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Dallas City Council Agenda

Monday, March 5, 2012, 7:00 p.m.

Mayor Brian Dalton, Presiding

Dallas City Hall

187 SE Court Street

Dallas, Oregon 97338

All persons addressing the Council will please use the table at the front of the Council. All testimony is electronically recorded. If you wish to speak on any agenda item, please sign in on the provided card.

| <u>ITEM</u> | <u>RECOMMENDED ACTION</u> |
|--|---------------------------|
| 1. ROLL CALL | |
| 2. PLEDGE OF ALLEGIANCE | |
| 3. PUBLIC HEARINGS <i>Public comment will be allowed on items appearing on this portion of the agenda following a brief staff report presenting the item and action requested. The Mayor may limit testimony.</i> a. Walmart appeal hearing (SPR 11-01) p. 3 | |
| 4. COMMENTS FROM THE AUDIENCE <i>This time is provided for citizens to address the Council on any matters other than public hearings.</i> | |
| 5. CONSENT AGENDA <i>The following items are considered routine and will be enacted by one motion. There will be no separate discussion of these items unless a Council member so requests, in which case the item will be removed from the Consent Agenda and considered separately.</i> a. Approval of February 21, 2012, City Council Minutes p. 21 b. Acknowledge report of February 27, 2012, Public Safety Committee meeting p. 23 c. Acknowledge report of February 27, 2012, Public Works Committee meeting p. 31 | |
| 6. ITEMS REMOVED FROM CONSENT AGENDA | |
| 7. REPORTS OR COMMENTS FROM THE COUNCIL MEMBERS | |
| 8. REPORTS FROM CITY MANAGER AND STAFF a. Chamber/Visitor Center requests for summer events b. Other | Motions |

Dallas City Council Agenda

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Our Vision

Our vision is to foster an environment in which Dallas residents can take advantage of a vital, growing, and diversified community that provides a high quality of life.

Our Mission

The mission of the City of Dallas is to maintain a safe, livable environment by providing open government with effective, efficient, and accountable service delivery.

Our Motto

*Commitment to the Community.
People Serving People.*

Dallas City Hall is accessible to persons with disabilities. A request for an interpreter for the hearing impaired or for other accommodations for persons with disabilities should be made at least 48 hours before the meeting to the City Manager's Office, 503-831-3502 or TDD 503-623-7355.

| | |
|--|----------------|
| 9. RESOLUTIONS | |
| a. <u>Resolution No. 3242</u> : A Resolution establishing a schedule of rates and fees to be paid by persons using the Dallas Aquatic Center, and repealing Resolution No. 3152. p. 75 | Roll Call Vote |
| 10. FIRST READING OF ORDINANCE | |
| a. <u>Ordinance No. 1744</u> : An Ordinance regulating the display for sale of drug paraphernalia; and declaring an emergency. p. 78 | First Reading |
| 11. SECOND READING OF ORDINANCE | |
| 12. OTHER BUSINESS | |
| 13. ADJOURNMENT | |

**CITY OF DALLAS
CITY COUNCIL**



**STAFF REPORT
Date: February 23, 2012**

| | |
|------------------------|--|
| FILE NO. | SPR11-01 |
| HEARING DATE | MARCH 5, 2012 7:00 P.M. CITY HALL CIVIC CENTER 187 SE COURT STREET DALLAS, OREGON 97338 |
| APPELLANTS | LYDIA GRABER, NEIGHBORS FOR DALLAS, JEREMIAH MULDER, AND RANDALL HOUSER REPRESENTATIVE: SEAN MALONE |
| OWNER/APPLICANT | WALMART REAL ESTATE BUSINESS TRUST REPRESENTATIVE: GREG HATHAWAY |
| REQUEST | APPEAL OF A STE PLAN REVIEW APPROVAL IN THE CG ZONE |
| LOCATION | 321 NE KINGS VALLEY HIGHWAY |
| RECOMMENDATION | <i>DENY THE APPEAL AND AFFIRM THE PLANNING COMMISSION DECISION (APPROVAL WITH CONDITIONS)</i> |

The full record may be viewed at the City Manager's office in Dallas City Hall, 187 SE Court Street, Dallas, OR 97338. Due to the size of the file, it cannot be included in the agenda packet.

STAFF REPORT TO THE DALLAS CITY COUNCIL

BACKGROUND:

The proposed project is an expansion of the existing Walmart store located at 321 Northeast Kings Valley Highway in Dallas, Oregon. The project will expand/remodel the existing Walmart store, which is comprised of an approximately 80,583 square foot building with a 6,190 square foot garden center, to an approximately 98,900 square foot building with the 6,190 square foot garden center to remain. The existing vestibule will be relocated and enlarged. The upgraded store will include everyday household items with an added full-grocery department that includes fruits and vegetables, a bakery, deli and pharmacy, as well as new products and merchandise. The remodel/expansion includes exterior façade re-design, new paint, new entrance, pedestrian amenities and improved interior layout.

In addition to the building remodel/expansion, there will be parking, landscaping, lighting, and pedestrian and bicycle access and circulation, and utility infrastructure improvements to bring the overall existing development closer into conformance with the current City of Dallas development codes and standards. There are currently 480 existing vehicular parking spaces on the site. Post-expansion, the site will have 383 vehicular parking spaces not including cart corrals, which represent a reduction of 97 parking spaces from the existing condition. In addition to the 383 vehicular parking stalls, Walmart proposes to relocate the bus shelter from the parking lot to the front of the store. The new location will include a dedicated pull-out to promote maneuverability and safety. Access will be maintained at the four (4) existing driveway locations currently provided to the site.

After a public hearing on the matter, and two periods during which the record was left open for additional evidence and testimony, the Planning Commission approved the project on January 10, 2012, with conditions, and the Final Order of Approval was signed on January 19, 2012. In accordance with the Dallas Development Code, a timely appeal was filed and this appeal follows.

PROCEDURE:

Dallas Development Code Section 4.1.040.G. governs the procedure for an appeal of a Type III decision to the City Council.

Appeals to the City Council are *de novo* on the record, and the City Council will consider argument on the record, only -- *not new evidence* -- directed to the issues raised in the Notice of Appeal. The City Council need only consider those matters specifically raised by the appellant; it *may* consider other matters if it so desires. In addition, only those people who participated before the Planning Commission and received the Notice of Decision can present argument in this appeal hearing.

The City Council shall make its decision based upon the record after first granting the right to present argument, but not to introduce additional evidence, to the parties to the hearing before the Planning Commission.

The burden of proof to demonstrate that the applicable criteria for this application have been met is on the applicant. The appellant has the burden under the city code and state law to articulate reasons why the decision of the Planning Commission, as to the issues raised on appeal, was in error.

ISSUES RAISED IN APPEAL:

Issue #1: Appellants assert that the existing stormwater system is not adequate to serve the existing store, that there is no evidence that the stormwater system is working as required by its original approval in 1994, and that the outdoor garden area contains fertilizers, compost, etc. that can leak into the ground and enter the stormwater system.

Response: The appellant cites no specific facts or supporting data in the record for these claims. In fact, the Supplementary Staff Report dated December 6, 2011, and applicant's engineers' submittal of November 16, 2011, contained in the record, specifically state that the stormdrain system was installed in 1995, was sized 30% larger than required at the time, and that the discharge rate will not be increased as a result of the project. There have been no documented incidents of malfunction, and since there will be a reduction in the overall runoff due to increased landscape areas, this issue should be disregarded. As for the outdoor garden area, there is evidence in the record that states any chemicals or fertilizers are stored inside the store, and that the store has no record of non-compliance or fines related to the storage of fertilizers.

Issue #2: Appellants assert that the existing store is a nonconforming use, and the zoning ordinance does not permit nonconforming uses to be expanded, and that, while Walmart contends it will bring the store more into conformance with the zoning ordinance, there is no evidence to support Walmart's claim. Appellants also assert that the driveways are nonconforming, and Walmart does not allege that the driveways will be brought closer to or into conformance.

Response: All of material elements of these assertions are inaccurate and not supported by the record. First, the existing use is not a nonconforming use. The record shows that the property is zoned Commercial General (CG). Retail sales are an outright permitted use in the CG zone pursuant to Dallas Development Code Table 2.3.020B. Therefore, there is no issue as to whether the use, which is a permitted use, is expanding.

Second, if this issue is meant to address nonconforming *development*, as opposed to *use*, then there is ample evidence in the record that that shows the nonconforming development elements are being brought into or closer to compliance with the standards of the Dallas Development Code as required by Section 5.2.030(A), which states that "nonconforming development may not be enlarged or altered in a way that increases the nonconformity, *but any development or portion thereof may be enlarged or altered in such a way that satisfies the current requirements of the Code or will decrease its*

nonconformity". The elements of nonconforming development in this application include parking, landscaping, and building façade issues, all of which are being brought closer to or into conformance, as shown by the record.

Third, the appellant does not specify how or which of "the driveways are also nonconforming." For that matter, there is no proposal to enlarge or alter any driveway access as part of this application.

ISSUE #3: Appellants assert that a traffic study is required when a land use application involves an increase of 300 or more average daily trips (ADT); that the proposed expansion will result in an increase of 600 ADT; that the Oregon Department of Transportation has not demonstrated why a traffic impact study is not required and has not demonstrated whether the decision not to require a traffic study conforms their rules; and that Walmart was required to collect actual data about traffic counts at other stores rather than relying on estimates in the Institute of Traffic Engineers (ITE) manual.

Response: Appellants state that Development Code subsections 4.1.090(A)(3) through (5) apply to this application and require a "traffic study" that was not provided with the application or in the record before the Planning Commission.

Subsection 4.1.090(A) provides that "A TIA [traffic impact analysis] shall be required when a land use application involves one of more of the following actions:

"* * *;

"(3) An increase in site traffic volume generation by 300 Average Daily Trips (ADT) or more;

"(4) An increase in peak hour traffic volume of a particular turning movement to and from an arterial street, including State highways, by 20 percent or more;

"(5) An increase in use of advance streets by vehicles exceeding the 20,000 pound gross vehicle weights by 10 vehicles or more per day[.]"

Subsection 4.1.090(A) further provides that "The current version of the Institute of Transportation Engineers *Trip Generation Manual* shall be used as a source for estimating development-generated traffic."

Subsection 4.1.090(B) provides that, when a traffic impact analysis is required under subsection (A), the TIA "shall be prepared by a professional engineer in accordance with the requirements of the road authority. If the road authority is the Oregon Department of Transportation (ODOT), the applicant shall consult ODOT's regional development review planner and OAR 734-051-180 [*sic*]."

In conjunction with its application, the applicant consulted with Scott Nelson, identified in the record as the ODOT Region 2 Development Review Coordinator, regarding traffic

impacts. The applicant sent Mr. Nelson a "Traffic Impact Study Scope" memorandum dated February 23, 2011, which showed the trip generation estimates for the proposed project based on manuals and handbooks published by the Institute of Transportation Engineers. The applicant's scoping memorandum states, among other things:

"Per our discussions, this memorandum summarizes the anticipated trip generation associated with the proposed expansion of the existing Wal-Mart store in Dallas, Oregon. *This information can be used to determine a required scope of work for any traffic analysis required to support the proposed expansion.*" (Emphasis added.)

Among other things, the scoping memorandum showed an anticipated increase of more than 300 daily trips, which implicated the TIA requirement of subsection 4.1.090(A)(3), above.¹ The scoping memorandum further states:

"Based on the limited increase in trip generation anticipated for this project we would anticipate a limited scope TIS [Transportation Impact Study] that includes an evaluation of the access points only to assure adequate operations are maintained."

ODOT evaluated the applicant's scoping memorandum in accordance with its "Change of Use Evaluation" criteria in Oregon Administrative Rules chapter 734-051, and determined that the project did "not meet the change of use criteria" that would require a new road approach application, nor did ODOT otherwise require a TIA. (This is reflected in the forwarded email in the record from B. Scott Nelson, the ODOT Region 2 Development Review Coordinator, dated March 18, 2011.)

Based on these facts in the record, the Planning Commission concluded that the applicant had functionally satisfied the TIA requirement under Development Code section 4.1.090.

Appellants are correct in their statement that subsection 4.1.090(A)(3) applies to this application² and that subsection (A), by its terms, would require a TIA. But subsection (A) cannot be read in isolation; rather, it has to be read together with subsection (B), so that the whole code section can be given effect. Subsection (B) provides that, when a TIA is required under subsection (A), the TIA "shall be prepared * * * in accordance with the requirements of the road authority." In this case, as the Planning Commission found in its Final Order, "ODOT is the road authority for all access points to the development (except the Bovard Street access, which is principally a freight access)." Final Order, page 64. As noted above, the applicant submitted a traffic scoping memorandum to ODOT's regional development review planner, as required by subsection (B), and as directed by staff, and ODOT's response was that the traffic impacts as shown on the scoping memorandum did not meet the criteria for a TIA under

¹ Neither the scoping memorandum nor any other information in the record indicates that a TIA would be required under either the criteria of subsection 4.1.090(A)(4) or (5), as appellants assert in their notice of appeal.

² But not 4.1.090(A)(4) or (5).

ODOT's standards. At that point, there was nothing more for applicant to do to comply with 4.1.090.

Subsection 4.1.090(B) says that a TIA "shall be prepared * * * *in accordance with the requirements of the road authority.*" The road authority, after consultation and review, determined that it would *not require* a TIA. That determination effectively, and for all practical purposes, discharged and satisfied the applicant's obligation under section 4.1.090.

Appellants further assert that ODOT "has not demonstrated why a traffic study is not required and has not demonstrated whether the decision not to require a traffic study conforms to their rules." In fact, ODOT did provide a copy of its "Change of Use Evaluation" applying the criteria of Oregon Administrative Rule 734-051-0045, which is in the record. Apart from that, there is nothing in subsection 4.1.090(B) that requires ODOT to "show its work," or to demonstrate that its decision conforms to its rules. (In fact, the city would have no authority to impose such an obligation on ODOT.) Subsection 4.1.090(B) required the applicant to consult with ODOT, as the road authority. It did so, and ODOT is entitled to a presumption that it made its determination not to require a TIA in conformance with its own rules.

The appellants also say "there is no evidence demonstrating that OAR 734-051-180 was consulted," as required by subsection 4.1.090(B). There are two problems with this argument. One is that the reference to "OAR 734-051-180" is a mistake in the printed Development Code. There is no such Oregon Administrative Rule, nor could there be, as the rule number cited in the Development Code does not conform to the numbering format for the Oregon Administrative Rules. That format provides for two sets of three digits followed by a set of four digits (such as "OAR 734-051-0045," as cited above). There is no rule number 734-051-180, nor do the last three digits of the number that appear in the city code suggest a particular rule number that *might* have been intended. (That is, there is no OAR 734-051-0180 or -1800, for example, or some other number that might indicate what the rule number in the city code could have been meant to refer to.) Given that, it would be unreasonable to hold an applicant to consult an Oregon Administrative Rule that cannot be identified by how it is referred to in the city Development Code.³ Further, OAR chapter 734 is a chapter of administrative rules adopted by ODOT, relating to its Highway Division. Division 051 of chapter 734 (that is, OAR 734-051) addresses "Highway Approaches, Access Control, Spacing Standards and Medians." As noted above, to the extent that the erroneous citation to the rule in the city development code was intended to refer to an ODOT rule contained in OAR chapter 734, division 051, governing access or standards for TIAs, applicant's submittal of its scoping memorandum to ODOT necessarily implicated all the applicable rules in OAR 734-051, and ODOT is entitled to a presumption that it appropriately applied its own rules in reaching its determination.

³ This is a matter for the city to contact the city's consultant who helped prepare the development code, to address the error and correct it by a future amendment to the code.

Finally, the appellants assert in their notice of appeal that “Walmart was required to collect actual data about traffic counts at other stores rather than relying on estimates in the Institute of Transportation Engineers manual.” This is an assertion of an argument presented in the record but has no basis in any approval criteria, so should be disregarded on appeal. Subsection 4.1.090(A) is explicit in providing that traffic impacts are to be estimated based on the Institute of Transportation Engineers manual, which is what the applicant used.

RECOMMENDATION:

STAFF RECOMMENDS THAT THE COUNCIL DENY THE APPEAL AND DIRECT STAFF TO DRAFT AN ORDER UPHOLDING THE PLANNING COMMISSION FINAL ORDER IN THIS MATTER.

Respectfully submitted by Jason Locke,
Community Development/Operations Director



RECEIVED
2/22/12



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**WALMART'S
SUMMARY RESPONSE TO APPEAL ISSUES**

**PLANNING COMMISSION FILE #SPR11-0
WALMART SITE PLAN REVIEW**

**Gregory S. Hathaway
Hathaway Koback Connors LLP
February 22, 2012**

INTRODUCTION

On January 19, 2012, the Planning Commission approved Walmart's Site Plan Review application for an expansion/remodel of the existing store. See Planning Commission's Final Order of Approval with Conditions. The store will be expanded from approximately 80,583 square feet to an approximate 98,900 square foot building. The existing 6,190 square foot garden center will remain. On February 2, 2012, opponents to the application ("Appellants") filed a Notice of Appeal challenging the decision of the Planning Commission.

Under the City's requirements, Appellants are required to specifically identify and explain the issues being raised on appeal before the City Council. In this appeal, Appellants have identified three "appeal issues" regarding (1) Stormwater, (2) Non-conforming Use and (3) Traffic Impacts.

The City Council will consider this appeal at its March 5, 2012 meeting and conduct a public hearing limited to the issues identified in the Notice of Appeal and to those that have previously appeared in this matter. The City Council will consider argument on the existing record and no new evidence will be allowed in this appeal pursuant to City requirements.

This Summary is intended to respond to the specific issues raised in the Notice of Appeal filed by Appellants for consideration by the City Council.

APPEAL ISSUE NO. 1: STORMWATER

The Appellants assert that the existing Stormwater system is not adequate to serve the expanded store, and there is no evidence that the system is working as

required by the store's original approval in 1994. As a result, Appellants assert that Walmart has not satisfied Sections 3.4.040 C and D. Appellants also assert that the existing outdoor garden area contains fertilizer and compost that can leak into the ground and enter the Stormwater system.

Response: Sections 3.040 C and D require that post-development runoff rates do not exceed pre-development rates and that necessary mitigation facilities are provided to meet this standard. The evidence in the record demonstrates that the existing Stormwater system was designed in 1994 and approved by the City. The detention system that was actually installed to ensure that post-development runoff rates did not exceed pre-development rates provided significantly more detention than what was required. The existing underground detention system consists of 3 separate 48-inch CMP pipes hydraulically connected totaling 1,086 lineal feet which provides approximately 13,640 cubic feet of storage. This exceeds the 5,280 cubic feet of storage required of the original system to meet the aforementioned rates. Thus, the evidence in the record clearly demonstrates that the existing system was constructed in compliance with the City's requirements. There is no substantial evidence in the record that rebuts this conclusion. This part of Appeal Issue No. 1 should be rejected.

There is additional evidence in the record that demonstrates that the existing system will continue to comply with Section 3.040 C and D with the proposed expansion. The Applicant intends to increase site landscaping (.24 acres) and reduce the impervious area on the site. This increased landscaping will reduce the volume of stormwater that will be collected into the existing underground detention, and ultimately discharged from the site. The existing flow control structure that was designed to allow the discharge of pre-developed stormwater rates in compliance with the City's requirements will continue to function in the same manner with the expansion. The Staff and Planning Commission concurred with this evidence in concluding that the Applicant satisfied Sections 3.040 C and D. The Appellants did not offer any substantial evidence rebutting this conclusion. This part of Appeal Issue No. 1 should be rejected.

Regarding the outdoor garden area, the evidence in the record demonstrates that it is standard operating procedure at Walmart stores, including Dallas, for all fertilizers to be kept inside the store to ensure proper maintenance of the product and protection of the environment. Walmart also agreed to have a condition imposed requiring the indoor storage of fertilizers. This part of Appeal Issue No. 1 should be rejected.

As a result, the City Council should DENY Appeal Issue No. 1.

APPEAL ISSUE NO. 2: NON-CONFORMING USE

Appellants assert that the existing store is a non-conforming use and the City's Code does not allow non-conforming uses to be expanded. Therefore, the City Council

should deny Walmart's Application. Appellants also assert there is no evidence demonstrating that Walmart will bring the store "more into conformance" with the Code with its proposed expansion, including the site driveways.

Response: Appellants incorrectly characterize the existing store as a "non-conforming use". The existing building is in a Commercial General (CG) District and the current retail use and proposed grocery sales are uses permitted by right in the CG District. As a result, and as a matter of law, the current and future use of the expanded store do not qualify as a "non-conforming use" – instead, the uses are "conforming". This part of Appeal Issue No. 2 should be rejected.

The existing store does qualify as a non-conforming development. A non-conforming development is a development that conformed to the applicable development standards at time of construction, but does not conform to current development standards. Section 5.2.030 A allows for non-conforming development to be altered if it will decrease its non-conformity. The Appellants "generally" state that the record does not contain evidence that Walmart's alterations will bring the store more into conformance with the current development standards. The Appellants Notice of Appeal does not specify what development standards are not in compliance with Section 5.2.030 A. To the contrary, the Application specifically addresses this standard in each instance where the proposed expansion and any site improvements trigger a current development standard by demonstrating that the alterations either decrease the non-conformity or comply with applicable development standards. The Planning Commission's Final Order recognizes the Applicant's compliance with Section 5.2.030 A. This part of Appeal Issue No. 2 should be rejected.

Regarding site driveways, Section 5.2.030 C provides that non-conforming driveways do not have to conform to current development standards unless the "roadway authority" determines a new access permit is required or the proposal constitutes a change in land use. The Applicant is not altering any of the site driveways. In this case, the road authority is the Oregon Department of Transportation (ODOT) and it has determined that the proposed expansion does not constitute a change in land use and does not require a new access permit. As a result, the Application is in compliance with Section 5.2.030 A. This part of Appeal Issue No. 2 should be rejected.

Based on the above, the City Council should DENY Appeal Issue No. 2.

APPEAL ISSUE NO. 3: TRAFFIC IMPACTS

Appellants assert that the Applicant was required to conduct a full traffic impact study for the proposed expansion pursuant to Section 4.1.090 A (3)-(5). They also assert that the road authority in this instance, ODOT, did not demonstrate why a traffic study was not required or whether its determination complied with its standards. Further, Appellants assert that the Applicant was required to use actual traffic counts from other

stores rather than relying on trip generation information provided by the Institute of Transportation Engineers Manual (ITE).

First, Appellants do not challenge the Planning Commission's interpretation that a full traffic study is not required when the road authority (ODOT) determines that a traffic impact analysis (in this instance) is not required. The Planning Commission determined in its Final Order that Section 4.1.090 A (3)-(5) has to be read in conjunction with 4.1.090 B that provides that a full traffic impact analysis is not required unless determined to be necessary by the road authority. In this case, ODOT is the road authority and determined that a full traffic impact analysis was not necessary. As a result, the Planning Commission concluded that Section 4.1.090 B was controlling and superseded the general provisions in Section 4.1.090 A (3)-(5). This part of Appeal Issue No. 3 should be rejected for Appellants failure to explain how the Planning Commission erred in its interpretation. We respectfully request the City Council to adopt the Planning Commission's interpretation.

Second, the Planning Commission's Final Order explained why ODOT determined that a full traffic impact analysis was not required under Section 4.1.090 B: "ODOT determined that, based on the applicant's Traffic Scoping Memo dated February 23, 2011, a full TIA was not warranted based on the proposed added development traffic generation." The Planning Commission determined that the road authority has the full discretion to determine whether a full TIA is required. Once that determination is made, ODOT does not have to prove why its determination is correct since it is the road authority. This part of Appeal Issue No. 3 should be rejected.

Lastly, the Applicant's Traffic Scoping Memo and Supplemental Traffic Analysis that relied on ITE trip generation information were approved by ODOT, the road authority. ODOT has the right to determine what information is necessary for it to determine whether a full TIA is required. ODOT accepted the ITE trip generation information provided by Applicant's traffic engineer as valid and reliable. The Planning Commission accepted this approach. This part of Appeal Issue No. 3 should be rejected since there is no legal requirement that actual traffic counts at other stores be used by ODOT in its determination whether a full TIA is required.

Based on the above, the City Council should DENY Issue No. 3.

CONCLUSION

The three appeal issues do not have merit based on the evidence in the record and the findings adopted by the Planning Commission in its Final Order. We respectfully request the City Council to deny the appeal and affirm the Planning Commission's Final Order of Approval with Conditions.

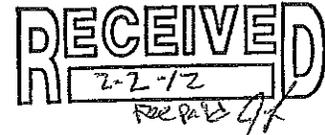
Thank you for your consideration.

Respectfully submitted this 22nd day of February, 2012.

HATHAWAY KOBACK CONNORS LLP

By Gregory S. Hathaway

Gregory S. Hathaway
Attorney for Wal-Mart Stores, Inc.



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February 2, 2012

Re: Notice of Appeal of Final Order of Approval with Conditions for the City of Dallas, Oregon
Planning Commission File # SPR11-01 and Filing Fee

Please find attached the filing fee for the appeal and the appeal criteria below.

Decision being appealed

Appellants Lydia Graber, Neighbors for Dallas, Jeremiah Mulder, and Randall Houser hereby appeal the Final Order of Approval with Conditions for the City of Dallas, Oregon Planning Commission File # SPR11-01 – Walmart: Site Plan Review for expansion of the Existing Building, Landscaping, and Parking Revisions, dated January 19, 2012.

Legal Standing

Appellants have standing to appeal because appellants participated in the proceeding by submitting oral and/or written comments before the Planning Commission. Specifically, appellants submitted comment letters dated November 8, 2011, and December 20, 2011 to the Planning Commission and/or testified at the planning commission hearings.

Appeal Issues

Stormwater

The existing stormwater system is not adequate to serve the expanded store. There is no evidence that the stormwater system is working as required by its original approval in 1994. Therefore, there is no evidence that the Applicant has satisfied Section 3.4.040C and D for public improvements and conditions of approval as it relates to stormwater.

The outdoor garden area contains fertilizers, compost, etc., that can leak into the ground and enter the stormwater system.

Nonconforming use

The existing store is a nonconforming use, and the zoning ordinance does not permit nonconforming uses to be expanded. Walmart contends that it will bring the store more into conformance with the zoning ordinance, but the record does not contain evidence to support this claim.

The driveways are also nonconforming. Walmart does not allege that the driveways will be brought closer to conformance, and there is no evidence to demonstrate that the driveways would be brought more into conformance.

Traffic Impacts

A traffic study is required when the average daily trips increase by 300. The expansion will result in more than 600 daily trips. Section 4.1.090A(3)-(5) all apply to this application, and, therefore, a traffic study is nondiscretionary.

The Oregon Department of Transportation has not demonstrated why a traffic study is not required and has not demonstrated whether the decision not to require a traffic study conforms to their rules. In addition, there is no evidence demonstrating that OAR 734-051-180 was consulted.

Walmart was required to collect actual data about traffic counts at other stores rather than relying on estimates in the Institute of Transportation Engineers manual.

Issues raised during comment period

The aforementioned issues were raised before the Planning Commission through letters dated November 8, 2011, and December 20, 2011.

If you have any questions, please do not hesitate to contact me.

Thank you,



Sean T. Malone



**City of Dallas
Planning Commission
Council Chambers - City Hall
January 10, 2011 - 7:00 p.m.**

**DRAFT
MINUTES**

CALL TO ORDER

Vice President Dave Pederson called the meeting to order at 7:00 p.m.

NEW COMMISSIONER OATH OF OFFICE

Denise Jones took the City of Dallas Planning Commission Oath of Office.

ROLL CALL

Commissioners Present: Carol Kowash, Dave Pederson, David Shein, Denise Jones,
and Robert Wilson.

Absent: Chuck Lerwick

Staff present: City Attorney Lane Shetterly, Community Development Director Jason
Locke, Planner John Swanson, and Recording Secretary Patti Senger.

APPROVAL OF MINUTES

Vice President Dave Pederson presented the minutes of the regular meeting of December 13, 2011. Commissioner Carol Kowash made a motion to approve the minutes as presented and Commissioner Dave Shein seconded the motion. The motion passed unanimously.

PUBLIC COMMENT

Vice President Pederson explained the rules for making public comment and pointed out that the Walmart expansion was on the agenda for deliberation only and that the public comment portion had been closed.

There were no public comments.

PUBLIC HEARING

Walmart Site Plan Review (SPR 11-01)

Vice President Pederson announced this was the deliberation portion of the public hearing for the site plan review for the expansion of the existing Walmart store #2315-04, located at 321 NE Kings Valley Highway in Dallas, Oregon. He opened the Public Hearing at 7:08 p.m. and asked if

any commissioner needed to declare ex parte contact or had a conflict of interest. There was no declaration. Denise Jones recused herself from deliberation and voting.

Commissioner Shein made a motion to accept all the written testimony that was submitted into the record. Commissioner Wilson seconded that motion and it passed unanimously.

SUPPLEMENTAL STAFF REPORT:

Mr. Locke reviewed the supplementary staff report and indicated it included the comments received as well as the applicant's additional testimony. Based on the position taken by the applicant relating to the transportation impact requirements 3.4.010(A)(1), he stated that City staff and the City attorney had determined their arguments reasonable. If the Commission was to approve the application, the staff report included six proposed conditions. Mr. Locke acknowledged the seventh condition was removed based on research into the applicant's argument that a local improvement district on a state facility is not consistent with Oregon Revised Statutes. Mr. Shetterly clarified there were two sections that contain 3.4.010, and this refers to the second 3.4.010 which was indicated 3.4.010(B) in the staff report. In answer to Commissioner Shein's question, Mr. Shetterly stated that the correction to the code would be made at a later date.

DISCUSSION BY COMMISSION

Commissioner Shein asked if the argument advanced by Walmart was reasonable and Mr. Shetterly indicated in his opinion it was and clarified that the code was not precisely tailored to each circumstance but would need to be interpreted. Commissioner Shein asked what FDC and OFC stood for and Mr. Locke responded Fire Department Connection and Oregon Fire Code.

Vice President Pederson asked if the state had done improvement on roads in Dallas, and if businesses were required to help fund those improvements. Mr. Shetterly indicated they may have paid for underground lines but not the street improvements. Commissioner Shein stated that he was present at the City Council meetings when improvements were discussed and he didn't recall that ever happening.

Vice President Pederson stated that, in his opinion, the State of Oregon was wrong about not requiring the traffic study. He explained that now and even more so after the expansion, when exiting the parking lot and making a left turn onto E. Ellendale Avenue, a hazard was created. He suggested not allowing left turns at that exit.

Commissioner Wilson made a motion to approve the site plan for the expansion of the existing Walmart store #2315-04, located at 321 NE Kings Valley Highway in Dallas, with the six conditions listed in the staff report. Commissioner Shein seconded the motion and it passed unanimously.

RECESS

A five minute recess was granted to prepare for the next public hearing.

PUBLIC HEARING

Appeal of Partition Approval (PTN 11-04)

Vice President Pederson announced the public hearing on the Appeal of Partition Approval (PTN 11-04), 1463 SE Miller, Dallas, Oregon, by Prism Manor, LLC. He opened the Public Hearing at 7:22 p.m. and asked if any commissioner needed to declare ex parte contact or had a conflict of interest. There was no declaration.

CITY OF DALLAS NOTICE OF DECISION

APPLICATION#: SPR11-01, Walmart Site Plan Review

On January 19, 2012, the Planning Commission Final Order approving the application was signed. A copy of the Final Order is available at the Community Development Department, 187 SE Court Street Dallas, OR. This decision may be appealed to the City Council by:

- a. The applicant or owner of the subject property; or
- b. Any other person who participated in the proceeding by submitting oral or written comments.

Appeal filing procedure.

- a. *Notice of appeal.* Any person with standing to appeal, as provided above, may appeal a Type II Administrative Decision or Type III Decision by filing a Notice of Appeal according to the following procedures.
- b. *Time for filing.* A Notice of Appeal of a Type II Administrative Appeal or Type III Decision shall be filed with the City Planning Official within ten (10) business days after the notice of decision is mailed.
- c. *Content of notice of appeal.* The Notice of Appeal shall be accompanied by the required filing fee, and shall contain:
 - (1) An identification of the decision being appealed, including the date of the decision;
 - (2) A statement demonstrating the person filing the Notice of Appeal has standing to appeal;
 - (3) A statement explaining the specific issues being raised on appeal;
 - (4) If the appellant is not the applicant, a statement demonstrating that the appeal issues were raised during the comment period.
3. *Scope of review.* An appeal of a Type II Administrative Appeal or a Type III Decision shall be limited to *de novo* review on the record of the decision being appealed and shall be conducted in accordance with DDC 4.1.040(G)(4) and (5).

A Notice of Appeal must be filed by 5:00 p.m. on Friday, February 3, 2012 at the Community Development Department, 187 SE Court Street in Dallas. The fee for this appeal is \$500.

Mailed: January 20, 2012

Jason Locke, Community Development Director
City of Dallas, Oregon
503.831.3565
jason.locke@dallasor.gov



Walmart Participants

| | Last Name | First Name |
|---|---------------|---------------------|
| A | Augustine | Tom |
| B | Birchman | Jesse |
| | Brandt | Ed and Lou |
| C | Chiles | Kathy & Joe |
| | Christopher | DiAnna |
| | Conolly | Kimberly |
| | Cruckshant | Nancy |
| D | Dallas Select | Employees |
| | De La Rosa | Mario |
| | Dickson | Brian |
| | Dornbusch | Patrick and Brenda |
| E | Edwards | Susan |
| F | Fessler | Brenda |
| G | Gore | Joe |
| | Graber | Lydia |
| | Gray | Westorn |
| | Green | Deann |
| H | Hardin | Fred |
| | Hathaway | Gregory |
| | Heinatz | Lauren |
| K | Kimberling | Diana |
| | Kirkman | Tim and Karen |
| | Koubek | Joe |
| | Kpsho | Kimberly |
| L | LaBonte | James |
| M | Malone | Sean |
| | McGavock | Steve and Kathy |
| | McWhirter | Douglas |
| | Mulder | Jeremiah |
| | Mulder | Jeremiah |
| | Murray | Bryan |
| N | Nys, PE | Rick |
| P | P | Michelle |
| | Pegg | Don and Marietta |
| | Pope | Chelsea |
| | Propp | Jeff and Janet |
| Q | Quantrille | Amy |
| R | Reynolds | Kathy & Joe |
| S | Spall | Jennifer |
| | Sparks | Casey |
| | Stahr | Howard and Lorraine |
| | Swenson | Mike |
| T | Taylor | Shron |
| | Thorpe | Royce |
| W | Waddell | Ryan |

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4 The Dallas City Council met in regular session on Tuesday, February 21, 2012, at 7:00 p.m. in the
5 Council Chambers of City Hall with Mayor Brian Dalton presiding.

6 **ROLL CALL AND PLEDGE OF ALLEGIANCE**

7 Council members present: Councilor Jim Fairchild, Councilor Beth Jones, Councilor Jackie
8 Lawson, Councilor Kevin Marshall, Councilor Murray Stewart, Councilor LaVonne Wilson, and
9 Councilor Ken Woods, Jr. Excused: Council President Wes Scroggin and Councilor Mark
10 McDonald.

11 Also present were: City Manager Jerry Wyatt, City Attorney Teresa Ozias, Administrative
12 Services Director Robert Spivey, Community Development/Operations Director Jason Locke,
13 Student Body Liaison Heather Enderle, and Recording Secretary Emily Gagner.

14 Mayor Brian Dalton led the Pledge of Allegiance.

15 **QUESTIONS OR COMMENTS FROM THE AUDIENCE**

16 Aaron Felton introduced himself and explained to the Council he was a candidate for Polk County
17 District Attorney. He outlined his platform and reviewed his qualifications for that position.

18 Diane Weaver reported to the Council that during the storm event in January her house flooded
19 for the second time in five years. She expressed her concern that the Council was waiving sewer
20 SDCs when there were problems with the sewer system that needed to be fixed.

21 Mayor Dalton pointed out that there was a Boy Scout troop in the audience working on a merit
22 badge. He stated the scouts were always welcome.

23 **PUBLIC HEARING**

24 **CONSENT AGENDA**

25 It was moved by Councilor Wilson and seconded by Councilor Stewart to approve the Consent
26 Agenda as presented. The motion carried unanimously.

27 Item approved by the Consent Agenda: a) the February 6, 2012, City Council minutes.

28 **ITEMS REMOVED FROM CONSENT AGENDA**

29 There were none.

30 **REPORTS OR COMMENTS FROM COUNCIL**

31 There were none.

32 **REPORTS FROM CITY MANAGER AND STAFF**

33 **EMPLOYEE LENGTH OF SERVICE AWARD – JANICE AMES**

34 Mr. Wyatt introduced Janice Ames and presented her with a clock commemorating her 20 years
35 with the City of Dallas. He stated Ms. Ames did an excellent job for the Library and thanked her
36 for her dedicated service.

37 Ms. Ames shared that it was a great pleasure to work with her coworkers, the City and the
38 community. She said she considered the library a community gathering spot that was very
39 welcoming of everyone. She told of the first person she helped that morning who told her, "This
40 is my favorite place in town."

41 **DALLAS AQUATIC CENTER RATE REVIEW**

42 Mr. Locke reviewed his staff report and provided a PowerPoint presentation showing revenue and
43 attendance numbers before and during the promotional rates. He stated over the promotional rate
44 period, there was additional revenue of \$24,132. Mr. Locke noted one economic indicator was
45 that staff really saw a reduction in the amount of facility rentals and birthday parties in 2009 and
46 2010, but they were now starting to see those go up significantly. He expressed his hope that this
47 showed things were turning around. He explained another issue that was discussed by the

1 Council in September had to do with opening for three hours on Sunday. He stated since
2 implementing the schedule change, costs never exceeded revenue on Sundays, adding the past
3 Sunday saw \$1,100 in revenue.

4 In response to a question, Mr. Locke stated that even if only 3 to 4% of the increase was
5 attributable to the promotional rate that was pretty significant. He indicated the promotional rates
6 impacted general admission more than annual passes, noting the Dallas Aquatic Center had
7 become known as an affordable alternative to other entertainment.

8 Councilor Jones stated some residents were upset that they paid taxes and had to pay the same
9 rate as non-residents to use the pool. She asked about providing a 15% or 20% discount to
10 residents. Mr. Locke stated there was only one person who really complained about that, noting
11 staff did a lot of work to provide people the best possible rates. He added staff had talked to a lot
12 of members and they thought the rates were a great deal and appreciated the different payment
13 options available.

14 Councilor Stewart indicated he felt the 10% for residents was fair. He commented it was only
15 about \$18 to \$20 per month for a single person to work out, which was good.

16 Councilor Wilson stated the staff did a good job reviewing the rates, adding the Council gave
17 them an opportunity and they had proven the new rates worked.

18 It was moved by Councilor Wilson and seconded by Councilor Stewart to make the promotional
19 rates permanent and direct staff to draft a resolution implementing that change. The motion
20 carried unanimously.

21 OTHER

22 **RESOLUTIONS**

23 **FIRST READING OF ORDINANCE**

24 **SECOND READING OF ORDINANCE**

25 **OTHER BUSINESS**

26 Mr. Locke stated that because of the size of the packet for the Walmart appeal, he would deliver it
27 to the Councilors the first part of the following week, which would give them a full week to
28 review it. Mayor Dalton reminded the Councilors not to discuss the topic with anyone because
29 the hearing would be a quasi-judicial action.

30 Heather Enderle, student body liaison, stated the DHS Wrestling team won the Mid-Willamette
31 Valley Conference by over 100 points, adding the coach received Coach of the Year honors. She
32 indicated seventeen wrestlers would participate in the State competition the following weekend.
33 Ms. Enderle reported the DHS Swim team had nine swimmers go to State, noting it was the first
34 time the girls had anyone go to State. She invited everyone to attend the DHS Theater
35 presentation of Almost, Maine.

36 There being no further business, the meeting adjourned at 7:32 p.m.

37 Read and approved this _____ day of _____ 2012.

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ATTEST:

City Manager

Mayor

Members Present: Chair Ken Woods, Jr., Jim Fairchild, Kevin Marshall. Absent: Mark McDonald

Also Present: City Manager Jerry Wyatt, City Attorney Lane Shetterly, Mayor Brian Dalton, Police Chief John Teague, Fire Chief Bill Hahn, Community Development/Operations Director Jason Locke, Engineering and Environmental Services Director Fred Braun, and Recording Secretary Emily Gagner.

Chair Woods called the meeting to order at 4:01 p.m.

Capital Improvement Plan – Fire Apparatus

Chief Hahn reported on the status of the fire apparatus. He explained the National Fire Protection Association (NFPA) recommended fire apparatus didn't exceed 20 years of life for use as front-line equipment. He acknowledged NFPA was funded and influenced by the industry, so he knew in most cases, based on the size of our department, we could get a little longer use out of our equipment.

Chief Hahn explained to the Committee that three pieces of fire equipment were at the 17-year range, which meant in three to five years he would be recommending to the Council that they go out for a bond to replace that equipment. He noted each of the two fire trucks would cost about \$500,000 and the rescue truck would cost about \$750,000.

Chief Hahn indicated the 2008 bond to purchase new equipment, remodel the fire station, and upgrade the fire training facility was defeated. He explained this bond would be for less money, due mainly to the fact that staff had been successful in acquiring grants to upgrade the fire station. He noted staff continued to pursue grants to purchase new equipment.

Councilor Marshall asked if purchase was the only option, noting a major overhaul might be accomplished at a lesser cost. Chief Hahn stated NFPA did not recommend refurbishing equipment that exceeded 12-15 years, noting the City's equipment had passed that number.

Councilor Fairchild stated that if the City would be looking at going for a bond in the next two to three years, staff needed to start educating people now so they knew what was happening and it wouldn't hit them out of the blue. Mr. Wyatt explained this would be a 2-plus year process, adding the first step would be the Council adoption of the Capital Improvement Plan.

Drug Paraphernalia Ordinance

Chief Teague reviewed the staff report. He indicated it was a common-sense ordinance that fixed a deficiency in the state law. He noted the ordinance didn't prohibit the sale of these items, just moved it behind the counter to a location inaccessible without assistance from the retailer. Chief Teague commented that in recent days, County Health staff assessed retailers and found they continue to publicly display paraphernalia.

Councilor Marshall asked if the ordinance violated free speech. Mr. Shetterly stated state law regulated the sale of paraphernalia and because of that the City couldn't prohibit the sale of those items outright, but the City could restrict how it was displayed for sale. He added the ordinance did not criminalize it, just made it a civil infraction punishable by a fine for each day the retailer did not comply. Councilor Fairchild commented that the state set a precedent for restricting the display of items with the restrictions on selling certain cold medicines with the ingredients used to manufacture meth.

1 It was moved by Councilor Fairchild and seconded by Councilor Marshall to recommend the Council
2 adopt the proposed ordinance restricting the display of drug paraphernalia. The motion carried unani-
3 mously.

4 **Police Chief's Report**

5 Chief Teague reported that during the last years' budget meetings, he asked for funding to pay for part of
6 a Salem Police employee's salary to have them available to run fingerprints. He indicated it had been un-
7 believably successful, with same-day response versus 150 to 200 days through the state. He noted he
8 would be discussing the expansion of that program with the City Manager for the next fiscal year.

9 Chief Teague indicated five out of twelve officers on patrol were out, noting he had hired a temporary re-
10 placement that would be going solo the following week.

11 **Fire Chief's Report**

12 Chief Hahn stated the Fire Station seismic rehabilitation project was moving to a close. He indicated once
13 the final touches were completed to the satisfaction of the volunteers, they would schedule an open house
14 for the public.

15 Chief Hahn reported staff had applied for a couple of grants through FEMA, adding he would keep the
16 Council apprised of the status of those applications.

17 **Other**

18 There was no other business and the meeting was adjourned at 4:30 p.m.

MEETING AGENDA

PUBLIC SAFETY COMMITTEE

Monday, February 27, 2012

4:00 p.m.

Ken Woods, Jr., Chair
Jim Fairchild
Mark McDonald
Kevin Marshall

1. Capital Improvement Plan – fire apparatus
2. Drug paraphernalia ordinance
3. Police Chief's report
4. Fire Chief's report
5. Other
6. Adjourn

DALLAS CITY COUNCIL SUBCOMMITTEE

REPORT

TO: COUNCIL PUBLIC SAFETY SUBCOMMITTEE

| | | |
|---------------------------------|---|---|
| <i>City of Dallas</i> | Agenda Item No. 2 | Topic: Drug Paraphernalia Ordinance |
| Prepared By: John Teague | Meeting Date: February 27, 2012 | Attachments: Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> |
| Approved By: Jerry Wyatt | | |

RECOMMENDED MOTIONS:

Recommend the Council adopt the proposed ordinance regulating the display of drug paraphernalia for sale.

BACKGROUND:

The Polk County Local Alcohol and Drug Planning Committee (LADPC) is a statutorily required organization established in accordance with ORS Chapter 430. The purpose of the LADPC is to advise the Polk County Board of Commissioners and Polk County Health and Human Services regarding Polk County’s alcohol and drug abuse treatment and prevention services and related activities, programs and policies. The LADPC is not limited to working with the county and may also assist municipalities.

The LADPC is asking that Dallas, Monmouth, Independence, Falls City, and Polk County regulate the display of drug paraphernalia for sale within their jurisdictions. The members of the LADPC—representatives from local law enforcement, Polk County courts, County mental health, and others—have unanimously endorsed the attached ordinance. The language in the ordinance promotes the prevention of drug abuse by keeping the display of drug paraphernalia out of the view of the public when it is offered for sale.

Sections (2), (3), and (4) of the ordinance are taken directly and wholly from the state statute that defines drug paraphernalia. ORS 475.525, the statute from which those sections are taken, prohibits the sale of drug paraphernalia, and it may be argued that selling drug paraphernalia is already unlawful thus regulating the display of it for sale is superfluous. The problem is, the statute is not easily enforced because it requires proving that the seller *knows* the items will be used for the unlawful use a controlled substance. The proposed ordinance does not require proof of knowledge; rather, it prohibits the display of drug paraphernalia for sale entirely apart from the culpable mental state of the seller.

FISCAL IMPACT:

Insignificant

ATTACHMENTS:

Proposed ordinance

ORDINANCE NO. _____

An Ordinance regulating the display for sale of drug paraphernalia; and declaring an emergency.

WHEREAS, the City of Dallas presently does not have provisions in its code addressing the issue of businesses and retailers selling drug paraphernalia; and

WHEREAS, youth who perceive that drug use is acceptable and common in their communities are more likely to themselves use drugs; and

WHEREAS, according to the 2010 Oregon Student Wellness Survey, one quarter of 11th grade students in Polk County have tried marijuana in the last thirty days; and

WHEREAS, drug paraphernalia is displayed openly and made available for sale in youth-friendly shapes and colors and promoted near items that appeal to youth such as candy, toys, ice cream, and soda; and

WHEREAS, displaying and selling drug paraphernalia at locations where youth commonly have access sends the message that drug use is acceptable; and

WHEREAS, according to the 2010 Oregon Student Wellness Survey, 66% of 11th grade students in Polk County identified that it would be “easy” or “very easy” to get marijuana; and

WHEREAS, the prevalence of drugs in a neighborhood and community increases the likelihood of violence and crime; and

WHEREAS, availability of drug paraphernalia acts as a trigger, increasing the chance of relapse among those struggling to overcome drug addiction; and

WHEREAS, other municipalities have enacted ordinances to regulate the selling of drug paraphernalia with successful results deterring public commercial displays and sales; and

WHEREAS, it is the City Council’s desire to establish provisions regulating the display and sale of drug paraphernalia which enables and encourages the use of illegal drugs;

NOW, THEREFORE, THE CITY OF DALLAS DOES ORDAIN AS FOLLOWS:

Section 1. The following is hereby added to and made a part of Chapter 5 of the Dallas City Code, as Section 5.212 thereof:

(1) A person selling or offering for sale drug paraphernalia may not locate the drug paraphernalia in a location where the drug paraphernalia is visible to the public or accessible without assistance by the seller or the seller's agent or employee.

(2) For the purposes of this section, "drug paraphernalia" means all equipment, products and materials of any kind which are marketed for use or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling or otherwise introducing into the human body a controlled substance in violation of Oregon Revised Statutes 475.840 to 475.980. Drug paraphernalia includes, but is not limited to:

(a) Kits marketed for use or designed for use in unlawfully planting, propagating, cultivating, growing or harvesting of any species of plant which is a controlled substance or from which a controlled substance can be derived;

(b) Kits marketed for use or designed for use in manufacturing, compounding, converting, producing, processing or preparing controlled substances;

(c) Isomerization devices marketed for use or designed for use in increasing the potency of any species of plant which is a controlled substance;

(d) Testing equipment marketed for use or designed for use in identifying or in analyzing the strength, effectiveness or purity of controlled substances;

(e) Scales and balances marketed for use or designed for use in weighing or measuring controlled substances;

(f) Diluents and adulterants, such as quinine hydrochloride, mannitol, mannite, dextrose and lactose, marketed for use or designed for use in cutting controlled substances;

(g) Separation gins and sifters marketed for use or designed for use in removing twigs and seeds from, or in otherwise cleaning or refining marijuana;

(h) Containers and other objects marketed for use or designed for use in storing or concealing controlled substances; and

(i) Objects marketed for use or designed specifically for use in ingesting, inhaling or otherwise introducing marijuana, cocaine, hashish or hashish oil into the human body, such as:

(A) Metal, wooden, acrylic, glass, stone, plastic or ceramic pipes with or without screens, permanent screens or hashish heads;

(B) Water pipes;

(C) Carburetion tubes and devices;

(D) Smoking and carburetion masks;

(E) Roach clips, meaning objects used to hold burning material that has become too small or too short to be held in the hand, such as a marijuana cigarette;

(F) Miniature cocaine spoons and cocaine vials;

(G) Chamber pipes;

(H) Carburetor pipes;

(I) Electric pipes;

(J) Air-driven pipes;

(K) Chillums;

(L) Bonges;

(M) Ice pipes or chillers; and

(N) Lighting equipment specifically designed for the growing of controlled substances.

(3) Drug paraphernalia does not include hypodermic syringes or needles.

(4) In determining whether an object is drug paraphernalia, a trier of fact should consider, in addition to all other relevant factors, the following:

(a) Instructions, oral or written, provided with the object concerning its use;

(b) Descriptive materials accompanying the object which explain or depict its use;

(c) National and local advertising concerning its use;

(d) The manner in which the object is displayed for sale;

(e) The existence and scope of legitimate uses for the object in the community; and

(f) Any expert testimony which may be introduced concerning its use.

(5) Violation of this section is a civil infraction. Each day of violation constitutes a separate offense.

(6) In addition to the penalty provided by subsection (5) of this section, a violation of this section is declared to be a public nuisance and shall be subject to summary abatement as provided in section 5.640.

Section 2. This ordinance being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist and this ordinance shall take effect on its passage.

Read for the first time:

Read for the second time:

Adopted by the City Council:

Approved by the Mayor:

BRIAN W. DALTON, MAYOR

ATTEST:

JERRY WYATT, CITY MANAGER

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3 Members Present: Chair Jim Fairchild, Kevin Marshall, and Ken Woods, Jr. Absent: Mark McDon-
4 ald.

5 Also Present: City Manager Jerry Wyatt, City Attorney Lane Shetterly, Mayor Brian Dalton, Engi-
6 neering and Environmental Services Director Fred Braun, Community Development/Operations Di-
7 rector Jason Locke, and Recording Secretary Emily Gagner.

8 Chair Fairchild called the meeting to order at 4:30 p.m.

9 **Rate RFP Recommendation**

10 Mr. Braun reviewed the staff report. He indicated over the years a number of questions had come up
11 about the City's utility rates. He noted the only way to answer those questions was to complete a
12 full economic rate study. He explained there would be a presentation at a future Council workshop
13 and the proposals would be discussed at Council meetings.

14 Councilor Woods asked when the last study like this had been completed. Mr. Braun explained the
15 City never had a comprehensive rate study done in the past, but rather just compared our rates to sur-
16 rounding cities and to what was needed in the budget.

17 Councilor Fairchild asked if the consultant would look at existing costs and the capital improve-
18 ments needed over the next ten years. Mr. Braun confirmed they would look at the necessary capital
19 improvements as well as operations and maintenance costs over a ten year period. Mr. Wyatt indi-
20 cated the consultant was tentatively scheduled to come to the March Council workshop. In response
21 to a question, Mr. Braun stated the study would include the proper rates needed to operate and main-
22 tain the system now as well as improvements to keep the system operational.

23 **FOG Program**

24 Mr. Braun provided a handout for everyone and explained the Fats, Oils, and Grease (FOG) program
25 was part of the Capacity Management, Operation, and Maintenance (CMOM) program that had been
26 discussed at a recent Council workshop.

27 He explained the FOG program would keep maintenance costs under control and ensure the City
28 protected the environment. He noted 60% of all dry weather overflows were caused by FOG, which
29 indicated that was a serious problem for Dallas. Mr. Braun reported it cost the City about \$75,000
30 per year for maintenance related to FOG, of which most originates from fifteen businesses. He not-
31 ed that additional maintenance cost was being paid by all sewer users, not just the businesses caus-
32 ing the problems. He explained the way to handle the problem was to keep FOG out of the system
33 through public outreach and education and through the City's existing industrial pretreatment pro-
34 gram. He noted the industrial pretreatment program applied to all non-residential users and gave the
35 City the authority to require the installation of best available technologies (BATs).

36 Mr. Braun acknowledged the installation of BATs could be costly, so staff developed an assistance
37 program to help businesses with the installation costs. He noted all new construction required the
38 installation of BATs.

1 Councilor Marshall recommended checking with Polk County to see who had food handling licenses
2 in Dallas. Mr. Braun explained he had a list of businesses from finance that he was pretty sure had
3 food. Mr. Shetterly stated the existing pretreatment ordinance listed who fell under the require-
4 ments, noting it was tied to volume and use. In response to a question, Mr. Braun stated the fifteen
5 locations that require cleaning every other week would be brought into the program first, with the
6 other businesses being brought in more slowly.

7 Councilor Woods asked what the typical cost would be to install the necessary equipment in a busi-
8 ness such as the North Dallas Bar and Grill. Mr. Braun stated it was typically around \$10,000, but if
9 the internal plumbing needed to be rerouted, it could be up to \$20,000. Mr. Shetterly pointed out the
10 City had an assistance program that offered reimbursement of half the cost up to \$10,000. In re-
11 sponse to a comment, Mr. Braun explained it was not fair for all rate payers to shoulder the cost to
12 clean these problem areas every two weeks.

13 Mr. Shetterly explained the Council would not be adopting a new ordinance in order to implement
14 the program, as it could all be done on the existing authority.

15 Councilor Woods asked where the funds for the match were coming from. Mr. Wyatt stated they
16 were coming from SDCs.

17 **Engineering Director's Report**

18 Mr. Braun reported the January storm damage at the Wastewater Treatment Facility was primarily
19 contained to the influent pumps, but the damage was more extensive than originally thought. He
20 noted it would require purchasing a new pump at a cost of about \$155,000. He indicated FEMA put
21 Polk County in a disaster declaration, so a large part of the pump cost would be paid through FEMA.
22 He added the log boom at the water intake that tore away could also be paid for through FEMA.

23 Councilor Marshall asked if FEMA would pay for the repairs or make a loan. Mr. Braun explained
24 they would reimburse the City for the costs to fix storm damage.

25 Councilor Fairchild asked about the status of the situation with Diane Weaver, who had addressed
26 the Council at the last meeting. Mr. Wyatt explained there was a lot going on at her property with
27 the insurance company and a local plumber investigating the issue, and the City was working on it.

28 **Community Development/Operations Director's Report**

29 Mr. Locke stated that staff would be replacing a fifty-year-old six inch water line on Court Street
30 before the entire street was overlaid and striped.

31 He indicated staff was in the process of identifying smaller inflow and infiltration projects that could
32 be completed with the available funding.

33 Mr. Locke mentioned some minor improvements that would be made to the City shops, including
34 removing rotten siding and bad windows. He noted the repairs were all budgeted items.

35 Mr. Locke reported several street signs had been replaced in accordance with new federal guidelines.

36 Mr. Locked advised staff would soon be installing new "Welcome to Dallas" signs on Ellendale Av-
37 enue and at the intersection of Godsey Road and Monmouth Cutoff. He noted the new signs were

1 made by EVCOR, a local company. Chair Fairchild recommended letting residents know that the
2 signs were being replaced because they had reached the end of their life.

3 Councilor Woods asked what was on the agenda for Urban Renewal. Mr. Locke stated the advisory
4 committee would be discussing the two-block layout of the Main Street project and the budget for
5 the next fiscal year.

6 Mr. Wyatt noted that there was no money in the budget now or in the foreseeable future for street
7 maintenance, adding the streets were bad and would continue to get worse. He explained the City
8 received little money from the federal government because gas taxes were amounting to less and
9 less. He indicated he had read that federal gas tax money to municipalities may be eliminated com-
10 pletely within the next ten years. He indicated those funds were used for overlays on the collector
11 and arterials, adding there was no funding for residential streets. Councilor Marshall asked if pot-
12 holes would be repaired. Mr. Locke stated staff would use cold patch on those, but couldn't get
13 good asphalt for repairs.

14 **Other**

15 There was no other business and the meeting was adjourned at 5:04 p.m.

MEETING AGENDA

PUBLIC WORKS COMMITTEE

Monday, February 27, 2012

4:00 p.m.

Jim Fairchild, Chair
Mark McDonald
Kevin Marshall
Ken Woods, Jr.

1. Rate RFP recommendation
2. FOG program
3. Community Development/Operations Director's report
4. Engineering Director's report
5. Other
6. Adjourn

DALLAS CITY COUNCIL SUBCOMMITTEE

REPORT

To: COUNCIL SUBCOMMITTEE

| | | |
|---------------------------------|---|--|
| <i>City of Dallas</i> | Agenda Item No. 1 | Topic: Water/Sewer Rate Study |
| Prepared By: Fred Braun | Meeting Date: February 27, 2012 | Attachments: Yes <input type="checkbox"/> No <input type="checkbox"/> |
| Approved By: Jerry Wyatt | | |

RECOMMENDED MOTION:

Information only

BACKGROUND:

As recommended by the Council Public Works Committee, staff requested proposals from qualified consultants to conduct a comprehensive water and sewer rate study. The goal of the proposed study is to independently assess and evaluate the City’s existing water delivery and sewer service cost structure and provide a new 10-year plan with rates and guidelines. The broad objective of the study is to adequately fund water and sewer utility operations and infrastructure costs and promote conservation, while minimizing rates to the greatest degree possible. The study will be based on a comprehensive review of the City of Dallas’ water funds and budgets, customer classes, current usage data, future planned growth of the City pursuant to the Comprehensive Plan, Water and Sewer Master Plans, and any other information deemed necessary. The study will also include guidelines for funding the operation and maintenance of the Storm Drainage System and a review of existing Systems Development Charges (SDC’s) for Sewer, Water and Storm Drainage.

The current sewer rate structure was created in the mid 1990’s and implemented as a short-term plan to raise rates, in advance of the new waste water treatment plant constructed in 2000. Minor adjustments of the rate were made during the last 10 years in order to keep up with increased material and personnel costs.

Costs for operation and maintenance of the City’s storm drainage system have been historically included in the sewer fund.

The current water rate structure was developed in the early 1990’s. Various rate increases have been implemented over the last 20 years to address needed capital improvements and in order to keep up with increased material and personnel costs.

The City established a pretreatment program in the mid 1990’s and updated it in 2008. The update has received DEQ approval.

The City has Systems Development Charges (SDC's) for Sewer, Water and Storm Drainage. Sewer and water SDC's were established in the mid 1990's. Storm Drainage SDC's were established in 2003.

A total of 2 proposals were received by the due date. Following an interview with Donovan Enterprises, they were selected by the selection committee to be the best proposal at the lowest cost to the City.

The Consultant will begin work in March and complete the work by the end of June. An initial workshop with the consultant will be scheduled and the final recommendations will be presented to the City Council for consideration.

FISCAL IMPACT:

Approximate cost of the study is \$40,000. The Cost will be shared between the Water and Sewer Funds.

ATTACHMENTS:

Rate Study RFP
Accepted Proposal from Donovan Enterprises Inc.



Request for Proposals

WATER AND SEWER RATE & FEE STUDY

**Proposals are due to the City
by Wednesday, January 25, 2012, 4:30 p.m.**

The City of Dallas is requesting proposals from qualified consultants to conduct a comprehensive water and sewer study. The goal of the study is to independently assess and evaluate the City's existing water delivery and sewer service cost structure and provide a new 10-year plan with rates and guidelines. The broad objective of the study is to adequately fund water and sewer utility operations and infrastructure costs and promote conservation, while minimizing rates to the greatest degree possible. The study will be based on a comprehensive review of the City of Dallas' water funds and budgets, customer classes, current usage data, future planned growth of the City pursuant to the Comprehensive Plan, Water and Sewer Master Plans, and any other information deemed necessary. The study shall also include guidelines for funding the operation and maintenance of the Storm Drainage System and a review of existing Systems Development Charges (SDC's) for Sewer, Water and Storm Drainage.

Proposals are due no later than 4:30 p.m., Wednesday, January 25, 2012, and must be received by that time and date. Proposal postmark dates and times will not be considered as meeting that deadline. Proposers must send six (6) bound copies of their proposal, one (1) unbound copy, and one (1) separately sealed fee proposal envelope to:

City of Dallas
187 SE Court St.
Dallas, OR, 97338
Attn: Jerry Wyatt

Proposals shall be clearly marked: "Water And Sewer Rate & Fee Study — City of Dallas."

The City is not responsible for proposals that are delinquent, lost, mismarked, and sent to an address other than that given above, or sent by mail or courier service. The City reserves the right, after opening the proposals, to reject any or all proposals, or to accept the proposal(s) that in its sole judgment is (are) in the best interest of the City.

DESCRIPTION

The city has a population of 14,500, and is located in the central portion of Polk County, 15 miles west of Salem, Oregon. The water and sewer utility serves all areas within the city limits. Service is provided to approximately 5100 water accounts, 4200 sewer accounts, including 280 commercial accounts. All residences are charged for sewer by means of a flat rate schedule. Water meters have been installed on all residential accounts and most commercial accounts. The City's total budgeted revenues/expenditures for fiscal year 2011/2012 are \$2.9M/\$3.1M for the sewer fund and \$2.1M/\$2.1M for the water fund. The City uses Tyler Technologies accounting software on a Windows based server.

BACKGROUND

The current sewer rate structure was created in the mid 1990's and implemented as a short-term plan to raise rates, in advance of the new waste water treatment plant constructed in 2000. Minor adjustments of the rate were made during the last 10 years in order to keep up with increased material and personnel costs.

Costs for operation and maintenance of the City's storm drainage system have been historically included in the sewer fund.

The current water rate structure was developed in the early 1990's. Various rate increases have been implemented over the last 20 years to address needed capital improvements and in order to keep up with increased material and personnel costs.

The City established a pretreatment program in the mid 1990's and updated it in 2008. The update has received DEQ approval.

The City has Systems Development Charges (SDC's) for Sewer, Water and Storm Drainage. Sewer and water SDC's were established in the mid 1990's. Storm Drainage SDC's were established in 2003.

SCOPE OF WORK

STUDY OBJECTIVES

1. Propose a rate schedule that is fair and objective, reflects costs of service, and promotes conservation.
2. Propose an alternate schedule that includes a plan for automated meter installation.
3. Propose a fee schedule for new service connections that is fair and objective and fully recovers the cost of construction, engineering and planning.
3. Develop a sound financial rate structure for ten years of operation, maintenance, capital replacement and future regulatory requirements.
4. Provide guidelines for rate definitions of customer classes, including non-standard connections, i.e. multi-family properties on one meter, mobile home parks, mixed use, and commercial customers without pretreatment devices (e.g. a FSE without a grease interceptor)
5. Provide guidelines for funding the operation and maintenance of the Storm Drainage System.
6. Review Systems Development Charges (SDC's) for Sewer, Water and Storm Drainage and make recommendations, if needed, in order to fully fund future improvements to the utility systems that are needed as a result of new development and regulatory requirements.

STUDY REQUIREMENTS

1. The recommended rate structure shall be based on cost of service and shall be sufficient to meet the short and long-term revenue requirements of the City of Dallas water and sewer utility.
2. The study shall recommend rate structures that consider and make provision for the following factors:
 - a) Current and future cost of providing utility service in accordance with established and anticipated standards and regulations.
 - b) Projected demands.
 - c) Availability of supply -- seasonal fluctuations and potential draught.
 - d) Age and condition of the system and the need to fund long-term capital improvement and replacement for the supply, treatment, and distribution infrastructure.
 - e) Impact of current and future environmental regulations.
 - f) A base rate and decreasing block rates for conservation.
3. The recommended rate structures shall provide identification of revenues appropriated to major funded activities and infrastructure.
4. The recommended rate structures shall be consistent with industry practice for utility rates in the State of Oregon.
5. The study shall provide at least two recommended alternatives for commercial sewer rates based upon high BOD or FOG.
6. The study shall provide at least two plans to fund the cost of installing automated meters throughout the service area, with the goal of minimizing customer resistance, despite the need to recover the cost from property owners.
7. Rates shall include provision for an emergency rate structure to address draught conditions or other interruptions in supply.
8. The recommended rate structure shall result in no decrease in stability of the revenue stream to the utility, as compared to the current structure.
9. The recommended rate structure shall be easy to administer and understand.
10. The proposed rate structure must work with the City's automated billing system.
11. The recommended rate structure shall be planned for at least ten years.
12. The sewer component shall adjust for landscape watering, for example, by basing rates on a winter period when landscape watering is minimal.
13. The study shall provide recommendations for funding of Storm Drainage operations, maintenance and improvements, both within the existing rate structure or as a separate utility.

SERVICES TO BE PROVIDED BY CONSULTANT

Draft Report:

1. Conduct a detailed review of the existing water and sewer rates and status of the utility, and develop a general familiarity with the City's billing system.
2. Confer with staff as needed.
3. Prepare a preliminary proposal and attend one meeting (evening) with the City Council for a working session to present the proposal and obtain their input.
4. Hold a public meeting during one evening to obtain comments on the proposal.
5. One additional public meeting may be required.

Final Report:

- a) Incorporate changes based on comments received at the first presentations.
- b) Submit 10 copies, plus one reproducible copy.
- c) Provide a disc or drive with the report in MS Word format, with spreadsheets in Excel format.
- d) Present the final report and recommended rate structure to the City Council and members of the public at a regular Council meeting.

SERVICES TO BE PROVIDED BY THE CITY

The services to be provided by the City include, but are not necessarily limited to the following:

1. Furnish all reasonably available records and information, including financial reports, budgets, and consumption data.
2. Provide a loaner copy of the Water and Sewer Plans.
3. Provide staff support as required and agreed to in advance of study.

Proposal Content

The City of Dallas requires the proposer to submit a concise proposal clearly addressing all of the requirements outlined in this RFP. Proposal must include, at a minimum, the following sections ***in the order indicated***:

- 1) **Information Page** – Include project name, name of firm submitting the proposal, contact information for the person that will act as project leader including name, title, address, telephone and fax numbers and email address.
- 2) **Description of Study Understanding** - Outline of the proposer's understanding of the study and summarizing the basic approach to the rate study and revenue program.
- 3) **Methodology** - Descriptions which enable the City of Dallas to assess the proposer's capability to conduct this study in a structured and efficient fashion.
- 4) **Scope of Work** - Details with specific task descriptions to demonstrate that the proposer has considered all aspects of the study and that the proposer will cover them thoroughly.
- 5) **Timetable** – A timetable which identifies the main elements of the project, according to the Scope of Work, and projected completion dates throughout the project period. This timetable will be used to pre-notify City staff of their required involvement and the timing of same. The complete draft report shall be submitted to the City within 90 days after award of contract. The City recognizes that performance by consultant is dependent upon performance by City. The City shall make schedule adjustments to reflect any delays caused by City. The final report, in hard copy and in Microsoft Word format on a disk, shall be submitted to City within 30 days of receipt of City comments.
- 6) **Personnel** - Resumes of the individual(s) assigned to the study and other staff personnel available to support the study. Particular attention should be given to the proposer's organization which provides internal service for supporting the study team, and facilitates quality assurance auditing of the study work.
- 7) **Qualifications** - Description of the organization, covering background experience connected with wastewater rate studies, as well as other rate studies and revenue programs.
- 8) **Representative Study Descriptions and Client References** - Submit descriptions of similar assignments which were conducted by the proposer, including other agency's contact name and telephone number.
- 9) **Cost Estimates of Consulting Fee** - Each proposal shall include a cost estimate for providing services. Cost estimates shall be placed in a separate sealed envelope on which is written:

RFP Cost Estimate
City of Dallas - Water and Wastewater Rate and Fee Study
(Name of your firm)
(Date)

10) A copy of a proposed contract may be attached. Proposers shall provide evidence of professional liability insurance.

Submittal Date & Information

Proposals are due no later than 4:30 p.m., Wednesday, January 25, 2012, and must be received by that time and date. Proposal postmark dates and times will not be considered as meeting that deadline. Proposers must send six (6) bound copies of their proposal, one (1) unbound copy, and one (1) separately sealed fee proposal envelope to:

City of Dallas
187 SE Court St.
Dallas, OR, 97338
Attn: Jerry Wyatt

Proposals shall be clearly marked: "Water And Sewer Rate & Fee Study — City of Dallas."

The City is not responsible for proposals that are delinquent, lost, mismarked, and sent to an address other than that given above, or sent by mail or courier service. The City reserves the right, after opening the proposals, to reject any or all proposals, or to accept the proposal(s) that in its sole judgment is (are) in the best interest of the City.

Proposers are encouraged to register by email at the address below. The city will create a list to disseminate changes, amendments and deletions to the RFP. Those registered by email will receive all questions presented by proposers and responses by the City.

Sign up by email with:

Fred.braun@dallasor.gov

Selection Process

The following is an outline of the procedures the City will use in the selection process:

- 1) Organize the Selection Committee.
- 2) Selection Committee sends out request for proposals to interested parties.
- 3) Selection Committee reviews the proposals submitted by the prospective consultants.
- 4) Selection Committee selects proposals which qualify based on the following factors:
 - a) Experience of the firm and project manager and assigned team in preparing wastewater rate studies, development of rate structures, development of financing scenarios, preparation of revenue programs.
 - b) Record of the firm, and project manager and assigned team in preparing rate studies within required time frames.
 - c) Record of the firm and project manager in being responsive to the clients' requests.
 - d) Quality of work previously performed by the firm for the City and other agencies.
 - e) Community relations, including evidence of sensitivity to citizen concerns.
 - f) Ability to communicate effectively with citizens, elected officials, and staff professionals.
 - g) Ability to tailor a rate study and revenue program to meet the requirements and needs of the City.
 - h) Geographic location of the principal offices of the firm and proximity of staff working on the study to the City.

- 5) Negotiations will take place with the primary firm on the final scope of work, the final contract proposal, and the proposal price. If a contract cannot be negotiated for this study, the negotiations with the designated consultant shall be terminated in writing and negotiations shall be started with the next highest rated consultant.
- 6) The selected firm will be notified of the final approval of the contract by the City Council.
- 7) Firms not selected will be notified following the approval of the contract by the City Council.

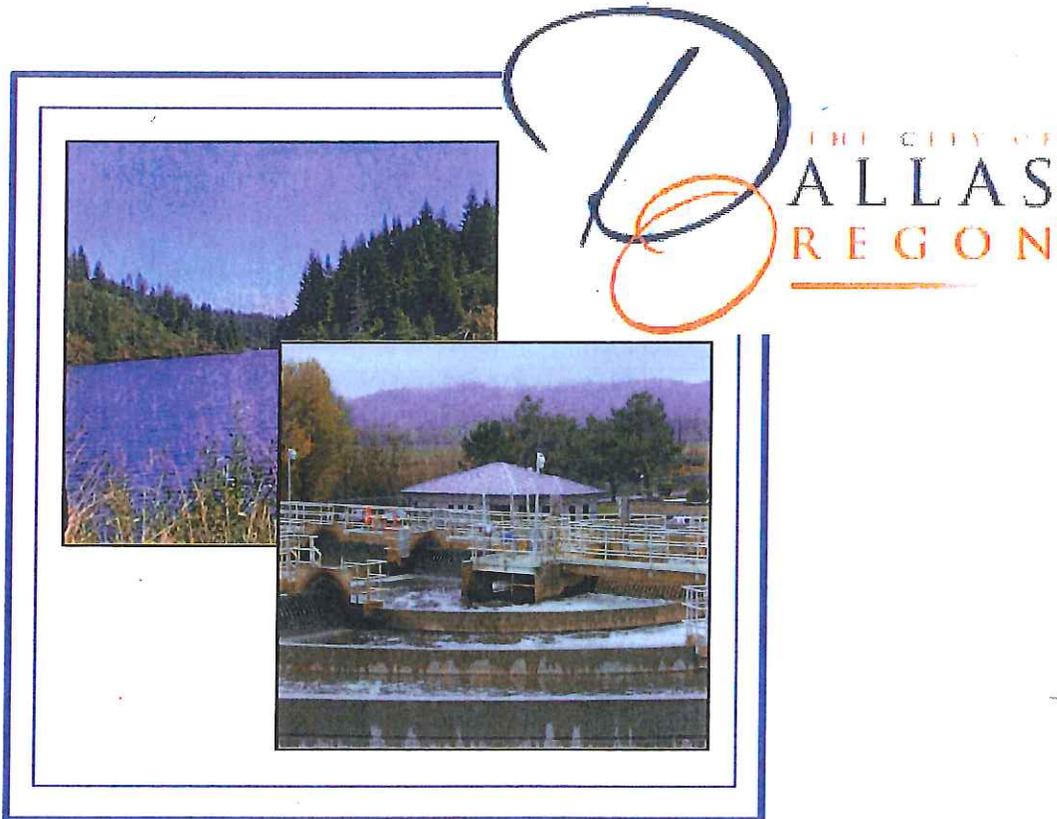
Evaluation Criteria

The City intends to engage the most qualified consultant available for this assignment. It is imperative the consultant's proposal fully address all aspects of the RFP. It must provide the City's staff with clearly expressed information concerning the consultant's understanding of the City's specific requirements which would result in the conduct of this study in a thorough and efficient manner. The following criteria shall be used in evaluation of the proposer's offer of services:

- 1) Consultant experience in providing financial consulting services on studies of similar scope for water and wastewater rate studies.
- 2) Project manager and his/her team's experience in conducting assignments of similar scope.
- 3) Methodology to be employed in conducting the study.
- 4) Proposer's support organization and in-house quality control and quality assurance methods.
- 5) Proposal clarity in expressing the understanding of the City needs and in defining a work plan for satisfying these needs.
- 6) Schedule compatibility with City needs.
- 7) Availability to work with City staff.

Professional Services Proposal

Water & Wastewater Rate Study



Prepared by:

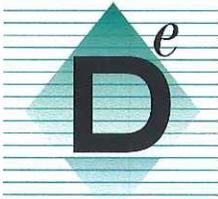
Donovan Enterprises, Inc.

January 25, 2012





D O N O V A N
enterprises, inc.



January 25, 2012

Mr. Jerry Wyatt, City Manager
187 SE Court Street
Dallas, Oregon 97338

D O N O V A N
enterprises, inc.

Dear Mr. Wyatt,

INFRASTRUCTURE
FINANCIAL
MANAGEMENT
MANAGEMENT
CONSULTING
LAND USE PLANNING

Donovan Enterprises, Inc. (DEI) is pleased to submit this response to your request for proposals to conduct a comprehensive water and sewer rate and fee study. I will be the project manager for this engagement and bring over thirty (30) years of experience in engineering, public works programming, economics, and public policy analysis. I have worked on a number of high profile projects specifically related to cost of service, rate analysis and municipal finance in the Northwest over this period. Shaun Pigott, principal of Shaun Pigott Associates, will be assisting me with the technical aspects of this study. Shaun is nationally recognized in the area of storm and sanitary sewer utility formation, maintenance programs, utility billing systems, program design, and rate making. Shaun assisted Clean Water Services (Hillsboro, Oregon) with the formation and evolution of their stormwater management utility. He has worked with CWS and the member cities (through the regional maintenance committee) for the past fifteen years on the development of SWM and sanitary maintenance standards and costs. Shaun's knowledge of the regional systems will be valuable to the City for this project.

Shaun and I are extremely excited at the prospect of working with Dallas on this project. The enclosed proposal demonstrates our Oregon-specific experience. It includes project understanding and approach, qualifications, schedule, communication plan, references, and budget. Our involvement in infrastructure and planning projects in Oregon cities and counties provides an excellent basis for understanding the current need for a stable funding basis for the City's water, sanitary sewer, and surface water management utilities both now and into the future. We believe that our best indicator of success is the track record we have established with our clients. We can point to a consistent record of efficient, within budget, and on-schedule delivery of work products.

The City has laid out a number of requirements for the study that are clearly challenging, and in some cases will either increase system revenue requirements, or change the way revenues are recovered from customers. The following table itemizes the policy issues that we see as drivers for either increasing costs or shifting cost recovery from customers:

Voice: 503.517.0671
Fax: 503.517.0672

Plaza West
Business Center

9600 SW Oak Street,
Suite 335

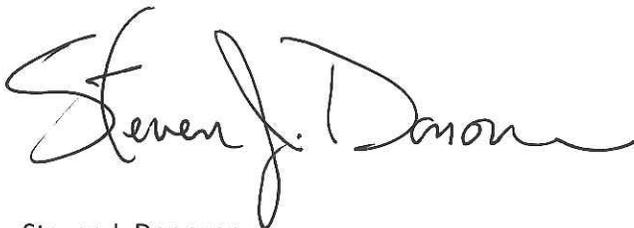
Tigard, Oregon 97223

| | Increasing System Cost | Shifting Recovery of Costs from Customers |
|--|------------------------|---|
| Provide at least two recommended alternatives for commercial sewer rates based upon high BOD or FOG | | ✓ |
| Provide at least two plans to fund the cost of installing automated meters throughout the service area, with the goal of minimizing customer resistance, despite the need to recover the cost from property owners | ✓ | ✓ |
| Provision for an emergency rate structure to address drought conditions or other interruptions in supply | | ✓ |
| Recommended rate structure shall result in no decrease in stability of the revenue stream to the utility, as compared to the current structure | | ✓ |
| The sewer component shall adjust for landscape watering, for example, by basing rates on a winter period when landscape watering is minimal. | | ✓ |
| Provide recommendations for funding of storm drainage operations, maintenance, and improvements, both within the existing rate structure or as a separate utility. | | ✓ |
| Provision for the need to fund long-term capital improvement and replacement for the supply, treatment, and distribution infrastructure. | ✓ | ✓ |

The key to this rate study will be to balance the City's desire to incorporate the above referenced policy issues, and keep resulting rates and charges affordable, understandable, defensible. Our scope of work and task plan for this engagement will achieve those outcomes.

In closing, we are able to commit ourselves to working on this project from beginning to completion and our proposal content and price will be valid for ninety (90) days from our submittal date. We see ourselves as the "hands on" team to assist you in answering key technical and financial questions that will result in a thorough analytical review of the City's utilities' financial requirements and the options for funding those requirements. The value is in cost savings for the City with no up-front learning curve and therefore no investment required by the City. We know utilities and municipal finance. We can hit the ground running and will continue this level of effort through successful completion of the project. We look forward to working on this project with you and your team. If you have any questions concerning our proposal, please do not hesitate to call.

Very truly yours,



Steven J. Donovan
President

Water and Sewer Rate and Fee Study

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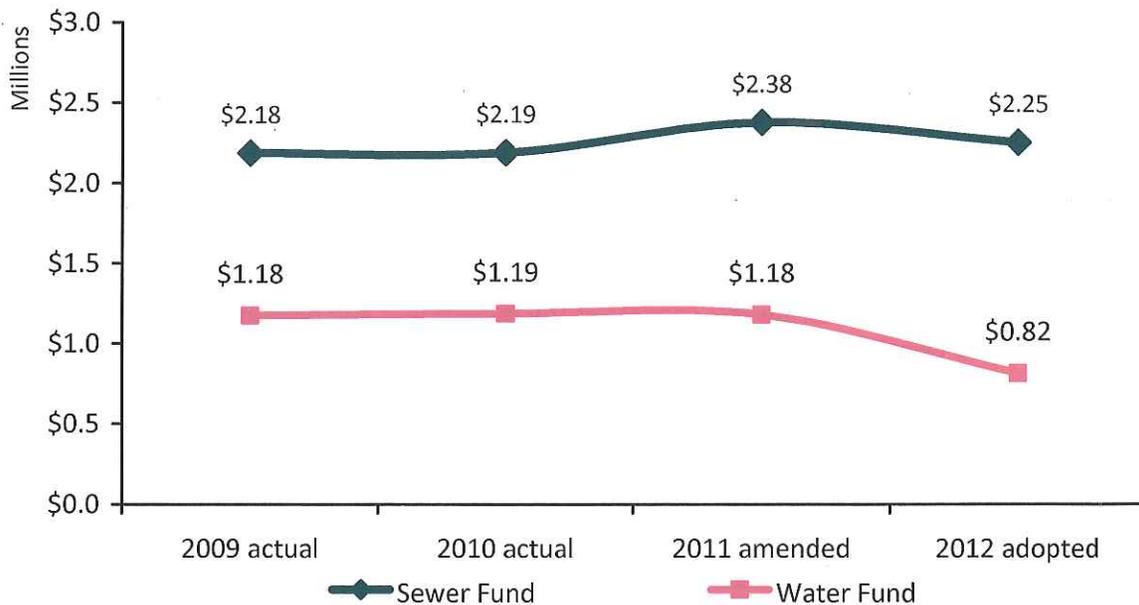
Information Page

| City of Dallas, Oregon – Water and Sewer Rate and Fee Study | |
|--|--|
| Name of firm submitting | Donovan Enterprises, Inc. Federal Tax I.D.: 41-2180168 |
| Insurances in force | <p><i>Professional liability insurance:</i> AXIS Surplus Insurance Company; coverage: aggregate limit: \$2,000,000, each wrongful act limit: \$1,000,000</p> <p><i>Commercial general liability insurance:</i> American Family Insurance Company; products-completed operations aggregate limit: \$2,000,000, liability and medical expenses: \$1,000,000</p> <p><i>Commercial liability umbrella policy:</i> American Family Insurance Company; aggregate limit: \$2,000,000</p> |
| Project manager & officer in charge | Steven J. Donovan |
| Project manager contact information and professional affiliations | <p>Office address: 9600 SW Oak Street, Suite 335, Tigard, Oregon 97223 Telephone: 503.517.0671 Fax: 503.517.0672 e-mail: steve.donovan@donovan-enterprises.com</p> <p>American Public Works Association American Water Works Association Water Environment Federation Institute of Electrical and Electronic Engineers Oregon Municipal Finance Officers Association Oregon Association of Clean Water Agencies</p> |
| Name of subconsulting firm | Shaun Pigott Associates, LLC |
| Key subconsultant | Shaun Pigott |
| Key subconsultant contact information | <p>Office address: P.O. Box 3393, Bend, Oregon 97707 Telephone: 503.407.7155 e-mail: spigott@teleport.com</p> <p>American Public Works Association Oregon Association of Clean Water Agencies</p> |

Project Understanding, Approach, and Expected Outcomes

Dallas is the sole provider of water, wastewater, and stormwater services to customers within the urban services boundary of the City. Revenues required to fund the delivery of these services are obtained from monthly user fees which are set by the City Council via their City charter authority. Costs to operate, maintain, and improve the water and wastewater system have increased over time, . With revenues flat, and costs rising, the City has drawn down reserves to fund the two utilities' revenue requirements heading into the current 2011-12 fiscal year. This is particularly true in the case of the water fund. Figure 1 shows historical and projected beginning fund balances for the water and sewer utilities.

Figure 1 - Historical and Projected Water and Sewer Fund Balances (July 1st)



The purpose of this study is to develop a cost of service-based methodology that will accurately determine the costs the city incurs to deliver the utility services at current service levels to customers. In cases where the City chooses to exceed current levels of service, for example, installing automated water meters throughout the service area, this study will identify the costs to meet these higher levels of service (LOS) and enable policy makers to understand the rate implications of providing services at a level that exceeds current revenues.

In the City's RFP, under the heading of "Study Requirements," there are a number of specific issues that Dallas would like incorporated into the project. Beyond the cost of service analysis (COSA) which will be developed as part of our proposed scope of work, concerns related to sewer strength (BOD and FOG) can and will be addressed by defining these specific costs and options for cost recovery within the COSA tasks. This will be dependent on plant monitoring/loading data and the ability of the City to assist in determining the costs related to these loadings. The City is also anticipating retrofitting water meters replacing on-site meter reading with meters that can be read remotely. The cost of this retrofit can be

incorporated into the COSA and included in the account or base elements of the water rate under either a pay as you go approach or under a phased repayment program. The options will be developed in close coordination with the City with a focus on mitigating the impacts on water customers while assuring that costs are equitably recovered from ratepayers. An emergency rate structure in cases of drought is always problematic and once again goes back to the accuracy of the COSA. This will develop water revenue requirements and appropriate COSA allocations to the three key water rate categories: account charges (costs related to the billing system and customer account management; base charges (the fixed expense elements of the utility); and use/volume charges (those charges related to the amount of water used). Rate revenue volatile resulting from draught conditions can be controlled by effective base vs. use allocations within the COSA. Optional structures to achieve this end will be developed based on historical water use data and in coordination with the City. Dallas is also interested in a sewer rate structure that better reflects the actual contribution of wastewater to the City's system. The generally accepted approach toward this is through residential winter average rate calculations which establish the use portion of the sewer charge on winter average water consumption rather than year around monthly use. This would eliminate irrigation from the sewer rate calculation. Finally, the revenue requirements for a storm drainage program will be prepared along with optional strategies for cost recovery including a standalone utility approach through impervious surface-related rates or shared costs within the sewer rate structure. All of the above must be assessed in terms of the City's existing billing system software to accommodate these rate alternatives which the project team will evaluate as part of this work plan.

Our approach for this study will be incremental, taking each of the utilities and breaking them down into distinct cost centers related to equipment, labor, materials and overhead. This process will result in the cost to provide the City's "current service level". From there, we will work with City staff to calculate the full cost of water, sewer and stormwater services at the department and division level. These cost pools will then be used to calculate the full rates that should be charged to recover the total cost of delivering services.

The process to develop this LOS cost schedule will be done in conjunction with the City and will be transparent, defensible, and above all, make sense to the Council and ratepayers. Experience has taught us that we have to pay careful attention to policy considerations in this area. In particular, we will develop the cost of service models with the flexibility to allow for support of rates from other City sources. Ultimately, the level of general fund support to "buy down" utility revenue requirements are a matter of City Council policy. The models developed through this study will allow a clear understanding of the cost implications resulting from various levels of service opposite general fund vs. rate support.

The outcomes from this study are:

1. A thorough understanding of the true cost to provide water, sewer, and stormwater service levels, and
2. What additional services or higher service levels the City is interested in undertaking and what that would translate into regarding a local rate or alternative funding source requirement.

Rate Study Methodology

Our methodology and approach to constructing this water and wastewater rate study will emphasize team work. This project must be focused and task oriented to meet the timelines for project completion. Our approach places a premium on structured interaction, strong project leadership, on-

going client involvement, quality assurance review, and the exercise of proven management methods. Itemized below, is a brief description of the expertise that the team bring to this engagement.

Donovan Enterprises, Inc. is a Tigard, Oregon based management consulting firm specializing in municipal finance, providing utility rate and general fund user fee studies, alternative financing impact analyses, indirect cost plans, utility valuations, management accounting, and financial plans. The firm consists of seasoned professionals with extensive backgrounds in municipal government, and financial advising. Founded in 1988, the firm serves a client base in the western United States, with emphasis in the states of Washington, Oregon, and California. Our primary practice focus is utility rate studies and financial management for water, sewer, and solid waste and surface water/storm drainage enterprises. This focus includes cost of service analysis in order to determine equitable and defensible user fees and charges for planning, public works, and general government services.

Our team's approach to managing the successful and efficient completion of the Dallas work assignments will emphasize the same "team concept" that we have successfully employed on prior efforts with our State and local government clients. Our approach places a premium on constructive interaction with engineering task managers, strong project leadership, on-going client involvement, appropriate staffing, quality assurance review, and the exercise of proven management methods

Shaun Pigott Associates (SPA), LLC is a Bend, Oregon based infrastructure financial management consulting firm. SPA was formed in 1990 to provide specific public sector finance and utility formation/operation funding experience to clients nationwide. The majority of the SPA's maintenance management, ratemaking and system development charge (SDC) experience has been in the western United States with utilities in Stockton, CA; Salt Lake City, UT; Orem UT; Tucson, AZ; Coeur d'Alene, ID; Clean Water Services of Washington County, OR; Clackamas County Water Environment Services, OR; City of Gresham OR; City of Lake Oswego, OR; City of Milwaukie, OR; Clark County, NV; City of Puyallup, WA; Spokane County, WA; and Clark County, WA. Mr. Pigott has gained a national reputation in the field of utility management and finance and was a featured speaker for various state associations of cities/counties, American Public Works Association and American Institute of Hydrologists on the subject. In addition to rate design expertise, Mr. Pigott has been responsible for some of the new innovations regarding system development charges, water quality management incentives and public/private facility cost sharing agreements. He has prepared CIP programs and rate/SDC analyses for clients in Washington, Oregon, Illinois, Arizona, Nevada, Kentucky, California, Utah and Oklahoma regarding utility financing, regulations and management.

Project Leadership

Steve's role will be to lead the study development process, coordinate the review and decision process with the City's project manager, review the work products, and quality assurance reviews. Steve will also be the financial modeler for the cost of service analysis, and his primary focus will be on the updating the revenue requirements and cost of service allocations elements. His extensive rate making experience specific to Oregon municipal organizations will be drawn upon to validate the analysis. He will be available at critical meetings and will be working together on all study issues. Continuity and commitment will be maintained throughout the project.

As discussed above, Steve will also be the financial modeler for the rate study, and the primary focus here will be on the updating the revenue requirements and cost of service allocations elements. His extensive rate making experience specific to Oregon Cities will be drawn upon to validate the analysis. Steve is a talented manager, and his analytical and presentation skills will be used throughout the project.

Coordination

The DEI team recognizes the importance of maintaining close communication with Client staff throughout the project. Steve possesses strong communication skills that support his technical strengths. Because of the need for close communication and regular client/consultant interaction, we propose to:

- Begin the project with a review workshop that will involve all the City's stakeholders in the project. The purpose of this workshop will be to identify project goals, map communication channels for participants and provide a venue for interested parties to raise issues regarding the project. The output of this step will be a detailed project work plan with special emphasis on how data will be collected.
- Once the detailed work plan is approved by the City's project manager, the consultant team will overlay the team member assignments to each task, their roles within each task, and a time budget for each team member by task.
- Maintain the communication channels with the City throughout the project. This will include the preparation and maintenance of a project schedule to ensure timely submittals of deliverables and completion of the project within the City's anticipated timeline.
- All tasks will be managed by Steve Donovan at his Tigard office. Administration of the project will be done here including the preparation of monthly invoices (including hours and costs expended on each task by the consultant team with a comparison to the budget).
- We will schedule and attend City department staff meetings and City Council work sessions and/or subcommittee meetings. This work will include the preparation of meeting agendas, meeting minutes and actions items. The City does not have a standing public works Citizen Advisory Committee, but City Staff has indicated they may form a stakeholder group for this project but nothing has been formalized at the time the request for proposals for this project was released. We will work with City staff on this issue as the study progresses. We encourage City Staff to form such a stakeholder group for this project.
- Key project direction will be made using issue papers and technical memorandum to identify and review key decision points and alternatives. Decisions will be made at regular meetings with the City's project manager and those directions will be clearly documented to keep all internal stakeholders informed.

Scope of Work

Task 1 – Rate Study Kickoff and Data Collection

...We have developed a task plan to meet the City's short-term needs and adequately address long-term policy objectives....

There are three separate elements of a rate study: revenue requirements, cost of service allocation, and rate design. Our approach uses these steps as basic elements of a study tailored to the City's specific interests and needs. We have highlighted some of the utility management issues that we often address through the rate study process in the task plan outlined below. In the interest of brevity, we recognize

and concur with the thorough description of the tasks contained in the RFP and will therefore not repeat them. Rather, we will highlight the key tasks, analyses, and considerations that will be essential to a successful study.

Data Collection - This initial project task is essential to timely completion of the engagement. A rate study requires data from various sources, including financial statements (income statement and balance sheet), budgets, asset schedules or inventories, and customer billing data. We have already collected a considerable amount of data in preparation for this engagement, as shown above in our presentation of the estimated cash positions of the water and sewer funds. We also schedule an initial project kick-off meeting to review available data, clarify unfulfilled data needs, identify key contact persons, and assign responsibilities. Data collection will also include identifying the steps required to obtain the customer statistics for use in the cost of service analysis. Finally, as part of our analysis, we will identify standard reports and formats which will improve management review capability and simplify future updates.

As this database takes shape it will be important to keep the process oriented on the objective for this study which is an accurate, comprehensive and clearly documented cost basis for each enterprise. Particular focus will be placed on understanding and separating storm and surface water management data from sanitary sewer data. To be useful, the project must produce maintenance standards and costs that are mutually understood and ultimately "owned" by the City as the process moves forward before the Council and ratepayers.

Task 2 – Preliminary Model and Revenue Requirements Development

Once the data collection and validation task is completed and vetted by the City project manager, the consultant team will develop a model in Microsoft Excel format. We design our models for easy use by City staff, and build in flexibility for the inclusion of future water, sewer, and surface water management services. The model will function as each utility's financial plan. We will develop the financial plan models to allow for evaluation of alternative policies and strategies. The models typically perform several revenue sufficiency tests, such as cash flow, coverage and earnings, against which the sufficiency of current rates to fund enterprise activities is measured. The revenue requirements analysis determines the amount of revenue needed from rates. This is related to utility cash flow or income requirements, constraints of bond covenants, and specific fiscal policies related to the water and wastewater utilities. The matter of compliance with bond & loan covenants is particularly important in this case because the City of Dallas has over \$13.2 million in principal outstanding on enterprise utility long term debt as of June 30, 2011. The composition of this long term debt is as follows:

| | |
|--|------------------|
| Sewage DEQ: original amount \$14,500,000; interest rate 3.93%; final payment due February 1, 2020..... | \$8,071,097 |
| 2005 Water Refunding: original amount \$1,347,000; interest rate 3.75%; final payment due December 1, 2012 | 369,000 |
| OECD Safe Drinking Water Loan: original amount \$5,650,000 interest rate 3.38%; final payment due December 1, 2028..... | <u>4,821,350</u> |
| Total principal outstanding on enterprise loans – June 30, 2011 | \$13,261,447 |

To meet the utilities' need to implement a rate adjustment to meet fiscal year 2012-2013 requirements, we recommend evaluating the revenue requirements as follows: review of the utility's current fiscal policies and their impact on the revenue requirements to ensure that the rate models reflect the financial objectives of the City. We will evaluate the impact of changes in policy, such as capital improvement funding approaches or reserve levels, to determine the impact of changes on revenue

requirements. Through the linkage of the analysis to a model of fund balances, rate strategies such as uniform increases, single or multi-year increases, or other strategies can be evaluated on an ongoing basis in terms of compliance with all fiscal constraints.

The model will also have the capability to evaluate the City's desire to include the following City-specific planning issues:

- ✓ provide at least two recommended alternatives for commercial sewer rates based upon high BOD or FOG.
- ✓ provide at least two plans to fund the cost of installing automated meters throughout the service area.
- ✓ provide a water rate structure feature that addresses draught conditions or other interruptions in supply.
- ✓ provide recommendations for funding of Storm Drainage operations, maintenance and improvements, both within the existing rate structure or as a separate utility.

The specific tasks that will be included in development of the financial plan model will be:

1. Review historical costs and revenues and project revenue under existing rates (this will provide information on current capacity of rates to support revenue requirements). During this work, we will also identify and develop applicable revenue sufficiency tests. Finally, we will determine projected revenue shortfalls (if any) for the test year and present results to staff.
2. Develop long-term financial model (planning period consistent with adopted capital improvement plan(s) and policies). Based on the work done to establish the historical review of costs and revenues, we will expand the logic to a forecast horizon consistent with other City planning timeframes (currently set at a ten year forecast horizon). Consistency between the City's adopted Capital Improvement Plan(s) and the financial plan will be essential. Critical work in this sub task will be:
 - a. Project revenue under existing rates and determine overall revenue shortfalls by year for the forecast horizon. Identify annual increases needed to meet annual revenue requirements.
 - b. Forecast O&M and capital costs based on the adopted Capital Improvement Plan (CIP). It is clear that the CIP will result in increases to operations and maintenance expenses. New costs (life cycle) to operate and maintain these the facilities will be identified, vetted, and loaded into the financial plan model.
 - c. Evaluate capital funding alternatives, including bonding strategies. This task will include evaluating fiscal policies related to capital financing, including preferences for debt or equity funding. Also, analyses will be done to evaluate reserve levels for debt or equity funding, reserve levels for contingencies, and replacement of funding (i.e., explicit funding of depreciation). Finally, the feasibility of developing alternative sources of funds, including grants, special low interest loans, special fees, and SDC's will also be integrated into the analysis.
 - d. Develop rate increase strategy. In this sub task, we will evaluate rate implementation strategies for effects on utilities financial performance and condition.

- e. Evaluate rate implementation strategies for effects on utility financial performance and condition.
- f. Storm drainage funding
 - i. The Project Team, through its sewer cost of service analysis, will isolate costs which are specific to the operation and maintenance of the City's storm drainage system.
 - ii. Based on these costs, along with known storm drainage capital needs, the project team will prepare two funding approaches which; a) show the sewer rate impact of continuing to recover storm drainage costs through the wastewater service charge along with the pros and cons of continuing this approach, and b) establish a storm drainage utility and dedicated revenue stream including a summary level feasibility/task plan providing the City with a roadmap toward implementing a storm drainage utility.
- g. Review revenue requirements findings with staff and the Council.

Upon the completion of the model building work, the consultant team will present the preliminary models to City's project team for review and comment. We suggest the City reserve a specific date and time for a staff workshop. This will allow a thorough briefing on the models contents and capabilities. Copies of the draft models will be left with the City team to use and beta test.. Upon completion of this internal review, the consultant team will make adjustments to the models to bring it in line with City staff requirements.

After incorporating City staff comments into the models, the consultant team will be prepared to make a presentation to the City Council at a work session (or perhaps to a City Council subcommittee). At this meeting, the consultant team will present the preliminary study results and demonstrate the use of the models to the Council. The presentation will also offer the Council a number of funding alternatives and implementation strategies. The agenda and format for the meeting will be prepared by the consultant team and reviewed with the City's project manager.

Task 3 - Detailed Financial Analysis (including policy on current and future indebtedness)

...A cost of service analysis generally addresses the basis for recovering revenues from customers according to the demands which they place on the utility...

Cost of Service - The cost of service analysis allocates costs to functional categories, classifies customers and defines their service characteristics, and distributes costs to customer classes. It also develops unit costs appropriate for recovering revenue requirements by customer class. An essential element of the cost of service analysis and rate review is to define customer service characteristics. This effort relies on the information contained in the customer billing system. The level of detail needed often exceeds that provided in summary reports. For example, to evaluate increasing block water rates, customer usage needs to be compiled by usage level. We pursue this information early in the assignment, recognizing the difficulties that can arise in developing necessary reports or downloading necessary raw data. Specific cost of service tasks include:

1. Develop functional allocation of costs. For water, this would include customers, fire protection, base usage and extra capacity (peak demand). For wastewater, this would include customers, flow, strength of domestic discharge (i.e., BOD and TSS), and extra strength loading. Also included at this stage are any special allocations associated with providing service to wholesale customers. This allocation relies primarily on utility planning documents and generally available statistics.
2. Develop customer statistics. The specific structure of the statistics needed will depend on the types of rate structures that the City wishes to consider. We would work with the billing system staff and, if necessary, the Springbrook programmers to obtain either summary statistics or raw customer data.
3. Distribute costs to customer classes. Develop class revenue requirements based on usage/demand characteristics. Develop functional unit costs.

...The cost of service analysis will likely result in different percentage rate increases among the customer classes, which may be more equitable based on the supporting analysis. ...

Task 4 – Rate Analysis

The rate design effort examines and evaluates alternative rate structures. The analysis compares existing rates with alternative rate design, and compares results with the allocated costs by customer class. The rate model can be designed to accommodate various rate alternatives, such as seasonal rates, block rates, and varying customer classifications if appropriate. Due to the nature of restructuring rates, impacts are not limited to customers classes nor necessarily uniform within them. The rate model also documents impacts on representative customers, as well as customer classes as a whole, in order to provide full information on the range of rate impacts which would result.

...The City may want to consider implementing changes to the rate structure on a calendar year basis rather than fiscal year ...

This avoids dramatic change during the summer peak period when customer sensitivity is highest and allows an education program to be implemented during the winter period when impacts will tend to be smaller. Specific tasks would include:

1. Review rate objectives and various alternatives for attaining those objectives with the City. Identify rate structures to be developed and quality of data to support them.
2. Develop rate model and incorporate customer statistics. Integrate with revenue requirements and cost of service models to automate the rate development process.
3. Develop and evaluate each rate alternative. Evaluation will be based on equity, sufficiency, and impacts.
4. Review preliminary rate findings with City staff. Refine analyses based on review. If appropriate, develop phased strategies for restructuring rates.

Task 5 – Review and update SDC methodology and schedules

In developing the improvement fee for each utility, the consultant team in consultation with City staff, will evaluate each of its CIP projects to exclude costs related to correcting existing system deficiencies or upgrading for historical lack of capacity. Only capacity increasing/level of performance costs will be used as the basis for the SDC calculation, as reflected in the capital improvement schedules developed by the

Cities. Population and future demand analysis will be based on the Cities' projections. The improvement fee will be calculated as a function of the estimated number of projected additional equivalent residential units to be served by the facilities over the planning horizon. The consultant team will also evaluate the merits of adjusting the capital costs within its CIP on an annual basis using the Engineering New Record (ENR) inflationary index.

This scope of work is based on a three phase approach toward reviewing methodology and implementing a schedule of SDCs for municipal services. Phase 1 consists of a review and assessment of the respective Cities' adopted facilities/master plans in order to document both current and future SDC-eligible facilities. Phase 2 will focus on the process required to move the City toward the implementation of a schedule of SDCs that are consistent with the planned facilities that are currently identified, or under study within the context of the adopted plans. This process will include issues relative to proposed methodologies for both the reimbursement and improvement portions of the SDCs. It is currently assumed that this work will focus on a facilities needs analysis planned out for ten years, and will be based on the specific response to policy issues affecting how capacity can be allocated, measured and priced. Phase 3 will be the process of the SDC calculation itself along with documentation of the methodology leading to the specific charge.

In each of these phases, we will work closely with City staff to achieve closure. This proposed approach would include two meetings with respective City staff, and separate presentations to the City Council (consistent with the rate presentation schedules). We strongly suggest the City consider creating a Citizens Advisory Committee for this project. We have found that by inviting stake holders into the process at the onset, the study inevitability gains credibility with decision makers. We believe that one meeting with an advisory group (that would coincide with the two staff presentation discussed above) would be sufficient to keep stake holders involved and informed, and still keep the study on track for completion by July 1, 2012. The specific tasks required to complete this work are itemized below:

Existing Municipal Code Review, Data Collection, and Development of the Demand Forecast

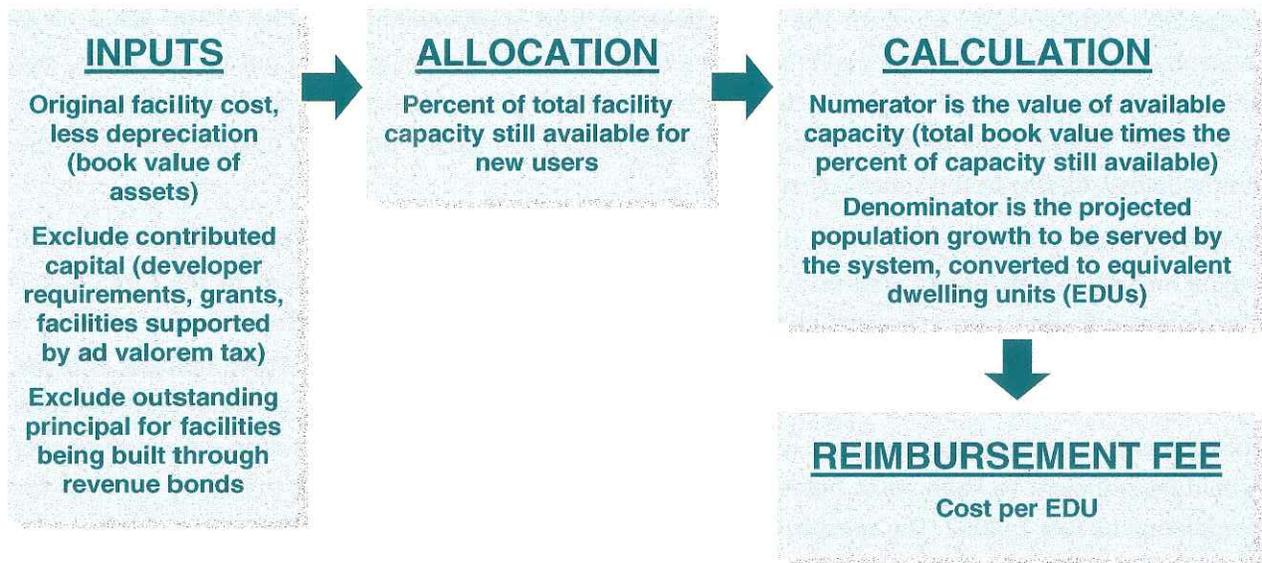
1. Secure copies of the current Dallas Municipal Codes/ordinances concerning SDCs. These ordinances will be reviewed for relevancy, accuracy, and functionality. Upon completion of this review, the consultant team will prepare a decision memorandum for Staff review that will evaluate the adequacy of the existing municipal code/ordinance and if appropriate itemize ways to perfect the code for the current state of the law concerning SDCs.
2. Prepare a data request including the City's financial statements, fixed asset records, facility use data, facilities/master, and/or capital improvement plans. The clear intent is to obtain all capital facility lists, schedules and costs that are either on the City's books or contained in planning documents that are part of the current facilities plans. The consultant team will obtain pertinent staff and consultant reports from other relevant Oregon districts and cities regarding their water, sewer, and storm drainage SDCs. We will summarize the methodologies considered by these cities and create the menu of options required for this task. The Consultant team will also account for the outcomes of recent Oregon litigation regarding the construction and administration of SDCs.
3. Review the information provided and conduct a status meeting with City staff to review the adequacy of the documentation, means for filling identified deficiencies and the next steps in the SDC development process; and

4. Evaluate and update funding assumptions and use (i.e., demand) estimates with emphasis on the cost of planned projects and their consistency with adopted plans and/or CIP's.

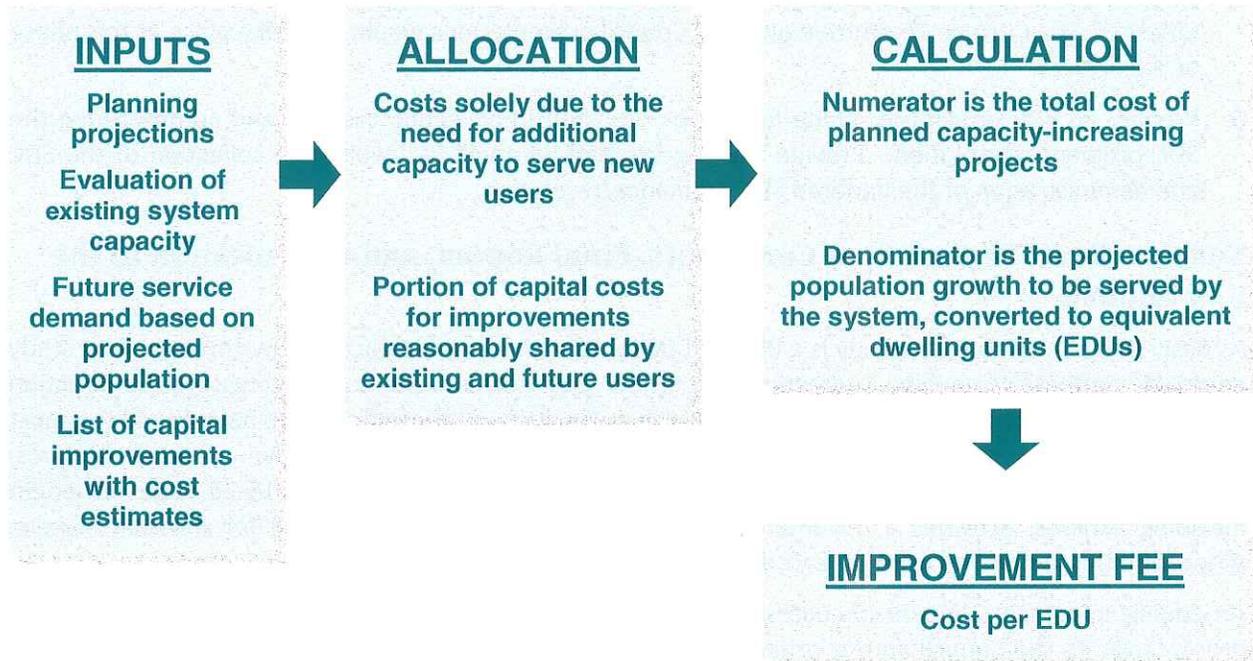
Financial Analysis, Modeling, and Public Involvement

1. Based on the information developed through SDC subtask 1, prepare optional approaches toward SDC calculation, given the future demand forecast that will be derived from the facilities plans.

Setting the Reimbursement Fee



Setting the Improvement Fee



2. Evaluate these approaches relative to specific compliance with the provisions of ORS 223.297 – 223.314 and the definition of the reimbursement and improvement portions of the fee; and
3. Establish specific policy statements relative to the preferred approach regarding:
 - a. credits,
 - b. valuation of existing capacity,
 - c. indexing costs based on Engineering News Record (ENR) or CPI data,
 - d. consistency of growth projections with development of future capacity patterns,
 - e. allocation of improvement costs between existing and future system users,
 - f. accounting for SDC receipts,
 - g. sources of customer use statistics for facilities and,
 - h. other planning assumptions affecting the SDC methodology.

SDC Recommendations, Statutory Reporting Compliance, and City Council Presentation

1. Prepare an interim summary of the proposed SDC methodology for the municipal services studied, and conduct a work session with City staff including the documentation of the credit policy (a requirement of ORS 223.304), SDC inputs, assumptions and calculations;
2. Based on staff comments on the interim summary, prepare for public review and present to the staff (and possibly a citizens committee) improvement fee and/or reimbursement fee SDC methodologies which include preliminary SDC base rates, credits, exemptions and exceptions, and administrative charges.

3. Based on feedback from the staff, make any necessary revisions to the methodology and calculations;
4. Prepare draft revisions to the Dallas development code to implement the water, sewer, and storm drainage SDC, and draft an updated SDC resolution which meets the current requirements of ORS 223.297-223.314; and
5. Prepare a summary-level report documenting the SDC methodology and present this report to the City staff. The Citizens Committee and City Council presentations would also take place at this phase of the Project.
6. Prepare an SDC procedures guide for use by City staff in collecting the SDC and administering the SDC ordinance/resolution. Provide training for staff who will be involved in collection of the SDC and administration of the updated SDC ordinance/resolution.

Task 6 – Draft Report, Staff Comments, Final Report, and Presentation to the City Council

As described above, the rate study is a blend of policy directive and technical follow-through. Our study approach emphasizes ongoing interaction and review with staff and the Council to assure the direction of the study. The documentation task is simply the culmination of that effort. We have found the most effective reporting method to be a policy-level document describing objective, general methods, summary results, considerations and recommendations. This report, typically 15-20 pages in length including exhibits, provides a document, which is both meaningful and useful for decision-makers. Along with this, a detailed printed record of the analyses is also provided.

An equally important element of successfully completing the study is presentation. We will conduct a presentation to the Council and/or other forums as appropriate, or support staff presentations if this is preferred. Additional presentations or workshops can also be incorporated. We have often worked with Citizen Advisory Committees, particularly in potentially controversial efforts. Specific tasks include:

1. Present Draft Rates Proposal - As discussed above, when the draft models have been completed and vetted by the City staff team, the consultant team will present the proposals regarding rates to the City Council via work session.
2. Prepare Draft Report - Prepare and submit a draft report for City review and comment. Review the report with the City and determine revisions for the final version. In this step, we will prepare and submit seven (7) bound copies of the draft report, and one (1) unbound copy. We will also present the preliminary report to the City Council and Staff at a public meeting.
3. Prepare Final Report - Prepare and submit the final report to the City. The final report submittal will consist of ten (10) bound copies and one unbound copy. These final versions will be given to the staff for distribution to the Council and other interested parties. We will also provide Staff with a disk that will contain the final report in MS Word format and all related Excel spreadsheet models.
4. Present a Resolution for City Council consideration that will adopt the recommended rates.

Timetable

Proposed Schedule for the Water & Wastewater Rate Study



| ID | Task Name | Start | Finish | 2012 | | | | | | | |
|----|--|-----------|-----------|------|-----|-----|-----|-----|-----|-----|---|
| | | | | Jan | Feb | Mar | Apr | May | Jun | Jul | |
| 1 | Water and sewer rate & fee study proposal due date | 1/25/2012 | 1/25/2012 | ★ | | | | | | | |
| 2 | Task 1: Rate study kickoff and data collection | 3/1/2012 | 3/16/2012 | | | | | | | | |
| 3 | Task 2: Preliminary model and revenue requirements development | 3/1/2012 | 3/15/2012 | | | | | | | | |
| 4 | Task 3: Detailed financial analysis | 3/1/2012 | 5/31/2012 | | | | | | | | |
| 5 | Task 4: Rate analysis | 3/16/2012 | 5/31/2012 | | | | | | | | |
| 6 | Task 5: Review and update SDC methodology and schedules | 3/1/2012 | 5/31/2012 | | | | | | | | |
| 7 | Task 6: Draft Report Preparation, Staff Comments Review and Final Report Preparation, Presentation to the City Council | 3/19/2012 | 5/31/2012 | | | | | | | | |
| 8 | Presentation of draft rate models to City Council via work session | 5/7/2012 | 5/7/2012 | | | | | | ★ | | |
| 9 | City staff review of draft and final report | 4/2/2012 | 5/31/2012 | | | | | | | | ★ |
| 10 | Present final rate study results to City Council | 6/4/2012 | 6/4/2012 | | | | | | | | ★ |
| 11 | Implement rate changes (if recommended) and publish final report | 7/2/2012 | 7/2/2012 | | | | | | | | ★ |

Personnel

Steve Donovan will serve as our project manager on the rate and SDC study. Steve is well suited to this task for three reasons. First, he is extremely familiar with the project having served as a project/task manager for similar studies in Western Oregon and within the Portland Metro area. Second, he is an efficient, well-organized manager whose skills coordinating a diverse team and keeping projects on schedule and budget have been proven many times. Lastly, he has extensive experience leading similar efforts and producing financial studies.

Project Team Organization Chart



The project team will consist of Steve, Shaun Pigott, principal of Shaun Pigott Associates, and DEI support staff. Over the past ten years, Steve has worked extensively with Shaun on rate, cost of service, and bond sale projects. In 2008, Steve and Shaun teamed up to provide the City of Gresham with professional services for their wastewater system cost of service study. Right now, Steve is working for Water Environment Services in Clackamas County on the financing of their wastewater Capacity Management Program. Itemized below, is a brief description of the expertise that each of the team members bring to this engagement

Donovan Enterprises, Inc. is a Tigard, Oregon based management consulting firm specializing in municipal finance, providing utility rate and general fund user fee studies, alternative financing impact analyses, indirect cost plans, utility valuations, management accounting, and financial plans. The firm consists of seasoned professionals with extensive backgrounds in municipal government, and financial advising. Founded in 1988, the firm serves a client base in the western United States, with emphasis in the states of Washington, Oregon, and California. Our primary practice focus is utility rate studies and financial management for water, sewer, solid waste and surface water/storm drainage enterprises. This focus includes cost of service analysis in order to determine equitable and defensible user fees and charges for planning, public works, and general government services.

Our team's approach to managing the successful and efficient completion of the Dallas work assignments will emphasize the same "team concept" that we have successfully employed on prior efforts with our State and local government clients. Our approach places a premium on constructive interaction with engineering task managers, strong project leadership, on-going client involvement, appropriate staffing, quality assurance review, and the exercise of proven management methods

Shaun Pigott Associates (SPA), LLC is a Bend, Oregon based infrastructure financial management consulting firm. SPA was formed in 1990 to provide specific public sector finance and utility formation/operation funding experience to clients nationwide. The majority of the SPA's ratemaking and system development charge (SDC) experience has been in the western United States with utilities in Stockton, CA; Salt Lake City, UT; Orem UT; Tucson, AZ; Coeur d'Alene, ID; Clean Water Services of Washington County, OR; Clackamas County Water Environment Services, OR; City of Gresham OR; City of Lake Oswego, OR; City of Milwaukie, OR; Clark County, NV; City of Puyallup, WA; Spokane County, WA; and Clark County, WA. Mr. Pigott has gained a national reputation in the field of utility management and finance and was a featured speaker for various state associations of cities/counties, American Public Works Association and American Institute of Hydrologists on the subject. In addition to rate design expertise, Mr. Pigott has been responsible for some of the new innovations regarding system development charges, water quality management incentives and public/private facility cost sharing agreements. He has prepared CIP programs and rate/SDC analyses for clients in Washington, Oregon, Illinois, Arizona, Nevada, Kentucky, California, Utah and Oklahoma regarding utility financing, regulations and management.

SPA has been working with SDC's in Oregon since the enactment of ORS 223.297 in 1991. This legal framework, patterned in large part after the Utah Impact Fees Act, which SPA has also worked with, establishes reasonable ground rules for SDC construction. Over the years, Shaun Pigott has conducted 22 SDC studies ranging in scope from Clean Water Services to Hermiston. In each case, the objective remains compliance with ORS 223 and allocating to new development its fair/proportionate share of infrastructure capacity costs. Beyond calculation of reimbursement and improvement charges, Shaun Pigott has also been involved with issues related to the transferability of SDC credits; portability of SDC's as businesses move; and adjustment of SDC's as business conditions change. In each of these cases, policy options were weighed against the statute, along with the financial implications and risk considerations for the utility.

Our approach to managing this rate review and SDC update will emphasize team work. This project has to be focused and task oriented to meet the tight timelines for overall project completion. Our approach places a premium on constructive interaction, strong project leadership, on-going client involvement, appropriate staffing, quality assurance review, and the exercise of proven management methods.

Steve's primary role will be to manage the study development process, coordinate the review and decision process with Client staff, review the work products, quality assurance reviews, and other project administration tasks. Steve will also be the lead consultant on the presentation of materials to staff, the citizens advisory committee (if applicable), and the City Council. Steve will also be the financial modeler for the water rate study component, and his focus will be on the updating the revenue requirements and cost of service allocations elements. His extensive rate making experience specific to Oregon cities will be drawn upon to validate the analysis.

We are fortunate to have Shaun Pigott on our team. Shaun is a nationally recognized expert in the area of System Development Charges, and he will be the lead on the SDC methodology review and cost of service update. He is easy to work with, and is a very effective presenter of complex information to elected officials and Citizen Advisory Committees.

Team Member Professional Resumes

The following pages contain professional resumes for Steve, and Shaun.

Steve Donovan



President, steve.donovan@donovan-enterprises.com

Education

B.S., Electrical Engineering, University of Wisconsin, 1977

MBA, University of Wisconsin, 1979

Distinguishing Qualifications

- ◆ Over Thirty (30) years of experience in engineering, public works programming, economics, and public policy analysis.
- ◆ Principal author or collaborator on dozens of water rate and SDC studies throughout the United States. These skills transfer directly to the scope of services required for Tigard.

Key Project Experience:

Mr. Donovan has served the **City of Sheridan** for the last twelve years as rate consultant and financial advisor for all water and wastewater matters. He was the financial task project manager on the City's Stony Mountain reservoir development project. His most recent water rate study for the City was completed in January, 2010, and the recommendations (and rate increases) that came out of that study were unanimously adopted by the Sheridan City Council.

Mr. Donovan was the financial consultant to the **City of Milwaukie**. The primary scope of work in this water rate study was to develop a system of residential and commercial water rates and charges. Additional work was done on developing a commercial customer data base tracking system for water consumption which included sub analysis of credit meter activity, and numerous "what-if" studies. The Milwaukie City Council adopted the study results, in June, 2004, and the rate methodology that was developed in this work is still in use by the City today.

Mr. Donovan is the financial and rate consultant to the **City of Silverton** since 2002. Most recently, he completed the City's 2008-09 water and sewer cost of service study. Mr. Donovan is currently working for the City on a number of ad hoc studies and analyses related to water system supply and wastewater treatment system funding.

Mr. Donovan served as financial consultant to the cities of **Salt Lake City, Orem, and Centerville, Utah** for the feasibility and implementation of storm and surface water management utilities. Primary emphasis concerned financial modeling to develop systems of rates and charges to fund revenue requirements for dedicated activities related to flood mitigation, non-point pollution abatement, and ground water protection. A significant element of the scope of work for this 2005 project was to investigate the feasibility of implementing an Aquifer Recharge Program and a system of surcharges to utility customers to pay for the project.

Mr. Donovan was the financial consultant to the **Portland Bureau of Water Works** to assist Bureau staff in forecasting revenue shortfalls due to lower than projected water sales in the summer of 2008. The Bureau was experiencing lower than expected retail and wholesale water sales. The scope of work for this engagement was to forecast the fiscal impact of the lower than expected sales on the Bureau's fiscal

2007-08 budget appropriation. The results of the analysis were to conclude that revenue requirements would increase by approximately 8-11% for the next fiscal year.

Mr. Donovan was retained as rate consultant to a consortium of **Beaverton, Tualatin, Tigard, Hillsboro, Sherwood, Forest Grove, Cornelius, Clean Water Services, and ODOT** to develop alternatives for the beneficial reuse of treated wastewater. The primary emphasis of this work was to develop a cost effective regional method for the beneficial reuse of wastewater effluent. The point sources of the effluent were in Durham (Tualatin river) and Hillsboro (Rock Creek). An important aspect of the work called for the characterization of the wastewater to be certain no hazardous wastes were involved. The ultimate recommendation was to consider the development of an expansion of the Barney reservoir to accept future stream flow augmentation needs in addition to the possibility of redirecting treated wastewater effluent to Henry Hagg lake. Mr. Donovan is still working on this project.

Mr. Donovan is currently engaged by **Water Environment Services** (a component unit of Clackamas County) as rate consultant and feasibility consultant for the County's planned \$125 million wastewater treatment system expansion project. Mr. Donovan was the principal author of the County's 2008 and 2009 wastewater rates and SDC studies (for Clackamas County Service District No. 1 and for the Tri-City Service District). Mr. Donovan was also the feasibility consultant for the County's successful issuance of the Series 2009A (\$38.460m) and Series 2009B (\$44.365m) Sewer System Revenue Obligations sales.

Mr. Donovan is currently engaged by the **City of Molalla** as utilities rates and feasibility consultant. On March 17, 2010, the City successfully refunded all of its outstanding general obligation water and junior lien water revenue bonds. The City successfully refinanced \$3,030,000 in outstanding long term debt obligations. The refinancing concerned four separate existing long term debt instruments related to the City's water system. The City will save \$252,721.71 (on a net present value basis) in future interest expense as a result of these transactions. Mr. Donovan is now working with City Staff and the City's Financial Advisor to advance refund all of the City's outstanding senior and subordinate lien sewer bonds.

Membership in Professional Organizations

American Public Works Association

American Water Works Association

Water Environment Federation

Institute of Electrical and Electronic Engineers

Oregon Municipal Finance Officers Association

Oregon Association of Clean Water Agencies

Shaun Pigott

Principal, spigott@teleport.com



Education

B.A., Economics, University of Washington

MPA, University of Washington

Distinguishing Qualifications

- ◆ Mr. Pigott has 25 years of experience in infrastructure management and public sector finance. Most significant in terms of Tigard's needs is Mr. Pigott's experience as Project Manager for the design and implementation of numerous system development charges (SDC) for water, stormwater and sewer rate studies in Oregon, Washington, Idaho and Utah. Shaun Pigott has developed water-sewer-stormwater rates and impact fees for the following jurisdictions: Clean Water Services (OR), Milwaukie, Newberg, Rogue Valley Sewer Services, Roseburg Urban Sanitary Authority, Medford, Gresham, Clackamas River Water, Scappoose, Rainier, Gresham, West Linn, Molalla, Silverton, Hermiston, Water Environment Services (Clackamas County), Oak Lodge Sanitary District and in Utah Price River Improvement District, Murray City, West Valley City, Draper City, Orem City, Salt Lake City, Centerville City, Magna Water Company. Shaun Pigott has been a featured speaker on the design and implementation of SDCs and utility rates for ASCE, APWA (Oregon and Utah) and ACWA.
- ◆ Financial consultant and analyst for numerous Northwest cities, counties and service districts. Responsible for feasibility analysis, cost of service and rate analysis for municipal utilities and Districts. Jurisdictions include: Lake Oswego, Gresham, Portland, Clackamas County, Oak Lodge, Milwaukie, West Linn, Clean Water Services of Washington County, Tualatin, Tigard, Forest Grove and Hillsboro (OR.).

Key Project Experience:

Shaun Pigott has worked with the cities of **Ashland and Medford** in the design and implementation of SDCs and utility rates. Similar services were provided to the Roseburg Urban Sanitary Authority (RUSA) and the Rogue Valley Sewer Services (RVS). In all case the recommended revisions to SDCs and/or rates were adopted by the jurisdictions.

Shaun Pigott was project manager for the design and implementation of a large wastewater provider in the Portland, OR metro area – **Clean Water Services** - revised sanitary sewer rate structure, which converted from a fixed EDU approach to a consumption-based rate. This project required development of the revenue requirements for the revised rate structure and developing the cost allocation methodology for the fixed and variable components of the rate. Also involved was coordination of winter average water consumption data from 6 water jurisdictions within the USA service area and conversion of data processing/billing systems to accommodate the revised approach.

Project manager for the regional surface water program in **Washington County, Oregon**. This involved 18 months of negotiation among the cities in Washington County regarding the form and operating structure for this new regional entity. The structure, which evolved, was a county service district having

specific operating agreements with each of the 13 member cities and required development of an application to the Portland Metropolitan Boundary Commission for review/approval of the program. Operated under the Clean Water Services of Washington County, this regional surface water utility is one of the largest and fastest growing entities in the United States.

Project manager for the **Clackamas Water Authority Project** which evaluated the feasibility of forming a regional supply and treatment program for 6 separate water districts and cities in the Clackamas County region. This project extended over 16 months and evaluated the technical and financial feasibility of linking these water systems. Parallel to this analysis, the new statute regarding Water Authority formation was interpreted and an institutional structure negotiated with the individual members and the group as a whole. While the full authority was not implemented, the framework for future regional actions has been established. The merger of two key districts did result from this project.

Shaun Pigott has prepared SDC ordinances, resolutions and methodologies for a wide variety of **Utah, Washington and Oregon cities**, districts and county governments. These impact fee development projects have included meetings with the public and affected entities such as the Homebuilders Association. Shaun Pigott has also emphasized the active involvement of City Councils in development of these charges through workshops on the legal and financial implications of impact fees.

Shaun Pigott assisted with the development of wastewater rates for **Murray City, Utah**. The analysis addressed an historic underfunding of the utility and incorporated the revised capital program into the rate analysis. Specific policies were also developed with staff and the City Council, which placed the utility on a solid fiscal foundation for the coming years.

Shaun Pigott assisted with the review **Magna Water Company's** rate and impact fee structure to better align the District's cash flow from these two funding sources with revised capital requirements. The analysis culminated in a series of service charge and impact fee revisions which established a common basis for these funding sources. The District's Board unanimously approved these changes which have been implemented by Magna Water Company.

Shaun Pigott worked with the cities of **Salt Lake, Orem, West Valley, Draper and Centerville**, Utah in designing and implementing new utilities for storm and surface water management. These analyses, conducted between 1990 and 2001, produced new rate structures and impact fee designs for these cities to establish the dedicated revenue stream for moving forward with their operations, maintenance and capital program needs.

Membership in Professional Organizations

American Public Works Association

Oregon Association of Clean Water Agencies

Qualifications and Relevant Experience Matrix

| Client | Year | Cost of Service Studies for Water and Wastewater Services | Policy Analysis of Water and Wastewater Program Delivery | Increased Costs for New Programs or Services | Shifting of Cost Recovery from Customer Classes |
|---|--------------------------|---|--|--|---|
| City of Silverton – Water and Wastewater Cost of Service Studies; Silverton, Oregon | January 2002 to Present | ✓ | ✓ | ✓ | ✓ |
| City of Molalla – Water Rate Study and Feasibility Consultant – Series 2010 Water Refunding Bonds; Molalla, Oregon | November 2009 to Present | ✓ | ✓ | ✓ | ✓ |
| Clean Water Services – 2011 Stormwater and Wastewater Program Assessment Study; Hillsboro, Oregon | 2011 | ✓ | ✓ | ✓ | ✓ |
| Water Environment Services – 2009, and 2011 Wastewater and Stormwater Cost of Service Studies; Clackamas County, Oregon | 2009 and 2011 Update | ✓ | ✓ | ✓ | ✓ |
| City of Sheridan – 2011 Water and Wastewater Cost of Service Studies; Sheridan, Oregon | 2011 | ✓ | ✓ | | |
| City of Coos Bay – 2010 and 2011 Wastewater Master Plan Financial and Rate Study Element; Coos Bay, Oregon | 2010-2011 | ✓ | ✓ | ✓ | ✓ |
| City of Gresham Maintenance Management System for Stormwater Field Operations | 2006 and 2011 Update | | ✓ | | ✓ |
| CWS - IGA Maintenance Standards Development and Permit Compliance Monitoring Reporting | 1995 - 2011 | | ✓ | ✓ | ✓ |
| Stormwater utility formation and implementation for Wilsonville, Ashland, Milwaukie, Bend, West Linn, Gresham, Salem, WES and CWS | 1990 - Present | | ✓ | ✓ | ✓ |

Representative Study Descriptions and Client References

Recent Service Delivery Study Project Experience for Steve Donovan

| | |
|----------------------------|--|
| Name of Project | City of Silverton, Oregon Water System Cost of Service Study |
| Project Description | Steve Donovan has been the City's infrastructure financing advisor since 2002. During that time, he has completed two complete water and wastewater system cost of service studies, and one special update in 2010. These studies addressed the levels and structure of rates needed to support current and future water and wastewater system infrastructure investments along with the operations and maintenance of the water and wastewater utilities in Silverton. The focus for the 2010 rate study is for years covering the period fiscal 2010 through fiscal 2030. These analyses also included updates for the City's water system development charge (SDC) methodology. |
| Client |  |
| Client Reference | Mr. Steve Starner Public Works Supervisor (503) 991-6359 |
| Name of Project | City of Molalla, Oregon Water System Cost of Service Study |
| Project Description | Steve Donovan has been the City's financial advisor since 1996. The most recent water cost of service study results were presented to the Molalla City Council on October 14, 2009. The results of the study indicated a 6.00% general water rate increase was required for fiscal 2009-10. The Council adopted the general water rate increase at that time. For the average Molalla single family residential customer that consumes 900 cubic feet per month, the impact was an increase of \$1.89 per month. Currently, this average customer pays \$31.20 per month for water. After the proposed increase, this customer would pay \$33.09 per month. The principal driver for this increase in revenue requirements was budgeted water system labor and materials & services expenses. Costs directly related to system reliability, maintenance, and regulatory permit compliance accounted for the preponderance of the variance. The forecast also indicated that future rate adjustments will be required to meet projected water system revenue requirements. |
| Client |  |
| Client Reference | Ms. Peggy Johnson Finance Director (503) 829-6855 |

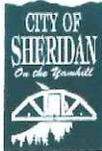
Recent Service Delivery Study Experience for Steve Donovan – Continued

| | |
|----------------------------|---|
| Name of Project | 2011 Wastewater and Stormwater Management Assessment Study |
| Project Description | <p>Donovan Enterprises, Inc. was retained by the District in January, 2011 to support the District’s internal policy review of the wastewater and stormwater management program. The District’s programs are at a crossroads where existing revenues do not adequately fund the current program. The purpose of the Program Assessment was to look at the range of current and anticipated program activities for the purpose of defining the future direction of the program. During the study, the project team evaluated six specific services within the stormwater program for policy analysis. These services were:</p> <ol style="list-style-type: none"> 1. SWM Capital Program - Collection System Improvements (Public vs. Private) 2. SWM Capital Program – Stream Channel Improvements 3. Rivers, Creeks and Streams Maintenance, and SWM Capital – Scope and Funding for Tree Planting Program 4. County Issues including Culvert Maintenance and the County Roadside Ditch Program 5. Street Sweeping 6. Leaf Program <p>In addition to providing policy assistance for the stormwater program assessment, the consultant team developed a series of forecast models to evaluate future rate impacts against alternative service delivery approaches. The study was completed in March of 2011, and presented to the CWS Board of Directors for policy review. The Board accepted the study results, and implemented the recommended \$0.50 per Equivalent Service Unit rate increase starting on July 1, 2011.</p> |
| Client |  |
| Client Reference | <p>Mr. Chris Bowles Field Operations Manager (503) 547-8102</p> |

Recent Service Delivery Study Experience for Steve Donovan – Continued

| | |
|----------------------------|---|
| Name of Project | Water Environment Services 2010 |
| Project Description | <p>Donovan Enterprises, Inc. was retained by Water Environment Services, a component unit of Clackamas County, Oregon to perform a 2009-10 utility cost of service study. This study addressed the levels and structure of rates needed to support current and future infrastructure investments along with the operations and maintenance of the wastewater, and surface water management utilities managed by Water Environment Services (WES). The key element of the study was to address the rate impacts of the District's plan to construct a new base load wastewater treatment plant on the banks of the Clackamas River in Oregon City, Oregon. In the fall of 2007, the Clackamas County Board of Commissioners (the Board), in its role as the governing body of the District, authorized WES, to implement the interim phase of a comprehensive wastewater system capacity management program (Program). The Phase I – Capacity Management Program (Phase I CMP) is an element of that comprehensive Program, and will be funded in part from the issuance of at least three (3) long term debt offerings. Current planning called for the completion of the Phase I CMP improvements over the next thirty-six (36) months. The total par amount of all senior-lien borrowings on the project ultimately amounted to \$107 million.</p> <p>The results of the rate study indicated monthly sewer rates would have to be increased from the 2007-08 level of \$16 per Equivalent Dwelling Unit, to the fiscal 2010-11 level of \$38 per EDU. The Phase 1 CMP project was completed in the summer of 2011, and the new wastewater treatment plan is now operating. The Board also adopted the recommendation of the rate study, and retained its investment grade bond rating.</p> |
| Client |  |
| Client Reference | <p>Mr. Doug Waugh Capacity Manager (503) 742-4564</p> |

Recent Service Delivery Study Experience for Steve Donovan – Continued

| | |
|----------------------------|--|
| Name of Project | City of Sheridan, Oregon Water and Wastewater System Cost of Service Study |
| Project Description | Steve Donovan has been the City's financial advisor since 1999. During that time, Mr. Donovan has produced annual water and wastewater system rate studies for the City Council. The City has a policy of annual rate reviews for all of their municipal utilities. In 1999 and 2006, the City commissioned water system master plan updates. In each of these instances, Mr. Donovan followed up the Master Plan updates with water costs of service studies, and SDC updates. In September, of 2010, Mr. Donovan acted as the City's feasibility consultant for the refunding of the City's series 1998 and 2000 water system revenue bonds. These bonds were successfully refunded with significant savings to the City. The refunding bonds were rated A+ by Standard and Poor's, an affirmation of the financial strength of the City's water system. |
| Client |  |
| Client Reference | Mr. Frank Sheridan City Manager (503) 843-2347 |

| | |
|----------------------------|---|
| Name of Project | City of Coos Bay Wastewater System Cost of Service Study |
| Project Description | Steve Donovan has been the City's financial advisor since 2007. The City is facing the replacement of both of its wholly owned wastewater treatment plants within the next five years. The total cost of replacing both plants will be in excess of \$50 million. In January, 2009, Steve Donovan authored the Comprehensive wastewater rate and cost of service study that started the City on a rate trajectory of future wastewater rate increases to fund the costs of replacing the two plants. Since the 2009 cost of service study, Steve Donovan has been working with the City on a number of task ordered assignments relative to financial planning and cost recovery studies. |
| Client |  |
| Client Reference | Mr. Jim Hossley Public Works Director (541) 269-1181 x-2250 |

Recent Service Delivery Study Project Experience for Shaun Pigott

| | |
|----------------------------|--|
| Name of Project | Maintenance Programming for the City of Gresham – 1996 and the 2011 Update |
| Project Description | Shaun Pigott was hired by the City to develop a complete inventory of stormwater activities and, based on these activities, develop standards for each. These standards define how each activity would be carried out including labor, equipment and material requirements. Labor and equipment rental costs were identified and applied to these activities for a complete financial database for the utility’s field activities. In 2011, this database is being re-validated and updated to include the maintenance effects of the City’s commitment to “green” stormwater infrastructure. These activities and alternative service levels will be investigated resulting in a complete summary of maintenance functions and costs to be reflected in the City’s proposed maintenance budget. |
| Client |  |
| Client Reference | Mr. Haig Valenzuela Stormwater & Operations Supervisor (503) 669-2381 |
| Name of Project | CWS - IGA Maintenance Standards Development |
| Project Description | Shaun Pigott worked with CWS and the partner cities within Washington County to develop a consistent set of maintenance standards for both the storm and sanitary systems. These standards were initially developed in response to the need for a consistent level of service throughout the CWS service area. In conjunction with CWS receiving its watershed permit for both systems from DEQ/EPA, compliance with these minimal levels of service were required as a condition of the permit. The standards included frequencies, work methods and crewing and were developed through a collaborative process with CWS and the partner cities. Based in part on these standards, the allocation of rate revenue between CWS (regional) and the cities (local) was also developed. This collaborative process continues with refinements to the standards and costs along with a streamlined process of quarterly reporting for field maintenance activities identified in the watershed permit. |
| Client |  |
| Client Reference | Ms. Chris Bowles Field Operations Manager (503) 547-8102 |

Recent Service Delivery Study Experience for Shaun Pigott – Continued

| | |
|----------------------------|--|
| Name of Project | Stormwater Utility Formations – Various Jurisdictions |
| Project Description | Shaun Pigott has worked with numerous jurisdictions over the years in development of storm and surface water management utility systems. Much like Dallas’s situation, the projects include a stepwise approach toward building a business model for service delivery. Questions that are addressed include: what are the required activities; what are the generally accepted procedures for completing the activities; how often should this activity be performed; what equipment is required, what materials and what is the crew configuration. By combining these elements, a unit cost model can be assembled which enables planning, scheduling and costing of each maintenance activity. In cases where budgets are limited or reduced, the model provides the information base to determine which activity should be eliminated or level of service reduced. In cases where increased service levels are required, the cost of this direction is clearly known in advance. |
| Client | Stormwater utility formation for Wilsonville, Ashland, Milwaukie, Bend, West Linn, Gresham, Salem, WES and CWS. |
| Client Reference | Mr. Mike Vaught Public Works Director, City of Ashland (541-488-5587) |

RESOLUTION NO. 3242

A Resolution establishing a schedule of rates and fees to be paid by persons using the Dallas Aquatic Center, and repealing Resolution No. 3152.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF DALLAS:

Section 1. The fees and rates charged for persons using the Dallas Aquatic Center are hereby adopted as set forth in Exhibit A, attached hereto and by reference incorporated herein.

Section 2. All other rates, fees and prices not expressly set forth in Exhibit A may be set by the City Manager.

Section 3. This Resolution shall be effective April 1, 2012.

Section 4. Upon the effective date of this resolution, all prior and conflicting Resolutions are hereby repealed.

Adopted: March 5, 2012
Approved: March 5, 2012

BRIAN W. DALTON, MAYOR

ATTEST:

JERRY WYATT, CITY MANAGER

EXHIBIT A

DALLAS AQUATIC CENTER RATES

1) General Admission Day Use Pass

| | |
|---------------------|---------|
| Adult (18-59) | \$5.00 |
| Youth (under 18) | \$4.00 |
| Senior (60 & over) | \$4.00 |
| Family ¹ | \$12.00 |

***Infants 3 and under wading pool use \$1.00*

2) Youth summer only Pass (June-August)

| | |
|--------------------|----------|
| Youth (18 & under) | \$100.00 |
|--------------------|----------|

3) 3-month Water Aerobics Pass (unlimited use)

| | |
|----------|---------|
| All ages | \$75.00 |
|----------|---------|

4) Annual Membership

(Includes all lap swims, recreation swims, and unlimited water aerobics, as well as a 20% discount all classes/lessons, 10% discount on room/facility rentals and swimsuits, 5 free passes per year for friends and family, and discounts on special events)

(Residents receive 10% discount on annual pass)

| | |
|---------------------|-------|
| Adult (18-59) | \$250 |
| Youth (under 18) | \$200 |
| Senior (60 & over) | \$200 |
| Two-person | \$375 |
| Family ¹ | \$450 |

5) 20 coupons (non-expiring)

| | |
|--------------------|---------|
| Adult (18-59) | \$85.00 |
| Youth (under 18) | \$60.00 |
| Senior (60 & over) | \$60.00 |

¹ "Family" means up to four persons related by blood, marriage or civil union who reside together in the same household. In the case of an annual pass, add \$60.00 for each additional family member.

6) Facility rental rates

Small room \$30.00/hour
Large Room \$60.00/hour

Entire facility (includes both rooms, all pools, lifeguards, and one lead lifeguard for one hour)

| <u># of Guests</u> | <u>Rate*</u> |
|--------------------|--------------|
| 1-40 | \$200.00 |
| 41-80 | \$250.00 |
| 81-120 | \$300.00 |
| 121-160 | \$350.00 |
| 161-200 | \$400.00 |
| 201-240 | \$450.00 |

*Add \$75.00 for each additional hour.

ORDINANCE NO. 1744

An Ordinance regulating the display for sale of drug paraphernalia; and declaring an emergency.

WHEREAS, the City of Dallas presently does not have provisions in its code addressing the issue of businesses and retailers selling drug paraphernalia; and

WHEREAS, youth who perceive that drug use is acceptable and common in their communities are more likely to themselves use drugs; and

WHEREAS, according to the 2010 Oregon Student Wellness Survey, one quarter of 11th grade students in Polk County have tried marijuana in the last thirty days; and

WHEREAS, drug paraphernalia is displayed openly and made available for sale in youth-friendly shapes and colors and promoted near items that appeal to youth such as candy, toys, ice cream, and soda; and

WHEREAS, displaying and selling drug paraphernalia at locations where youth commonly have access sends the message that drug use is acceptable; and

WHEREAS, according to the 2010 Oregon Student Wellness Survey, 66% of 11th grade students in Polk County identified that it would be “easy” or “very easy” to get marijuana; and

WHEREAS, the prevalence of drugs in a neighborhood and community increases the likelihood of violence and crime; and

WHEREAS, availability of drug paraphernalia acts as a trigger, increasing the chance of relapse among those struggling to overcome drug addiction; and

WHEREAS, other municipalities have enacted ordinances to regulate the selling of drug paraphernalia with successful results deterring public commercial displays and sales; and

WHEREAS, it is the City Council’s desire to establish provisions regulating the display and sale of drug paraphernalia which enables and encourages the use of illegal drugs;

NOW, THEREFORE, THE CITY OF DALLAS DOES ORDAIN AS FOLLOWS:

Section 1. The following is hereby added to and made a part of Chapter 5 of the Dallas City Code, as Section 5.212 thereof:

(1) A person selling or offering for sale drug paraphernalia may not locate the drug paraphernalia in a location where the drug paraphernalia is visible to the public or accessible without assistance by the seller or the seller's agent or employee.

(2) For the purposes of this section, "drug paraphernalia" means all equipment, products and materials of any kind which are marketed for use or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling or otherwise introducing into the human body a controlled substance in violation of Oregon Revised Statutes 475.840 to 475.980. Drug paraphernalia includes, but is not limited to:

(a) Kits marketed for use or designed for use in unlawfully planting, propagating, cultivating, growing or harvesting of any species of plant which is a controlled substance or from which a controlled substance can be derived;

(b) Kits marketed for use or designed for use in manufacturing, compounding, converting, producing, processing or preparing controlled substances;

(c) Isomerization devices marketed for use or designed for use in increasing the potency of any species of plant which is a controlled substance;

(d) Testing equipment marketed for use or designed for use in identifying or in analyzing the strength, effectiveness or purity of controlled substances;

(e) Scales and balances marketed for use or designed for use in weighing or measuring controlled substances;

(f) Diluents and adulterants, such as quinine hydrochloride, mannitol, mannite, dextrose and lactose, marketed for use or designed for use in cutting controlled substances;

(g) Separation gins and sifters marketed for use or designed for use in removing twigs and seeds from, or in otherwise cleaning or refining marijuana;

(h) Containers and other objects marketed for use or designed for use in storing or concealing controlled substances; and

(i) Objects marketed for use or designed specifically for use in ingesting, inhaling or otherwise introducing marijuana, cocaine, hashish or hashish oil into the human body, such as:

(A) Metal, wooden, acrylic, glass, stone, plastic or ceramic pipes with or without screens, permanent screens or hashish heads;

(B) Water pipes;

(C) Carburetion tubes and devices;

(D) Smoking and carburetion masks;

(E) Roach clips, meaning objects used to hold burning material that has become too small or too short to be held in the hand, such as a marijuana cigarette;

(F) Miniature cocaine spoons and cocaine vials;

(G) Chamber pipes;

(H) Carburetor pipes;

(I) Electric pipes;

(J) Air-driven pipes;

(K) Chillums;

(L) Bongos;

(M) Ice pipes or chillers; and

(N) Lighting equipment specifically designed for the growing of controlled substances.

(3) Drug paraphernalia does not include hypodermic syringes or needles.

(4) In determining whether an object is drug paraphernalia, a trier of fact should consider, in addition to all other relevant factors, the following:

(a) Instructions, oral or written, provided with the object concerning its use;

(b) Descriptive materials accompanying the object which explain or depict its use;

(c) National and local advertising concerning its use;

(d) The manner in which the object is displayed for sale;

(e) The existence and scope of legitimate uses for the object in the community; and

(f) Any expert testimony which may be introduced concerning its use.

(5) Violation of this section is a civil infraction. Each day of violation constitutes a separate offense.

(6) In addition to the penalty provided by subsection (5) of this section, a violation of this section is declared to be a public nuisance and shall be subject to summary abatement as provided in section 5.640.

Section 2. This ordinance being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist and this ordinance shall take effect on its passage.

Read for the first time: March 5, 2012

Read for the second time: March 19, 2012

Adopted by the City Council: March 19, 2012

Approved by the Mayor: March 19, 2012

BRIAN W. DALTON, MAYOR

ATTEST:

JERRY WYATT, CITY MANAGER