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**City of Florence**  
**City Council Minutes**  
**April 5, 2010**

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**CALL TO ORDER - ROLL CALL - PLEDGE OF ALLEGIANCE**

Mayor Brubaker opened the regular council meeting at 7:00 p.m. with the pledge of allegiance. Other members present included Council President Nola Xavier, Council Vice President Alan Burns, Councilors Suzanne Roberts and Dave Franzen. Staff in attendance included City Manager Robert Willoughby, Assistant City Manager Jacque Morgan, Public Works Director Mike Miller, Finance Director David Armstrong, Associate Planner Melissa Anderson, Community Development Director Sandra Belson and City Recorder Pat Heinze.

**PROCLAMATION**

*National Public Safety Telecommunications Week – April 11-17, 2010*

Mayor Brubaker said he was proud to read the proclamation announcing that April 11-17, 2010 as National Public Safety Telecommunications Week. He said this relates to the city's dispatchers; the women and men who are the connection between the call for service and getting the job done. He said it is very important that we have a dispatch center here in the greater Florence area; otherwise the call would go to Eugene. He said there are entirely too many streets named the same in and out of the city and they would never be able to find it. He expressed the council's appreciation to Kim Greenwood and all the other dispatchers that make this process work. He asked Kim to come forward and accept the proclamation on behalf of the dispatchers. After Mayor Brubaker presented the proclamation to Kim, she thanked the Mayor and Council for their support on behalf of all of the 911 dispatchers at the Florence Police Department.

**APPROVAL OF AGENDA**

Mayor Brubaker asked for any additions or corrections to the agenda. Councilor Xavier moved to postpone Item 4 – “Fireworks Prohibition in the Old Town Area,” to the meeting of June 7<sup>th</sup>, second by Councilor Roberts.

When Councilor Burns asked why Councilor Xavier wanted to move this agenda item; Mayor Brubaker responded that council needed to give this item more time. He then called for the vote on the motion; by voice four ayes, and one nay. Councilor Burns cast the dissenting vote.

Mayor Brubaker said the council would take up this item at a later date and he thanked those in the audience that attended the meeting for this item.

Councilor Burns asked if this could be discussed later on in the meeting; Mayor Brubaker replied, yes, under the Mayor and Council item.

## **PUBLIC COMMENTS**

Mayor Brubaker explained the purpose of this portion of the meeting and offered an opportunity for members of the audience to address the council regarding any matter not already on the agenda for that evening; hearing none he proceeded with the next item.

## **CONSENT AGENDA**

### **MINUTES**

*Consider approval of minutes of the council meeting minutes of March 15, 2010.*  
Councilor Roberts moved to approve the minutes of the regular council meeting of March 15, 2010. Second by Councilor Xavier, by voice all ayes, motion carried unanimously.

### **ACTION ITEMS**

#### **FIREWORKS PROHIBITION IN THE OLD TOWN AREA**

*Consider the second reading of Ordinance No. 5, Series 2010, an ordinance amending Title 6 Chapter 1 of General Offenses for a localized ban of fireworks in Old Town District Areas A and B and the Port of Siuslaw Property.*

*(For the record this item was postponed to the meeting of June 7, 2010.)*

### **PUBLIC HEARING**

#### **INDUSTRIAL CODE AND ZONING MAP AMENDMENTS**

*Consider testimony on the Industrial Code and Zoning Map Amendments*

Mayor Brubaker said this item is a public hearing regarding amendments to the city's Industrial Code and Zoning map. He said this is partly a quasi-judicial and partly a legislative hearing. He said he would request that staff identify all the applicable criteria, but noted that they were listed in the staff report. He said the applicable criteria must be used by the council to make their decision, and the testimony in evidence must also address the applicable criteria. He said failure to raise an issue accompanied by statements or evidence sufficient to afford the council and parties involved in this an opportunity to respond to the issue would preclude an appeal on this issue.

Mayor Brubaker asked the council if there were any conflict of interest or ex parte contact. Councilor Burns stated that he lived in the Business Park but he would have no potential conflict.

Mayor Brubaker then asked if any councilor would like to challenge the qualifications of any other councilor to participate in this hearing; hearing none he asked the same of members in the audience; hearing none he proceeded with the agenda item.

AP Anderson said she would go through the applicable criteria used to evaluate the code amendments to the Industrial zones around the Pacific View Business Park:

- Florence City Code – Title 10 Chapter 1, Zoning Administration
  - Section B - Quasi judicial
  - Section C - Legislative changes.
  - Section 1-1-5 Land Use Hearings
  - Section 1-2-2 Changes of boundaries on the zoning maps.
- Florence Realization 2020 Comp Plan
  - Chapter 1, Citizen Involvement
  - Chapter 2 Lane Use
  - Chapter 9 Economic Development
  - Chapter 12 Transportation.
- State Wide Planning
  - Goal 1: Citizen Involvement
  - Goal 2: Land Use
  - Goal 9: Economic Development
- Oregon Administrative Rules (OAR)
  - OAR – 660-012-0060: Plan and Land Use Regulation Amendments
- Oregon Revised Statutes (ORS)
  - ORS 197.610; Local government notice of proposed amendments or new regulation; exceptions; report to commission
  - ORS 197.763: Conduct of local quasi-judicial land use hearings; notice requirements ; hearing procedures
  - ORS 227.186: Notice to property owners of hearing on certain zone change; Form of Notice; Exceptions; Reimbursement of Cost

AP Anderson referred to the PowerPoint that included the description of the proposed changes. She reminded the audience that a public hearing would be held right after the staff report. She said this affects the Industrial Zones around the Pacific View Business Park (PVBP); the code amendments include the PVBP, the Port of Siuslaw property of approximately 40 acres as well as the Airport Industrial Park.

She said summary of the changes that are included in the amendments are:

- Consolidating the three zoning districts into one zoning district.
- Expanding the allowed land uses in the PVBP and port property; maintains generally the same type of land uses already allowed in the Airport Industrial Park and provides additional land use category definitions.
- Relaxes requirements on lot size and coverage for properties proposed for the PVBP zoning district.
- Implementing Comp Plan buffering standards on the port property.
- Streamlines the permit process by removing requirements for a public hearing on new construction and instead allows administrative (staff) review for permitted uses.

AP Anderson said one of the city council goals for 2010 is to address the Industrial Zoning District along with the Pacific View Business Park, which is why we are working on this project. She said in approximately 2008 the city council had a round table discussion and that some issues were identified in that discussion were the economic viability of the Industrial Zone, the allowed land uses and limitations of those land uses and staff found some conflicts

between the city's zoning code and the CCR's. She went on to say that since that discussion the CCR's have been removed from the PVBP; the code had been amended a couple of times to allow some specific additional land uses and in addition in 2009 we had a comprehensive analysis done of the Industrial zone by a consulting firm. She said that firm presented a report called the Airport Pacific View Business Park Project Report which recommended consolidating the industrial zoning districts in order to eliminate confusion, streamline the land use approval process and create a "*fast, friendly and flexible*" development process.

She said the public adoption process formally began with the city council initiating changes January 19, 2010 and that package of amendments went to the Planning Commission who had a worksession on February 9, 2010, followed by a public hearing on March 9, 2010 and that package of amendments is what was being presented to the council this evening.

She said the proposed changes included:

- Zoning map amendments
  - Rezoning the Port of Siuslaw property from limited industrial park to the Pacific View Business park district as well as rezoning the Industrial District to the Pacific View Business Park. She said the Industrial District is the lower half of the Pacific View Business Park. She said the port property and all of the PVBP are proposed to be changed to one zone.
- Zoning code text amendments
  - Amendments to Chapter 1 Zoning Administration
  - Chapter 4 Conditional Uses
  - Chapter 6 Design Review
  - Chapter 20 Limited Industrial District
  - Chapter 28 Pacific View Business District
  - Chapter 34 Landscaping
  - Chapter 32 is proposed to be deleted because the Industrial District Zone will eliminate that zone
- Housekeeping amendment to our Comp Plan
  - Housekeeping amendments to change the reference to the zone of the port property from the Limited Industrial District to the proposed zone which is the Pacific View Business Park District. She added that this housekeeping change would not affect the Comp Plan map designation.

She said council initiated these amendments on January 19<sup>th</sup>:

- Amended the language for clarification and consistency
- Addressed typographical errors that may have occurred.
- Added electrical substations to the list of examples of basic utilities.
- Conditional use chapter added conditions for residential caretakers unit.
- Added in the limited industrial district: animal daycare and overnight boarding facility as a conditional use.

- Added a provision to insure landscaping and trees do not obstruct the airport's approach path.
- Added a provision to restrict signs to externally lit freestanding monument signs only

CDD Belson added that for clarity these signs are not the only signs allowed, but free standing signs must be externally lit monument signs. AP Anderson agreed and said that one could have a wall sign on the building.

- Added standards for trash enclosures to mirror the standards for the other districts by adding a reference to Title 6 standards to mitigate unnecessary noise and public nuisance (e.g. odors and vibrations)
- Modified the buffering requirements between non-residential and residential land uses for consistency with the Comp Plan

Pacific View Business Park District FCC (10-28) added:

- Crematories and associated mortuaries and funeral homes as permitted use
- Animal daycare and overnight boarding facility as a conditional use
- An increase in the buffering requirement between commercial or industrial uses and residential districts from 15' to a 20' buffer
- A provision to ensure landscaping and trees do not obstruct the airport's approach path
- A provision to restrict signs to externally lit signs only
- A reference to Title 6 standards to mitigate unnecessary noise and public nuisance (e.g. odors and vibrations)

AP Anderson said the council had a variety of alternatives which were included in the staff report. She said after the public hearing the council could:

- Either close the hearing or adopt Ord. 4 as recommended by the Planning Commission; with or without an emergency clause.
- Do the same with changes made by council
- Close the hearing to keep the written record open to a date and time certain, postponing deliberation to a certain meeting
- Close the hearing and deliberate or postpone deliberations to a future meeting.

Mayor Brubaker said this was the time for clarification questions and not to advance a particular point of view or deliberate.

Councilor Roberts said we had a discussion in relation to metal buildings and it seemed to her that she recalled the Mayor was on the positive side of having metal buildings as long as they were painted earth tones and then there were a couple of councilors (including herself) that thought the metal buildings should have a wood or simulated façade in the front. She said as far as she could tell the amendments are just metal buildings and it didn't include the façade.

AP Anderson said it was included on page 3, Exhibit G – 10-28-5-A-2 – “All building elevations that face a street shall be constructed with alternative

building materials such as wood siding, brick textured block, concrete and concrete aggregate or other similar building materials.”

Mayor Brubaker asked about the Limited Industrial Park. AP Anderson said we never restricted the outside of buildings in that area. AP Anderson said Councilor Roberts was correct that the word façade was changed because the building might face the side as opposed to the front which is not a façade; so we used the wording “all building elevation.”

Mayor Brubaker opened the public hearing at 7:25 p.m. and asked if there was anyone that would like to address this item.

**Jim Jordan – 3125 Rhododendron:** Mr. Jordan expressed his concern about the port of Siuslaw property. He said in Marine Manor there is a problem with water leaching from the port property under Rhododendron Drive which is causing Marine Manor erosion problems. He said they were concerned about development on that property and asked where the water was going to go once the property was developed. He asked that some thought be put into the fact that it is going to create problems for the residents in Marine Manor.

**Pete Gintner - PO Box 1270 Newport, OR:** Mr. Gintner said he was a lawyer that represented Central Lincoln PUD and stated that PUD was totally supportive of the provisions in the draft Plan. He said their chief engineer Mike Wilson was available to answer any of the council’s questions. Mayor Brubaker thanked Mr. Gintner and said one of the great benefits of televising and recording is that the Mayor had seen Mr. Gintner on a planning commission meeting and appreciated his input at the planning commission and council meetings.

**Joshua Greene – Chair for the Port of Siuslaw:** Mr. Greene said the port had worked very closely with staff and they were very pleased with the outcome of these proposed changes. He said from a marketing point of view, this will make the presentation more attractive and allow the port to reach out to a greater opportunity that might be out there. He said obviously telecommunications or call centers would be the alternative to straight industrial; we’re looking more for an office industrial type of center. He said the port is completely in support of the changes in the 40 acres.

AP Anderson said she would like to bring to the council’s attention and for the record that she had handed out a letter of support for these amendments from the Central Oregon Coastal Board of Realtors.

With no one else coming forward Councilor Burns moved to close the public hearing, second by Councilor Xavier, by voice all ayes, motion carried unanimously. The public hearing was closed at 7:29 p.m.

*Consider approval of Ordinance No. 4, Series 2010, an ordinance in the matter of quasi-judicial zoning map amendments and legislative amendments to the Florence City Code Title 10 and Comp Plan relating to Industrial Areas within and around the Pacific View Business Park and declaring an emergency.*

Councilor Burns asked PWD Miller about the comment made during public testimony on the erosion from the port property onto Marine Manor and if the 40 acre parcel would be developed, would that lessen the erosion or drainage. PWD Miller said the stormwater management plan calls for development not to exceed pre-development runoff. He said the developers would have to come up with a scheme to manage the stormwater. Councilor Burns asked if the development would lessen the potential erosion. PWD Miller said we would need to see what they come up with in their plan. Mayor Brubaker said it would be no worse than it is now; the net effect of runoff would have to be on site or otherwise mitigated; not necessarily that it would solve the problem, but it would not make it worse.

Councilor Roberts said this item was established as a council goal for 2010 and she expressed her amazement that it was accomplished in such a short time as it was a huge undertaking. She thanked members of the staff, planning commission, and the community development department for their hard work.

Mayor Brubaker said he saw that water towers would be permitted right near the PUD electrical station; he said he didn't think we would want water storage near an electrical tower. Councilor Roberts said there were a lot of administrative things in there that will be worked out with time. Mayor Brubaker said he discussed some of these things with staff that morning and AP Anderson had worked up some language on this issue.

He expressed his concern about the size of the monument signs and stated that he didn't want them to be too high. CDD Belson said there was no discussion on size of the monument signs at the planning commission meeting; all they were trying to say was that they did not want to allow pole signs, only to allow monument signs. She said she did not see any height maximum on a monument sign. Mayor Brubaker asked if this would be reviewed by staff or go to the planning commission for a monument sign permit. CDD Belson said if they know what their sign is as part of their development it would be considered under design review; if it is after the fact, and the building is already there and they want a sign or make changes to a sign, it goes through the building permit process.

Mayor Brubaker said he envisioned the sign as being low with planters around it and it wider than it is tall and maybe only 3-4' tall, in the ground and not on a pole. He said we just recently put a bunch of signs around Old Town, with Urban Renewal money and asked if those were considered pole signs because they were on sticks and only 4' tall. He said he wanted monuments signs low and he didn't care if they were on sticks or stuck in the ground. CDD Belson said the definition of monument sign; "is low profile free standing sign, a monument sign shall include support structure of wood, masonry or concrete that is incorporated with the overall design of the sign."

Mayor Brubaker asked if the councilors were comfortable with the definition and they were.

Mayor Brubaker said the next concern he had was with the caretaker units. He said the planning commission had said it has to be ancillary to the building and 1,000 square feet. He said a few years ago we had someone who wanted to buy one of the PVBP lots on top with a beautiful view of the ocean and it turned out what they really wanted to do was build a 4 bedroom 3 bath house with a 3 car garage and they were going to make rubber stamps in one of the bays of the three car garage. He said it was a residential use in this zone therefore it was denied. He said the caretaker unit has to be ancillary to the business and a maximum of 1,000 square feet but the business building would typically be bigger. He expressed his concern that it was a judgment call whether or not a caretaker was needed. He asked if the applicant could determine if they needed a caretaker unit and have it reviewed under admin review, as long as it meets the criteria of being ancillary and 1,000 square feet, two bedrooms, two baths.

Councilor Roberts asked if the Mayor recalled the big controversy over the Happy Place RV on Hwy 101 and the planning commission went on and on over a caretaking trailer being placed there. CDD Belson said what happened was that Happy Place RV had applied for a conditional use permit to allow for the caretaker unit, they had built the bay for the unit on the east side of the property for the RV, but then they didn't actually put the RV unit there, they put it out on the other side of the parking lot so it had to come back to the planning commission to modify their approval to relocate it where the residence was; which the planning commission did. She said that is why it seemed to have been drawn out, because it came to the planning commission twice.

Mayor Brubaker said he was not talking about someone trying to put a caretaker trailer out there; it should be integral to the building, planned ahead for a caretaker unit whether it's to protect the business or not. He said it was the subjectivity that concerned him because we all would have a different opinion. He said if he was an electrical contractor he may want someone to protect his copper wire; and if he owned Doggie Daycare he would like to have someone there to take care of the dogs in the evening. He asked conceptually if it would be a problem to relax the rule and leave it up to the applicant to determine whether they need a caretaker unit on site.

Councilor Roberts concurred with Mayor Brubaker. Councilor Xavier asked Mayor Brubaker if he was proposing this to be a permitted use that could be approved by staff rather than a conditional use. Mayor Brubaker said the fear is that there would be 35 caretaker units and it becomes a residential zone; that needs to be controlled and that is not the intent. The intent is to have people develop property safely and if it requires a caretaker in their mind and they want to go to the expense of putting in that unit and it's integral to the building, then they should be able to.

CDD Belson said there was nothing in the code that says it has to be integral to the building. Mayor Brubaker said does that mean it could be a separate building; CDD Belson replied absolutely. Mayor Brubaker said we could add that it cannot be a trailer and staff replied that would have to be added into the amendments. Councilor Xavier said it seemed to her that if we leave it as a

conditional use then we really don't have to worry about it, because the planning commission will take care of those issues. They would insure that it was necessary to the business, and insure that it is the best design. She said if you put it under the admin review, we have to consider every possibility that could possibly occur, like the trailer.

Mayor Brubaker said that was an important point and his concern was not the design review part; his concern was the subjectivity, who determines that the provision of the residential unit must be necessary to ensure adequate security and monitoring of the site and/or viable business operations (e.g. on call persons, emergency maintenance). He said he questioned who would determine that, and he thought it should be the applicant.

Councilor Roberts said we need to remember "fast, friendly and flexible." Mayor Brubaker said he thought we would avoid some of the problems that had come up in the past and be more realistic about it. He said he would certainly amend what he was talking about and he would be comfortable with going to design review as part of the structure in how it's incorporated into the facility and he was not interested in having travel trailers in the PVBP, but with the original need he would propose that it would be at the determination of the applicant.

Councilor Burns said he agreed if one was allowed, it should be through design review, but to make the determination of whether one was allowed he agreed with Councilor Xavier that it should be done through conditional use.

Mayor Brubaker said that would mean that the planning commission would determine whether someone would have onsite security with their business. Councilor Burns said they did that for his business and he could see several issues that did come up in the process. He said whether a caretaker unit is needed or not, he thought the city should have some sort of say on that.

Mayor Brubaker said he could see there wasn't support for this and he could see all sorts of potential abuse, but on the outset it could be a very legitimate use.

Councilor Xavier said she was a little confused by Mayor Brubaker's concern that there could be a perfectly legitimate reason for having a caretaker unit and the planning commission would deny it. Mayor Brubaker replied, yes, he was concerned that it was too subjective. He said the "beauty is in the eye of the beholder," the need for onsite security is in the eye of the business owner.

Councilor Burns said he totally agreed with Mayor Brubaker but suggested that there was an extreme on the other end, but if the need really isn't there and they could have the unit and then just rent it out. Mayor Brubaker said the renter could be the caretaker.

AP Anderson asked for clarification that the council wanted to change the water tower to a water storage facility. It was the consensus of the council to do so.

Mayor Brubaker called for the first reading of Ordinance No. 4, Series 2010, by short title only acknowledging the council's familiarity with its content as amended. CR Heinze gave the first reading declaring an emergency. Councilor Xavier moved for approval of the first reading and called for the second reading. Second by Councilor Burns, by voice all ayes, motion carried unanimously. CR Heinze gave the second reading. Councilor Roberts moved for approval of the ordinance; second by Councilor Xavier, by roll call all ayes, motion carried unanimously.

**CITY OF FLORENCE  
ORDINANCE NO. 4, SERIES 2010**

**IN THE MATTER OF QUASI-JUDICIAL ZONING MAP AMENEDMENTS AND LEGISLATIVE AMENDMENTS TO THE FLORENCE CITY CODE TITLE 10 AND COMPREHENSIVE PLAN RELATING TO INDUSTRIAL AREAS WITHIN AND AROUND THE PACIFIC VIEW BUSINESS PARK AND DECLARING AN EMERGENCY.**

**WHEREAS**, the City Council established a goal in 2010 to address zoning issues within and around the Pacific View Business Park (PVBP);

**WHEREAS**, the City contracted with Iron Wolf Community Resources and Group Mackenzie who conducted an analysis of the industrial zones and prepared a report titled "Airport/Pacific View Business Park Project Report" in September, 2009;

**WHEREAS**, the report recommended consolidating the industrial zoning districts in order to eliminate confusion, expand the allowed land uses and streamline the land use approval process;

**WHEREAS**, the City Council initiated amendments to the industrial zoning districts by motion on January 19, 2010, after multiple work-sessions and receiving input from interested parties, including the Port of Siuslaw;

**WHEREAS**, the City sent notice of the proposed code amendments to the Department of Land, Conservation and Development on January 21, 2010, not less than 45 days prior to the first evidentiary hearing as required by state law and the Florence City Code;

**WHEREAS**, the City sent notice to affected and surrounding property owners of the Planning Commission work-session and public hearing and posted the information on the web site and at City Hall on February 2, 2010;

**WHEREAS**, the Planning Commission held a work-session that was open to the public on the proposed rezone and code amendments on February 9, 2010;

**WHEREAS**, the City published a notice of hearing in the Siuslaw News on February 24, 2010 prior to the Planning Commission conducting a public hearing March 9, 2010;

**WHEREAS**, the Planning Commission closed the public hearing and deliberated to a decision for a recommendation to the City Council on March 9, 2010;

**WHEREAS**, the City posted a notice on the Port of Siuslaw property and on the Pacific View Business Park on March 15, 2010;

**WHEREAS**, the City sent notice of the City Council public hearing to affected and surrounding property owners and people who had commented during the Planning Commission public hearing process on March 18, 2010;

**WHEREAS**, the City posted notice on the website and at City Hall on March 18, 2010 and published the notice in the Siuslaw News on March 20, 2010;

**WHEREAS**, the City Council held a public hearing, closed the public record and deliberated to a final decision on April 5, 2010;

**WHEREAS**, the zoning map amendments consolidate the industrial zoning districts, and the proposed text amendments to Title 10 expand the allowed land uses, provide land use category definitions, relax development standards and streamline the permitting process;

**WHEREAS**, the City Council finds the proposed text, zoning map and Comprehensive Plan amendments are consistent with applicable criteria in Florence City Code, Realization 2020 Florence Comprehensive Plan, Statewide Planning Goals, Oregon Administrative Rules and Oregon Revised Statutes;

**NOW, THEREFORE, THE CITY OF FLORENCE ORDAINS AS FOLLOWS:**

- Section 1. Adopt the Findings of Fact (Exhibit A);
- Section 2. Amend the Zoning Map (Exhibit B);
- Section 3. Amend FCC, Title 10 Chapter 1, Zoning Administration (Exhibit C);
- Section 4. Amend FCC, Title 10 Chapter 4, Conditional Uses (Exhibit D)
- Section 5. Amend FCC, Title 10 Chapter 6, Design Review (Exhibit E);
- Section 6. Amend FCC, Title 10 Chapter 20, Limited Industrial District (Exhibit F);
- Section 7. Amend FCC, Title 10 Chapter 28, Pacific View Business Park District (Exhibit G);
- Section 8. Delete FCC, Title 10 Chapter 32, Industrial District (Exhibit H);
- Section 9. Amend FCC, Title 10 Chapter 34, Landscaping (Exhibit I);
- Section 10. Amend Realization 2020, Florence Comprehensive Plan Chapter 2, Land Use (Exhibit J)
- Section 11. Inasmuch as it is necessary to expand the allowed land uses and streamline the land use approval process of the Pacific View Business Park for economic development, an emergency is hereby declared to exist and this Ordinance shall take effect immediately following its adoption by the Council and approval by the Mayor.

**ACTION ITEMS**

**CLARIFICATION ON THE CITY’S POSITION ON 2020 PLAN CO-ADOPTION SUBMITTAL AND ISSUES RELATING TO THE HECETA WATER DISTRICT**

*Consider authorizing the Mayor to sign two letters, one to the Lane County Board of County Commissioners on the City’s position on the 2020 Plan co-adoption and a second to the Heceta Water District Board on issues relating to Heceta Water District*

Mayor Brubaker said this item came from his urging that the city manager prepare a clarification paper in written form on the various points and concerns that the city has on both on the 2020 Comp Plan co-adoption process with the county and the IGA with Heceta Water District. He said the paper was

in the agenda packet along with the two letters that have been drafted to implement them should the council agree with this approach.

CM Willoughby said the request was to place this on the agenda for the purpose of identifying the sticking points with the board of county commissioners with regard to the co-adoption process, and to clarify the council's position on these points and then explore the council's willingness to seek common ground with the Board of Commissioners, if there is any.

He said the second purpose of putting this on the agenda was to identify the sticking point in the negotiations with Heceta Water District for the service territory intergovernmental agreement (IGA) and to clarify with the HWD board what the city is/is not willing to agree to. He said the commissioners will be considering co-adoption again at their May 19<sup>th</sup> meeting so the timing is good for the both of these. He said if the council has suggestions for common ground with the county, we have the opportunity to communicate that to the BCC before the meeting.

CM Willoughby said he thought it was also good for clarifying the issues related to the HWD IGA in that the city is in the process of completing our Water Master Plan update and we need to know which entity is going to serve those properties. He said that was information that both the public works director and the city consultants need to have to complete the Master Plan. He said it was also true that HWD continues to make plans and improvements to its system and the sooner they know the extent of its permanent service territory the better.

CM Willoughby said starting with the co-adoption issue there are three sticking points identified in this memo.

1. *City's annexation policy* – throughout this multi-year process of seeking co-adoption, the county commissioners and others have made the suggestion that if the city would insert the wording “no forced annexation,” into the Comp Plan that it would solve that issue for the BCC. He said he mentioned in the memo that we have a communication from Dave Perry who is the regional representative for the Oregon Department of Conservation and Development and also from our own CDD Sandra Belson who both have advised that the city cannot insert that language in the Plan, because in doing so it wouldn't be in compliance with state law. He referred to the city's Charter in Chapter 2, paragraph H section 4 which establishes the power of the city to annex properties into the city in accordance with state law; therefore our charter tells us how we need to do that and that we also need to be in compliance with state law. He said in prior meetings the Mayor and Council have discussed their desire to find a democratic process; they have said they would not use the island annexation proposal and that was the council's policy the last time it was sent to the BCC and so the question is; whether there is common ground with regard to the annexation issue and with regard to the no island annexation method and the fact that we will let the majority of the property owners decide.

He said there is a draft letter to the BCC which deals with all three of the sticking points, the first one has to do with annexation and there is a proposal to change the language about island annexation which will read, “annexation territories to the City of Florence other than to address health hazards per ORS 222.840 shall utilize an annexation method allowable by state law that requires a majority of consent.” He said that is the proposal staff recommends for common ground, if acceptable to the city council.

2. *Septic Tanks:* The second sticking point is a reference in the 2020 Plan background plan materials to “septic tanks.” He said apparently the language about septic tanks has created a septic tank scare with some of the residents in the UGB. They feel that our Plan and the water testing program are too focused on septic tanks; although he thought that hadn’t been true for several years. He said very early on, when the city had feedback from the county planning commission, BCC and the public, the city changed its focus to expand well sources of pollution and the background language as described in the draft letter would suggest common ground that would delete the language that says, “Based on scientific evidence....”
3. *IGA with HWD:* The third sticking point has to do with the IGA with HWD; this is an IGA that would define the service territories for both the city and the district. At the request of the water district the BCC had indicated that they would hold up co-adoption of the Plan until the city had an IGA with the water district. The county commissioners did make several ambiguous references to IGA’s and it was difficult to tell which IGA they were talking about. He said he didn’t know if the BCC really understood that there are at least three IGA’s that have been discussed with the water district over the last several years and all three of those were still pending.

*Three IGA’s with HWD*

1. One involving the service territory
2. One involving the EPA grant
3. One involves the sale of surplus water to each other

CM Willoughby said there were references during the commissioner’s discussion that they thought the water district should be given a seat at the table; that never made a lot of sense to the staff because it had always been the intent to enter into an IGA and Heceta had always had a “seat at the table.” He said he thought that the commissioners in some of their discussions may have been talking about an IGA concerning the EPA grant; it’s always been the city’s intent to enter into an IGA with the water district and give them a seat at the table, and he thought that was a non-issue. He said the county recently asked if the city would consider a three way agreement on the EPA grant involving the water district, the city and the county and he said we have no objection to that in principal, but we still need to see what the draft agreement is and it needs to be acceptable to all of the parties.

*Service Territory IGA*

He said the service territory IGA is more problematic as the council had been very clear to the staff that they would not agree to an IGA which allows the water district to provide a sub-standard service to the commercial and service industrial properties along Hwy 101. He said given that we had an impasse on this issue and there didn't appear to be any common ground with the BCC unless the council was willing to change its mind on the fire flow issue. He said staff does not recommend that the council change their policy and accordingly the draft letter from CDD Belson she suggests that the BCC decouple those two issues, because the council is adamant that they would not subject the city residents to higher insurance costs, nor would they limit job creation and economic growth potential by allowing substandard water service when we have the capability of providing those properties with an urban level of service that meets all the current, commercial and industrial service standards.

He said in the conclusion of the letter it states that the city had gone through an iterative process to address the concerns of the BCC, county staff and the public that we received prior to the council's last action in December. With this letter the city is further addressing concerns raised during the February 17<sup>th</sup> public hearing at the county commissioners and accordingly the city believes that the choice before the BCC on May 19<sup>th</sup> is whether to continue to utilize the 1988 Comp Plan or adopt the Realization 2020 Comp Plan with the changes outlined in the letter. The letter goes on to say, that "should the county commissioners initiate approved changes to the Plan at their May meeting then the city council will subsequently consider the county's adopted amendments, if they chose to do nothing or reject the city's Comp Plan then they are choosing the 1988 Plan which has no protections for the UGB residents concerning annexation."

#### *Single Sticking Point with HWD*

He said he wanted to clarify the single sticking point that we had with HWD with regard to an IGA concerning service territory; as mentioned we have a couple of issues pending. First we have the service territory IGA which is the one that the BCC injected into our co-adoption process, both commissioners and the people who spoke for the water district during that process conceded that was really an irrelevant issue to the co-adoption of our Comp Plan, that one had nothing to do with the other. He said whether or not that is adopted does not affect the implementation by the city and the county of our 2020 Comp Plan. He said we are clearly at an impasse with regard to the issue that we have that has to do with serving of the commercial and the industrial properties on the north part of Hwy 101 in north Florence.

CM Willoughby said there really has been no reason to meet further with Heceta Water District or to have any further face to face negotiations; we are at an impasse. He said putting this on the agenda this evening with regard to Heceta Water District is an opportunity to reaffirm that message to the water district board, if that's the choice that the council wishes to make that evening. He said if the council wants these properties served by the best service available which meets the objective definition of an urban level of service, in other words if you want adequate fire flows, adequate water, adequate storage

you should inform the water district board that the city will be providing the service for these commercial and industrial properties and that decision is not negotiable. He said there is a letter drafted with the assistance of PWD Mike Miller to Bob Hursh the Chair of the HWD Board which comes to that conclusion.

He said even though he was an advocate, when he first came to the city three years ago, of trying to improve the relationship between the city and HWD and staff worked very hard to try and get an IGA for the service territory, he said he no longer believed that it is in the best interest of the city at this point; and there are a variety of reasons for that summarized in the memo. He said it could be summarized by saying given the animosity and the lack of trust that the HWD board has for the city and for what the city rightfully does under its statutory authority and land use planning and providing urban services to the UGB; right now it would not be in the best interest of the city to have the water district operating inside the city. He said he didn't see it being very likely that we would enter into a cooperative agreement that allows HWD to provide water service inside the city because it would require communication and cooperation. He said it doesn't matter whose fault it is; he was not trying to place any blame on any party.

CM Willoughby said the fact is that the relationship is dysfunctional and we ought not to be entering into any agreements that we don't have to enter into by law. He said we don't really need an IGA to determine what the city's service territory is going to be. The statutes clearly give that authority and the responsibility to the city and it's the water district that needs the IGA to define a right to serve any part of the UGB and it doesn't seem that one entity that needs that agreement from another party, approaches the other party the way the city has been approached by the water district. He said that is represented by comments that we received at our last meeting that were somewhat harsh and not very respectful and certainly not the way one approaches somebody if you really want to enter into an agreement that they need and the city doesn't.

He said he wanted to stress that the city didn't make up the standards for serving the commercial property. He said PWD Miller got those standards from America Water Works Association and from Siuslaw Valley Fire District in terms of what fire flows that the city needs for this community for commercial property. He said those are the standards for urban level of service that are defined for virtually every city in the state. He said the water district has always said the primary purpose of the negotiations is to protect its service territory; if they had agreed to the IGA that the city sent to them last April, they could have achieved over 95% of that goal. The commercial and service industrial property that we have been discussing and we appear to have an impasse on; only represents 4.8% of the total area that is currently served by the water district. He said it seemed to him that it's irrational when you need an agreement from another party to push that negotiation to an impasse over 4.8% of what you're trying to achieve; and that is yet another reflection of how polar the relationship is between the city and the district. He said he was not sure that he wanted to recommend to the council that we enter into a voluntary agreement that we don't have to; it's discretionary. He said why

would the city want to enter into a voluntary agreement with an entity that's going to act irresponsible against its own interest because of its lack of trust and poor relationship with the city. He said it's been more than three years that he had been working on this agreement and he had heard comments made that the water district initiated all of the first drafts and he thought the implication was supposed to be that the city had not responded to their drafts; it's not entirely true that HWD had generated all of the first drafts, the city generated one, but we've always promptly met with them and responded to all of their proposals and in fact when the city thought we were close to an agreement, at least three different times in the past, the water district without any notice or explanation sent an entirely new draft and we had to start over.

He said they were close to an agreement on the latest draft that was being negotiated and he thought it was down to one issue which was who was going to serve those commercial properties. He said back in April 2009, we had a meeting where we incorporated the comments from that meeting into a draft and it was sent back right away. We had a couple of more meetings and discussions but no formal response was ever received.

CM Willoughby said we have had the same issue with one of the other pending agreements; they were getting close to an agreement on a surplus water agreement which was another agreement that is very common between water districts and a city that shares a common boundary. He said the issues are fairly simple; it's how to determine how to pay for water and determine if you have a surplus if one entity asks the other for water. He said it was pretty basic and yet despite negotiating and having multiple drafts; we thought we were close and it's been at least a year since we've heard anything from our last draft of that.

He said his recommendation to the council with regard to trying to deal with this issue of service territories; until the relationship between the water district and the city would justify cooperative agreement we ought not to continue those negotiations and the message needs to be that the requirement that an urban level of service is being provided by whoever is providing water service to city residents that have a right to expect something other than a substandard level of service and there is discussion in the memo about what urban level of service means and where that information came from. He said until there is some demonstration that the water district is willing to accept the city's role in land use planning and until the relationship is such that we can be confident that if we enter into a voluntary relationship it's not going to be something that is being endured but something that is going to benefit both parties; he didn't think the city should entertain any further discussion and he thought the city should go forward with the statutory obligation to provide all of the urban services including water to not only the properties that are inside the city, but also properties in the future as they are annexed by the city. He said when our finances are such that we can afford to provide services; we should start planning for that and make the improvements to our system that will allow us to accomplish that.

CM Willoughby said he had heard more than once during the discussions with the county commissioners and again when Bob Hursh made comments at a recent council meeting; that we were asking HWD to meet a standard that the city couldn't meet. He said at several of our meetings with HWD (which included HWD Manager and Bob Hursh), he was asked the question if the city could meet those standards and CM Willoughby had told them that the city would not ask them to meet a standard that the city could not meet.

He said as it says in the memo, with regard to the 3,500 gallons/minute (which is the urban standard) the city can provide 3,000 gallons/minute at the present time and PWD Miller has stated that in the Master Water Plan, it will show the improvements that need to be made to our system which will allow us to provide 3,500 gallons/minute for all of those commercial and industrial properties. He said when it comes to fire flows and water service for commercial properties; more is better. He said at the present time the water district can provide 2,000 gallons/minute and with some improvements the best they could do is 2,200 gallons/minute. He said the city already provides 800 gallons/minute more in fire flows than the best that the water district will ever provide for those commercial properties and we will meet the 3,500 gallons/minute after improvements are made and it is simply not true that the city can't and won't meet that standard.

He said the letters state that, "the city manager has withdrawn all the offers that we had on the table, the city council concurs with that action and supports it and until such time as the Heceta Water District and its Board demonstrate that it is willing to accept the authority of the City of Florence to make land use plans affecting property in the city and the UGB and until the water district and its Board demonstrates that it is willing to heal the relationship issues preventing agreement on a service territory IGA, all negotiations on that IGA are suspended. In the meantime, the city intends to meet its statutory obligations to plan for and provide water service to the entire UGB and all properties inside the city currently served by HWD." He said the letter goes on to say, "if you are interested in how you might demonstrate your willingness to re-start negotiations, the city council would suggest the following: 1) Withdraw your opposition to the county's co-adoption of our 2020 Plan and urge the county commissioners to de-couple these two issues. 2) Reply to the city's January 12, 2009 proposed Surplus Water Agreement with either your acceptance or a counter proposal."

CM Willoughby said there were two things he needed to mention that had happened since he wrote the memo; the first is an email that he received last week while he was out of the office from Bob Hursh that has a draft IGA attached and after reviewing it he said that there are a couple of things that are significant.

He said the cover letter says, "The loss of even one customer is not something they take lightly," in other words they still want to serve all the customers that they currently serve. He said there was some discussion about their debt structure and the obligation they have based on some bonds that have been sold; he thought there may be some confusion over what happens to those

properties when they are annexed into the city and he recommended that HWD talk with their bond counsel regarding that issue. He said he didn't think the situation was as dire as they projected, about losing a single customer or a loss of 4.8% of their service territory, in their ability to pay back their bonds.

He said in the city's draft agreement there are some sections that had to do with providing an urban level of service and that failing to provide that urban level of service would be a material breach which would authorize the city to give notice that HWD either has to remedy that or we could terminate the agreement. He said Mr. Hursh's draft defines "urban level of service," as 2,200 gallons/minute for 2 hours for the Hwy commercial and service industrial; that is different from what they've said they want provided for that property. He said what PWD Miller had stated was an urban level of service for the duration of the fire flows is 3,500 gallons/minute for 3 hours and that is included in the city's draft and those numbers are defined by the Siuslaw Valley Fire district and the National Public Works Association, not the city.

He said there were a couple of other things included in the draft agreement which were significant; the remedies for breach; if they are not providing urban level of service their proposed draft, states that the parties would have to get together and negotiate in good faith. He said that doesn't give one much comfort giving the history of not being able to negotiate even a surplus water agreement with HWD, something that almost every utility that has a neighboring utility has. He said he didn't know of one city that hasn't been able to negotiate a surplus water agreement. He said there were some other things in the draft agreement, but he felt it was sufficient to say that even though it was purely a response to our April 15, 2009 draft, the response was not consistent with the directions the council has given staff with regards to urban level of service, and fire flows. He said although it does include a provision for a franchise fee of 5% which is the next agenda item.

CM Willoughby said he also received an email today that was forwarded from CDD Belson which involves an email that was sent by Bob Hursh to Dave Perry (DLCD regional manager and the one the city mentioned in our memo who said you can't just put "no forced annexation," into your policies that would not be consistent with state law). In his email, Mr. Hursh had asked if the wording, "no forced annexation" could be put in there and unfortunately Dave Perry answered somewhat ambiguously in his response; part of which was the subject of forced annexation was not the subject. He said Mr. Perry was referring to a December 10, 2009 letter that he attached to the email. He said that wasn't the communication that CDD Belson or the city relies on when we say that they had been told by Dave Perry that we can't just put "no forced annexation" in there.

CM Willoughby then read from several emails back from April 2009, it was a communication that happened when there were meetings with Commissioner Fleenor discussing annexation and what the city might do to deal with the fear that people have in being forced to annex into the city. He said this was from an email that CDD Belson had forwarded to Commissioner Fleenor making it a public record as far as the co-adoption process.

He said the email from Dave Perry states, “Annexation is necessary to carry out the city’s obligation to provide full urban services. Any new city policy that would allow individual property owners to opt out of an annexation process carried out pursuant to ORS Chapter 222, would be working at cross purposes to the city’s policy to provide orderly, efficient and cost effective urban services to an urban area. Ultimately the potential jurisdictional patch work that would result from such a policy would create chaos for all service providers. Annexation should be contiguous to the city’s limits and subject to a majority consensus among affected property owners.” (Here is the critical part) “We would oppose (speaking on behalf of DLC), a policy that would allow individual property owners to opt out of annexation.

CM Willoughby said if you put “no forced annexation” in the policy then all of the statutory methods for annexation which allow you to annex with a majority would not be effective. He said if any one person had veto power over those kinds of annexations then you would have diverted the statutory scheme for a majority election and it’s the majority election that the council had said would be their preference as opposed to island annexation. He said that discussion based on this reply from Dave Perry may come up in terms of future communications with regard to Dave Perry disavowing his comment about “no forced annexations,” but in fact the city has a copy of his communication. He said what Dave Perry had said was that he didn’t talk about that in the December 10<sup>th</sup> letter but that isn’t the communication that the city was relying on, we were relying on another email. He said they had sent that email back to Dave Perry to remind him about that communication.

CM Willoughby said the council’s action that evening would be to consider the two draft letters and either adopt them or change them as it fits the council’s policies with regard to both of those issues.

Mayor Brubaker said another thing that came out of the clarification review is that there are really two aspects to a surplus water agreement. He said neither of which are in effect; one is if we need more water, and historically back in the old days we bought water from Heceta to meet our peak demand in August and September; HWD had to declare a surplus so the city could buy it from them. He said those days are over and we have no intent in the future of buying any water from Heceta for that purpose. He said the other is in the event of an emergency, if a pipe would break or an earthquake, where one entity needs water from the other to fight fires. He said although many thought that agreement was in place; it expired in 2005 and we haven’t been able to replace it since.

Mayor Brubaker said there is no emergency agreement with a neighboring water district if each of us needs 200,000 gallons of water to fight a major fire. He said we can disregard everything else, if we can get an emergency water agreement started that would be a good first step, and now that we don’t have one, that alarms him more than anything else.

Councilor Roberts said at this time she did not want the city to enter into any agreements with HWD. She said HWD Board members were elected officials, apparently the citizens in the UGB who are served by HWD concur with the policies that are now going on, or they would be doing something about it. She said as she had heard that HWD Board members wear two hats; anti-annexation and then they sit on the HWD too. She said with off the wall lawsuits which the city has won, it has cost our taxpayer approximately \$59,000 in attorney fees alone and that does not take into account the staff time.

She said she had a comment in relation to the May 19<sup>th</sup> meeting of the county commissioners on the co-adoption and she hoped that no one was thinking of sending a representative to that meeting. She said she watched the meeting on the county website and she thought that what they put our community development director through was rude and totally uncalled for and to make it a legislative hearing so the city couldn't have any input was wrong. She didn't want any the city's staff members having to put up and deal with those types of people again.

Councilor Franzen said he thought it was time to move off the dime and follow the city manager's recommendation and he would make the motion to do so.

Mayor Brubaker said he would interpret that to be a motion to authorize the mayor to sign and forward the letters as drafted Councilor Franzen agreed. Second by Councilor Xavier, by voice all ayes, motion carried unanimously.

Mayor Brubaker said if nothing else this has created a paper that we can all point to and not take a lot more time on; this is the city's policy in writing and these are the letters that will be sent.

### **FRANCHISE AGREEMENT WITH HECETA WATER DISTRICT**

*Consider approval of Ordinance No. 6, Series 2010, an ordinance granting a non-exclusive franchise to Heceta Water District to operate a water utility and fixing terms, conditions and compensation of such franchise.*

Mayor Brubaker said by city charter the city is authorized to grant franchises for businesses operating in the city that use the city's rights-of-ways. He said in this case it would be 5% of gross revenues of water sales and services provided within the city limits for Heceta Water customers; including Driftwood Shores.

FD Armstrong said we modified this franchise agreement to fit a water utility and what they do, so there were some changes in the definitions from other franchise agreements that we have. He said the date of collecting those franchise fees will go back to August 2008; when Driftwood Shores was annexed. He said HWD had been operating within the city limits for a number of years, but the number of properties were small and he knew how hard it would be if the city had to go back a number of years to try and determine what the revenues might be.

Mayor Brubaker asked if the 2008 date would be just Driftwood Shores and FD Armstrong responded, no, anything within the city limits from that point on and nothing before.

Councilor Burns asked if HWD was aware of the possible franchise fees back in August 2008. FD Armstrong said it had been included in their draft IGA but he could not say for certain. Councilor Burns suggested that this be made effective January 1, 2010 because he didn't want them to come back and say they were not aware in August 2008.

Councilor Xavier asked staff to explain to the audience and listeners why the city charges franchise fees. CM Willoughby said state law allows cities to charge these fees and there are court cases that go back hundreds of years confirming that. He said cities have had control of the jurisdiction of the right-of-ways inside of the city and there are statutes that allow the city to charge franchise fees and our city charter also authorizes the city to charge franchise fees as well. He said the purpose of the franchise fees is to partially reimburse the cities for administrating and managing the right of way. He said you have to coordinate where the water, power, cable lines go. He said we have franchises with the cable company, telephone company, electrical company and with the city's own utilities (water, sewer and stormwater) it works and it's the city that has to manage that right of way and coordinate all of that and to continue to maintain the streets so they remain viable for transportation arterials as well as corridors for these utilities.

He said in terms of revenues for the city it's always one of the top three revenue items for every city in the state of Oregon and most cities in the country.

Mayor Brubaker said he appreciated Councilor Burns' suggestion and asked if staff had any idea how much revenue we would be excusing if we changed that collection date. FD Armstrong replied, no, and that he had requested figures from HWD and never received them.

After some discussion the council concurred to make the payment of franchise fees in the ordinance retroactive to May 1, 2009 as it was noted that HWD was aware of the franchise fees at least as of April 15, 2009, and this would also make it fair to the other franchise holders who have been paying.

CM Willoughby suggested that the retroactive date be put in Section 25 – Effective Date, “the payment of franchise fees shall be retroactive to May 1, 2009.”

Mayor Brubaker called for the first reading of Ordinance No. 6, Series 2010, by short title only acknowledging the council's familiarity with its content as amended. CR Heinze gave the first reading declaring an emergency. Councilor Burns moved for approval of the first reading and called for the second reading. Second by Councilor Xavier, by voice all ayes, motion carried unanimously. CR Heinze gave the second reading. Councilor Xavier moved for approval of the ordinance; second by Councilor Burns, by roll call all ayes, motion carried unanimously.

**ORDINANCE NO. 6, SERIES 2010**

**AN ORDINANCE OF THE CITY OF FLORENCE GRANTING A NON-EXCLUSIVE FRANCHISE TO HECETA WATER DISTRICT TO OPERATE A WATER UTILITY WITHIN THE CITY, AND FIXING TERMS, CONDITIONS AND COMPENSATION OF SUCH FRANCHISE.**

THE CITY OF FLORENCE ORDAINS AS FOLLOWS:

Section 1: Definitions and Explanations

(1) As used in this ordinance.

- (a) “City” means the City of Florence and the areas within its boundaries, including its boundaries as extended in the future.
- (b) “Council” means the legislative body of the City.
- (c) “Water Utility” means a public or private entity which provides water services to the public within its service territory..
- (d) “Grantee” means the entity referred to in Section 2 of this ordinance.
- (e) “Gross Revenue” means the revenue of the Grantee in whatever form accrued from all sources in connection with providing Water services and the operation of the Water Utility using the Right-of-way of the City, including but not limited to: revenues from customers; installation fees, equipment fees and other fees related to the provided Water service; access and attachment charges paid to Grantee by customers and other Water service providers; and, revenue from the sale or lease of pipes, meters, pump stations, water storage, or any other infrastructure. “Gross revenues” do not include proceeds from the sale of bonds, mortgage or other evidence of indebtedness, or securities or stocks, any revenues that are exempt from franchise fees under federal or state law or any amounts received from federal, state or local governments.
- (f) “Person” includes an individual, corporation, association, firm, partnership and joint stock company.
- (g) “Public place” includes any city-owned park, place or grounds within the City that is open to the public but does not include a Right-of-way.
- (h) “Right-of-way” includes a street, alley, avenue, road, boulevard, thoroughfare, bridge or public highway within the City, but does not include a public place.
- (i) “Water Service” means a service related to a public or private utility providing water service to the public..

(2) As used in this ordinance, the singular number may include the plural and the plural number may include the singular.

Section 2: Rights Granted

Subject to the conditions and reservations contained in this ordinance, the City hereby grants to Heceta Water District, an Oregon Water Utility, the right, privilege and franchise to:

- (1) Construct, maintain and operate only a Water Utility within the City.

- (2) Install, maintain and operate on, under and above the rights of way of the City, a Water Utility for the transmission and distribution of water services to the City, its inhabitants and other customers; and
- (3) Transmit and distribute water and sell Water Services.

### Section 3: Scope of Services Provided

If in the future Grantee intends to deliver services other than Water Services, Grantee will notify City at least 90 days in advance of delivery of such services, and a separate agreement will be negotiated. Nothing in this agreement shall restrict the City from imposing any franchise fees, license fees or related charges for services not covered by this franchise agreement.

### Section 4: Use of Right-of-Way by Grantee

- (1) Before the Grantee may use or occupy any right-of-way, the Grantee shall first obtain permission in writing from the City to do so and shall comply with any special conditions the City desires to impose on such use or occupation.
- (2) The compensation paid by the Grantee for this franchise includes all compensation for the use of rights of way located within the City as authorized. However, this subsection shall not be construed to prevent the City from requiring the grantee to pay charges as provided in Section 14 of this ordinance.

### Section 5. Duration

This franchise is granted for a period of five (5) years from and after the effective date of this ordinance, unless sooner terminated as provided in this ordinance. At the end of the Franchise term, if the City and Grantee are negotiating another franchise and have not concluded their negotiations, Grantee's rights and responsibilities shall be controlled by this Franchise until the City grants a new franchise and Grantee accepts it.

### Section 6. Franchise Not Exclusive

This franchise is not exclusive, and shall not be construed as a limitation on the City in:

- (1) Granting rights, privileges and authority to other persons similar to or different from those granted by this ordinance.
- (2) Constructing, installing, maintaining or operating any City-owned Water Utility.

### Section 7. Public Works and Improvements Not Affected by Franchise

The City reserves the right to:

- (1) Construct, install, maintain and operate any public improvement, work or facility;
- (2) Do any work that the City may find desirable on, over or under any right-of-way or public place.
- (3) Vacate, alter or close any right-of-way or public place, provided that the City shall make available to Grantee an alternative right-of-way for the location of its facilities, if an alternative right-of-way is necessary.
- (4) Control or prevent the use of any public place by Grantee and require payment of additional compensation for use of the public place at a reasonable amount.

- (5) Whenever the City shall excavate or perform any work in any of the present and future rights of way and public places of the City, or shall contract, for such excavation or work where such excavation or work may disturb Grantee's Water Facilities, the City shall, in writing, notify Grantee sufficiently in advance of such contemplated excavation or work to enable Grantee to take such measures as may be deemed necessary to protect such Water Facilities from damage and possible inconvenience or injury to the public. In any such case, the Grantee, upon request, shall furnish maps or drawings to the City or contractor, as the case may be, showing the approximate location of all its structures in the area involved in such proposed excavation or other work.
- (6) Whenever the City shall vacate any right-of-way or public place for the convenience or benefit of any person or governmental agency or instrumentality Grantee's right under this franchise shall be preserved as to any of its facilities then existing in such right-of-way or public place.

#### Section 8: Continuous Service

The Grantee shall maintain and operate an adequate system for Water services in the City. The Grantee shall use due diligence to maintain continuous and uninterrupted 24-hour a day service which shall at all times conform at least to the standards common in the business and to the standards adopted by state authorities and to standards of the City which are not in conflict with those adopted by the state authorities. Under no circumstances shall the Grantee be liable for an interruption or failure of service caused by an act of God, unavoidable accident or other circumstances beyond the control of the Grantee through no fault of its own.

#### Section 9: Safety Standards and Work Specifications

- (1) The facilities of the Grantee shall at all times be maintained in a safe, substantial and workmanlike manner.
- (2) For the purpose of carrying out the provisions of this section, the City may provide such specifications relating thereto as may be necessary or convenient for public safety or the orderly development of the City. The City may amend and add to such specifications from time-to-time.

#### Section 10: Control of Construction

The Grantee shall file with the City maps showing the location of any construction, extension or relocation of its Water Utility in the rights of way and public places of the City and shall obtain from the City written approval of the location and plans prior to commencement of the work. The City may require the Grantee to obtain a permit before commencing the construction, extension or relocation of any of its Water Utility.

#### Section 11: Right-of-Way Excavations and Restorations

- (1) Subject to the provisions of this ordinance, the Grantee may make necessary excavations for the purpose of constructing, installing, maintaining and operating its facilities. Except in emergencies, and in the performance of routine service connections and ordinary maintenance, prior to making an excavation in the traveled portion of any right-of-way and, when required by the City, in any untraveled portion of any right-of-way, the Grantee shall obtain from the City written approval of the proposed excavation and of its location. Grantee shall give notice to the City by telephone, electronic data transmittal or other appropriate means prior to the commencement of service or maintenance work and as soon as is practicable after the commencement of work performed under emergency conditions.

- (2) When any excavation is made by the Grantee, the Grantee shall promptly restore the affected portion of the right-of-way or public place to the same condition in which it was prior to the excavation. The restoration shall be in compliance with specifications, requirements and regulations of the City in effect at the time of such restoration. If the Grantee fails to restore promptly the affected portion of a right-of-way or public place to the same condition in which it was prior to the excavation, upon 15 days written notice to the Grantee, the City may make the restoration, and Grantee shall be responsible for paying the cost of such restoration, including the City's cost of inspection, supervision and administration.

#### Section 12: Location and Relocation of Facilities

- (1) All facilities of the Grantee shall be placed so that they do not interfere unreasonably with the use by the City and the public of the rights of way and public places and in accordance with any specifications adopted by the City governing the location of facilities.
- (2) The City may require, in the public interest, the removal or relocation of facilities maintained by the Grantee in the rights of way and public places of the City, and the Grantee shall remove and relocate such facilities within a reasonable time after receiving notice so to do from the City. The City shall provide the Grantee with timely notice of any anticipated requirement to remove or relocate its facilities. The cost of such removal or relocation of its facilities shall be paid by the Grantee. When a removal or relocation is required for the convenience or benefit of any person, governmental agency or instrumentality other than the City, Grantee may refuse to accomplish such removal or relocation unless such party agrees to pay the reasonable cost thereof.

#### Section 13. Emergency Repair Service

Grantee shall maintain emergency repair service available on a 24-hour a day basis.

#### Section 14: Compensation

- (1) As compensation for the franchise granted by this ordinance, the Grantee shall pay to the City an amount equal to five percent (5%) of the Gross Revenue collected by the Grantee from its customers for Water Services provided within the City.
- (2) Grantee shall make quarterly payments to the City on or before the 15<sup>th</sup> day of each April, July, October, and January for the immediately preceding quarter. Grantee shall pay a pro rata fee for the last annual payment to the date of termination in addition to any other sums due the City and shall make such payment within 30 days of termination.
- (3) The Grantee shall furnish to the City with each payment of compensation required by this section a sworn statement showing the amount of gross revenue of the Grantee within the City for the period covered by the payment computed on the basis set out in subsection (1) of this section. The compensation for the period covered by the statement shall be computed on the basis of the gross revenue so reported. If the Grantee fails to pay the entire amount of compensation due the City through error or otherwise, the difference due to City shall be paid by the Grantee within fifteen (15) days from discovery of the error or determination of the correct amount. If the City institutes any collection action for recovery of any payment due under this agreement or for the breach of any provision of this agreement, Grantee agrees to pay all costs in connection with collection, suit, and appeal, including reasonable attorney fees. Any overpayment to the City through error or otherwise, shall be offset against the next payment due from the Grantee.
- (4) Acceptance by the City of any payment due under this section shall not be deemed to be a waiver by the City of any breach of this franchise occurring prior thereto,

nor shall the acceptance by the City of any such payments preclude the City from later establishing that a larger amount was actually due, or from collecting any balance due to the City.

#### Section 15. Permit and Inspection Fees

Nothing in this ordinance shall be construed to limit the right of the City to require the Grantee to pay reasonable charges imposed by the City in connection with issuing a permit, making an inspection or performing any other service, including projects in public places, for or in connection with the Grantee and its facilities, whether pursuant to this ordinance or any other ordinance or resolution now in effect or adopted by the City in the future, as long as these fees apply to all persons alike.

#### Section 16. Compensation to be Credit Against Certain Taxes

The compensation required by Section 14 of this ordinance to be paid by the Grantee to the City shall be a credit against all license, occupation, business or excise taxes which the City may now or hereafter impose upon the Grantee for the delivery of Water Services. However, nothing contained in this franchise shall give the Grantee any credit against any ad valorem property tax now or hereafter levied against real or personal property within the City, or against any local improvement assessment or against any charges imposed upon the Grantee as provided in Section 15 of this ordinance or reimbursement or indemnity paid to the City.

#### Section 17: Books of Account and Reports

The Grantee shall keep accurate books of account at an office in Oregon for the purpose of determining the amounts due to the City under section 14 of this ordinance. The City may inspect the books of account at any time during business hours and may audit the books from time-to-time. Grantee shall reimburse City for the reasonable costs of such audit if the audit discloses that Grantee has paid 95% or less of the fee owing for the period of the audit. The Council may require periodic reports from the Grantee relating to its operations and revenues within the City.

#### Section 18: Supplying Maps Upon Request

(1) The Grantee shall maintain on file at an office in Oregon maps and operational data pertaining to its operations in the City. Upon reasonable notice, an authorized representative of the City may inspect the maps and data any time during business hours at an office of the Grantee.

(2) Grantee and the City may determine that the locations of certain Water facilities should be confidential as the public interest may require. If they so determine, Grantee shall thereafter not be obligated to provide records of the location of such facilities to the City. If Grantee provides such records to the City, the City shall treat them as records given in confidence and:

- (a) Retain and disclose them as provided by Oregon Public Records Law and any other applicable law;
- (b) Limit employee access to any such confidential record facilities to those employees of the City required to use information in the record;
- (c) Store such records provided by Grantee under this section pursuant to the City's adopted Records Management Policy;
- (d) Use its best efforts to maintain such confidential records in a locked location and avoid making and distributing copies of such records.

#### Section 19: Indemnity

The Grantee shall indemnify and save harmless the City and its officers, agents and employees from any and all loss, cost and expense, including court costs and attorney fees, whether at trial or on appeal, arising from damage to property and/or injury to, or

death of, persons due to any wrongful or negligent act or omission of the Grantee, its agents or employees in exercising the rights, privileges and franchise hereby granted.

Section 20: Assignment of Franchise

This franchise shall be binding upon and inure to the benefit of the successors, legal representatives and assigns of the Grantee; but no transfer of this franchise by merger, consolidation, sale, assignment or otherwise shall be made unless the City Council first consents by resolution.

Section 21. Reservation of Statutory Authority: Incorporation of Charter Provisions

The City reserves the right to exercise, with regard to this franchise and the Grantee, all authority now or hereafter granted to the City by State statutes. All rights of the City under the City charter are reserved to the City and provisions of the City charter applicable hereto are incorporated by reference and made part of the franchise.

Section 22: Termination of Franchise for Cause

The City may terminate this franchise as provided in this Section, subject to Grantee's right to a court review of the reasonableness of such action, upon the willful failure of the Grantee to perform promptly and completely each and every material term, condition or obligation imposed upon it under or pursuant to this ordinance. The City shall provide the Grantee written notice of any such failure and the Grantee shall have sixty (60) days from receipt of notice to cure such failure, or if such failure cannot reasonably be cured within sixty (60) days, to commence and diligently pursue curing such failure.

Section 23: Remedies Not Exclusive, When Requirement Waived

All remedies and penalties under this ordinance, including termination of the franchise, are cumulative, and the recovery or enforcement of one is not a bar to the recovery or enforcement of any other such remedy or penalty. The remedies and penalties contained in this ordinance, including termination of the franchise, are not exclusive and the City reserves the right to enforce the penal provisions of any ordinance or resolution and to avail itself of any and all remedies available at law or in equity. Failure to enforce shall not be construed as a waiver of a breach of any term, condition or obligation imposed upon the Grantee by or pursuant to this ordinance. A specific waiver of a particular breach of any term, condition or obligation imposed upon the Grantee by or pursuant to this ordinance shall not be a waiver of any other or subsequent or future breach of the same or of any other term, condition or obligation, or a waiver of the term, condition or obligation itself.

Section 24: Acceptance

The Grantee shall, within thirty (30) days from the date this ordinance takes effect, file with the City its written unconditional acceptance of this franchise, and if the Grantee fails so to do, this ordinance shall be void and Grantee shall cease all operations inside the City until a franchise or license to do so has been approved by the City Council.

Section 25. Effective Date

This ordinance will be effective 30 days following the date of its passage by the City Council. The payment of franchise fees shall be retroactive to May 1, 2009.

**REPORTS**

**CITY MANAGER REPORT**

*Broadband Expansion and Connectivity*

CM Willoughby said one of the council goals has to do with interconnectivity of Public Works, City Hall, the Justice Center and the FEC. He said we've received some good news in how we might accomplish that.

FD Armstrong (IT Director) said Lane Council of Governments (LCOG) was awarded an 8.4 million dollar stimulus grant for broadband expansion and connectivity which included Florence. He said in Florence they will be doing a fiber route that will include the city buildings: City Hall, FEC, Public Works building, and the Justice Center. He said also included will be the county public works and another county facility and a state facility that are all located in Florence. He said this will enable us to get connectivity between the city buildings and they will bear the cost and there is no local match; that is a very big advantage for the city. ACM Morgan added that the city of Eugene put in the local match.

FD Armstrong said the connectivity will be fiber which will be very fast. He said at present we are already switched over to Coastcom at the Justice center and we are working on getting Coastcom to city hall. He said at the present we have not incurred any infrastructure cost; we will be connecting with copper lines that are leased through Coastcom through Qwest. He said with the county and state buildings having fiber, they will have some options for connectivity for purchasing broadband that they don't have at this time. He said that could enable them to switch away from their current contract and possibly aggregating some of the city/county/state entities to try and get a bigger internet pipe between Florence and Eugene. He said this will enable them to have some options where we might be able to talk about doing that and getting bigger pipe which will lower our broadband costs; the more options one has and the bigger pipe you can bring over and split up, it lowers the bandwidth charges for everyone. He said this is a win/win for Florence all the way around.

CM Willoughby said this will give the city connectivity with the Justice Center and we will be able to relocate city hall's server at the Justice Center in a room that is designed for a server and out of the city hall basement. He said this will allow all the city buildings to communicate with each other and also be able to do the backups and have all of their systems operate in a climate controlled environment. He said this also puts fiber in some of the major streets in Florence and with ACS fiber we have fiber from the PVBP and at least one loop to the rest of the world. This will allow us to loop that system to Eugene and then there are all kinds of fiber between Eugene and Portland. He said it puts fiber in streets where people and businesses and future businesses can access that fiber, but it also helps the city achieve the council goal for interconnectivity.

FD Armstrong said they are looking to be completely built out in two years; although that timeline is still being set on which pieces get done in what order. He said he had been contacted by Dan Mulholland from LCOG and they are setting up a meeting with all the interested parties in Florence within the next couple of weeks and the timeframe will be discussed at that meeting.

CM Willoughby said the council has the goal for document scanning and record retention, and the affordable options for doing that are internet based and we need to have sufficient capacity within our system to be able to access those types of solutions. He said the city will use copper wire that we lease temporarily, and eventually we'll be hooked up with fiber and that will be more economical and more reliable. He said the fiber between Eugene and Florence that the phone company operates on and is used to light up the copper isn't really looped, it's a single fiber and if someone would cut into it then the service is down. He said we want it looped so if a wire is cut then we just send the service the other way.

Mayor Brubaker asked if this was a pipe being put into a trench from Eugene to Florence that has fiber in it. FD Armstrong responded, no, they will be utilizing existing fiber between Eugene and Florence for the time being, it will be new fiber in the ground in Florence and in other cities.

## **MAYOR AND COUNCIL REPORTS**

### *Grand Opening of the Senior Center*

Mayor Brubaker referred to the grand opening of the Senior Center and said the we hope to get the landscaping done in time and if we don't we would have to bond the city, because we require that of other developers. He said the grand opening for the public would be at 2:00 p.m. on Sunday, April 25<sup>th</sup>, and everyone is invited, not just those 60 and older.

### *Town Hall Meeting on Fire Annexation Measure*

The city council concurred to hold an informal Town Hall meeting on April 26<sup>th</sup> at 6:30 p.m. to discuss the Fire District Measure. Mayor Brubaker said the council was attempting to get the word out and answer questions and concerns on the measure. Councilor Burns suggested that staff invite Chief Buchanan or a representative from the Fire District to the meeting.

### *Fire Works Ban*

Councilor Burns asked the city manager if the city could get a letter from the port requesting the ban of the fireworks on their property. Councilor Roberts asked that Chief Buchanan and his assistant Sean Barrett be invited to the meeting of June 7<sup>th</sup> and requested a confirmation from staff that they had accepted the invitation.

### *Fire Flow Rates*

Councilor Burns asked PWD Miller about the flow rate figures of 3,500 gallons/minute that were provided by the fire department. He asked if we could get those flow rates for urban levels of service in writing from the fire department. PWD Miller said we have an email correspondence and Councilor Burns said as long as the city has those numbers in writing it will prevent the challenges to that information. CM Willoughby said staff had the same concern and they knew that they had been told verbally so we asked to confirm that in writing and we have received that information.

### *Information on Water Service in UGB and City Limits*

Councilor Burns asked if the council could get a report in a couple meetings, on exactly what it would take for the city to provide water service to all the residents in the city limits; including Hwy 101, Rhody Drive and out to Driftwood Shores. PD Miller replied, yes, staff can provide that and added that the question was timely because at the second council meeting in May staff will have the engineers at the meeting to talk to the council about the Water Master Plan.

#### *Annexed Properties and Water Service*

Councilor Burns said when a property was annexed into the city, shouldn't they be taken out of the Heceta Water taxing district. CDD Belson responded that withdrawal from the water district is not automatic upon annexation like it is with the fire district. She said the city council has to take a separate action to withdraw the territory from the water district after it has been annexed, so until it's withdrawn they are paying property taxes to HWD.

Councilor Burns said he was aware that properties in the Genereaux development at Munsel Lake at 52<sup>nd</sup> Street were paying property taxes to HWD. CDD Belson said the Spruce Village properties were annexed before she came to the city and about 1 year after she came to the city the council withdrew those territories from the water district, but the paperwork didn't go through immediately to the state and the county, so they were not withdrawn. She went on to say that Barb Miller had followed through and done paperwork to withdraw those properties from HWD and their next tax statements should reflect that change and HWD should no longer be on there.

CM Willoughby added that it takes some time after you make a change like that, if it's too close in time before the next tax statement comes out; he said next year it should not be on there.

#### *Copies of Emails*

Councilor Roberts asked for a copy of the two recent emails that the city manager had received.

#### *LCOG Board Of Directors Meeting at FEC*

Mayor Brubaker announced that on Thursday, June 24<sup>th</sup>; the city will be hosting LCOG Board of Directors at the FEC for their monthly meeting. He said he invited each councilor to attend that meeting.

With no further business, Mayor Brubaker adjourned the meeting at 9:08 p.m.

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Phil Brubaker, Mayor

**ATTEST:**

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Pat Heinze, City Recorder