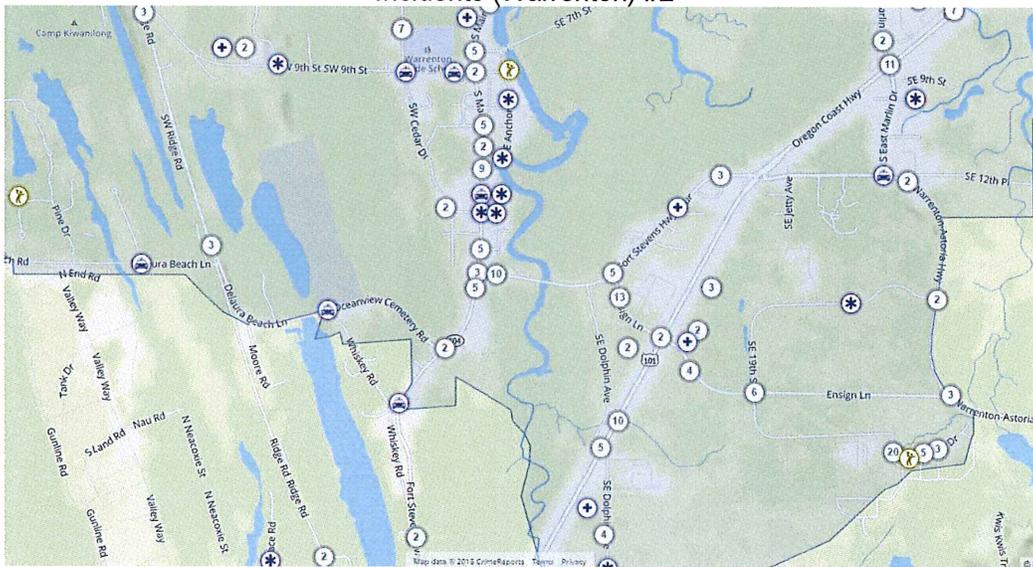
- Vehicle Stop
- Weapons Offense
- Community Policing
- Proactive Policing
- Emergency
- Fire
- Traffic



Incidents (Warrenton) #1



Incidents (Warrenton) #2



Incidents (Hammond)





# Warrenton Fire Department

P.O. Box 250 Warrenton, OR 97146-0250 503/861-2494 Fax 503/861-2351

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## STAFF REPORT

**Date:** October 24, 2016  
**To:** The Members of the Warrenton City Commission  
Linda Engbretson, City Manager  
**From:** Tim Demers, Fire Chief  
**Re:** Fire Department Activity Report for **September, 2016**

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### **September, 2016 Emergency Response Activity -**

The Warrenton Fire Department responded to 111 emergency calls during the month of September, 2016. The department responded to 80 EMS (emergency medical service) calls, 12 motor vehicle crashes, and 13 service calls. There were Six (6) reportable fires during the month. Service calls include alarm activations with no fire, false alarms, hazardous conditions, good intent calls, public assists, etc. An average of 5 volunteers responded per call throughout the month. During the month of September, 58.6%, or 65 of the calls were during daytime hours between 6:00 a.m. and 6:00 p.m. The other 46 calls, or 41.4%, were during the night, between the hours of 6:00 p.m. and 6:00 a.m.

### **September, 2016 Training –**

The department held 4 regularly scheduled Wednesday evening training sessions during the month of September, with an average attendance of 17 volunteers per drill. The department offered two (2) additional training sessions during the month of September.

#### **7<sup>th</sup> EMS – Wound dressing & splinting**

**Instructor: Capt. Shepherd, EMTs**

#### **Support firefighter training – SCBA review**

**Instructor: Capt. Shepherd**

#### ***Association business meeting***

#### **14<sup>th</sup> Fall Firefighter Skills Competition**

**Instructor: Capt. Shepherd**

**21<sup>st</sup> School bus tour & patient extrication drill – High school**  
**Instructors: Capt. Shepherd, Cindy Kirby**

**28<sup>th</sup> Team equipment presentations**  
**Instructor: Lt. Alsbury**

6A

*"Making a difference through excellence of service"*



**CITY OF WARRENTON**

## **AGENDA MEMORANDUM**

**TO:** The Mayor and Warrenton City Commission  
**FROM:** Linda Engbretson, CMC, City Manager Pro Tem  
**DATE:** October 25, 2016  
**SUBJ:** 8<sup>th</sup> Street Dam

### **SUMMARY**

Mr. Akin Blitz with Bullard Law will be at the meeting to follow up with his review, findings, recommendations, and budget forecast with you at the meeting.

### **RECOMMENDATION/SUGGESTED MOTION**

Consider taking action as deemed appropriate by the City Commission.

### **ALTERNATIVE**

N/A

### **FISCAL IMPACT**

These legal services are not budgeted and are being paid from General Fund Professional Services. Staff will prepare a budget adjustment to use contingency if necessary.

Approved by City Manager: LM E

All supporting documentation, i.e., maps, exhibits, etc., must be attached to this memorandum.

**BUDGET FORECAST  
and  
Summary of Costs to Date**

- A. Identify readily available documents; document review; identify and describe issues related to history, records of hydrology and flood control, dam ownership, safety, reliability and liability of 8<sup>th</sup> Street structure, and City interests, make determinations not requiring separate and additional research or analysis

Preparation of CONFIDENTIAL PowerPoint presentation to brief Commission of preliminary fact-finding report and draft budget

Meet with Commission concerning preparation of written fact-finding report and desired budget to address preliminary issues, questions and concerns (with scope as desired and directed by Commission). **\$28,000<sup>6</sup>**

- B. Formalize fact-finding report to Commission (developed in the form of an internal law firm work product draft and PowerPoint presentation) based on Commission desires **\$1,000 – \$2,500**

- C. Develop fact record and conclusions concerning public records issues:

1. Complete forensic examination of 5-6 hard drives and 5-6 PST files using forensic search terms (Skipanon 8<sup>th</sup> Street Dam, CREST, and Skipanon Water Control District). Cost is data driven. The best option is to examine only City Manager PST files and the City Manager hard drive if his actions are the focus of Commission concerns. There may be no basis for further examination or additional drives and files.

Travel & complete examination **\$4,000-\$5,500**

Travel & single hard drive and one PST file **\$2,000-3,500/person**

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<sup>6</sup> This cost reflects work to date inclusive of Commission meeting attendance, gathering of documentation at the City and County, limited contacts as necessary (law firms, State, County, engineers), para-legal evaluation, document presentation and PowerPoint preparation, and the drafting of a 30 page internal memo which, in substantial part, will be the initial report submitted to the Commission upon approval of the scope of the fact-finding.

2. Asses emails and computer data, and identify actions if any, contrary to law or City policy **\$500-4,000**

Possible Commission considerations include whether this “look back” concerns matters which are largely resolved, whether the matter is moot, and whether the facts should be clarified and reviewed because questions remain concerning City administration and the actions are capable of repetition.

- D. Legal review and ownership analysis in anticipation of potential litigation to acquire all rights, title, and control over the 8<sup>th</sup> Street structure.

1. If Skipanon Water Control District willingly abandons whatever interest it may have in 8<sup>th</sup> Street Structure, tide-gates and parts of the structure to City of Warrenton, further research regarding confirmation is unnecessary.
2. With assistance and facilitation of City Engineer Collin Stelzig, 80-95% certainty of City ownership seems established by documents gathered to date from Oregon Division of State Lands and Oregon Water Resources’ Board, the land records and court records.
3. I have seen no evidence of an ownership interest of Skipanon Water Control District.
4. Legal review of land ownership, if need. Daniel Timmons at Marten Law responded to my request and prepared a proposed scope of work and estimated budget. Research and opinion is estimated between \$9975 and \$19,950 at a discounted hourly rate of \$285.
5. This estimate does not include a land records search by a title company and presumes that the City and/or I have or will locate all land records.
6. Research land records at the Oregon Water Resources Board and Division of State Lands; in particular to locate any other tideland deeds and records of ownership. **\$10,000-\$20,000**

- E. Prepare contractual conveyance of all rights and interest, if any, of the Skipanon Water Control District in the 8<sup>th</sup> Street structure, and acceptance by the City of Warrenton. **\$500 - \$1,000**

- F. Engineering studies to examine the integrity of 8th Street structure, limited use of structure as a road-bed right of way, maintenance/upkeep needs forecast, and a floodplain evaluation and analysis of 8th Street Structure options, costs, impacts and alternatives in regard to wetlands, bridges in wetlands and lands owned and occupied within City of Warrenton. The floodplain analysis would take into account

- G. the 8th Street structure “as is” and with tide gates functioning, in contrast with impact of removal, the 2010 FEMA maps, the 2016 FEMA draft and a 100/200 year event, tidal and storm surges, weather, and runoff until 200 year event.

Thomas R. Grindeland at WEST Consultants estimates the cost to complete a hydraulic study of the Skipanon River as likely to include the following elements and estimated costs:

Project Management	\$2,000
Meetings to include project kick-off meeting, Tetra Tech/CREST data collection and review, and presentation of results	\$6,000
Collect/review existing data (Hydrology, Tide Data, Topography /Bathymetry, Hydraulic Structures, Hydraulic Models)	\$2,000
Additional field survey	\$20,000
Revise/finalize hydraulic models of existing & proposed conditions	\$25,000
Hydraulic Impact Assessment (Floodplains & flood elevations)	\$5,000
Documentation report	\$5,000
Estimated TOTAL <b>with</b> survey cost	\$65,000
Estimated TOTAL <b>without</b> survey cost	\$45,000

- H. Geotechnical engineering work by Mike Meyer of Cornforth Consultants, Tigard, Oregon presents two options.

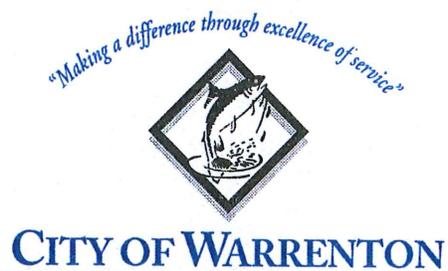
OPTION A. Evaluation of specifications as constructed and, if to standards, provide confirmation estimate of annual maintenance costs. **\$5,000**

OPTION B. Not recommended and perhaps unnecessary. Cornforth Consultants can evaluate the 8<sup>th</sup> Street structure more comprehensively and definitively. Mike Meyer describes the 8<sup>th</sup> Street structure as a very small reach of the levee system, and/or as a “cross levee” substantially identical to a Portland structure which connects Pen #1 and Pen #2 and blocks the Columbia Slough. As such, Mike Meyer suggests that it should be treated just as the levees on either end. Cornforth Consultants notes

there are miles of levees which, as a practical matter, are not susceptible to engineering evaluation and analysis that might be brought to bear on the 8<sup>th</sup> Street structure. Cross levees do not fall within the inventory of dams. The 8<sup>th</sup> Street structure is not in the federal dam Inventory and is not a dam, in his opinion. Mike Meyer points out that it is effective as the levees abutting it for a high water event, and suggests that appropriate studies would demonstrate this.

If in spite of Mike Meyer's opinion, the City were to call for a thorough structure analysis of slope stability, true banks, settlement, and structural elements, this would require drilling bore holes, creating a cross section picture, lab studies and engineering analysis. **\$60,000-\$80,000**

- I. "Look back" inquiry as to motive and possibility of wrongs which have been raised in the community. (Note: Unlike the questions raised concerning public records, these issues are beyond Commission control and responsibility and are subject to meaningful review, if at all, by the District Attorney, Attorney General and Oregon Treasurer, and/or federal law enforcement authorities. I have not considered whether a basis might exist for private action of individual citizens.)
  1. CREST opportunities
  2. SBU management by BPA
  3. True value to salmon of CREST projects
  4. Impacts of CREST projects on landowners and properties including Division of State Lands and Common School Fund
  5. Whether CREST activities have circumvented due process or property rights deprivations (actual or potential)
  6. Whether CREST has engaged in wrongful and/or criminal activities



## AGENDA MEMORANDUM

TO: The Mayor and Warrenton City Commission  
FROM: Linda Engbretson, CMC, City Manager Pro Tem  
DATE: October 25, 2016  
SUBJ: City Engineer Presentation FEMA/Levees/8<sup>th</sup> Street Dam

### SUMMARY

City Engineer Collin Stelzig will be at the meeting to update you on FEMA meetings for the Clatsop Estuary Technical Analysis and discuss next steps. He will be available to offer insight and answer questions regarding the 8<sup>th</sup> Street Dam.

### RECOMMENDATION/SUGGESTED MOTION

No recommendation

### ALTERNATIVE

N/A

### FISCAL IMPACT

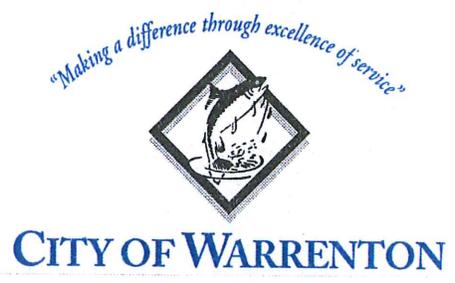
N/A

Approved by City Manager:

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All supporting documentation, i.e., maps, exhibits, etc., must be attached to this memorandum.

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## AGENDA MEMORANDUM

TO: The Mayor and Warrenton City Commission  
FROM: Linda Engbretson, CMC, City Manager Pro Tem  
DATE: October 25, 2016  
SUBJ: NW Natural Gas Request to Extend Franchise

### SUMMARY

The City received a request from NW Natural Gas to renegotiate its Franchise Agreement. In 2011, the City began the process of updating its right of way ordinance, basically taking away the need to negotiate franchise agreements, to provide a one-size uniform process for utilities that use the public right-of-ways. It was also a tool to possibly capture additional revenues, i.e., competitive phone service providers other than CenturyLink which may be leasing CenturyLink's facilities to provide service to customers in the City. These competitive providers generally do not own facilities so they would not have to get a franchise, but they do benefit from use of the right of way and thus the City can impose on them a privilege tax (or other tax/fee). The ordinance does not exclude the opportunity to enter into written franchise agreements in the public interest.

I have attached NW Natural's request. I see no public harm in renegotiating/extending the franchise with NW Natural Gas.

**RECOMMENDATION/SUGGESTED MOTION**

*"I move to authorize the City Manager to work with NW Natural to renew its franchise agreement with the City; bringing it back for Commission approval."*

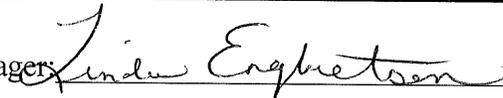
**ALTERNATIVE**

Other action as deemed appropriate by the City Commission

**FISCAL IMPACT**

The City receives 5% of gross revenue collected.

Approved by City Manager:

A handwritten signature in cursive script, reading "Linda Engstrom", is written over a horizontal line.

All supporting documentation, i.e., maps, exhibits, etc., must be attached to this memorandum.

Hi Linda:

- I wanted to follow up with you on why NW Natural would prefer to renew its franchise with the City, in lieu of the ROW ordinance. The ROW ordinance leaves open the option for the City to consider franchise agreements with its utility partners, and NWN believes that both its longstanding relationship with the City and its long-term investment by the nature of its services and operation, along with the particular obligations of a gas utility compared to other utilities, are all reasons a franchise would work better for both parties here. With the ROW ordinance, the additional process / administrative requirements imposed on NWN (in particular, the licensure processes and financial assurance requirements) are costly and would not improve either on safety or efficient delivery of NWN's services to City residents.
- NW Natural has found that franchises generally promote more open communication with and regarding cities' financial, logistical and infrastructure needs, while providing for NW Natural's strict regulatory requirements and unique attributes, especially compared to one-size-fits-all ROW ordinances given the differences in gas versus other utilities.
- The promotion of equity among all utilities is often raised as a reason for ROW ordinances over franchises. NW Natural respectfully notes the marked differences between the various utilities subject to this ordinance, not only in the nature of the services they deliver, but also their divergent and industry-specific regulatory schemes. A one-size-fits-all approach does not adequately account for these differences.
  - For example, the Telecommunications Act of 1996 mandates that City franchising/right-of-way regulations applicable to telecommunications providers maintain competitive neutrality to encourage competition and decrease barriers to market entry as new telecommunication companies enter the market. In contrast, NW Natural's service territory is allocated to it alone and its rates are regulated by the Oregon Public Utility Commission (OPUC). There are no issues of competitive neutrality because there is no direct competition, and the City has flexibility to customize a franchise that recognizes NW Natural's unique service and the regulatory structure under which it operates.
- We understand that ROW ordinances also strive to streamline processes for cities, particularly those that commonly arise from multiple uses/users of a city's rights-of-way. It seems in many if not most instances, such issues are caused by companies new to the areas, without firm ties to the particular communities or undergoing corporate changes in control. Given NWN's long history in Oregon, and its 50 years in Warrenton, NWN has not only well-established ties in the community but also long-standing interests and investments in the City. We will work with you to resolve concerns promptly and are committed to serving the City's and its residents' natural gas needs.
- The ROW ordinance's licensure requirements, specifically the business license and Utility ROW license (renewable annually and every 5 years respectively), add process and administrative burdens to NWN without gains in safety or efficient delivery of services to Warrenton customers. The basic method of delivering natural gas hasn't changed significantly in over 150 years since NW Natural first began providing services, and the investments made by NW Natural in the City's rights-of-way are significant, long term investments designed to serve Warrenton for decades. An annual registration requirement or every 5 year ROW license requirement are at odds with this long-term investment. A franchise (typically 10 years in length) provides certainty to NW Natural's customers,

the public, investors and comfort to its lenders. This certainty enables NW Natural to provide better and more cost-effective service to its customers.

- The additional fees outlined in the Ordinance, such as the registration fee, permit / license fees will ultimately be fees/costs passed on to its residents. Likewise, requiring a PUC-approved utility with a 150+ year history of performance to post a 100% bond for each project is an expensive and unnecessary requirement, and could significantly hinder our operations, and such a requirement unnecessarily increases costs that will be passed through to customers in utility rates. We respectfully submit that NW Natural should be exempt from such a requirement, or there should be a credit-worthiness or past performance exception, and this would be easily addressed in a franchise agreement.
- Of some concern as well is the definition of gross revenues in the ordinance, which does not contain the some of the longstanding exclusions in NWN franchise with Warrenton and the other cities we serve (See Section 13 of the Warrenton Franchise versus Resolution No. 2365 setting privilege tax rate). These exclusions are to ensure that the franchise fees paid for the use of the ROW are tied to the use of the ROW; the ordinance has instead placed an overly broad definition of Gross Revenue for the privilege tax.
- While the current NWN/Warrenton franchise does not have any specifics on insurance requirements, we would have not object to incorporating these requirements into a franchise agreement. In fact, the insurance level/coverage requirements are similar to those we have in multiple other franchise agreements.
- Another concern of NW Natural, which operates in over 96 cities, is that with an ordinance in lieu of a franchise, a city may also make unilateral changes without the knowledge of its licensees, effectively forcing the licensee out of compliance without the licensee's knowledge or a reasonable opportunity to conform. It is not a question of NWN intentionally trying to not comply or any intent by the city to cause such an effect; it is just that a franchise provides more surety to both parties.
- Requiring a PUC-Approved Utility with a 150+ year history of performance to post a 100% bond for

In summary, NW Natural remains committed to working with Warrenton to provide consistent, cost-effective and safe natural gas. It is our hope that we can continue to work with the City to negotiate mutually-beneficial franchise agreements as we have done for the past 50 years.

Thank you for your consideration and we look forward to continuing our long collaborative relationship with the City.

ORDINANCE NO. 1160-A

INTRODUCED BY ALL COMMISSIONERS

TO AMEND CHAPTER 12.32 OF THE MUNICIPAL CODE TO ESTABLISH  
STANDARDS FOR USE OF THE RIGHTS OF WAY IN THE CITY

WHEREAS, the City of Warrenton has statutory and Constitutional authority to manage its right of way; and

WHEREAS, Warrenton Municipal Code (WMC) Chapter 12.32 Rights-of-Way establishes requirements for use of the City's right of way, but currently does not adequately address use of the rights of way by utilities; and

WHEREAS, the City Commission finds it is in the public interest to clarify the requirements for utilities to use the right of way and to require utilities to obtain a license for use of the right of way and pay a privilege tax.

NOW, THEREFORE, the City of Warrenton ordains as follows:

**Section 1:** The provisions of WMC Chapter 13.32 Rights-of-Way are hereby repealed in their entirety and replaced with the provisions set forth in Exhibit A.

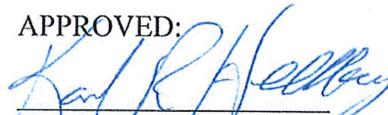
**Section 2:** This ordinance will take effect 30 days after its adoption by the Warrenton City Commission.

ADOPTED by the City Commission of the City of Warrenton this 8<sup>th</sup> day of February 2012.

First Reading: 1/24/12

Second Reading: ~~2/14/12~~  
5/8/12

APPROVED:

  
Karl R. Hellberg, Mayor

ATTEST:

  
Linda Engbretson, City Recorder

## EXHIBIT A

### Chapter 12.32 PUBLIC RIGHTS OF WAY

#### 12.32.010 Purpose and Intent.

The purpose and intent of this chapter is to:

- A. Permit and manage reasonable access to the rights of way of the City for utility purposes and conserve the limited physical capacity of those rights of way held in trust by the City consistent with applicable state and federal law;
- B. Assure that the City's current and ongoing costs of granting and regulating access to and the use of the rights of way are fully compensated by the persons seeking such access and causing such costs;
- C. Secure fair and reasonable compensation to the City and its residents for permitting use of the rights of way;
- D. Assure that all utility companies, persons and other entities owning or operating facilities and/or providing services within the City comply with the ordinances, rules and regulations of the City;
- E. Assure that the City can continue to fairly and responsibly protect the public health, safety and welfare of its citizens;
- F. Encourage the provision of advanced and competitive utility services on the widest possible basis to businesses and residents of the City; and
- G. Comply with applicable provisions of state and federal law.

#### 12.32.020 Jurisdiction and Management of the Public Rights of Way.

- A. The City has jurisdiction and exercises regulatory management over all rights of way within the City under authority of the City charter and state law.
- B. The City has jurisdiction and exercises regulatory management over each right of way whether the City has a fee, easement, or other legal interest in the right of way, and whether the legal interest in the right of way was obtained by grant, dedication, prescription, reservation, condemnation, annexation, foreclosure or other means.
- C. The exercise of jurisdiction and regulatory management of a right of way by the City is not official acceptance of the right of way, and does not obligate the City to maintain or repair any part of the right of way.
- D. The provisions of this chapter are subject to and will be applied consistent with applicable state and federal laws, rules and regulations, and, to the extent possible, shall be interpreted to be consistent with such laws, rules and regulations.

#### 12.32.030 Regulatory Fees and Compensation Not a Tax.

- A. The fees and costs provided for in this chapter, and any compensation charged and paid for use of the rights of way provided for in this chapter, are separate from, and in addition to, any and all other federal, state, local, and City charges as may be levied, imposed, or due from a utility operator, its customers or subscribers, or on account of the lease, sale, delivery, or transmission of utility services.
- B. The City has determined that any fee or tax provided for by this chapter is not subject to the property tax limitations of Article XI, Sections 11 and 11b of the Oregon Constitution. These fees or taxes are not imposed on property or property owners.

C. The fees and costs provided for in this chapter are subject to applicable federal and state laws.

#### **12.32.040 Definitions.**

For the purpose of this chapter the following terms, phrases, words and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number and words in the singular number include the plural number. The words "shall" and "will" are mandatory and "may" is permissive.

"Cable service" is to be defined consistent with federal laws and means the one-way transmission to subscribers of: (i) video programming, or (ii) other programming service; and subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.

"City facilities" means City owned or operated structures or equipment located within the right of way or public easement used for governmental purposes.

"Communications services" means any service provided for the purpose of transmission of information including, but not limited to, voice, video, or data, without regard to the transmission protocol employed, whether or not the transmission medium is owned by the provider itself and whether or not the transmission medium is wireline. "Communications service" includes all forms of telephone services and voice, video, data or information transport, but does not include: (1) cable service; (2) open video system service, as defined in 47 C.F.R. 76; (3) private communications system services provided without using the public rights of way; (4) over-the-air radio or television broadcasting to the public-at-large from facilities licensed by the Federal Communications Commission or any successor thereto; and (5) direct-to-home satellite service within the meaning of Section 602 of the Telecommunications Act.

"License" means the authorization granted by the City to a utility operator pursuant to this chapter.

"Permittee" means any person to whom the City has issued a valid permit pursuant to WMC 12.32.050 and includes any person who is subject to the permit requirement of WMC 12.32.050 regardless of whether or not such person applied for or obtained the required permit. For work performed on behalf of a utility operator, "permittee" shall include the utility operator in addition to the person to whom the City issued the permit.

"Private communications system" means a system, including the construction, maintenance or operation of the system, for the provision of a service or any portion of a service which is owned or operated exclusively by a person for their use and not for resale, directly or indirectly. "Private communications system" includes services provided by the state of Oregon pursuant to ORS 190.240 and 283.140.

"Public utility easement" means the space in, upon, above, along, across, over or under an easement for the constructing, reconstructing, operating, maintaining, inspecting, and repairing of utilities facilities. "Public utility easement" does not include an easement solely for the constructing, reconstructing, operating, maintaining, inspecting, and repairing of City facilities, or where the proposed use by the utility operator is inconsistent with the terms of any easement granted to the City.

"Public Works Director" shall mean the person acting as the head of the City's public works department or his or her designee.

"Right of way" means and includes, but is not limited to, the space in, upon, above, along, across, over or under the public streets, roads, highways, lanes, courts, ways, alleys, boulevards, bridges, trails, paths, sidewalks, bicycle lanes, public utility easements and all other public ways or areas, including the subsurface under and air space over these areas, but does not include parks, parkland, or other City property not generally open to the public for travel. This definition applies only to the extent of the City's right, title, interest and authority to grant a license to occupy and use such areas for utility facilities.

"State" means the state of Oregon.

"Utility facility" or "facility" means any physical component of a system, including but not limited to the poles, pipes, mains, conduits, ducts, cables, wires, transmitters, plant, equipment and other facilities, located within, under or above the rights of way, any portion of which is used or designed to be used to deliver, transmit or otherwise provide utility service. "Utility facility" does not include City facilities.

"Utility operator" or "operator" means any person who owns, places, operates or maintains a utility facility within the City. The City shall not be considered a "utility operator" for purposes of this chapter.

"Utility service" means the provision, by means of utility facilities permanently located within, under or above the rights of way, whether or not such facilities are owned by the service provider, of electricity, natural gas, communications services, cable services, water, sewer, and/or storm sewer to or from customers within the corporate boundaries of the City, and/or the transmission of any of these services through the City whether or not customers within the City are served by those transmissions. "Utility service" does not include City owned or operated utility services.

"Work" means construction, reconstruction, grading, oiling, repairing, opening or excavating in or on the right of way. "Work" also includes the construction, demolition, installation, replacement, repair, maintenance or relocation of any utility facility, including but not limited to any excavation and restoration required in association with such construction, demolition, installation, replacement, repair, maintenance or relocation.

#### **12.32.050 City Permit Required.**

A. No person shall do work affecting the right of way without first obtaining a permit from the Public Works Department. The permit requirement does not apply to City utilities or to the construction of improvements performed under City contract unless such contract expressly requires City permits.

B. No person shall perform any work on utility facilities within the rights of way without first obtaining all required permits, including but not limited to a permit from the Public Works Director. The City shall not issue a permit for the construction, installation, maintenance or repair of utility facilities unless the utility operator of the facilities has applied for and received the license required by this chapter, or has a current franchise with the City, and all applicable fees have been paid.

C. The permit shall be issued only to a duly licensed bonded contractor holding a current City of Warrenton business license with proof of current liability and workers compensation insurance, except that a property owner who is not a licensed contractor may receive a permit under the following conditions:

1. The total value of the work is not to exceed One Thousand Dollars (\$1,000).
2. No excavation shall exceed one foot in depth.

3. Excavations shall be in the area between the back of the curb and right of way/property line boundary.
4. No existing improvements other than sidewalks and/or driveway approaches are to be disturbed.
5. A security deposit of One Thousand Two Hundred Dollars (\$1,200) in the form of cash or certified check shall be required under the restoration of the work area at the discretion of the Public Works Director. In the event that restoration is not satisfactory, the deposit shall be retained by the City to defray the cost of restoration by the Public Works Department.

D. In the event of an emergency, a utility operator with a license pursuant to this chapter or its contractor may perform work on its utility facilities without first obtaining a permit from the City, provided that, to the extent reasonably feasible, it attempts to notify the City prior to commencing the emergency work and in any event applies for a permit from the City as soon as reasonably practicable, but not more than forty eight (48) hours after commencing the emergency work. As used in this subsection D, "emergency" means a circumstance in which immediate repair to damaged or malfunctioning facilities is necessary to restore lost service or prevent immediate harm to persons or property.

E. Applications for permits to work in the right of way shall be submitted upon forms to be provided by the City and shall be accompanied by drawings, plans and specifications in sufficient detail to demonstrate that the facilities will be constructed in accordance with all applicable codes, rules and regulations, including but not limited to the most current revision of the City of Warrenton Public Works specifications. The drawings, plans and specifications accompanying applications for permits to construct or work on utility facilities shall also demonstrate:

1. The location and route of all utility facilities to be installed aboveground or on existing utility poles.
2. The location and route of all utility facilities on or in the rights of way to be located under the surface of the ground, including the line and grade proposed for the burial at all points along the route that are within the rights of way. Applicant's existing utility facilities shall be differentiated on the plans from new construction. A cross section shall be provided showing new or existing utility facilities in relation to the street, curb, sidewalk or right of way.
3. The construction methods to be employed for protection of existing structures, fixtures, and facilities within or adjacent to the rights of way, and description of any improvements that applicant proposes to temporarily or permanently remove or relocate.

F. A permit applicant shall provide the verification of a registered professional engineer, or other qualified and duly authorized representative of the applicant, that the drawings, plans and specifications submitted with the application comply with applicable technical codes, rules and regulations.

G. All permit applications shall be accompanied by a written construction schedule, which shall include a deadline for completion of construction. The construction schedule is subject to approval by the Public Works Director.

H. Prior to issuance of a construction permit, the applicant shall pay a permit fee in an amount to be determined by resolution of the Commission.

I. If satisfied that the applications, plans and documents submitted comply with all requirements of this chapter, the Public Works Director shall issue a permit authorizing the work, subject to such further conditions, restrictions or regulations affecting the time, place and manner of performing the work as they may deem necessary or appropriate.

J. Except in the case of an emergency, the permittee shall notify the Public Works Director not less than two (2) working days in advance of any excavation or construction in the rights of way.

K. All construction practices and activities shall be in accordance with the permit and approved final plans and specifications. The Public Works Director shall be provided access to the work site and such further information as the Public Works Director may require to ensure compliance with such requirements.

L. All work which does not comply with the permit, the approved or corrected plans and specifications for the work, or the requirements of this chapter, shall be removed at the sole expense of the permittee. The City is authorized to stop work in order to assure compliance with the provision of this chapter.

M. The permittee shall promptly complete all construction activities so as to minimize disruption of the city rights of way and other public and private property. All work within the rights of way, including restoration, must be completed within one hundred twenty (120) days of the date of issuance of the permit unless an extension or an alternate schedule has been approved by the Public Works Director.

N. Performance Surety.

1. Unless otherwise provided in a franchise agreement or agreed to in writing by the City, a performance bond or other form of surety acceptable to the City equal to at least one hundred percent (100%) of the estimated cost of the work within the rights of way of the City shall be provided before construction is commenced.
2. The performance bond or other form of surety acceptable to the City shall remain in force until sixty (60) days after substantial completion of the work, as determined in writing by the Public Works Director, including restoration of rights of way and other property affected by the construction.
3. The performance bond or other form of surety acceptable to the City shall guarantee, to the satisfaction of the City:
  - a. Timely completion of the work;
  - b. That the work is performed in compliance with applicable plans, permits, technical codes and standards;
  - c. Proper location of the work and/or utility facilities as specified by the City;
  - d. Restoration of the rights of way and other property affected by the work; and
  - e. Timely payment and satisfaction of all claims, demands or liens for labor, material, or services provided in connection with the work.

O. Injury to Persons or Property. The permittee shall preserve and protect from injury or damage all facilities in the rights of way, the public using the rights of way and any adjoining property, and take other necessary measures to protect life and property, including but not limited to buildings, walls, fences, trees or facilities that may be subject to damage from the permitted work. The permittee shall be responsible for all injury to persons or damage to public or private property resulting from its failure to properly protect people and property and to carry out the work.

P. Restoration.

1. The permittee shall, at its own expense, promptly restore such ways or property to the same or better condition as existed before the work was undertaken, in accordance with applicable federal, state and local laws, codes, ordinances, rules and regulations, unless otherwise directed by the City and as determined by the Public Works Director.
2. If weather or other conditions beyond the permittee's control do not permit the complete restoration required by the City, the permittee shall temporarily restore the affected rights of way or property. Such temporary restoration shall be at the permittee's sole expense and the permittee shall promptly undertake and complete the required permanent restoration when the weather or other conditions no longer prevent such permanent restoration. Any corresponding modification to the construction schedule may be subject to approval by the City.
3. If the permittee fails to restore rights of way or property as required in this chapter, the City shall give the permittee written notice and provide the permittee a reasonable period of time not less than ten (10) days, unless an emergency or threat to public safety is deemed to exist, and not exceeding thirty (30) days to restore the rights of way or property. If, after said notice, the permittee fails to restore the rights of way or property as required in this chapter, the City shall cause such restoration to be made at the expense of the permittee.

#### **12.32.060 Licenses.**

##### **A. License Required.**

1. Except those utility operators with a valid franchise agreement from the City, every person shall obtain a license from the City prior to conducting any work in the rights of way.
2. Every person that owns or controls utility facilities in the rights of way as of the effective date of this chapter shall apply for a license from the City within forty-five (45) days of the later of: (1) the effective date of this chapter, or (2) the expiration of a valid franchise from the City, unless a new franchise is granted by the City pursuant to subsection E of this section.

**B. License Application.** The license application shall be on a form provided by the City, and shall be accompanied by any additional documents required by the application to identify the applicant, its legal status, including its authorization to do business in Oregon, a description of the type of utility service provided or to be provided by the applicant, and the facilities over which the utility service will be provided, and other information reasonably necessary to determine the applicant's ability to comply with the terms of this chapter.

**C. License Application Fee.** The application shall be accompanied by a nonrefundable application fee or deposit set by resolution of the Commission in an amount sufficient to fully recover all of the City's costs related to processing the application for the license.

**D. Determination by City.** The City shall issue, within a reasonable period of time, a written determination granting or denying the license in whole or in part. If the license is denied, the written determination shall include the reasons for denial. The license shall be evaluated based upon the provisions of this chapter, the continuing capacity of the rights of way to accommodate the applicant's proposed utility facilities and the applicable federal, state and local laws, rules, regulations and policies.

**E. Franchise Agreements.** If the public interest warrants, the City and utility operator may enter into a written franchise agreement that includes terms that clarify, enhance, expand, waive or

vary the provisions of this chapter, consistent with applicable state and federal law. The franchise may conflict with the terms of this chapter with the review and approval of Commission. The franchisee shall be subject to the provisions of this chapter to the extent such provisions are not in conflict with any such franchise.

F. Rights Granted.

1. The license granted hereunder shall authorize and permit the licensee, subject to the provisions of the City code and other applicable provisions of state or federal law, to construct, place, maintain and operate utility facilities in the rights of way for the term of the license.
2. Any license granted pursuant to this chapter shall not convey equitable or legal title in the rights of way, and may not be assigned or transferred except as permitted in subsection K of this section.
3. Neither the issuance of the license nor any provisions contained therein shall constitute a waiver or bar to the exercise of any governmental right or power, police power or regulatory power of the City as may exist at the time the license is issued or thereafter obtained.

G. Term. Subject to the termination provisions in subsection M of this section, the license granted pursuant to this chapter will remain in effect for a term of five (5) years.

H. License Nonexclusive. No license granted pursuant to this section shall confer any exclusive right, privilege, license or franchise to occupy or use the rights of way for delivery of utility services or any other purpose. The City expressly reserves the right to grant licenses, franchises or other rights to other persons, as well as the City's right to use the rights of way, for similar or different purposes. The license is subject to all recorded deeds, easements, dedications, conditions, covenants, restrictions, encumbrances, and claims of title of record that may affect the rights of way. Nothing in the license shall be deemed to grant, convey, create, or vest in licensee a real property interest in land, including any fee, leasehold interest or easement.

I. Reservation of City Rights. Nothing in the license shall be construed to prevent the City from grading, paving, repairing and/or altering any rights of way, constructing, laying down, repairing, relocating or removing City facilities or establishing any other public work, utility or improvement of any kind, including repairs, replacement or removal of any City facilities. If any of licensee's utility facilities interfere with the construction, repair, replacement, alteration or removal of any rights of way, public work, City utility, City improvement or City facility, except those providing utility services in competition with a licensee, licensee's facilities shall be removed or relocated as provided in subsections C, D and E of section 12.32.080 this chapter, in a manner acceptable to the City and consistent with industry standard engineering and safety codes.

J. Multiple Services.

1. A utility operator that provides or transmits or allows the provision or transmission of utility services and other services over its facilities is subject to the license and privilege tax requirements of this chapter for the portion of the facilities and extent of utility services delivered over those facilities.
2. A utility operator that provides or transmits more than one utility service over its facilities is not required to obtain a separate license or franchise for each utility service, provided that it gives notice to the City of each utility service provided or transmitted and pays the applicable privilege tax for each utility service.

K. Transfer or Assignment. To the extent permitted by applicable state and federal laws, the licensee shall obtain the written consent of the City prior to the transfer or assignment of the license. The license shall not be transferred or assigned unless the proposed transferee or assignee is authorized under all applicable laws to own or operate the utility system and the transfer or assignment is approved by all agencies or organizations required or authorized under federal and state laws to approve such transfer or assignment. If a license is transferred or assigned, the transferee or assignee shall become responsible for all facilities of the licensee at the time of transfer or assignment. A transfer or assignment of a license does not extend the term of the license.

L. Renewal. At least ninety (90), but no more than one hundred eighty (180), days prior to the expiration of a license granted pursuant to this section, a licensee seeking renewal of its license shall submit a license application to the City, including all information required in subsection B of this section and the application fee required in subsection C of this section. The City shall review the application as required by subsection D of this section and grant or deny the license within ninety (90) days of submission of the application. If the City determines that the licensee is in violation of the terms of this chapter at the time it submits its application, the City may require that the licensee cure the violation or submit a detailed plan to cure the violation within a reasonable period of time, as determined by the City, before the City will consider the application and/or grant the license. If the City requires the licensee to cure or submit a plan to cure a violation, the City will grant or deny the license application within ninety (90) days of confirming that the violation has been cured or of accepting the licensee's plan to cure the violation.

M. Termination.

1. Revocation or Termination of a License. The Commission may terminate or revoke the license granted pursuant to this chapter for any of the following reasons:
  - a. Violation of any of the provisions of this chapter;
  - b. Violation of any provision of the license;
  - c. Misrepresentation in a license application;
  - d. Failure to pay taxes, compensation, fees or costs due the City after final determination of the taxes, compensation, fees or costs;
  - e. Failure to restore the rights of way after construction as required by this chapter or other applicable state and local laws, ordinances, rules and regulations;
  - f. Failure to comply with technical, safety and engineering standards related to work in the rights of way; or
  - g. Failure to obtain or maintain any and all licenses, permits, certifications and other authorizations required by state or federal law for the placement, maintenance and/or operation of the utility facilities.
2. Standards for Revocation or Termination. In determining whether termination, revocation or some other sanction is appropriate, the following factors shall be considered:
  - a. The egregiousness of the misconduct;
  - b. The harm that resulted;
  - c. Whether the violation was intentional;
  - d. The utility operator's history of compliance; and/or
  - e. The utility operator's cooperation in discovering, admitting and/or curing the violation.

3. Notice and Cure. The City shall give the utility operator written notice of any apparent violations before terminating a license. The notice shall include a short and concise statement of the nature and general facts of the violation or noncompliance and provide a reasonable time (no less than twenty (20) and no more than forty (40) days) for the utility operator to demonstrate that the utility operator has remained in compliance, that the utility operator has cured or is in the process of curing any violation or noncompliance, or that it would be in the public interest to impose a penalty or sanction less than termination or revocation. If the utility operator is in the process of curing a violation or noncompliance, the utility operator must demonstrate that it acted promptly and continues to actively work on compliance. If the utility operator does not respond or if the City manager or designee determines that the utility operator's response is inadequate, the City manager or designee shall refer the matter to the Commission, which shall provide a duly noticed public hearing to determine whether the license shall be terminated or revoked.

#### **12.32.070 Construction and Restoration.**

A. Construction Codes. Utility facilities shall be constructed, installed, operated and maintained in accordance with all applicable federal, state and local codes, rules and regulations, including the National Electrical Code and the National Electrical Safety Code. When a utility operator, or any person acting on its behalf, does any work in or affecting the rights of way, the utility operator shall, at its own expense, promptly restore the rights of way as directed by the City consistent with applicable City codes, rules and regulations. A utility operator or other person acting on its behalf shall use suitable barricades, flags, flagging attendants, lights, flares and other measures as required for the safety of all members of the general public and to prevent injury or damage to any person, vehicle or property by reason of such work in or affecting the rights of way or property.

B. Inspection. Every utility operator's facilities shall be subject to the right of periodic inspection by the City to determine compliance with the provisions of this chapter and all other applicable state and City codes, ordinances, rules and regulations. Every utility operator shall cooperate with the City in permitting the inspection of utility facilities upon request of the City. The utility operator shall perform all testing, or permit the City to perform any testing at the utility operator's expense, required by the City to determine that the installation of the utility operator's facilities and the restoration of the right of way comply with the terms of this chapter and applicable state and City codes, ordinances, rules and regulations.

C. Coordination of Construction. All utility operators are required to make a good faith effort to both cooperate with and coordinate their construction schedules with those of the City and other users of the rights of way.

1. Prior to January 1st of each year, utility operators shall provide the City with a schedule of known proposed construction activities for that year in, around or that may affect the rights of way.
2. Utility operators shall meet with the City annually, or as determined by the City, to schedule and coordinate construction in the rights of way.
3. All construction locations, activities and schedules within the rights of way shall be coordinated as ordered by the Public Works Director, to minimize public inconvenience, disruption, or damages.

### **12.32.080 Location of Facilities.**

A. Location of Facilities. Unless otherwise agreed to in writing by the City, whenever any existing electric utilities, cable facilities or communications facilities are located underground within a right of way of the City, the utility operator with permission to occupy the same right of way shall locate its facilities underground at its own expense. This requirement shall not apply to facilities used for transmission of electric energy at nominal voltages in excess of thirty-five thousand (35,000) volts or to pedestals, cabinets or other above-ground equipment of any utility operator. The City reserves the right to require written approval of the location of any such above-ground equipment in the right of way.

B. Interference with the rights of way. No utility operator or other person may locate or maintain its facilities so as to unreasonably interfere with the use of the rights of way by the City, by the general public or by other persons authorized to use or be present in or upon the rights of way. All use of the rights of way shall be consistent with City codes, ordinances, rules and regulations.

#### **C. Relocation of Utility Facilities.**

1. A utility operator shall, at no cost to the City, temporarily or permanently remove, relocate, change or alter the position of any utility facility within a right of way, including relocation of aerial facilities underground, when requested to do so in writing by the City.
2. Nothing herein shall be deemed to preclude the utility operator from requesting reimbursement or compensation from a third party, pursuant to applicable laws, regulations, tariffs or agreements, provided that the utility operator shall timely comply with the requirements of this section regardless of whether or not it has requested or received such reimbursement or compensation.
3. The City shall provide written notice of the time by which the utility operator must remove, relocate, change, alter or underground its facilities. If a utility operator fails to remove, relocate, alter or underground any utility facility as requested by the City and by the date reasonably established by the City, the utility operator shall pay all costs incurred by the City due to such failure, including but not limited to costs related to project delays, and the City may cause the utility facility to be removed, relocated, altered or undergrounded at the utility operator's sole expense. Upon receipt of a detailed invoice from the City, the utility operator shall reimburse the City for the costs the City incurred within thirty (30) days.

#### **D. Removal of Unauthorized Facilities.**

1. Unless otherwise agreed to in writing by the Public Works Director, within thirty (30) days following written notice from the City or such other time agreed to in writing by the City, a utility operator and any other person that owns, controls, or maintains any abandoned or unauthorized utility facility within a right of way shall, at its own expense, remove the facility and restore the right of way.
2. A utility system or facility is unauthorized under any of the following circumstances:
  - a. The utility facility is outside the scope of authority granted by the City under the license, franchise or other written agreement. This includes facilities that were never licensed or franchised and facilities that were once licensed or franchised but for which the license or franchise has expired or been terminated. This does not include any facility for which the City has provided written authorization for abandonment in place.

- b. The facility has been abandoned and the City has not provided written authorization for abandonment in place. A facility is abandoned if it is not in use and is not planned for further use. A facility will be presumed abandoned if it is not used for a period of one (1) year. A utility operator may overcome this presumption by presenting plans for future use of the facility.
  - c. The utility facility is improperly constructed or installed or is in a location not permitted by the construction permit, license, franchise or this chapter.
  - d. The utility operator is in violation of a material provision of this chapter and fails to cure such violation within thirty (30) days of the City sending written notice of such violation, unless the City extends such time period in writing.
- E. Removal by City.
- 1. The City retains the right and privilege to cut or move the facilities of any utility operator or similar entity located within the rights of way of the City, without notice, as the City may determine to be necessary, appropriate or useful in response to a public health or safety emergency. The City will use qualified personnel or contractors consistent with applicable state and federal safety laws and regulations to the extent reasonably practicable without impeding the City's response to the emergency.
  - 2. If the utility operator fails to remove any facility when required to do so under this chapter, the City may remove the facility using qualified personnel or contractors consistent with applicable state and federal safety laws and regulations, and the utility operator shall be responsible for paying the full cost of the removal and any administrative costs incurred by the City in removing the facility and obtaining reimbursement. Upon receipt of a detailed invoice from the City, the utility operator shall reimburse the City for the costs the City incurred within thirty (30) days. The obligation to remove shall survive the termination of the license or franchise.
  - 3. The City shall not be liable to any utility operator for any damage to utility facilities, or for any consequential losses resulting directly or indirectly therefrom, by the City or its contractor in removing, relocating or altering the facilities pursuant to subsections B, C or D of this section or undergrounding its facilities as required by subsection A of this section, or resulting from the utility operator's failure to remove, relocate, alter or underground its facilities as required by those subsections, unless such damage arises directly from the City's negligence or willful misconduct.
- F. Engineering Designs and Plans. The utility operator shall provide the City with two complete sets of engineered plans in a form acceptable to the City showing the location of all its utility facilities in the rights of way after initial construction if such plans materially changed during construction. The utility operator shall provide two updated complete sets of as built plans upon request of the City, but not more than once per year.

#### **12.32.090 Leased Capacity.**

A utility operator may lease capacity on or in its systems to others, provided that, upon request, the utility operator provides the City with the name and business address of any lessee. A utility operator is not required to provide such information if disclosure is prohibited by applicable law or a valid agreement between the utility operator and the lessee.

#### **12.32.100 Maintenance.**

A. Every utility operator shall install and maintain all facilities in a manner that complies with applicable federal, state and local laws, rules, regulations and policies. The utility operator shall, at its own expense, repair and maintain facilities from time to time as may be necessary to accomplish this purpose.

B. If, after written notice from the City of the need for repair or maintenance, a utility operator fails to repair and maintain facilities as requested by the City and by the date reasonably established by the City, the City may perform such repair or maintenance using qualified personnel or contractors at the utility operator's sole expense. Upon receipt of a detailed invoice from the City, the utility operator shall reimburse the City for the costs the City incurred within thirty (30) days.

#### **12.32.110 Vacation.**

If the City vacates any right of way, or portion thereof, that a utility operator uses, the utility operator shall, at its own expense, remove its facilities from the right of way unless the City reserves a public utility easement, which the City shall make a reasonable effort to do provided that there is no expense to the City, or the utility operator obtains an easement for its facilities. If the utility operator fails to remove its facilities within thirty (30) days after a right of way is vacated, or as otherwise directed or agreed to in writing by the City, the City may remove the facilities at the utility operator's sole expense. Upon receipt of an invoice from the City, the utility operator shall reimburse the City for the costs the City incurred within thirty (30) days.

#### **12.32.120 Privilege Tax.**

A. Every utility operator shall pay the privilege tax for every utility service provided using the rights of way in the amount determined by resolution of the Commission.

B. Privilege tax payments required by this section shall be reduced by any franchise fee payments received by the City, but in no case will be less than zero dollars (\$0).

C. Unless otherwise agreed to in writing by the City, the tax set forth in subsection A of this section shall be paid quarterly, in arrears, for each quarter during the term of the license within thirty (30) days after the end of each calendar quarter, and shall be accompanied by an accounting of gross revenues, if applicable, and a calculation of the amount payable. The utility shall pay interest at the rate of nine percent (9%) per year for any payment made after the due date.

D. The calculation of the privilege tax required by this section shall be subject to all applicable limitations imposed by federal or state law.

E. The City reserves the right to enact other fees and taxes applicable to the utility operators subject to this chapter. Unless expressly permitted by the City in enacting such fee or tax, or required by applicable state or federal law, no utility operator may deduct, offset or otherwise reduce or avoid the obligation to pay any lawfully enacted fees or taxes based on the payment of the privilege tax or any other fees required by this chapter.

#### **12.32.130 Audits.**

A. Within thirty (30) days of a written request from the City, or as otherwise agreed to in writing by the City:

I. Every provider of utility service shall furnish the City with information sufficient to demonstrate that the provider is in compliance with all the requirements of this chapter

and its franchise agreement, if any, including but not limited to payment of any applicable registration fee, privilege tax or franchise fee.

2. Every utility operator shall make available for inspection by the City at reasonable times and intervals all maps, records, books, diagrams, plans and other documents, maintained by the utility operator with respect to its facilities within the rights of way or public utility easements. Access shall be provided within the City unless prior arrangement for access elsewhere has been made with the City.

B. If the City's audit of the books, records and other documents or information of the utility operator or utility service provider demonstrate that the utility operator or provider has underpaid the privilege tax or franchise fee by three percent (3%) or more in any one (1) year, the utility operator shall reimburse the City for the cost of the audit, in addition to any interest owed pursuant to subsection C of Section 13.32.120 this chapter or as specified in a franchise.

C. Any underpayment, including any interest or audit cost reimbursement, shall be paid within thirty (30) days of the City's notice to the utility service provider of such underpayment.

#### **12.32.140 Insurance and Indemnification.**

##### **A. Insurance.**

1. All utility operators shall maintain in full force and effect the following liability insurance policies that protect the utility operator and the City, as well as the City's officers, agents, and employees:
  - a. Comprehensive general liability insurance with limits not less than:
    - i. Three Million Dollars (\$3,000,000.00) for bodily injury or death to each person;
    - ii. Three Million Dollars (\$3,000,000.00) for property damage resulting from any one accident; and
    - iii. Three Million Dollars (\$3,000,000.00) for all other types of liability.
  - b. Motor vehicle liability insurance for owned, non-owned and hired vehicles with a limit of One Million Dollars (\$1,000,000.00) for each person and Three Million Dollars (\$3,000,000.00) for each accident.
  - c. Worker's compensation within statutory limits and employer's liability with limits of not less than One Million Dollars (\$1,000,000.00).
  - d. Comprehensive form premises-operations, explosions and collapse hazard, underground hazard and products completed hazard with limits of not less than Three Million Dollars (\$3,000,000.00).
2. The limits of the insurance shall be subject to statutory changes as to maximum limits of liability imposed on municipalities of the state of Oregon. The insurance shall be without prejudice to coverage otherwise existing and shall name, or the certificate of insurance shall name, as additional insureds the City and its officers, agents, and employees. The coverage must apply as to claims between insureds on the policy. The policy shall provide that the insurance shall not be canceled or materially altered without thirty (30) days prior written notice first being given to the City. If the insurance is canceled or materially altered, the utility operator shall obtain a replacement policy that complies with the terms of this section and provide the City with a replacement certificate of insurance. The utility operator shall maintain continuous uninterrupted coverage, in the terms and amounts required. The utility operator may self insure, or keep in force a self-insured retention plus insurance, for any or all of the above coverage.

3. The utility operator shall maintain on file with the City a certificate of insurance, or proof of self-insurance acceptable to the City, certifying the coverage required above.
- B. Financial Assurance. Unless otherwise agreed to in writing by the City, before a franchise granted or license issued pursuant to this chapter is effective, and as necessary thereafter, the utility operator shall provide a performance bond or other financial security, in a form acceptable to the City, as security for the full and complete performance of the franchise or license, if applicable, and compliance with the terms of this chapter, including any costs, expenses, damages or loss the City pays or incurs because of any failure attributable to the utility operator to comply with the codes, ordinances, rules, regulations or permits of the City. This obligation is in addition to the performance surety required by subsection N of Section 12.32.050 of this chapter.
- C. Indemnification.
1. Each utility operator shall defend, indemnify and hold the City and its officers, employees, agents and representatives harmless from and against any and all liability, causes of action, claims, damages, losses, judgments and other costs and expenses, including attorney fees and costs of suit or defense (at both the trial and appeal level, whether or not a trial or appeal ever takes place) that may be asserted by any person or entity in any way arising out of, resulting from, during or in connection with, or alleged to arise out of or result from the negligent, careless, or wrongful acts, omissions, failure to act, or other misconduct of the utility operator or its affiliates, officers, employees, agents, contractors, subcontractors, or lessees in the construction, operation, maintenance, repair, or removal of its facilities, and in providing or offering utility services over the facilities, whether such acts or omissions are authorized, allowed, or prohibited by this chapter or by a franchise agreement. The acceptance of a license under Section 12.32.060 of this chapter shall constitute such an agreement by the applicant whether the same is expressed or not. Upon notification of any such claim the City shall notify the utility operator and provide the utility operator with an opportunity to provide defense regarding any such claim.
  2. Every utility operator shall also indemnify the City for any damages, claims, additional costs or expenses assessed against or payable by the City arising out of or resulting, directly or indirectly, from the utility operator's failure to remove or relocate any of its facilities in the rights of way or easements in a timely manner, unless the utility operator's failure arises directly from the City's negligence or willful misconduct.

**12.32.150 Compliance.**

Every utility operator shall comply with all federal and state laws and regulations, including regulations of any administrative agency thereof, as well as all applicable ordinances, resolutions, rules and regulations of the City, heretofore or hereafter adopted or established during the entire term of any license granted under this chapter.

**12.32.160 Confidential/Proprietary Information.**

If any person is required by this chapter to provide books, records, maps or information to the City that the person reasonably believes to be confidential or proprietary, the City shall take reasonable steps to protect the confidential or proprietary nature of the books, records or information, to the extent permitted by Oregon Public Records Laws, provided that all documents are clearly marked as confidential by the person at the time of disclosure to the City.

The City shall not be required to incur any costs to protect such document, other than the City's routine internal procedures for complying with the Oregon Public Records Law.

**12.32.170 Penalties.**

A. Any person found guilty of violating any of the provisions of this chapter or the license shall be subject to a penalty of not less than One Hundred Dollars (\$100.00) nor more than Five Hundred Dollars (\$500.00) for each offense. A separate and distinct offense shall be deemed committed each day on which a violation occurs or continues.

B. Nothing in this chapter shall be construed as limiting any judicial or other remedies the City may have at law or in equity, for enforcement of this chapter.

**12.32.180 Severability and Preemption.**

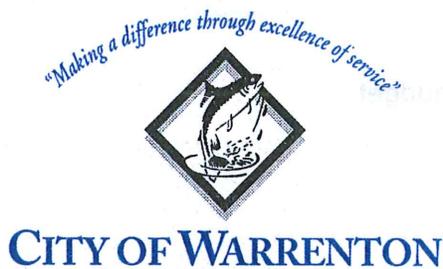
A. The provisions of this chapter shall be interpreted to be consistent with applicable federal and state law, and shall be interpreted, to the extent possible, to cover only matters not preempted by federal or state law.

B. If any article, section, subsection, sentence, clause, phrase, term, provision, condition or portion of this chapter is for any reason declared or held to be invalid or unenforceable by any court of competent jurisdiction or superseded by state or federal legislation, rules, regulations or decision, the remainder of this chapter shall not be affected thereby but shall be deemed as a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions hereof, and each remaining section, subsection, clause, phrase, term, provision, condition, covenant and portion of this chapter shall be valid and enforceable to the fullest extent permitted by law. In the event any provision is preempted by federal or state laws, rules or regulations, the provision shall be preempted only to the extent required by law and any portion not preempted shall survive. If any federal or state law resulting in preemption is later repealed, rescinded, amended or otherwise changed to end the preemption, such provision shall thereupon return to full force and effect and shall thereafter be binding without further action by the City.

**12.32.190 Application to Existing Agreements.**

To the extent that this chapter is not in conflict with and can be implemented consistent with existing franchise agreements, this chapter shall apply to all existing franchise agreements granted to utility operators by the City.

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## AGENDA MEMORANDUM

TO: The Mayor and Warrenton City Commission  
FROM: Linda Engbretson, CMC, City Manager Pro Tem  
DATE: October 25, 2016  
SUBJ: City Manager Contract

### SUMMARY

I will present a one-year contract, to include a six month evaluation, for City Manager appointment, as discussed at the October 11 meeting. The contract will include salary and benefits as currently receiving, with the addition of a car and cell phone allowance. Should the Commission or I feel it best to end this arrangement, I retain the right to return to my former position as City Recorder. Please know I am committed to Warrenton and will actively participate in community events outside of office hours.

### RECOMMENDATION/SUGGESTED MOTION

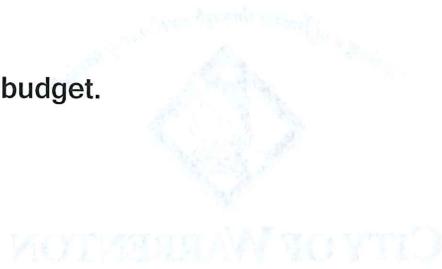
*" I move to authorize the Mayor's signature on a one-year contract with Linda Engbretson to serve as the City of Warrenton's City Manager, effective October 25, 2016, pending contract approval by legal counsel."*

### ALTERNATIVE

Other action as deemed appropriate by the City Commission

**FISCAL IMPACT**

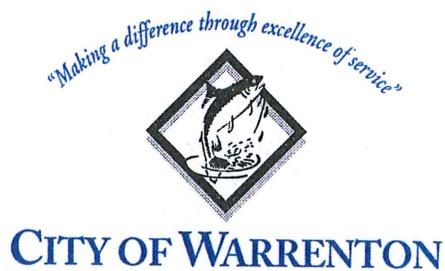
**No negative impact to budget.**



**AGENDA MEMORANDUM**

Approved by City Manager:  \_\_\_\_\_

All supporting documentation, i.e., maps, exhibits, etc., must be attached to this memorandum.



## AGENDA MEMORANDUM

TO: The Mayor and Warrenton City Commission  
FROM: Linda Engbretson, CMC, City Manager Pro Tem  
DATE: October 25, 2016  
SUBJ: Opportunities for K-9 Drug Dog

### SUMMARY

Chief Workman asked for time on the agenda to discuss opportunities to get a Warrenton K-9 Drug Dog. Officer Robert Wirt and Deputy Chance Moore will provide additional information.

### RECOMMENDATION/SUGGESTED MOTION

Seeking permission to further explore costs and requirements to add a K-9 Drug Dog to Warrenton's Department.

### ALTERNATIVE

N/A

### FISCAL IMPACT

Unknown at this time.