

**AGENDA**  
**City of Brookings**  
**Common Council Meeting**  
Brookings City Hall Council Chambers  
898 Elk Drive, Brookings, Oregon 97415  
Monday, July 27, 2009, 7:00 p.m.

- I. Call to Order**
- II. Pledge of Allegiance**
- III. Roll Call**
- IV. Ceremonies/Appointments/Announcements**
  - A. Employee Anniversary – 10 years, LauraLee Gray, Building Official. *Pg. 5*
  - B. Proclamation - Oregon Code Enforcement Officers Recognition. *Pg. 7*
  - C. Acceptance of Jan Willm's resignation from the Public Art Committee. *Pg. 9*
- V. Public Hearings/Ordinances – *Planning/Advance Packet***
  - A. File LDC-9-09, proposed amendment to Chapter 17.136, Conditional Use Permits of the Brookings Municipal Code, City initiated.
    - 1. Legislative public hearing
    - 2. Adopting Ordinance 09-O-641.
  - B. File LDC-10-09, proposed amendment to Chapter 17.124, Specific Standards Applying to Conditional Uses of the Brookings Municipal Code, City initiated.
    - 1. Legislative public hearing.
    - 2. Adopting Ordinance 09-O-640.
- VI. Public Comments – limit to **5 minutes per person**. Turn in completed **public comment form** before start of meeting or to the City Manager's office during regular business hours. Obtain forms at City Hall or at [www.brookings.or.us](http://www.brookings.or.us).**
- VII. Regular Agenda**
  - A. Continuation of appeal regarding use of a recreational vehicle at 241 Chetco Avenue. Planning/pg. 11
  - B. Installation of pedestrian signs at six City locations. *City Manager/Pg. 15*
  - C. Tower Lease Site Management Service agreement. *City Manager/Pg. 21*
- VIII. Consent Calendar**
  - A. Approval of Council Minutes for June 29 and July 13, 2009. *Pg. 37*
- IX. Remarks from Mayor and Councilors**
  - A. Mayor
  - B. Councilors
- X. Adjournment**

All public meetings are held in accessible locations. Auxiliary aids will be provided upon request with advance notification. Please contact 469-1102 if you have any questions regarding this notice.

# July 2009

July 2009							August 2009						
S	M	T	W	T	F	S	S	M	T	W	T	F	S
5	6	7	1	2	3	4	2	3	4	5	6	7	1
12	13	14	8	9	10	11	9	10	11	12	13	14	8
19	20	21	15	16	17	18	16	17	18	19	20	21	15
26	27	28	22	23	24	25	23	24	25	26	27	28	22
			29	30	31		30	31					29

Monday	Tuesday	Wednesday	Thursday	Friday	Sat/Sun
		July 1	2	3	4
		10:00am CC- Site Plan Com Mtg 7:00pm FH-PoliceReserves	3:00pm CC SafetyComMtg	July 4th - Closed (closest workday)	July 4th
					5
					8:00am
6	7	8	9	10	11
9:00am CC- VIPS/Volunteers in Police Service 4:00pm CC - Council Workshop 7:00pm FH-FireTng/ChShrp	FH - Fire Training 7:00pm CC - Planning Commission	10:00am CC- Site Plan Com Mtg 10:00am FH - Brookings Rural Fire Dept	9:00am CC-Crm Stoppers 1:00pm CC - Court 3:00pm CC Urban Renewal Advisory Committee		11:00am CC - SC Sportsman Assoc.
					12
13	14	15	16	17	18
7:00pm FH-FireTng/ChShrp 7:00pm CC-Council Mtg	FH - Fire Training	10:00am CC- Site Plan Com Mtg	3:00pm CC - Stout Park Subcomm		
					19
20	21	22	23	24	25
11:00am CC-VIPS/Volunteers In Police Service 7:00pm FH-FireTng/ChShrp	FH - Fire Training	10:00am CC- Site Plan Com Mtg	7:00pm CC-Parks & Rec		
					26
27	28	29	30	31	
7:00pm FH-FireTng/ChShrp 7:00pm CC-Council Mtg	FH - Fire Training	10:00am CC- Site Plan Com Mtg	8:00am CCIS training		

# August 2009

August 2009							September 2009						
S	M	T	W	T	F	S	S	M	T	W	T	F	S
2	3	4	5	6	7	1	6	7	1	2	3	4	5
9	10	11	12	13	14	15	13	14	15	16	17	18	19
16	17	18	19	20	21	22	20	21	22	23	24	25	26
23	24	25	26	27	28	29	27	28	29	30			
30	31												

Monday	Tuesday	Wednesday	Thursday	Friday	Sat/Sun
					August 1
					2
3	4	5	6	7	8
9:00am CC- VIPS/Volunteers in Police Service 4:00pm CC - Council Workshop 7:00pm FH-FireTng/ChShrp	FH - Fire Training 1:00pm CC - LDC 7:00pm CC - Planning Commission	10:00am CC- Site Plan Com Mtg 7:00pm FH-PoliceReserves	3:00pm CC SafetyComMtg 3:00pm FH - Stout Park Subcommittee		9
10	11	12	13	14	15
7:00pm FH-FireTng/ChShrp 7:00pm CC-Council Mtg	FH - Fire Training 1:00pm CC - LDC	10:00am CC- Site Plan Com Mtg 10:00am FH - Brookings Rural Fire Dept	9:00am CC-Crm Stoppers 1:00pm CC - Court 3:00pm CC Urban Renewal Advisory Committee		16
17	18	19	20	21	22
Let Joyce know... 9:00am CC-VIPS/Volunteers in Police Service 7:00pm FH-FireTng/ChShrp	FH - Fire Training 1:00pm CC - LDC 7:00pm CC - Planning Comm (TENT)	10:00am CC- Site Plan Com Mtg	3:00pm CC - Stout Park Subcomm		23
24	25	26	27	28	29
7:00pm FH-FireTng/ChShrp 7:00pm CC-Council Mtg	FH - Fire Training 1:00pm CC - LDC	10:00am CC- Site Plan Com Mtg	7:00pm CC-Parks & Rec		30
31					
7:00pm FH-FireTng/ChShrp					

# CERTIFICATE OF APPRECIATION

Awarded to

**Lauralee Gray**

For Ten Years of Dedicated Service to the  
Citizens of the City of Brookings.

Mayor Larry Anderson

City Manager, Gary Milliman

Honored this 27th day of July, 2009

STATE OF OREGON  
**PROCLAMATION**  
OFFICE OF THE GOVERNOR

**WHEREAS:** Code Enforcement Officers provide for the safety, health and welfare of the citizens in the community through the enforcement of the county or city's codes or ordinances dealing with such issues as building, zoning, housing, animal control, environmental and health and life safety; and

**WHEREAS:** Code Enforcement Officers often do not receive recognition for the job that they do in improving living conditions for residents and the appearance of neighborhoods; and

**WHEREAS:** Every day, assisted by support and program staff, they attempt to provide quality customer service to the public for the betterment of the community; and

**WHEREAS:** To many times, their success stories and ability to achieve corrective action goes unnoticed, even though code compliance has been accomplished due to their efforts and expertise; and

**WHEREAS:** Code Enforcement Officers are dedicated, well trained, and highly responsible individuals who take their jobs seriously and are proud of their office and the local governments which they serve; and

**WHEREAS:** The Oregon Code Enforcement Association, known as OCEA, has requested that the second week of August 2009 be set aside by local governments to honor and recognize their Code Enforcement Officers.

**NOW,**  
**THEREFORE:** I, Theodore R. Kulongoski, Governor of the State of Oregon, hereby proclaim  
**August 10-14, 2009** to be

**OREGON CODE ENFORCEMENT OFFICERS RECOGNITION WEEK**

in Oregon and encourage all Oregonians to join in this observance.

IN WITNESS WHEREOF, I hereunto set my hand and cause the Great Seal of the State of Oregon to be affixed.  
Done at the Capitol in the City of Salem in the State of Oregon on this day, March 5, 2009.



*Theodore R. Kulongoski*  
Theodore R. Kulongoski, Governor

*Kate Brown*  
Kate Brown, Secretary of State

## Joyce Heffington

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**From:** Jan [janmad@harborside.com]  
**Sent:** Wednesday, July 15, 2009 12:21 PM  
**To:** Joyce Heffington  
**Subject:** resignation from the Public Art Committee

To Whom it May Concern:

Please accept this as my formal resignation from the City of Brookings Public Art Committee.

Sincerely,

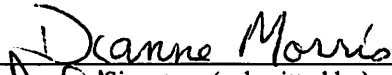
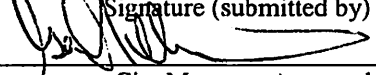
Janice L. Willms

# CITY OF BROOKINGS

## COUNCIL AGENDA REPORT

Meeting Date: July 27, 2009

Originating Dept: Planning

  
\_\_\_\_\_  
Signature (submitted by)  
  
\_\_\_\_\_  
City Manager Approval

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Subject: Appeal of Staff's interpretation of Brookings Municipal Code (BMC) 8.15.087, Temporary use of recreational vehicle (RV) or travel trailer on property located at 241 Chetco Avenue.

Recommended Motion: Motion to uphold Staff's interpretation of BMC 8.15.087.

Financial Impact: None

Background/Discussion: At the June 22, 2009 City Council meeting, an appeal of Staff's interpretation of BMC 8.15.087 was heard. Staff was instructed to research RV use in other cities and present to City Council on July 27, 2009.

Staff contacted several cities in the Rogue Valley and numerous coastal cities. The Rogue Valley cities, which included Medford, do not allow use of RV's for living quarters on private property. Most of the coastal cities have some provisions for temporary use. Several require conditional use permits to allow temporary use of RV's, and only during construction or as a hardship dwelling. This is the requirement in Curry County. Attachment A is a list of those contacted and their responses.

The Appellants argued that "developed" property means having water and sewer service available and therefore their property qualified for sleeping in their RVs temporarily. There are many vacant lots in the City that have water and sewer service available and by the Appellants interpretation would be able to site RVs as temporary sleeping quarters. Staff does not believe this is the community's vision for Brookings. RV park businesses would also be negatively impacted.

The Land Development Code Committee discussed the provisions of BMC 8.15.087 and felt some revision to the language to clarify that temporary RV use would require the RV to be located entirely on private property that is residentially zoned and developed **with a dwelling unit** would be appropriate.

Attachments: List of cities contacted and their responses.

## Temporary use of RV's as living quarters on private property

### **North Bend –**

Not allowed.

### **Florence –**

RV allowed for temporary use for 1 month with dwelling. Not allowed on vacant property.

### **Coos Bay –**

RV use not allowed except for a watchman during construction, requires permit and approval with 6 month limitation.

### **Medford –**

Not allowed.

### **Grants Pass –**

Not allowed.

### **Ashland –**

Code does not address the use, no complaints received in the past 6 years.

### **Tillamook –**

RV allowed for temporary use on property with a dwelling with a conditional use permit (CUP) under special circumstances. Not allowed on vacant property.

### **Lincoln City -**

Special zone where tiny lots were platted in the 1930's, typically 2500 sq ft (new lots in this zone require 5000 sq ft). Outright permitted use requires siting permit and the payment of SDCs with a maximum of 98 days of use in any calendar year. Not allowed in other zones.

### **Bandon –**

For property developed with a dwelling:

- One RV allowed for 7 days each quarter year without permit.
- One RV allowed with permit & fee limited to 90 days for medical emergency.
- One RV allowed for 1 month with permit & fee each calendar year.
- Water connection with backflow device, no sewer connection.

For vacant property:

- One RV allowed for property maintenance for 4 days each calendar quarter
- Permit with fee required for each visit
- RV can not be stored on property when not in use.
- Temporary use of owner occupied RV allowed during construction with permit and fee.

### **Curry County –**

RV use only allowed with CUP during construction of dwelling.




# CITY OF BROOKINGS

## COUNCIL AGENDA REPORT

Meeting Date: July 27, 2009

Originating Dept: City Manager

  
\_\_\_\_\_  
Signature (submitted by)  
\_\_\_\_\_  
City Manager Approval

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Subject: Pedestrian Signs

Recommended Motion:

Motion to authorize the Public Works Department to proceed with project to install pedestrian directional signs at six locations as outlined in the staff report.

Financial Impact:

Cost of the proposal would be paid for by an anonymous donor.

Background/Discussion:

An anonymous donor has offered to pay for the production and installation of six pedestrian directional signs. The signs would be located primarily along Chetco Avenue, with one also at Oak and Fir (see list). The signs would provide an arrow in the direction of walking destinations and would include the walking distance and approximate walking travel time.

This project would be an additional amenity for local residents and visitors who are interested in walking from the downtown area to visit parks and the port. Similar signs may be erected in the port area directing pedestrians to downtown.

Cost of the signs, including installation, is estimated at \$750.00.

The sign design would be a composite of the two attached renderings. A white arrow and image of a walking person would be added to the sign with the destination name, distance and walking time. Signs would be dark brown with white lettering.

The Urban Renewal Advisory Committee voted July 9 to support the proposal in concept and recommended that the project be reviewed 12 months following implementation.

Attachment(s): 1) List of sign locations.  
2) Rendering of proposed signs

## SIGN LOCATIONS

101 @ Constitution

- ✓ Azalea Park
- ✓ Port

101 @ Wharf

- ✓ Chetco Park
- ✓ Azalea Park
- ✓ Harris Beach

101 @ Oak

- ✓ Azalea Park
- ✓ Chetco Park
- ✓ Port

Oak @ Fir

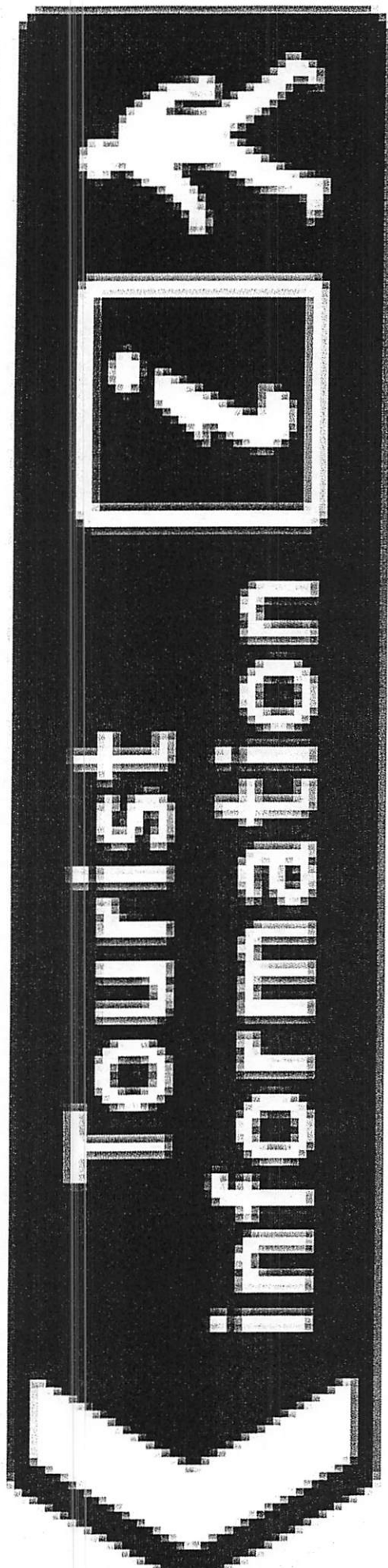
- ✓ Azalea Park

101 @ Fifth

- ✓ Chetco Park

101 @ Arnold

- ✓ Harris Beach



30 in

**Chetco Point Park**

**.3 miles / 10 min. walk**

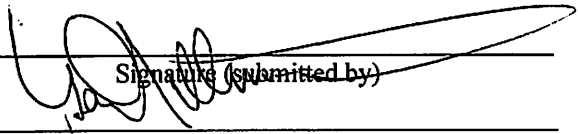
8 in

# CITY OF BROOKINGS

## COUNCIL AGENDA REPORT

Meeting Date: July 27, 2009

Originating Dept: City Manager

  
\_\_\_\_\_  
Signature (submitted by)  
\_\_\_\_\_  
City Manager Approval

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Subject: Tower Lease Marketing

Recommended Motion: Motion to authorize City Manager to execute agreement with Day Wireless for tower lease marketing and management services.

Financial Impact:

Contractor will receive 25 per cent of lease revenue from new, non-government users of communications tower as compensation for marketing and technical services.

Background/Discussion:

Technical assistance is needed in marketing and developing lease agreements with potential leasees of space on the City's communications tower. The City issued a request for proposals from companies that provide tower management services. Once proposal was received. The City Manager has had subsequent discussion with the company, Day Wireless, and has developed an agreement whereby Day Wireless will conduct marketing and management services for private sector leases of tower space. The City will directly handle leasing of space for public agency users. The fee for Day Wireless services will be 25 per cent of non-government lease revenue.

Attachment(s): Agreement with Day Wireless.

**City of Brookings**  
**SITE MANAGEMENT SERVICES CONTRACT**

**CONTRACT NO. 09-009**

This Contract is between the CITY OF BROOKINGS, a municipal corporation of the State of Oregon (City) and DAY WIRELESS SYSTEMS, (Contractor). The City's Project Manager for this Contract is City Manager Gary Milliman.

The parties mutually covenant and agree as follows:

**1. Effective Date and Duration.**

The term of this Contract shall be for a period of five (5) years, starting on \_\_\_\_\_, and expiring on \_\_\_\_\_, 2014. This Contract shall automatically renew and extend for five (5) additional five (5) year terms.

**2. Statement of Work.**

The work under this contract is for Site Management Services for Brookings Communications Tower. The statement of work, including the delivery schedule for the work, is contained in Exhibit A (Scope of Work). Contractor shall, at its own risk and expense, perform the work described and furnish all labor, equipment, materials and permits required for the proper performance of the work. The risk of loss for such work shall not shift to the City until written acceptance of the work by the City.

**3. Consideration.**

Third party communications equipment and associated accessories placed on or in the Premises shall be subject to a lease amount set by Contractor, with twenty five percent (25%) of the lease being paid to Contractor and seventy five (75%) of the lease being paid to Owner. Owner shall collect all money and send Contractor's portion on a quarterly basis.

In the event that Owner is unable to collect on an outstanding balance due to bad debt, bankruptcy or a legal dispute, Owner will receive from Owner a refund on any payments made to Contractor for the amount that was not collected.

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## CONTRACTOR DATA, CERTIFICATION, AND SIGNATURE

Business Name (please print): \_\_\_\_\_

Contact Name/Title: \_\_\_\_\_ Phone: \_\_\_\_\_

Fax: \_\_\_\_\_ E-Mail: \_\_\_\_\_

Address: \_\_\_\_\_

Federal Tax ID #: \_\_\_\_\_ -or- ☐ W-9 (attach) -or- SSN #: \_\_\_\_\_

State Tax ID #: \_\_\_\_\_ Brookings Bus  
Lic.# \_\_\_\_\_ CCB#: \_\_\_\_\_

Citizenship: Nonresident alien ☐ Yes ☐ No

Business Designation (check one): ☐ Individual ☐ Sole Proprietorship ☐ Partnership  
☐ Corporation ☐ Government ☐ Nonprofit

The above information must be provided prior to contract approval. Payment information will be reported to the Internal Revenue Service (IRS) under the name and taxpayer I.D. number provided above. (See IRS 1099 for additional instructions regarding taxpayer ID numbers.) Information not matching IRS records could subject you to 31 percent backup withholding.

I, the undersigned, understand that the Standard Terms and Conditions for Personal Services Contracts and Exhibits A, B, C and D are an integral part of this contract and agree to perform the work described in Exhibit A in accordance with the terms and conditions of this contract; certify under penalty of perjury that I/my business am not/is not in violation of any Oregon tax laws; and certify I am an independent contractor as defined in ORS 670.600

Signed by Contractor: \_\_\_\_\_  
Signature/Title Date

*NOTICE TO CONTRACTOR: This contract does not bind the City of Brookings unless and until the City Manager or Designee has executed it.*

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## CITY OF BROOKINGS SIGNATURE

Approved: \_\_\_\_\_  
City Manager or Designee Date

Approved: \_\_\_\_\_  
Project Manager Date

Reviewed: \_\_\_\_\_  
City Attorney or Designee Date

**CITY OF BROOKINGS**  
**STANDARD TERMS AND CONDITIONS FOR PERSONAL SERVICES CONTRACTS**

**1. Contractor is Independent Contractor**

a. Contractor shall perform the work required by this contract as an independent contractor. Although the City reserves the right (i) to specify the desired results; (ii) to determine (and modify) the delivery schedule for the work to be performed; and (iii) to evaluate the quality of the completed performance, the City cannot and will not control the means or manner of the Contractor's performance. The Contractor is responsible for determining the appropriate means and manner of performing the work.

b. The Contractor represents and warrants that Contractor (i) is not currently an employee of the federal government or the State of Oregon, and (ii) meets the specific independent contractor standards of ORS 670.600, as certified on the Independent Contractor Certification Statement attached as Exhibit D. Contractor represents and warrants that all subcontractors shall also meet such independent contractor standards.

c. Contractor will be responsible for any federal or state taxes applicable to any compensation or payment paid to Contractor under this contract.

d. Contractor is not eligible for any federal Social Security, unemployment insurance, state Public Employees' Retirement System, or workers' compensation benefits from compensation or payments to Contractor under this contract.

**2. Subcontracts and Assignment**

Contractor shall not subcontract any of the work required by this contract, or assign or transfer any of its interest in this contract, without the prior written consent of the City. Contractor agrees that if subcontractors are employed in the performance of this contract, the Contractor and its subcontractors are subject to the requirements and sanction of ORS Chapter 656, Workers' Compensation.

**3. No Third Party Beneficiaries**

City and Contractor are the only parties to this contract and are the only parties entitled to enforce its terms. Nothing in this contract give or provide any benefit or right, whether directly, indirectly, or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this contract.

**4. Successors in Interest**

The provisions of this contract shall be binding upon and shall inure to the benefit of the parties hereto, and their respective successors and approved assigns, if any.



## **5. Early Termination**

a. During any such renewal period as defined under Section 1, all terms and conditions of the initial Contract term shall remain in full force and effect. If no third party tenants are using the Premises at the end of any original or renewal period, either party shall have the right to terminate this Contract by giving ninety (90) days advance written notice to the adjoining party prior to the expiration of the then current term. If either party gives such notice then this Contract shall terminate on the expiration of the then current term.

b. Either the City or the Contractor may terminate this Contract in the event of a breach of the Contract by the other. Prior to such termination, however, the party seeking the termination shall give to the other party written notice of the breach and of the party's intent to terminate. If the Party has not entirely cured the breach within 15 days of the notice, then the party giving the notice may terminate the Contract at any time thereafter by giving a written notice of termination.

## **6. Payment on Early Termination**

a. If this contract is terminated under 5(a), the City shall pay the Contractor for work performed in accordance with the Contract prior to the termination date.

b. If this contract is terminated under 5(b), by the City due to a breach by the Contractor, then the City shall pay the Contractor as provided in subsection (a) of this section, subject to set off of excess costs, as provided for in section 7, Remedies.

## **7. Remedies**

a. In the event of termination under 5 (b), by the City due to a breach by the Contractor, then the City may complete the work either itself, by agreement with another contractor, or by a combination thereof. In the event the cost of completing the work exceeds the remaining unpaid balance of the total compensation provided under this contract, then the Contractor shall pay to the City the amount of the reasonable excess.

b. The remedies provided to the City under section 5 and section 7 for a breach by the Contractor shall not be exclusive. The City also shall be entitled to any other equitable and legal remedies that are available.

c. In the event of breach of this Contract by the City, then the Contractor's remedy shall be limited to termination of the Contract and receipt of payment as provided in section 5(b) and 6(b).

## **8. Access to Records**

Contractor shall maintain and the City (and its authorized representatives) shall have access to all books, documents, papers and records of Contractor which relate to this contract for the purpose of making audit, examination, excerpts, and transcripts for a period of three years after final payment. Copies of applicable records shall be made available upon request. Payment for cost of copies is reimbursable by the City.

## **9. Compliance with Applicable Law**

Contractor shall comply with all federal, state, and local laws, regulations, executive orders and ordinances applicable to the work under this contract, including without limitation, ORS 279A.120, ORS 279B.020, ORS 279B.220, ORS 279B.225, ORS 279B.230, and ORS 279B.235, as set forth on Exhibit B. Without limiting the foregoing, Contractor expressly agrees to comply with: (i) Titles VI and VII of the Civil Rights Act of 1964, as amended; (ii) Sections 503 and 504 of the Rehabilitation Act of 1973, as amended; (iii) the Americans with Disabilities Act of 1990, as amended; (iv) Executive Order 11246, as amended; (v) the Health Insurance Portability and Accountability Act of 1996; (vi) the Age Discrimination in Employment Act of 1967, as amended, and the Age Discrimination Act of 1975, as amended; (vii) the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended; (viii) ORS Chapter 659, as amended; (ix) all regulations and administrative rules established pursuant to the foregoing laws; and (x) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations. A condition or clause required by law to be in this contract shall be considered included by these references.

## **10. Indemnity and Hold Harmless**

a. Except for the professional negligent acts covered by paragraph 11.b., Contractor shall defend, save, hold harmless, and indemnify the City, its officers, agents, and employees from all claims, suits, or actions of whatsoever nature resulting from or arising out of the activities of Contractor or its officers, employees, subcontractors, or agents under this contract.

b. Contractor shall defend, save, hold harmless, and indemnify the City, its officers, agents, and employees from all claims, suits, or actions arising out of the professional negligent acts, errors, or omissions of Contractor or its officers, employees, subcontractors, or agents under this contract.

c. Contractor waives any and all statutory or common law rights of defense and indemnification by the city.

## **11. Insurance**

Contractor shall provide insurance in accordance with Exhibit C.

## **12. Waiver**

The failure of the City to enforce any provision of this contract shall not constitute a waiver by the City of that or any other provision.

## **13. Professional Standards; Errors**

Work under this Contract shall be performed in a good and workmanlike manner and in accordance with the highest professional standards of professionals doing similar work in the State of Oregon. At all times during the term of this Contract, Contractor shall be qualified, professionally competent, and duly licensed to perform the services. In addition to any other remedies, Contractor shall perform such additional work as may be necessary to correct errors in the work required under this contract without undue delays and without additional cost.

## **14. Governing Law**

The provisions of this contract shall be construed in accordance with the laws of the State of Oregon and ordinances of the City of Brookings, Oregon. Any action or suits involving any question arising under this contract must be brought in the appropriate court in Curry County, Oregon. If the claim must be brought in a federal forum, then it shall be brought and conducted in the United States District Court for the District of Oregon.

## **15. Severability**

If any term or provision of this contract is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the contract did not contain the particular term or provision held invalid.

## **16. Business License**

The Contractor shall obtain a City of Brookings business license as required by GRC 9.05.020 prior to beginning work under this contract. The Contractor shall provide a business license number in the space provided on page two of this contract.

## **17. Exclusions**

All public agency users are excluded from this Contract. If Owner desires Manager's assistance with public agency users Manager will bill Owner at a rate of \$125 per hour. Owner will provide Manager on an on-going basis with all applicable information on all public agency users installed or installing at the Premises so Manager can accurately manage the Premises and Owner agrees to coordinate such installations with Manager to avoid conflicts in installations, interference or any other complications.

## **18. Liens**

Manager shall have no power to do any act or to make any contract that may create or be the foundation for any lien, mortgage, or other encumbrance on any interest of Owner in the Premises.

## **19. Merger Clause**

THIS CONTRACT AND ATTACHED EXHIBITS CONSTITUTES THE ENTIRE AGREEMENT BETWEEN THE PARTIES. NO WAIVER, CONSENT, MODIFICATION OR CHANGE OF TERMS OF THIS CONTRACT SHALL BIND EITHER PARTY UNLESS IN WRITING AND SIGNED BY BOTH PARTIES. SUCH WAIVER, CONSENT, MODIFICATION OR CHANGE, IF MADE, SHALL BE EFFECTIVE ONLY IN THE SPECIFIC INSTANCE AND FOR THE SPECIFIC PURPOSE GIVEN. THERE ARE NO UNDERSTANDINGS, AGREEMENTS, OR REPRESENTATIONS, ORAL OR WRITTEN, NOT SPECIFIED HEREIN REGARDING THIS CONTRACT. BY ITS SIGNATURE, CONTRACTOR ACKNOWLEDGES IT HAS READ AND UNDERSTANDS THIS CONTRACT AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

## **EXHIBIT A SCOPE OF WORK**

This Site Management Scope of Work, hereafter referred to as the "Scope of Work" is for the purpose of the management of a communications facility, and associated land and/or equipment shelters belonging to the City of Brookings (Owner), by Day Wireless Systems (Manager). The site, commonly known as Brookings Communications Tower, (Premises), is located at 898 Elk Drive, Brookings, Oregon.

### ***Section 1. Manager's Responsibility***

Manager shall manage the Premises and is authorized to license or sublease to others the right to install, operate, and maintain communication equipment and antennas in areas designated by Manager. Manager shall use due diligence and good faith in licensing and subleasing to protect the site and to maximize the revenues under this Scope of Work.

Manager shall offer consultation to Owner regarding issues in which the Owner is negligent in its responsibilities as a communications facility owner. At no time does Manager accept responsibility for any such neglect or failure to respond to Manager's suggestions. Such issues include government or regulatory requirements, such as Electromagnetic Emission compliance, FAA requirements, FCC tower identification procedures, and local or federal safety requirements.

Manager shall make efforts to market or advertise the Premises to potential new tenants. Both parties hereby agree that a variable cost is associated with such actions, and that the Manager will have the ability to decide what efforts are cost effective and which are not. Under no circumstances will there be any additional cost to the Owner without prior approval.

Manager will negotiate and execute agreements with tenants.

Manager shall provide technical assistance with the Premises, including resolution of interference problems and intermodulation studies (if necessary) on new tenants. Manager will also offer consultation regarding technical or structural problems with the Premises. Examples of such problems may include items such as grounding requirements, ice bridges, cable trays, control systems or any other components necessary for the site users to effectively use the Premises.

Manager shall not allow the mounting, installation, wiring or relocating of any equipment not belonging to Owner or controlled by Manager on the Premises without written permission of Owner.

### ***Section 2. Owners Responsibility***

Owner shall be responsible for all normal site maintenance and operational expenses. As used herein, "normal site maintenance and operational expenses" include, but is not limited to, utility

payments, insurance costs, building repairs, lights, heat, ventilation, storm drainage, vandalism, tower inspections and adjustments. Owner shall also be responsible for any landowner fees such as taxes, site rent and user charges by any third party landowners.

Owner shall perform any administrative functions required by all subleases of the Premises. Such administrative functions include billing, collections, accounts receivable, renewals and addendums.

Owner shall be responsible for any capital expenditures such as site expansion, tower upgrades, or building modifications.

Owner shall provide space for Manager owned or controlled equipment on the Premises and such equipment shall be governed under a separate agreement. Such space shall include building and tower space and shall not be considered as revenue generating equipment. In the same respect, any Owner-controlled equipment shall not be subject to a revenue split.

### ***Section 3. Access***

Owner shall permit Manager unrestricted access to the Premises and will provide the necessary keys and or codes for Manager and future tenants. Manager is hereby granted the ability to allow access, at no additional charge, for any parties necessary to accommodate the needs of any current or future site tenants.

### ***Section 4. Additional Requirements***

Any notices, communications, or demands to be given hereunder shall be in writing and sent by certified or registered mail addressed as follows:

**To Owner:**                      **City of Brookings  
City Manager  
898 Elk Drive  
Brookings, OR 97415**

**To Manager:**                **Day Wireless Systems  
P.O. Box 22169  
Milwaukie, OR 97269  
Attn: Sites Department**

Either party hereto may, from time to time, by notice to the other, designate a different address that shall be substituted for the addresses specified above.

## **EXHIBIT B**

### **OREGON STATUTORY PROVISIONS**

A condition or clause required by law to be in this contract shall be considered included by these references.

#### **REQUIRED STATUTORY PROVISIONS**

##### **ORS 279B.220 Conditions concerning payment, contributions, liens, withholding.**

Every public contract shall contain a condition that the contractor shall:

- (1) Make payment promptly, as due, to all persons supplying to the contractor labor or material for the performance of the work provided for in the contract.
- (2) Pay all contributions or amounts due the Industrial Accident Fund from the contractor or subcontractor incurred in the performance of the contract.
- (3) Not permit any lien or claim to be filed or prosecuted against the state or a county, school district, municipality, municipal corporation or subdivision thereof, on account of any labor or material furnished.
- (4) Pay to the Department of Revenue all sums withheld from employees under ORS 316.167.

##### **ORS 279B.225 Condition concerning salvaging, recycling, composting or mulching yard waste material.**

Every public contract for lawn and landscape maintenance shall contain a condition requiring the contractor to salvage, recycle, compost or mulch yard waste material at an approved site, if feasible and cost-effective.

##### **ORS 279B.230 Condition concerning payment for medical care and providing**

##### **workers' compensation.**

(1) Every public contract shall contain a condition that the contractor shall promptly, as due, make payment to any person, copartnership, association or corporation furnishing medical, surgical and hospital care services or other needed care and attention, incident to sickness or injury, to the employees of the contractor, of all sums that the contractor agrees to pay for the services and all moneys and sums that the contractor collected or deducted from the wages of employees under any law, contract or agreement for the purpose of providing or paying for the services.

(2) Every public contract shall contain a clause or condition that all subject employers working under the contract are either employers that will comply with ORS 656.017 or employers that are exempt under ORS 656.126.

##### **ORS 279B.235 Condition concerning hours of labor.**

(1) Except as provided in subsections [5 and 6] of this section, every public contract subject to this chapter must contain a condition that a person may not be employed for more than 10 hours in any one day, or 40 hours in any one week, except in cases of necessity, emergency or when the public policy absolutely requires it, and in such cases, except in cases of contracts for personal services designated under ORS 279A.055, the employee shall be paid at least time and a half pay:

- (a) (A) For all overtime in excess of eight hours in any one day or 40 hours in any one week when the work week is five consecutive days, Monday through Friday; or

(B) For all overtime in excess of 10 hours in any one day or 40 hours in any one week when the work week is four consecutive days, Monday through Friday; and

(b) For all work performed on Saturday and on any legal holiday specified in ORS 279B.020.

(2) An employer must give notice in writing to employees who work on a public contract, either at the time of hire or before commencement of work on the contract, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week that the employees may be required to work.

(3) In the case of contracts for personal services as described in ORS 279A.055, the contract shall contain a provision that the employee shall be paid at least time and a half for all overtime worked in excess of 40 hours in any one week, except for individuals under personal services contracts who are excluded under ORS 653.010 to 653.261 or under 29 U.S.C. 201 to 209 from receiving overtime.

\*\*\*\*\*

(5)(a) \*\*\*\*\* [C]ontracts for services must contain a provision that requires that persons employed under the contracts shall receive at least time and a half pay for work performed on the legal holidays specified in a collective bargaining agreement or in ORS 279B.020 (1)(b)(B) to (G) and for all time worked in excess of 10 hours in any one day or in excess of 40 hours in any one week, whichever is greater.

(b) An employer shall give notice in writing to employees who work on a contract for services, either at the time of hire or before commencement of work on the contract, or by posting a notice in a location frequented by employees, of the number of hours per

day and days per week that the employees may be required to work.

(6) This section does not apply to public contracts:

\*\*\*\*\*

(c) For goods or personal property.

## **OTHER STATUTORY PROVISIONS**

### **ORS 279A.120 Preference for Oregon goods and services; nonresident bidders.**

(1) As used in this section:

(a) "Nonresident bidder" means a bidder who is not a resident bidder.

(b) "Resident bidder" means a bidder that has paid unemployment taxes or income taxes in this state during the 12 calendar months immediately preceding submission of the bid, has a business address in this state and has stated in the bid whether the bidder is a "resident bidder" under this paragraph.

\*\*\*\*\*

(3) When a public contract is awarded to a nonresident bidder and the contract price exceeds \$10,000, the bidder shall promptly report to the Department of Revenue on forms to be provided by the department the total contract price, terms of payment, length of contract and such other information as the department may require before the bidder may receive final payment on the public contract. The contracting agency shall satisfy itself that the requirement of this subsection has been complied with before the contracting agency issues a final payment on a public contract.

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## **STATUTORY REFERENCES OF INTEREST**

ORS 279B.020 Maximum hours of labor on public contracts; exceptions; liability to workers; rules.



**EXHIBIT C**  
**PERSONAL SERVICES CONTRACT INSURANCE REQUIREMENTS**

**To:** Insurance Agent. Please provide Certificates of Insurance to the project manager. During the term of the contract, please provide Certificates of Insurance prior to each renewal.

During the term of this contract, Contractor shall maintain in force at its own expense all insurance noted below:

**Workers Compensation** insurance in compliance with ORS 656.017. All employers, including Contractor, that employ subject workers who work under this Contract in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage, unless such employers are exempt under ORS 656.126. Contractor shall ensure that each of its subcontractors complies with these requirements. Contact City of Brookings Risk Management at 503-618-2451 if exempt.

☐ **Professional Liability** (*Check Here if Required*) insurance with a combined single limit of not less than \$1,000,000 for each claim, incident, or occurrence. This is to cover damages caused by error, omission, or negligent acts related to the professional services to be provided under this contract. The coverage must remain in effect for two years after the contract is completed.

**Commercial General Liability** insurance, on an occurrence basis, with a combined single limit of not less than \$1,000,000 for each occurrence of bodily injury, personal injury and property damage. It shall include coverage for broad form contractual liability; broad form property damage; personal and advertising injury; owners and contractor protective; premises/operations; and products/completed operations. Coverage shall not exclude excavation, collapse, underground, or explosion hazards.

**Commercial Automobile Liability** insurance with a combined single limit, or the equivalent of not less than \$1,000,000 each accident for Bodily Injury and Property Damage, including coverage for owned, hired and non-owned vehicles. "Symbol One" coverage shall be designated.

**Notice of Cancellation or Change.** There shall be no cancellation, material change, reduction of limits or intent not to renew the insurance coverage(s) without 30 days written notice from the Contractor or its insurer(s) to the City. This notice provision shall be by endorsement physically attached to the certificate of insurance.

**Additional Insured.** For general liability insurance and automobile liability insurance the City, and its agents, officers, and employees will be Additional Insureds by endorsement, but only with respect to Contractor's services to be provided under this contract. This coverage shall be by endorsement physically attached to the certificate of insurance.

**Certificates of Insurance.** Contractor shall furnish insurance certificates acceptable to City prior to commencing work. The certificate will include the deductible or retention level and required endorsements. Insuring companies or entities are subject to City approval. If requested, copies of insurance policies shall be provided to the City. Contractor shall be responsible for all deductibles, self-insured retention's, and/or self-insurance.

**EXHIBIT D**  
**CERTIFICATION STATEMENT FOR INDEPENDENT CONTRACTOR**

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**I. INDEPENDENT CONTRACTOR STANDARDS**

As used in ORS chapters 316, 656, 657, 671 and 701, "independent contractor" means a person or business entity that provides services for remuneration and who, in the provision of the services, meets the following criteria of ORS 670.600.

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**II. BASIC REQUIREMENTS**

1. The Contractor is free from direction and control over the means and manner of providing the services, subject only to the right of the City to specify the desired results;
  2. The Contractor is customarily engaged in an independently established business;
  3. The Contractor is licensed under ORS chapter 671 or 701 if the person provides services for which a license is required under ORS chapter 671 or 701; and
  4. The Contractor is responsible for obtaining other licenses or certificates necessary to provide the services.
- 

**III. ADDITIONAL REQUIREMENTS**

For purposes of Section II above, a person is considered to be customarily engaged in an independently established business if any three of the following requirements are met:  
**(Check three or more of the following:)**

\_\_\_\_\_ The Contractor maintains a business location:  
(a) That is separate from the business or work location of the person for whom the services are provided; or  
(b) That is in a portion of the person's residence and that portion is used primarily for the business.

\_\_\_\_\_ The Contractor bears the risk of loss related to the business or the provision of services as shown by factors such as:  
(a) The person enters into fixed-price contracts;  
(b) The person is required to correct defective work;  
(c) The person warrants the services provided; or  
(d) The person negotiates indemnification agreements or purchases liability insurance, performance bonds or errors and omissions insurance.

\_\_\_\_\_ The Contractor provides contracted services for two or more different persons within a 12-month period, or the person routinely engages in business advertising, solicitation or other marketing efforts reasonably calculated to obtain new contracts to provide similar services.

\_\_\_\_\_ The Contractor makes a significant investment in the business, through means such as:

- (a) Purchasing tools or equipment necessary to provide the services;
- (b) Paying for the premises or facilities where the services are provided; or
- (c) Paying for licenses, certificates or specialized training required to provide the services.

\_\_\_\_\_ The Contractor has the authority to hire other persons to provide or to assist in providing the services and has the authority to fire those persons.

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#### **IV. INDEMNIFICATION**

If any action is taken by a person or enforcement agency relating to the independent contractor status of Contractor or Contractor's subcontractors in connection with this contract, Contractor shall defend, hold harmless and indemnify the City of Brookings, its elected and appointed officials, employees, volunteers and agents from any such action, claim, judgment, fine, penalty, or order to pay. Contractor shall pay any additional costs incurred by the City in defending such action or incurred as a result of such action. This indemnification is in addition to any indemnification otherwise in this agreement.

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#### **V. CERTIFICATION**

Contractor and Project Manager certify that the above statements are true and correct.

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Contractor Signature

Date

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Project Manager Signature

Date

**MINUTES**  
**City of Brookings**  
**SPECIAL COUNCIL MEETING**

Brookings City Hall Council Chambers  
898 Elk Drive, Brookings, Oregon 97415

**Monday, June 29, 2009**

**Call to Order**

Mayor Anderson called the special Council meeting to order at 5:31pm.

**Roll Call**

Council Present: Mayor Larry Anderson, Councilors Hedenskog, Gordon, Kitchen and Pieper; a quorum present.

Staff Present: City Manager Gary Milliman, Administrative Services Director Janell Howard, Fire Chief Bill Sharp and Chief Water Treatment Plants Operator Ray Page.

Other Present: Curry Coastal Pilot Reporter Scott Graves and approximately 30 public.

**Budget Hearings/Resolutions**

The public hearing was opened in the matter of Resolution 09-R-918, adopting a supplemental Budget for FY 2008/2009. There were no public comments and the hearing closed.

Director Howard generally stating that the financing of the tower was the major expenditure in the 2008-2009 Supplemental Budget.

**Councilor Hedenskog moved, a second followed and Council voted unanimously to adopt Resolution 09-R-918, adopting a Supplemental Budget for FY 2008-2009.**

The public hearing was opened in the matter of Resolution 09-R-923, approving appropriations transfers for FY 2008-2009. There were no public comments and the hearing closed.

Director Howard generally stated that appropriations transfers under Resolution 09-R-923, were were housekeeping items from the previous fiscal year budget.

**Councilor Pieper moved, a second followed and Council voted unanimously to adopt Resolution 09-R-923, approving appropriation transfers for FY 2008-2009.**

The public hearing was opened in the matter of Resolution 09-R-919. There were no public comments and the hearing closed.

**Councilor Hedenskog moved, a second followed and Council voted unanimously to adopt Resolution 09-R-919, declaring the City of Brookings' election to receive State revenues for FY 2009-2010.**

The public hearing was opened in the matter of Resolution 09-R-920, adopting the City of Brookings Budget, declaring tax levied and making appropriations for the FY 2009/2010, and to categorize the levy.

Public comments were received from the following:

Pat Sherman, PO Box 1140, Brookings, generally commented on the importance of the budget given the current state of the economy and the increases in fees and taxes and City salaries. In particular Sherman remarked that wages could be frozen, Planning Department staffing could be cut and/or consolidated, the City Recorder function could be returned to the Finance Director, the Council could go without laptops and the reserve fund could be reduced to 8% to save money

and suggested that Council take another look at the budget and do more cutting. Sherman also introduced written testimony for the record [on file with the Agenda Packet].

Harold Thiesen, 1223 Barkley Lane, Brookings, stated that he had lived in Brookings for 36 years and served on the Budget Committee for over 20 years. Generally, Thiesen commented that seniors are losing 50-75% of their income and didn't think it was fair that City salaries were being increased. Thiesen suggested that the City cut salaries and use volunteers to do the work if City employees quit due to wages being frozen. Thiesen also commented that the City should have made arrangements to deal with the current economic downturn.

Larry Aslinger, 439 Buena Vista, Brookings, asked if any employee was receiving more than a 20% salary increase and generally remarked that if the City was planning to give any employee a 20% increase, this was extremely excessive, no matter the position, and that increases of even 5% were excessive.

John Johnson, 632 Hassett Street, Brookings, generally urged Council to take a good look at their actions on the budget, specifically as regards increasing taxes and fees while people were scratching to get by in order to retain credibility with the public.

All public comments having been heard, Mayor Anderson closed the hearing.

Generally, Mayor Anderson, stated that the budget process had been a difficult one; Council had "...spent a long time in dealing with how to figure out how to pay our bills," including rate reviews during at least three workshops and three budget meetings; the 3% Cost of Living Increase (COLA) was negotiated last year during Union negotiations in which both general and police unions participated; there had not been a 20% increase in any employee's salary; salaries had been understated in the last budget; and pending development projects will require the expertise of the Planning and Building Departments in the near future. Mayor Anderson further stated that prior to the last Council, water rates had not been raised in 18 years, and when the rates were finally increased, a Consumer Price Index (CPI) annual adjustment was also adopted.

City Manager Milliman generally stated that Council had elected to apply the 3% COLA negotiated for the unions to non-union employees; the budget reflects the 3% COLA and a 5% step increase available to many employees; the City Recorder position was reclassified last year at a rate of around 10%; and the City Manager position was budgeted to receive the same COLA and contracted 5% performance increase that all other employees receive.

Director Howard generally confirmed the Mayor's statement that the total increase in the staff salary line item had indeed been understated in the previous budget as \$127,000 when in fact it was \$145,000.

Councilor Hedenskog generally stated that Council had agreed to the City Manager's proposal to reclassify Joyce Heffington as City Recorder because, while the AS Director held the title of City Recorder, Heffington had been doing the work and should be paid accordingly.

Councilor Gordon generally stated that the topic of consolidating City and County Planning Departments had been discussed in the past, and had been discontinued due to concerns regarding how the County would handle City matters.

Generally, Councilor Pieper stated that his main contention with the budget was the increasing amount of funds being transferred to the General Fund from fees collected under the water and wastewater accounts, particularly the 4% termed as a "franchise fee;" the general disconnect the budget had with Main Street; and non-union employees receiving the 3% COLA increase negotiated for union employees.

Councilor Hedenskog generally stated that he had considered the same issues as Councilor Pieper, but had resolved his issues with this budget, while discussing with Council what could be done prior to the next budget process.

Generally, Councilor Gordon stated that, despite numerous meetings, public participation had been minimal, with no major concerns expressed. He further stated that Council worked hard to make sure that the budget was balanced, and that City employees work hard to provide the public the services they require.

Mayor Anderson generally commented that while he was personally feeling the situation on Main Street as much as anyone, the budget process, with one unfilled position on the committee, had been extensive and difficult, and encouraged those attending to participate in future budget processes prior to the matter coming to a vote before Council.

**Councilor Gordon moved, a second followed and Council voted to adopt Resolution 09-R-920, the City of Brookings Budget, declaring tax levied and making appropriations for the FY 2009/2010, and to categorize the levy, with a "No" vote from Councilor Pieper.**

#### **Rates, Fees & Charges/Resolutions**

Public comments under this item were as follows:

Judy Kaplin, 441 Buena Vista Loop, Brookings, generally commented that she appreciated Councilor Pieper for understanding that residents do not have the income to pay fees that keep getting added on and that it doesn't make sense that City employees are getting 8-10% increases.

Tim Patterson, 621 Chetco, Brookings, generally commented that while he didn't agree with everything in the budget, he was very impressed with the budgeting process that had taken place. Patterson also commented that he hoped Council would work on the Harbor Sanitary issue, increasing the amount they are paying before next year's budget process; look into the "science of the dewatering project," stating that spending \$2 million on this project seemed unnecessary; look at the increases imposed per EDU for some uses which seem very high, suggesting that the number of classes on the commercial side could be decreased. Patterson also thanked Council for their effort during a difficult process.

Mayor Anderson generally stated that while the practices that led to current Harbor Sanitary District fees are under review, the District is paying the amounts required of them by agreement. Mayor Anderson further stated that since the sewer bond was originally passed, the state legislature changed the rules, not the City; that the City has to comply with these legislative changes while meeting its obligations; and that after reviewing the rate study, Council determined that the increase should be across the board rather than imposed upon any one group.

Director Howard generally stated that the rates in Resolution 09-R-924, adopting water rates, fees and charges for FY 2009-2010, included the 5.2% rate increase as approved by the Budget Committee.

**Councilor Kitchen moved, a second followed and Council voted to adopt water rates, [fees and charges] for FY 2009-2010 with a "No" vote from Councilor Pieper.**

Director Howard generally stated that the 8.6% increase in sewer rates, fees and charges for FY 2009-2010 under Resolution 09-R-925, were as approved in the budget.

**Councilor Kitchen moved, a second followed and Council voted to adopt sewer rates, [fees and charges] for FY 2009-2010, with a "No" vote from Councilor Pieper.**

Director Howard generally stated that Resolution 09-R-926, reflected a decrease in System Replacement fees for 2009-2010, based on the CPI-U.

**Councilor Kitchen moved, a second followed and Council voted unanimously to adopt Resolution 09-R-926, adopting System Replacement fees for 2009-2010.**

**Adjournment**

Councilor Gordon moved, a second followed and Council voted unanimously by voice vote to adjourn at 6:29pm.

A meeting of the Urban Renewal Agency immediately followed.

Respectfully submitted:

ATTESTED:

this \_\_\_\_\_ day of \_\_\_\_\_ 2009:

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Larry Anderson, Mayor

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Joyce Heffington, City Recorder

**MINUTES**  
**City of Brookings**  
**Common Council Meeting**  
Brookings City Hall Council Chambers  
898 Elk Drive, Brookings, Oregon 97415  
**Monday, July 13, 2009, 7:00 p.m.**

Prior to the regular meeting, Council met in Executive Session at approximately 6:12 pm in the City Manager's office under the authority of **ORS 192.660(2)(d)** to deliberate with the City Manager as the person designated by the City Council to carry on labor negotiations. In attendance were Mayor Anderson, Councilor Hedenskog, Gordon and Kitchen, and City Manager Gary Milliman. The meeting ended at approximately 6:32 pm.

**Call to Order**

Mayor Anderson called the meeting to order at 7:00pm.

**Roll Call**

Council Present: Mayor Larry Anderson, Councilors Hedenskog, Gordon, and Kitchen; a quorum present. Councilor Pieper was absent.

Staff Present: City Manager Gary Milliman, Public Works Director John Cowan, Administrative Services Director Janell Howard, and City Recorder Joyce Heffington.

Other Present: Curry Coastal Pilot Reporter Arwyn Rice and approximately 5 public.

**Ceremonies/Appointments/Announcements**

Mayor Anderson proclaimed July 17-18 as Relay for Life weekend and the week of July 13<sup>th</sup> as Southern Oregon Kite Festival Week.

Mayor Anderson announced July Yard of the Month Awards as follows:

- Yard of the Month – William and Dolores Zimmerman, 1125 Boyer Court
- Most Improved – Mike and June Batty, 870 Third Street
- Commercial Property –Doug Nidiffer, C&K Market, Inc., 615 Fifth Street

**Regular Agenda**

Director Cowan reviewed the staff report on the contract award for the Fifth Street Improvements Contract.

**Councilor Kitchen moved, a second followed and Council voted unanimously to award the contract for the Fifth Street Improvement Project to Tidewater Contractors, Inc., as the lowest responsible bidder, in the amount of \$110,355.**

Director Howard briefly reviewed the staff report regarding a joint agreement with the County for consulting services in reference to the renegotiation of our franchise agreement with Charter Communications, which is due to expire in 2010.

**Councilor Hedenskog moved, a second followed and Council voted unanimously to authorize the City Manager to enter into agreement with Curry County and MuniCom to renegotiate cable franchise fees.**

City Manager Gary Milliman reviewed the staff report regarding Request for Proposals for City Attorney Services.

**Councilor Kitchen moved, a second followed and Council voted unanimously to direct the City Manager to issue the Request for Proposals for City Attorney services and advertise accordingly.**



**Consent Calendar**

- Approval of Council Minutes for June 22, 2009.
- Acceptance of Parks and Recreation Minutes for April 23 and May 28, 2009.

**Councilor Hedenskog moved, a second followed and Council voted unanimously to approve the Consent Calendar as written.**

**Adjournment**

**Councilor Gordon moved, a second followed and Council voted unanimously by voice vote to adjourn at 7:15pm.**

Respectfully submitted:

ATTESTED:

this \_\_\_\_\_ day of \_\_\_\_\_ 2009:

\_\_\_\_\_  
Larry Anderson, Mayor

\_\_\_\_\_  
Joyce Heffington, City Recorder

*July 27 packet*

July 23, 1 2009

City of Brookings  
898 Elk Drive  
Brookings, OR 97415

ATTN: City Manager of Brookings

Dear, Joyce Heffington, assistant to the City Manager of Brookings

Please foreword this letter to City Council members, City Manager and Planning Dept. staff members.

We received the agenda for the Common Council Meeting, July 27, 2009, 7:00 p.m., the City of Brookings council agenda report, attachment A (Temporary use of RV's as living quarters on private property) and the Minutes of the Common Council Meeting, June 22, 2009.

**NOTE: The word "Development" is in BMC Definitions 17.08.040. The phrase "developed Property" is not defined in the BMC Definitions 17.08.040.**

In the Council Minutes dated, June 22, 2009 the word "Development" is used in place of the phrase "developed Property" several times, which compounds the ambiguity of BMC 815.087 that states (in part): A recreational vehicle or travel trailer may be used for temporary sleeping purposes within the city of Brookings provided that the recreational vehicle or travel trailer is located entirely on residentially zoned and developed private property.

The Brookings council agenda report included a motion to The City Council.

Recommended Motion: Motion to uphold Staff's interpretation of BMC 8.15.087.

We believe their motion is premature, unless: 1. The City Manager and the Planning Dept. fulfill Councils request as stated in the Council Minutes dated, June 22, 2009.

2. The Land Development Code Committee suggestion to revise to include, **with a dwelling unit**, is approved.

If a revision of the BMC 8.15.087 were to be approved, would a "Grandfather Clause" be appropriate? We have been utilizing our private property under BCM 8.15.087 for more than ten (10) years. An example of "Grandfather clause", Chapter 17.28 C. (in part): Single-family dwellings, provided the building permit applicant or the applicant's spouse, parent, child or sibling purchased the property prior to August 13, 1998.

Why did the City Manager and the Planning Dept. choose not the address all of the concerns and comment that were included in the Council Minutes, June 22, 2009?

The Brookings council report does not address the City Councils approved minutes, dated June 22, 2009 which states:

1. Councilor Hedenskog moved, a second followed and Council voted to extend the abatement, request staff to review the wording and see if it's possible to make an exception and continue the decision on the appeal to the July 27, 2009 City Council meeting, with a "nay" vote from Councilor Kitchen.

The following are concerns and comments of the Councilor:

1. Councilor Pieper generally stated that while he wants to uphold the code, it lacks a definition for "development", ("developed property") and his definition is that water, sewer, curb,gutter,etc., constitutes "development", ("developed property").

2. Councilor Gordor generally stated the he agreed with the City Manager, and said that, in absence of a firm definition, he chooses to see the property as not developed.

3. Councilor Hedenskog generally agreed with Councilor Gordon but stated that he would like to make an exception in this instance, due to its particular circumstance as large parcel in the City's suburbs. Hedenskog further stated that any definition of "development" ("developed property") should define specific exceptions based on factors such as oversized lots with unique settings.

4. Mayor Anderson generally stated the he did not want to make accommodations for anyone and asked what other cities are doing.

5. After much discussion, Council generally agreed to extend the abatement to allow staff an opportunity to research the subject and look at what other cities are doing, how they are handling this issue and how they define "development" ("developed property").

Why didn't the staff inquire of the contacts in Attachment A, their definition of "developed property", or did they inquire? Please answer.

Why would the staff, make a motion to up hold Staff's interpretation of BMC 8.15.087. 80% of the concerns and discussion of the Council demonstrate that an ambiguity exist in the current written word and additional words, "without a dwelling", needed to be added to the BMC to serve a Notice to Abatement.

At the June 22, 2009 we failed to consider the abatement notice for BMC 17.28 Multiple-Family Residential (R-3) District. All of the sections deal with requirement of the land use. Section 17.28.010 Purpose, 17.28.020 Permitted uses, 17.28.030 Accessory uses, 17.28.040 Conditional uses, 17.28.050 Minimum lot area and dwelling density, 17.28.060 Lot width, lot coverage and yard requirements, 17.28.070 Maximum building height, 17.28.080 Signs, 17.28.090 Parking, 17.28.100 Manufactured housing siting, requirements, 17.28.110 Other required conditions.

The Section that covers our present use is 17.28.030 Accessory uses, paragraph C. Boats trailers, pick-up campers, motor homes and similar equipment may be stored, but not occupied, except as provided for temporary sleeping purposes in BMC 8.15.087, on a lot in a "R" district; provided that:

1. Parking and storage shall be at least five feet from the front property line and at least three feet from a street and interior side or rear lot line; except, however, no storage shall be allowed within 20 feet of the corner along both property lines at a street corner;
2. All areas used for storage of such vehicle/equipment shall be paved or a graveled hard surface. [Ord. 08-O-614 | 2; Ord. 89-O-446 | 1.]

There is no mention of any building or dwelling in this section. Please remove the Abatement Notice based on this section.

Thank you,

Lloyd Bendickson  
49 Jack Nicklaus Rd.  
Medford, OR 97504  
(541) 773 2534 Home  
(541) 944 3772 Cell

Dennis Sullivan  
1985 Rossanley Dr  
Medford, OR 97501  
(541) 772 3837 Home  
(541) 821 1989 Cell