



McCleary City Council

AGENDA

February 11, 2015

7:00 City Council Meeting

Flag Salute
Roll Call
Public Hearings:
Public Comment:

Minutes: (Tab A)
Mayor's Report/Comments:

Staff Reports: Dan Glenn, City Attorney (Tab B)
Todd Baun Staff Report (Tab C)
Staff Reports (Tab D)

Old Business:

New Business: International Property Maintenance Ordinance (Tab E)

Ordinances: ATV Ordinance (Tab F)
Astound WAVE Broadband Ordinance (Tab G)

Resolutions:

Vouchers
Mayor/Council Comments
Public Comment
Executive Session
Adjournment

Americans with Disabilities Act (ADA)
Accommodation is Provided Upon Request

Please Turn Off Cell Phones – Thank You

The City of McCleary is an equal opportunity provider and employer.
La ciudad de McCleary es un proveedor de igualdad de oportunidades y el empleador.

CITY OF MCCLEARY
Regular City Council Meeting
Wednesday, January 28, 2015

ROLL CALL AND FLAG SALUTE	Councilmember's Reed, Schiller, Catterlin, Ator and Peterson.
ABSENT	Mayor Dent was absent. Mayor Pro Tem Ben Ator Chaired the meeting.
STAFF PRESENT	Present at the meeting were Todd Baun, Wendy Collins, George Crumb, and Dan Glenn.
PUBLIC COMMENT	Gary Atkins asked what is the City Council's goals this year to make money so we don't have all the animosity. Councilmember Catterlin said his goal is to finish the police negotiations and then work with Wendy and Todd to take the surplus of money we would have and figure out ways of how to lower the sewer and water rates.
MINUTES APPROVED	It was moved by Councilmember Peterson, seconded by Councilmember Reed to approve the minutes from the January 14, 2015 meeting. Motion Carried 4-0.
CITY ATTORNEY REPORT	Dan Glenn
MAYOR'S COMMENTS	None.
DIRECTOR OF PUBLIC WORKS REPORT	None.
GHCOG REPRESENTATIVE	Mayor Dent had chosen Todd Baun to be the Grays Harbor Council of Governments representative for the City of McCleary. He will attend meetings and bring information back to the Mayor and Council. Councilmember Schiller believes it is important to have an elected official volunteer to attend meetings as well so he volunteered himself to attend various meetings and functions along with Mr. Baun. Chris Vessey said he used to attend these meetings when he was on the Council and believes it is a good organization. Members from every City in the County along with County Commissioners and Port Commissioners attended. All subjects involving Grays Harbor County are discussed.
HB 162 ATV VEHICLES	<p>This was discussed at a City of Montesano meeting. One thing to note is motorcycles are not required to have insurance covering the operation of the vehicles and neither will ATV users. If the Council were to authorize the use and found it to be a problem, the Ordinance can be repealed. Unlike a zoning permit, it would not be a vested. It would be allowed as long as we have an Ordinance in place. Councilmember Schiller recently discovered South Bend allows ATV/s and wanted to know if Chief Crumb has spoken to anyone from there to find out if it is working well for them and Chief Crumb said he had not. Dan Glenn suggested Chief Crumb contact Chief Vance to review a power point presentation he has that is very informative. Councilmember Schiller would like Chief Crumb to also talk to South Bend. Dan Glenn will provide a draft Ordinance to review.</p> <p>Councilmember Catterlin asked Chief Crumb if he pulled over 100 people in a month, what percentage of those would not have insurance. Chief Crumb said probably 30 percent would not have insurance. He feels a little reluctant about approving them at this time. Councilmember Schiller would like to see the City work with they County to research a possible route to the ORV park so quad riders could drive directly there from McCleary.</p> <p>No action taken. Tabled.</p>
CHILDREN'S ADVOCACY AGREEMENT	It was moved by Councilmember Catterlin, seconded by Councilmember Schiller to authorize the Mayor to sign the annual Children's Advocacy Agreement for 2015. Motion Carried 4-0.
BPA REVISION NO. 1 TO EXHIBIT H SETTLEMENT	Last year the Council decided not to sign the settlement from BPA because the Grays Harbor County PUD hadn't come up with a settlement. They finally settled with BPA and now McCleary is the only one that has not signed it. There are no fees involved. It was moved by Councilmember Schiller, seconded by Councilmember Reed to authorize the Mayor to sing the Revision No. 1 to Exhibit H of McCleary FY 2012-2028 Power Sales Contract. Motion Carried 4-0.

ASTOUND NETWORKS WAVE BROADBAND FRANCHISE ORDINANCE DISCUSSION	Paul Nott is reviewing the franchise agreement. The only change Dan Glenn pointed out is the fact they will be using our power poles. Paul is checking on the Grays Harbor PUD's setup and Dan will research if the city can impose a pole fee and possibly business tax. Tabled.
APPROVAL OF VOUCHERS	Accounts Payable vouchers/checks approved were 39059 - 39114 including EFT's in the amount of \$301,906.37 and 39115 - 39125 including EFT's in the amount of \$19,249.04. It was moved by Councilmember Reed, seconded by Councilmember Peterson to approve the vouchers. Motion Carried 4-0.
EXECUTIVE SESSION	At 7:22 PM, Councilmember Schiller made a motion for a ten minute executive session per RCW 42.30.110 Paragraph (f) To receive and evaluate complaints or charges brought against a public officer or employee. However, upon the request of such officer or employee, a public hearing or a meeting open to the public shall be conducted upon such complaint or charge. The executive session ended at 7:32 PM. No action was taken.
PUBLIC COMMENT	None.
MEETING ADJOURNED	It was moved by Councilmember Peterson, seconded by Councilmember Reed to adjourn the meeting at 7:32 pm. The next meeting will be Wednesday, February 11, 2015 at 7:00 pm. Motion Carried 4-0.

MEMORANDUM

TO: MAYOR AND CITY COUNCIL, City of McCleary
FROM: DANIEL O. GLENN, City Attorney
DATE: February 6, 2015
RE: LEGAL ACTIVITIES as of FEBRUARY 11, 2015

THIS DOCUMENT is prepared by the City Attorney for utilization by the City of McCleary and its elected officials and is subject to the attorney-client privileges to the extent not inconsistent with laws relating to public disclosure.

1. **ASTOUND BROADBAND COMMUNICATIONS FRANCHISE DRAFT:**

I have received a response from Astound's counsel in relation to the draft franchise ordinance I provided to them for their review. I have provided the information to Ms. Collins, Mr. Nott, and Mr. Baun for their review and comment.

Basically, the company appears to have no significant problems with the draft. They would like a term of 15 years subject to renewal. As to fees, in a manner which is consistent with the City's pattern in terms of other utilities, they are proposing that the concept of a "franchise fee" be deleted and that we utilize the gross revenue tax capped at the statutory maximum of 6%. Based upon their discussion, the downside is they are not anticipating generating any revenue from business within the corporate limits for some time. Also, it may become an interesting question at one stage as to what constitutes doing business. However, over time that may change.

In any event, upon receipt of the comments and suggestions from your staff members, I will prepare a final draft for your formal consideration.

2. **INTERNATIONAL PROPERTY MAINTENANCE CODE:**

Mr. Mercer, as the Building Official/Code Enforcement Officer, and Chief Crumb, in his role as head of the City's Police Department, are faced with the task of dealing with properties which are not being properly maintained or utilized. This can result from the time it takes to clear ownership upon a property in

foreclosure/forfeiture or simply through neglect. Currently, the enforcement is through alleging violations of Zoning or Nuisance provisions of the Municipal Code or, sometimes, the criminal code. Several weeks ago in discussing this same issue at a meeting with Oakville's Mayor and other staff members, their Building Official referenced the potential applicability of the International Property Maintenance Code as an enforcement tool. He indicated that, at a meeting of building officials, it had been mentioned as a Uniform Code which provides specific provisions handling the entire area.

As a result, I undertook some general research and confirmed that a number of governmental entities within the State have adopted it and have found it useful. I discussed the matter with Mr. Mercer who indicates he is aware of the Code and actually has a copy of it. However, while the City has adopted a number of the International Codes approved by the State Building Code Council, this is not one of them. Thus, it can not be used since it is not currently adopted.

With the hope of the Code providing a more direct method of dealing with these issues, I have provided for review by Staff a draft ordinance which would adopt the Code and make clear that its provisions, when applicable, preempt certain other provisions of the Code. After I receive comments or suggestions from Staff, I will prepare a final draft for your review and consideration. Hopefully it will become a useful tool to move forward in this area.

3. ENHANCED ATV ROAD USE ORDINANCE DRAFT: Pursuant to the discussion at the last meeting of the Council, I have prepared and provided to Chief Crumb and Director Baun a draft ordinance for their review. If adopted, it would authorize the operation of the ATVS equipped as required by the provisions of the statutory provisions now in the State MTO upon any street within the City which has a speed limit of 35 mph or less.

As to the latter matter, it is my understanding the statute would allow you to designate certain streets upon which the ATVs could not be operated. Of course, it would require the posting of signs disclosing that prohibition. I have also included a section which would allow the issuance of a notice of infraction to any owner who allows the operation of an ATV on the street who does not meet the requirements (age and licensing.)

Chief Crumb indicated he has put together a notebook of information on this issue. I am certain it is available for review by any of you who would like to do so. As an additional resource, I am attaching a multi-page PowerPoint presentation developed, I believe, by the South Bend Police Department.

MEMORANDUM - 2

CITY OF McCLEARY
100 SOUTH 3RD STREET
McCLEARY, WASHINGTON 98557

Although I am not a great admirer of PowerPoint presentations, this one does provide you a neat and understandable summarization of the requirements of the Act, although a couple of the points are difficult to read.

4. **FRANCHISE REVIEW**: I would note that the matter of Astound's request for a franchise ordinance has raised to our attention the appropriateness of reviewing the current status of several other franchises, including the telephone company. An associated issue is the process by which the City charges companies such as the telephone and cable providers for utilizing the City's Light and Power poles. While Astound, since it will be undergrounding its lines, would not be involved, it appears there has not been such a review in some time. Thus, Mr. Nott, Mr. Baun, Ms. Collins, and myself have the unanticipated task of reviewing the existing grants of right of use and resolutions/ordinances establishing pole use fees. Upon completion, we will be back to you.

As always, this is not meant to be all inclusive. If you have any questions or comments, please direct them to me.

DG/le.



HOUSE BILL 1632

OFF-ROAD VEHICLES

(Passed by the House June 28, 2013)
 (Passed by the Senate June, 29, 2013)
 (Approved by the Governor July 3, 2013)
 (Filed in Office of Secretary of State July 3, 2013)
 (Effective 7-28-2013)

Cover Page

Reason for changes:

- Off-road users have been overwhelmed with confusing rules, regulations and ordinances from federal, state, county and city land managers throughout the state.
- Standardization Statewide Laws
- Maintain public safety Statewide
- Good order Statewide

Reason for changes:

- To increase safe, legal and environmentally acceptable motorized recreation.
- Funds for signage, education and enforcement of motorized recreation activities.

Page 1 & 2

This is the Ref Page in the House Bill Packet

Reason for changes:

Stimulate rural economy by opening certain roadways.

- Gasoline Lodging
- Food & Drinks
- Other entertainment purposes


Page 2

Definitions
(with heading to this chapter)

HIGHWAY: The entire width between the boundary lines of every roadway publicly maintained by Department of Transportation, county or city.

A highway is generally capable of travel by a conventional two-wheel drive passenger vehicles during most of the year.

Page 3




Definitions
(only applies to this chapter)

Non-HIGHWAY: Road owned or managed by public agency, a **primitive road** or any private road that the owner has granted an easement for public use.


Page 7

Definitions
(only applies to this chapter)




Primitive Road: Linear roads managed for use by four-wheel drives or high-clearance vehicles that are generally **NOT** maintained or paved. Designation is done by county or local city ordinance.


Page 4




Definitions
(only applies to this chapter)




Direct Supervision: Supervising adult must be in a position, on another wheeled all-terrain vehicle or specialty off-highway vehicle within reasonable distance of the unlicensed operator.



Page 6




Definitions
(only applies to this chapter)



Wheeled All-Terrain Vehicle: Any motorized non-highway vehicle with handlebars that are 50" or less in width, has a seat height of at least 20", weighs less than 1500 pounds, and has 4 tires having a diameter of 30" or less.


Page 7




Registration

Any Wheeled all-terrain vehicle operated within this state must display a metal tag affixed to the rear of the vehicle.

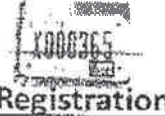
Similar to a motorcycle license plate.



Page 7



Registration



Metal tags are the same size as a motorcycle license plate with the word "RESTRICTED VEHICLE" at the top of the plate.

Page 8



Registration

Metal tags – Bottom left corner of tag is reserved for OFF-ROAD tab.



At this time DOI is issuing the same ORV stickers that have date in the past for OFF-Road. This is the number law enforcement uses.

Page 8



Registration

Metal tags – Bottom right corner of tag is reserved for ON-ROAD tab.



Page 9

Registration



A person who operates a wheeled all-terrain vehicle upon a public roadway **MUST** have a current and proper ON-ROAD vehicle registration (TAB).

Can't be for commercial use.

Page 8

Driver's License Required



A person may not operate a wheeled all-terrain vehicle upon a public roadway without having a valid driver's license issued to Washington State residents. RCW 46.20 or a valid Driver's license issued from another state.

Page 9

Wheeled All-Terrain Vehicle



A person who operates a wheeled all-terrain vehicle is granted all rights and is subject to all duties applicable to the operator of a motorcycle.

Page 9



Rules Restriction




Any person violating the rules commits a traffic infraction and may be issued an infraction and/or citation.

Page 9



Training

The Department of Licensing may develop and implement  an online training course for persons that register wheeled all-terrain vehicles and Utility-type vehicles for use on a public roadway.

Page 8



Rules



- Persons may operate a wheeled all-terrain vehicle upon any public roadway with a speed limit of **35 MPH** or less.

Page 9



Rules Restriction

- Wheeled all-terrain vehicle are not allowed on State Highways listed in RCW 47.17.

Listed:

State Route 101
State Route 105
State Route 6



Page 10

Rules Restriction

(HOWEVER)



A person MAY operate a wheeled all-terrain vehicle upon a segment of a state highway listed in RCW47.17 if the segment is within the limits of a city or town and the speed limit is **35 MPH** or less.

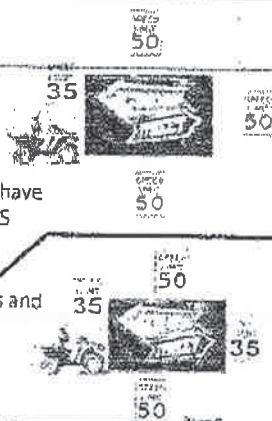


Page 11

Rules Restriction

- Wheeled all-terrain vehicle are **NOT** allowed to cross State highways that have speed limits in excess of 35 MPH.

Unless the crossing begins and ends on a public roadway with a speed limit 35 MPH or less.



Page 12



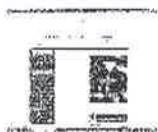
Rules Restriction



Legislative body of a county or city may by ordinance designate roadways or highways within its boundaries to be legal and unsuitable for use by wheeled all-terrain vehicles.

Page 13

Rules Restriction



Unsuitable roadways must be listed publicly and made accessible from the main page of the county web site.

Page 10

Rules Restriction

A person may not operate a wheeled all-terrain vehicle on a public roadway within the boundaries of a city or town unless the city or town by ordinance has approved the operation of wheeled all-terrain vehicles on city or town roadways.

Page 10



Any public roadways authorized by a legislative body of a city or town **MUST** list publicly and made accessible from the main page of the city or town web site.

Page 10

Rules Restriction



Local authorities may **NOT** establish requirements for the registration of wheeled all-terrain vehicles.

Page 10



High Beam
Low Beam

Equipment Requirements

RCW 46.37.030 Visibility Distance and RCW 46.37.040 Headlights when in motion.



Page 11



Equipment Requirements

RCW 46.37.525 One Tail lamp when in motion.


Page 11

Equipment Requirements

RCW 46.37.200 A stop lamp.



Page 11



Equipment Requirements

RCW 46.37.060 Reflectors.



Page 11

Equipment Requirements

RCW 46.37.200 Turn signals required if operating after the hours of darkness.

Page 11





Left Turn Slow/Stop Turn Right Turn

Equipment Requirements


RCW 46.61.310 Signal by hand and arm or signal lamps.

Page 11



Equipment Requirements

ORV's must have a mirror attached to either the right or left side handlebar.




Mirrors

Page 11

Equipment Requirements


RCW 46.34.400 A utility type vehicle MUST have two mirrors. One on the outside on the right and one either inside or on the left side. RCW 46.37.400



Page 11

Equipment Requirements


RCW 46.37.530(1)(b) Windshield must be installed unless the operator wears glasses, goggles or a face shield while operating the vehicle.



Page 13

Equipment Requirements


RCW 46.37.380 A horn or warning device.



Page 14

Equipment Requirements


RCW 46.09.470 Spark arrester and muffling device.



Page 15

Equipment Requirements

RCW 46.37.510 Utility-Type vehicles seatbelts.



Page 16

Equipment Requirements

RCW 46.37.351 Brakes must be in good working condition.

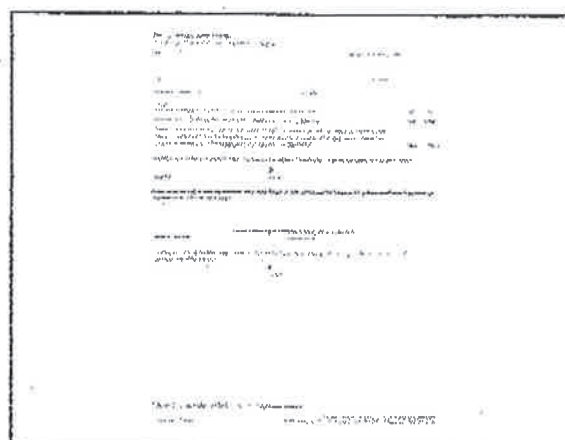
Page 17

Declaration Requirements

Documentation of a safety inspection completed by a licensed wheeled all-terrain vehicle dealer or a licensed auto repair shop.



Page 18



Declaration Requirements

Documentation of a safety inspection.

Must outline the vehicle information and certify under oath that wheeled all-terrain vehicle meets requirements outlined in state and federal law.

Page 12

Declaration Requirements

Documentation of a safety inspection.

A person who makes a false statement regarding the inspection of equipment is guilty of False Swearing RCW 9A.72.040.

Page 13

Declaration Requirements

Documentation of a safety inspection.

Wheeled all-terrain vehicle inspection should not be more than \$50.


Page 14

Declaration Requirements

Documentation of a safety inspection.

A vehicle identification number verification must be completed by a licensed wheeled all-terrain vehicle dealer or repair shop.

Page 15





Declaration Requirements

Liability Release

A release signed by the owner of the wheeled all-terrain vehicle and verified by the department, county auditor or other agent that releases the state from any liability and outlines that the owner understands that the original wheeled all-terrain vehicle was not manufactured for ON-ROAD use and that it has been modified for use on public roadways.



Page 12

Infraction

Any law enforcement officer may issue a notice of traffic infraction for a violation whether or not the infraction was committed in the officer's presence.



Page 13

Infraction

As long as there is reasonable evidence presented that the operator of the wheeled all-terrain vehicle committed the violation.



Page 13

Infraction

At a minimum, the evidence must include the related time and location the violation occurred and the wheeled all-terrain vehicle metal tag number or description of the vehicle


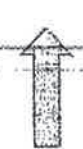
Page 13

Ordinances

City, town or county may regulate the operation of non-highway vehicles on public lands, streets, roads or highways within its boundaries by adopting regulations or ordinances.

Page 13

Ordinances

Regulations can not be less stringent then the provisions of this chapter.

Page 14



Definition

For the purpose of this section, "OFF-Road Vehicles" does not include Wheeled all-terrain vehicles.

Page 14



Decals

Off-road vehicle will be issued a registration, excluding wheeled all-terrain vehicles. Decals serve the same function as license plates for vehicles registered under RCW 46.16A.

Page 15



Decals



The Department of Licensing will issue metal tags, off-road vehicle registrations and on-road vehicle registrations for wheeled all-terrain vehicles.

Page 15



ORV

The application for an original or renewal ORV registration has the same requirements as described for original vehicle registrations in RCW 46.16A.040 and must be accompanied by the annual off-road vehicle license fee.

Page 15

ORV

The owner of an ORV must within 15 days of taking possession of the ORV transfer the registration with the Department of Licensing.

Page 15




ORV



Department of Licensing will issue an ORV registration, decal and tabs upon payment.


Page 15



ORV

The ORV registration **MUST** be carried on the vehicle for which it was issued at all times during operation in this state.
**** Registration will be changed to a "modified on-road" registration.**


Page 15



ORV

ORV decals **MUST** be affixed to the OFF-ROAD vehicle in a manner prescribed by the Department of Licensing.


Page 16



ORV

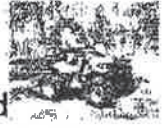
Out of State: Operators comply with this chapter and **MUST** obtain an ORV registration and decal or a temporary ORV use permit.

Page 17




ORV

ORV registrations and decals are **NOT** required for vehicles owned and operated by the United States, Municipality, agricultural and timber land owners.




Page 18



ORV



ORV registrations and decals are **NOT** required for vehicles owned by a resident of another state. This exemption applies only to the extent that a similar exemption or privilege is granted under the laws of that state.

Page 19

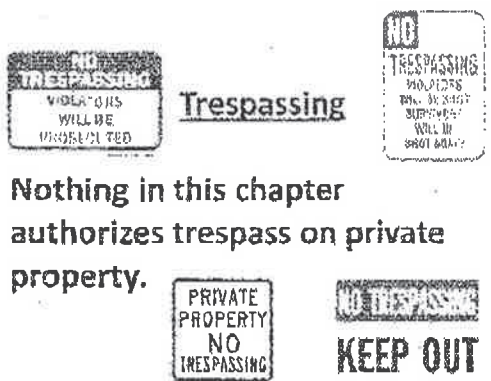


ORV

ORV registrations and decals are **NOT** required for vehicles used as emergency vehicles. (sample: search and rescue or law enforcement agency.)


Page 20



Trespassing

Nothing in this chapter authorizes trespass on private property.

Page 12



Age Requirements

No one under the age of 16 years old may operate an OFF-ROAD vehicle on or across a highway or non-highway without "direct supervision" (16 years old and in possession of a valid license to operate a motor vehicle.)

Page 12

Pacific County/Raymond/South Bend


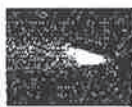
- DIRECT SUPERVISION IS NOT ALLOWED ALL RIDERS MUST HAVE A VALID DRIVER'S LICENSE.

Page 12

Infractions

It is a traffic infraction to operate a Wheeled All-Terrain vehicle:

- In a manner as to endanger the property of another;
- On lands not owned by the operator without a lighted headlight and taillight between the hours of dusk and dawn.

Page 12

Infractions



It is a traffic infraction to operate a Wheeled All-Terrain vehicle:

- On lands not owned by the operator without an adequate braking device.
- Without a spark arrester.

Page 12

Infractions

It is a traffic infraction to operate a Wheeled All-Terrain vehicle:


- Without an adequate muffling device that reduces the noise to less than 86 decibels on an "A" scale at 50 feet.

Page 12

Infractions

It is a traffic infraction to operate a Wheeled All-Terrain vehicle:

- On lands not owned by the operator as to unreasonably expose the underlying soil or create an erosion condition.
- In a manner to damage trees, growing crops or other vegetation.




Page 19

Infractions

It is a traffic infraction to operate a Wheeled All-Terrain vehicle:

- On lands not owned by the operator when these are restricted to pedestrian or animal travel.




Page 19

Infractions

It is a traffic infraction to operate a Wheeled All-Terrain vehicle:

- On public lands in violation of rules and regulations of the agency administering such lands.





Page 19

DUI

It is a misdemeanor for any person to operate any non-highway vehicle while under the influence of intoxication liquor or a controlled substance.

RCW 46.09.470(2)





Page 20

Infractions

It is NOT a traffic infraction to operate a Wheeled All-Terrain Vehicle:

- That is properly outfitted with seat belts and roll bars (enclosed passenger compartment).
Helmet is not required.




Page 20

Infractions

It is a traffic infraction to operate a Wheeled All-Terrain vehicle:

- Without upon his or her head a motorcycle helmet fastened securely while in motion.

DOT HELMETS




Page 20

RCW 46.37.530 Motorcycle Helmet

NEW

Infractions

It is **NOT** a traffic infraction to operate a Wheeled All-Terrain vehicle:



- Helmet required does **NOT** apply on operators own land.

Page 20


**Off-Road Vehicle - \$18 Initial
\$18 Renewal**

**Wheeled all-terrain vehicle -
(ON-Road) \$12 Initial
\$12 Renewal**

**Wheeled all-terrain vehicle -
(OFF-Road) \$18 Initial
\$18 Renewal**

Page 21 & 22

QUESTIONS / COMMENTS



STAFF REPORT

To: Mayor Dent
From: Todd Baun, Director of Public Works
Date: February 6, 2015
Re: Current Non-Agenda Activity

City Accident Prevention Program

I have been working on writing a Safety and Accident Prevention Program for City personnel. We are required to do this as an L&I requirement. I have been getting a lot of help from all departments and I will have a draft out by the end of the week.

Family Thank You

My family and I would like to thank everyone for their help and support during the recent loss of my brother Ross Baun. This is a great community and the support was overwhelming. I am truly blessed with the city staff and McCleary fire department. They sacrificed their time and effort to help my family throughout this difficult time. We will forever be grateful. Again from the bottoms of all my families hearts, Thank You.

STAFF REPORT

To: Mayor Dent
From: Colin Mercer
Date: February 4, 2015
Re: January Building Department

Activities

- Submit copies of permits issued to Grays Harbor County Assessor's Office.
- High Definition Homes 1493 N Summit Road is in the finishing stage.
- The Beehive has received insulation approval and is in the drywall stage.
- 116 S 4th Street waiting for owner to complete the project.
- 216 E. Cedar St. – permit has been approved but not paid for and picked up.
- 108 Summit Place Dr. Garage conversion to Day Care is in the finishing stage.
- 221 W Spruce St has been issued a Placement Permit for a wood storage accessory structure.

Nuisance Issues in Progress

- 525 W Maple, tenants do not have active utility services, working with bank and City Attorney to restore services or evict occupants.
- 695 N Summit Rd. was notified about garbage scattered around the front yard visible from the road.
- 335 S 2nd St. was notified to preform vegetation maintenance on the lot to the South, and remove the junk boat.
- 413 S 3rd St. property owner was notified to remove from view the junk vehicle in the rear yard visible from Main St.
- 107 W Hemlock property owner was notified to remove junk on the porch and viewable from the street and to install address numbers.
- 221 S. Main St conditions have not improved and the incident has been forward to the Police for citation.
- 727 W Ash St, letter sent to remove metal items being stored in the City Right of Way.
- 343 S 1st St. letter has been sent to occupant and property owner regarding excessive amount of junk vehicles.
- 137 S 3rd St, shop operator has been notified to remove the junk van from the property and is in talks with the Police Department regarding assistance with the forms and process to do so.

Nuisances Resolved

- 695 N Summit Rd. cleaned up the garbage.

Conservation Program

Month	Applications Received	Conservation Permits Issued	Rebates Paid This Month	Total Rebates Paid To Date
December	0	0	\$1,582.80	\$22,320.80
January	0	0	\$0.00	\$22,320.80

Conservation Update:

The Energy Smart Grocer program has completed a project for Sam's Food Mart to install new LED lights in the reach in coolers for a total of \$2,400.00. The remaining balance for energy smart projects is \$27,600.00.

Building Department Activity

ACTIVITY	MONTHLY TOTALS	YEAR TO DATE TOTALS	ACTIVITY EXPLANATION
Customer Service	22	22	Answer building department related questions in person or by phone, meeting with potential applicants.
Building Permits Issued	1	1	Remodels, new construction & additions, both residential and commercial.
Plan Reviews Performed	0	0	Reviewing plans for building code and municipal code compliance.
Inspections Performed	8	8	Field inspections, writing of corrections or approving work.
Finals or Certificates of Occupancies	0	0	Performing of the final inspection & issuing of certificate of occupancy allowing use of the structure.
Complaints Received	0	0	Investigate and address citizen or staff reported issues, obtain resolution or acceptable compromise.
Nuisance Letters Sent	7	7	Formal notice from the City informing citizens of violations and providing expectation of the City for compliance.
Lemay's Garbage Letters Sent	3	3	Formal notice from City after notification from Lemay that service has been stopped.
Building Department Revenue	\$89.00	\$89.00	Funds generated by the Building Department from permits, inspections, reviews etc.

Comments:

STAFF REPORT

To: Mayor Dent
From: Paul Nott, Light & Power
Date: February 5, 2015
Re: January Report



	Monthly Statistics;	YTD Totals;
New Services;	0	0
System Outages;	0	0
Pole Replacements;	0	0
Maintenance Work Orders;	2	2
Billable Work Orders;	0	0

The month of January has consisted of repairing the remaining street lights in Summit II. The Light and Power crew was inspected by the Department of Labor and Industries which is a typical inspection. We have been working on some corrections and procedural requirements that we currently don't have. There are also other facility corrections that we are currently working on and will continue until completed. We are also assisting the WWT plant crew with an electrical design issue at the lift stations. We are still waiting for a response from L&I in regards to correcting the issue.

We have also been working with Shayne and GHPUD to complete the Simpson metering. Once complete, the City will be able to utilize the system for retrieving the data for billing purposes for Simpson and Simpson will be able to retrieve load profiling data via the internet.

As always if you have any questions feel free to contact us...

In case of a power outage, please contact:

Light and Power Department 360-495-4533
City Hall 360-495-3667
Dispatch Non-Emergency 360-533-8765

Staff Report for McCleary Police Department

To: Mayor Dent
From: George M. Crumb, Chief of Police
Date: Friday, February 6, 2015
RE: For February 11, 2015 Council Meeting

SUMMARY OF POLICE INCIDENTS / ACTIVITIES:

The below listed information are calls or contacts received by McCleary Police Officers either generated by Grays Harbor County dispatch 911 service, citizen reports, call in reports, citizen contacts, US mail, or other officer generated incidents.

0220 Incident histories reported this year as of time of this report. As of 15:19 hours 020115.
(1986 Incident Histories in 2014)

00-Assault(s)	00-Noise Complaints
00-Agency Assist(s)	00-No Valid Operator's License (NVOL)
00-Alcohol Offense	00-Police Information-, Protection Order Scv-
00-Audible Alarm	00-Public Works Assist
01-Abandon Vehicle	01-Parking Complaint
00-Animal Complaint	00-Police Referral
02-Burglary	00-Speeding Stops
00-Curfew Violation	00-Speed in School Zone
00-Citizen Dispute	00-Suspicious Person-/Vehicle-/Circumst-
00-Civil	00-Subject Stop
01-Court Order Violation	00-Sex Offense-0/Sex Offen Add Confirmation-
03Citizen Assist	00-Suicide-0/Suicide Attempt-0
00-DWLS	00-Traffic Offense-/Reckless-0/Hazard-
00-DUI	02-Theft Reports/Vehicle-(Shop lifter-)
01-Disorderly Conduct	00-Traffic Accident
02-Drug Incidents (VUCSA)	00-Traffic Stop
00-Death Report(s)	00-Trespass
01-Domestic Violence/Verbal/Mal Mis.	00-Vehicle Prowl-0/Prowler-0
00-Extra Patrol Request	00-Vehicle Lockout Assist-/Disabled-
00-Fire Responses	03-Warrant Confirmation
00-Found/Lost Property Report(s)	00-Warrant Search
01-Fraud/01-Firearm Compl-	01-Warrant Arrest
00-Harassment-	00-Welfare Check
00-Insurance Violation(s)	00-Weapons Offense
01-Juvenile Problem/Run-a-way	00-911 Open Line or Hang Up
00-Motorist Assist	00-No classification-, or Unknown Problem-
00-Malicious Mischief	01-Threats by Phone-
01-Missing Person	

Incomplete numbers, will have police clerk on line shortly

Discussion: Open.

Council Members Present: ALL.... Mr. Catterlin-Position 1, Mr. Reed-Position 2,
Mr. Peterson-Position 3, Mr. Schiller-Position 4,
Mr. Ator-Position 5.

Mayor Dent: Present / Not Present _____

Officer Reporting: Chief Crumb _____

STAFF REPORT

To: Mayor Dent
From: Kevin Trehwella, Water & Wastewater manager
Date: February, 4, 2015

During the month of February our day to day operations, at both the Waste Water Treatment and the Water Treatment Plant, were very good.

At the Cedar Heights Lift Station we have a seal leak on one of the pumps, we are looking at cost of repair vs. replacement. While looking into the pump we found very poor workmanship when the electrical hookups were installed. We are working with our city engineer to redesign the electrical box so that in the future it will be accessible for any person to work on.

STAFF REPORT

To: Mayor Dent
From: Colin Mercer Webmaster
Date: February 2, 2015
Re: January Website

Re-Occurring Website Activities

- Council Agenda/Packet posted online.
- Council Minutes posted online.

New Website Activity

- Create and post 2015 Organization Chart
- Post 2015 Holidays
- Create new form for “Tell us what you think” to eliminate spam submissions.
- Post notice of possible website interruptions during GOV Office Maintenance.
- Update and upload the new Conservation Registered Contractors List.

Additional Tasks

- Create safety forms for hazard assessment.

Website Comments:

- None this month

Website Traffic January 1, 2015 through January 31, 2015 (Top visited pages shown only)

Section	Page Views	Percent of Total
Default Home Page	4155	38.3%
Events Calendar	508	4.68%
Agendas and Minutes	432	3.98%
Conservation Program	399	3.68%
Utilities	353	3.25%
City Jobs	334	3.08%
City Departments	256	2.36%
Mayor and Council	205	1.89%
Bear Festival	178	1.64%
Public Facilities	159	1.47%
Municipal Code	152	1.4%
Police	149	1.37%
Previous Years Council Minutes	139	1.28%
City Forms & Documents	129	1.19%

ORDINANCE NO. _____

AN ORDINANCE RELATING TO GOVERNMENTAL OPERATION, ADOPTING THE INTERNATIONAL PROPERTY MAINTENANCE CODE BY REFERENCE, AMENDING CERTAIN SECTIONS THEREOF, ADDING NEW SECTIONS TO CHAPTER 15.04 OF THE MUNICIPAL CODE; PROVIDING FOR AN EFFECTIVE DATE AND SEVERABILITY.

R E C I T A L S:

1. The City has previously adopted various uniform codes and ordinances relating to the construction and maintenance of structures within the City.

2. The Council and Mayor have been made aware that a number of structures within the City have been allowed to deteriorate to such a degree as to require repeated actions by the Code Enforcement Officer and the Police Department. Some of these properties are apparently subject to the pendency of forfeiture proceedings by the lenders having the secured interest while the owners or occupants of others have simply not maintained them.

3. It has been brought to the attention of the Council and Mayor that, while the City has not previously adopted the International Property Maintenance Code, provisions of that Code would be beneficial in dealing with issues of maintenance of structures within the City in a more effective manner than the current provisions of the City's Code.

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02/04/2015
DG/le

CITY OF McCLEARY
100 SOUTH 3RD STREET
McCLEARY, WASHINGTON 98557

NOW, THEREFORE, BE IT ORDAINED AS FOLLOWS BY THE CITY COUNCIL OF THE CITY OF McCLEARY:

SECTION I: The International Property Maintenance Code (the IPMC), as published by the International Code Council, as now existing within its 2012 edition or hereafter amended or succeeded, is adopted with the exceptions set forth in Section II.

SECTION II: In the implementation and administration of the IPMC, the following provisions shall apply:

A. References to the Board of Appeals in Section 111 shall be deemed to refer to the Hearing Examiner system of Chapter 2.30 MMC.

B. Subsection 301.3, Vacant buildings and land, is repealed in its entirety and replaced by the following:

301.3 Vacant Buildings. All vacant buildings and premises thereof must comply with this Code. Vacant buildings shall be maintained in a clean, safe, secure, and sanitary condition as provided herein so as not to cause a blighting problem or otherwise adversely affect the public health, safety, or quality of life.

301.3.1 Appearance. All vacant buildings must appear to be occupied, or appear able to be occupied with little or no repairs.

301.3.2 Security. All vacant buildings must be secured against outside entry at all times. Security shall be by

the normal building amenities such as windows and doors having adequate strength to resist intrusion. All doors and windows must remain locked. There shall be at least one operable door into every building and into each housing unit. Exterior walls and roofs must remain intact without holes.

301.3.2.1 Architectural (Cosmetic) Structural Panels. Architectural structural panels may be used to secure windows, doors, and other openings provided they are cut to fit the opening and match the characteristics of the building. Architectural panels may be of exterior grade finished plywood or Medium Density Overlaid plywood (MDO) that is painted to match the building exterior or covered with a reflective material such as plexi-glass: PROVIDED THAT, untreated plywood or similar structural panels may be used to secure windows, doors, and other openings for a maximum period of 30 days within any 90 day period.

301.3.2.2 Security Fences. Temporary construction fencing shall not be used as a method to secure a building from entry: PROVIDED THAT, such fencing may be used for a maximum period of 30 days within any 90 day period.

301.3.3 Weather Protection. The exterior roofing and siding shall be maintained as required in Section 304.

301.3.4 Fire Safety.

301.3.4.1 Fire Protection System. All fire suppression and alarm systems shall be maintained in a working condition and inspected as required by the Fire Department.

301.3.4.2 Flammable Liquids. No vacant building or premises or portion thereof shall be used for the storage of flammable liquids or other materials that constitute a safety or fire hazard.

301.3.4.3 Combustible Materials. All debris, combustible materials, litter, and garbage shall be removed from vacant buildings, their accessory buildings, and adjoining yard areas. The building and premises shall be maintained free from such items.

301.3.4.4 Fire Inspections. Periodic fire safety inspections may be required at intervals set forth by the Building Official or his designee.

301.3.5 Plumbing Fixtures. Plumbing fixtures connected to an approved water system, an approved sewage system, or an approved natural gas utility system shall be installed in accordance with applicable codes and be maintained in sound condition and good repair or removed and the service terminated in the manner prescribed by applicable codes.

301.3.5.1 Freeze Protection. The building's water systems shall be protected from freezing.

301.3.6 Electrical. Electrical service lines, wiring, outlets, or fixtures not installed or maintained in accordance

with applicable codes shall be repaired, removed, or the electrical services terminated to the building in accordance with applicable codes.

301.3.7 Heating. Heating facilities or heating equipment in vacant buildings shall be removed, rendered inoperable, or maintained in accordance with applicable codes.

301.3.8 Interior Floors. If a hole in a floor presents a hazard, the hole shall be covered and secured with three-quarter (3/4) inch plywood, or a material of equivalent strength, cut to overlap the hole on all sides by at least six (6) inches.

301.3.9 Termination of Utilities. The code official may, by written notice to the owner and to the appropriate water or electricity utility, request that water or electricity service to a vacant building be terminated or disconnected.

301.3.9.1 Restoration of Service. If water or electricity service has been terminated or disconnected pursuant to Section 313.9, no one except the utility may take any action to restore the service, including an owner or other private party requesting restoration of service, until written notification is given by the code official that service may be restored.

301.3.10 Notice to Person Responsible. Whenever the code official has reason to believe a building is vacant, the code official may inspect the building and premises. If the code official determines a vacant building violates any provision of this section, the code official shall notify in writing, the

owner of the building, or real property upon which the building is located, or other person responsible, of the violations and required corrections and shall be given a time frame to comply. The notice either may be personally served upon the responsible individual or mailed by USPS, postage prepaid, by both 1st class mail and certified mail, return receipt requested. If personally served, the date of service shall be the first day upon which the period allowed for any corrective action or appeal shall commence. If mailed, those periods shall commence upon the third business day after the notices being deposited with the USPS.

301.3.10.1 Alternate Requirements. The requirements and time frames of this section may be modified under an approved Plan of Action. Within 15 days of notification that a building or real property upon which the building is located is in violation of this Section, an owner may submit a written Plan of Action for the code official to review and approve if found acceptable. A Plan of Action may allow:

- 1) Extended use of non-architectural panels
- 2) Extended use of temporary security fencing
- 3) Extended time before the demolition of a building is required
- 4) For substandard conditions to exist for a specific period of time, provided the building is secured in an approved manner. When considering a Plan of Action, the building

official shall take into consideration the magnitude of the violation and the impact to the neighborhood.

301.3.11 Enforcement. To the extent that enforcement procedures are not provided by other provisions of this ordinance, violations of this section shall be enforced according to the provisions and procedures of Section 17.40.080 of the McCleary Municipal Code, as now existing or hereafter amended or succeeded, and be subject to the monetary penalties contained therein, as well as the actions set forth in the following subsections.

301.3.11.1 Abatement. A building or structure accessory thereto that remains vacant and open to entry after the required compliance date is found and declared to be a public nuisance. The code official is hereby authorized to summarily abate the violation by closing the building to unauthorized entry. The costs of abatement shall be collected from the owner in the manner provided by law.

301.3.11.2 Unsafe Buildings and Equipment. Any vacant building or equipment therein, declared unsafe is subject to the provisions of Section 108 and the demolition provisions of Section 110.

SECTION III: Interpretation: To the extent that the provisions of the International Building Maintenance Code, as adopted by Sections I and II of this Ordinance, conflict with any provision of the Municipal Code, including but not limited to the

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02/04/2015
DG/le

CITY OF McCLEARY
100 SOUTH 3RD STREET
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provisions of Chapters 8.16 & 17.40 of the Municipal Code and the statutes incorporated by references in Section 9.90.900 of the Municipal Code, the provisions of the International Property Maintenance Code shall control.

SECTION IV: Sections I, II, & III of this Ordinance shall constitute new sections in Chapter 15.04 of the Municipal Code.

SECTION V: If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this Ordinance. The Council hereby declares that it would have passed this Ordinance and each section, subsection, sentence, clause, and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases had been declared invalid or unconstitutional, and if for any reason this Ordinance should be declared invalid or unconstitutional, then the original ordinance or ordinances shall be in full force and effect.

SECTION VI: This Ordinance shall take effect upon the fifth day following date of publication.

SECTION VII: Corrections by the Clerk-treasurer or Code Reviser. Upon approval of the Mayor and City Attorney, the Clerk-treasurer and the Code Reviser are authorized to make necessary corrections to this ordinance, including the correction of clerical errors, references to other local, state, or federal

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laws, codes, rules, or regulations, or ordinance number and section/subsection numbering.

PASSED THIS _____ DAY OF _____,
2015, by the City Council of the City of McCleary, and signed in approval therewith this _____ day of _____,
2015.

CITY OF MCCLEARY:

D. GARY DENT, Mayor

ATTEST:

WENDY COLLINS, Clerk-Treasurer

APPROVED AS TO FORM:

DANIEL O. GLENN, City Attorney

STATE OF WASHINGTON)
 : ss.
GRAYS HARBOR COUNTY)

I, WENDY COLLINS, being the duly appointed Clerk-Treasurer of the City of McCleary, do certify that I caused to have published in a newspaper of general circulation in the City of McCleary a true and correct summary of Ordinance Number _____ and that said publication was done in the manner required by law. I further certify that a true and correct copy of the summary of Ordinance Number _____, as it was published, is on file in the appropriate records of the City of McCleary.

WENDY COLLINS

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DG/la

CITY OF MCCLEARY
100 SOUTH 3RD STREET
MCCLEARY, WASHINGTON 98557

SIGNED AND SWORN to before me this _____ day of
_____, 2015, by WENDY COLLINS.

NOTARY PUBLIC IN AND FOR THE STATE OF
WASHINGTON, Residing at:
My appointment expires:

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02/04/2015
DG/le

CITY OF McCLEARY
100 SOUTH 3RD STREET
McCLEARY, WASHINGTON 98557

ORDINANCE NO. _____

AN ORDINANCE RELATING TO MOTOR VEHICLES,
AUTHORIZING THE UTILIZATION OF CERTAIN
WHEELED ALL-TERRAIN VEHICLES UPON CERTAIN
STREETS OF THE CITY UNDER CERTAIN TERMS AND
CONDITIONS, ADDING NEW SECTIONS TO CHAPTER
10 OF THE MUNICIPAL CODE AND IMPOSING
PENALTIES FOR VIOLATION.

R E C I T A L S:

1. The Legislature, through the adoption of ESHB 1632 in 2013, authorized the operation of certain wheeled all-terrain vehicles upon public rights of way so long as the vehicles and their operators meet certain requirements.

2. Since that adoption, the provisions of that Act which were applicable to such activities have been incorporated into the Model Traffic Ordinance (MTO) by rule issued by the state agency having jurisdiction.

3. The City has adopted the MTO by reference, as well as any modifications therein. However, the provisions of the Bill specifically provided that, before the provisions allowing the use of such vehicles upon streets within the City, the Council and Mayor had to adopt an ordinance specifically authorizing such activity.

4. At its January 28th meeting, the Council discussed whether such utilization should be allowed. Chief Crumb has made available material which he has gathered upon this matter. After

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DG/le

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review of written material provided by Chief Crumb and having considered the matter, including the potential implications, both positive and negative, of taking such an action, and having received limited public comment, the Council has determined it to be appropriate to allow such utilization upon streets within the City.

NOW, THEREFORE, BE IT ORDAINED AS FOLLOWS BY THE CITY COUNCIL OF THE CITY OF McCLEARY:

SECTION II: Incorporation of Provisions Into MTO: The incorporation into the City Code of the provisions of ESHB 1632, as now codified in Title RCW 46, relating to the definitions, equipment, and licensing requirements, operator requirements, and other provisions applicable to this matter is specifically ratified.

SECTION II: A. Operators meeting the requirements set forth in the applicable provisions of the MTO and licensing requirement established in sub-paragraph B of this Section may operate a wheeled all-terrain vehicle meeting the equipment and licensing requirements set forth in the Model Traffic Ordinance upon all public streets within the City other than any street having a speed limit greater than thirty-five miles per hour.

B. No person shall operate a wheeled all-terrain vehicle upon a public street pursuant to the provisions of this ordinance unless that person has been issued and is in possession of a valid driver's license.

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02/02/2015
DG/le

CITY OF McCLEARY
100 SOUTH 3RD STREET
McCLEARY, WASHINGTON 98557

SECTION III: Penalties:

A. Unless stated otherwise in any other applicable provision of the Municipal code, violation of any provisions of this ordinance is a traffic infraction, punishable as provided by the provisions of the Municipal Code; PROVIDED THAT, if the vehicle is operated in a negligent or reckless manner by the operator or the operator is in such a condition as to be subject to citation under the provisions of RCW 46.61.502 through RCW 46.61.540, inclusive, such citation may be issued and, upon conviction, the penalties provided therein shall be applied.

B. The parent or legal guardian of a minor who knowingly allows a minor who [1] is less than the age of 18 years and [2] does not possess the licensing required by the applicable provisions of this ordinance, including Section II, to operate a vehicle the use of which is authorized by this ordinance shall be deemed to have committed a traffic infraction and, upon a finding of committed, shall be subject to imposition of the fiscal penalty in the same amount to which the operator is subject.

SECTION IV: If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this Ordinance. The Council declares that it would have passed this Ordinance and each section, subsection, sentence, clause, and phrase thereof, irrespective of the fact that any one or more sections,

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02/02/2015
DG/ls

CITY OF McCLEARY
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subsections, sentences, clauses, or phrases had been declared invalid or unconstitutional, and if for any reason this Ordinance should be declared invalid or unconstitutional, then the original ordinance or ordinances shall be in full force and effect.

SECTION V: Sections I, II, and III shall be codified as new sections in Chapter 10.04 of the Municipal Code, being the chapter providing for the adoption of the Model Traffic Ordinance.

SECTION VI: This Ordinance shall take effect upon the fifth day following date of publication.

SECTION VII: Corrections by the Clerk-treasurer or Code Reviser. Upon approval of the Mayor and City Attorney, the Clerk-treasurer and the Code Reviser are authorized to make necessary corrections to this ordinance, including the correction of clerical errors, references to other local, state, or federal laws, codes, rules, or regulations, or ordinance number and section/subsection numbering.

PASSED THIS _____ DAY OF _____, 2015, by the City Council of the City of McCleary, and signed in approval therewith this _____ day of _____, 2015.

CITY OF McCLEARY:

D. GARY DENT, Mayor

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02/02/2015
DG/le

CITY OF McCLEARY
100 SOUTH 3RD STREET
McCLEARY, WASHINGTON 98557

ATTEST:

WENDY COLLINS, Clerk-Treasurer

APPROVED AS TO FORM:

DANIEL O. GLENN, City Attorney

STATE OF WASHINGTON)
 : ss.
GRAYS HARBOR COUNTY)

I, WENDY COLLINS, being the duly appointed Clerk-Treasurer of the City of McCleary, do certify that I caused to have published in a newspaper of general circulation in the City of McCleary a true and correct summary of Ordinance Number _____ and that said publication was done in the manner required by law. I further certify that a true and correct copy of the summary of Ordinance Number _____, as it was published, is on file in the appropriate records of the City of McCleary.

WENDY COLLINS

SIGNED AND SWORN to before me this _____ day of _____, 2015, by WENDY COLLINS.

NOTARY PUBLIC IN AND FOR THE STATE OF
WASHINGTON, Residing at:
My appointment expires:

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02/02/2015
DG/1*

CITY OF McCLEARY
100 SOUTH 3RD STREET
McCLEARY, WASHINGTON 98557

ORDINANCE NO. _____

**AN ORDINANCE GRANTING A REQUESTED
FRANCHISE TO ASTOUND ~~BROADBAND,~~
~~LLC~~COMMUNICATIONS UPON CERTAIN TERMS AND
CONDITIONS, ESTABLISHING AN EFFECTIVE DATE
AS PROVIDED BY RCW 35A.47.040, AND
PROVIDING FOR SEVERABILITY.**

R E C I T A L S:

1. Astound ~~Communications~~Broadband, LLC, a limited liability company licensed to do business in the State of Washington, has submitted a request to be granted a non-exclusive franchise to utilize rights of way within the corporate limits for the installation, utilization, and maintenance of fiberoptic tele-communication lines and associated facilities.

2. As authorized by RCW 35A.21.020 and RCW 35A.47.040, the Council has considered the request after having the opportunity to receive citizen input.

3. After consideration of the potential benefits to the citizens of the City and the County, the Council finds such a grant to be in the best interests of the City subject to compliance with certain terms and conditions.

NOW, THEREFORE, BE IT ORDAINED AS FOLLOWS BY THE
CITY COUNCIL OF THE CITY OF McCleary:

SECTION I: A Franchise is hereby granted to ASTOUND BROADBAND, LLC, a limited liability company in the State of Washington, its successors and assigns; hereinafter referred to as the GRANTEE, for a period of ~~_____fifteen (15)~~ (15) years from and after the date of adoption of this ordinance to construct, operate, and maintain fiber optic telecommunication lines and system facilities in, over, along, and under public rights of way within the corporate limits of the City, as they now exist and may hereafter be expanded.

This franchise is granted upon the terms and conditions set forth in the following sections.

SECTION II: Scope of Authority: Subject to compliance with any requirements for prior notice, permitting, and authorization, ASTOUND BROADBAND, LLC, its successors and assigns, (hereinafter the GRANTEE) shall have the right and authority to enter upon the public roads and rights-of-way within the corporate limits for the purpose of constructing its fiber optic telecommunication lines and system and all necessary facilities connected therewith (hereinafter referred to collectively as the DISTRIBUTION SYSTEM) and for repairing, operating, and maintaining said distribution system.

SECTION III: Construction Conditions:

3.1. Construction to be Approved by the Director of Public Works. All construction and installation work where crossing roads, streets, alleys, or rights-of-way within the

corporate limits shall be subject to the prior approval of and pass the inspection of the Building Official, after consultation with the Director of Public Works (the Director) or their respective designees.

3.2. Permit Application, Review & Approval.

A. Prior to commencement of construction or modification of any portion or element of the distribution system and associated elements which will result in or require utilization or modification of City property or restriction upon utilization or public access, Grantee shall first file with the Building Official its application for a permit to do such work, together with duplicate plans and specifications showing the position, depth, and location of all lines and facilities sought to be constructed, laid, installed or erected at that time, which shows their relative position to existing streets, roads, alleys, or rights-of-way upon plans drawn to scale, hereinafter collectively referred to as the "Map of Definite Location." It shall concurrently provide a copy of the documents to the Director.

B. The plans and specifications shall designate the class and type of material and equipment to be used, manner of excavation, construction, installation, back fill, erection of temporary structures, erection of permanent structures, traffic control, traffic turnouts, road obstructions, etc. No such construction shall begin without the Grantee first

securing a written permit from the Building Official, including approval endorsed on one set of plans and specifications which will be returned to the Grantee. All such work shall be subject to the approval of and shall pass the inspection of the Building Official, in consultation with the Director.

C. In addition to any permit fee required, in recognition of the potentiality of the requirement of specialized inspection services, the Grantee shall pay those reasonable costs and expenses incurred in the examination, inspection, and approval of such work on account of granting of the permit pursuant to RCW 35.21.860(1)(b).

D. The improvements installed pursuant to the authorization of a permit issued pursuant to this grant, including the initial distribution system, shall be laid in substantial conformity with said Map of Definite Location, except in instances where deviation may be allowed thereafter in writing by the Building Official pursuant to application by Grantee.

E. A set of as-built maps of Grantee's lines or facilities shall be furnished to the Director within sixty (60) days after completion of the work.

3.3. Roads to be Replaced & Restoration Guaranteed by Bond.

A. In any work which requires breaking of surface of a public road, street, alley, or right-of-way subject to this franchise for the purpose of laying, relaying, connecting, disconnecting, and repairing the said distribution system, and making connections between the same to structures and buildings of consumers, or making connections to other facilities of the Grantee now in existence or hereafter constructed, the Grantee shall be governed by and conform to the standards and specifications set forth by the Director.

B. The Grantee at its own expense and within a reasonable time period shall complete the work for which the surface has been broken and promptly replace the work and make good the street, road, alley or right-of-way, restoring the same to as good condition as before the work was commenced; PROVIDED, however, that no such breaking of the surface of the streets, alleys, roads, or rights-of-way shall be done prior to the obtaining of the permit issued by the Building Official; PROVIDED, however, that in cases of emergency arising outside of normal office hours when an immediate excavation may be necessary for protection of public or private property, the necessary excavation may be made and shall be reported to the Director in the manner herein provided as soon as practical, but in no case later than the next following business day.

C. Application for the permit required as a condition precedent of the work covered by this section shall be accompanied by specifications for the restoration of the street, alley road, or rights-of-way to the same condition as it was in prior to such breaking, and such specifications must be approved by the Director before such breaking of the surface is commenced. The Grantee shall pay those costs and expenses incurred in the examination, inspection, and approval of such restoration pursuant to RCW 35.21.860(1)(b).

D. In the event the Grantee, after receiving notice from the Director or designee, fails to correct a condition in a timely manner, the Director may undertake, order, or have done any and all work that is reasonably considered necessary to restore to a safe condition any such street, alley road, or right-of-way left by the Grantee or its agents in a condition dangerous to life or property, and the Grantee, upon demand, shall pay to the City all costs associated with or arising from such corrective action.

3.4. General Conditions & Reservation of Rights.

A. Minimum Interference with Public Travel, Grantee Liable for Damage. All work done under this franchise shall be done in a thorough and workmanlike manner. The Grantee shall leave trenches, ditches, and tunnels necessary in the laying of fiber optic or other telecommunications system distribution lines, the openings of trenches and the

construction of other facilities in such a way as to interfere as little as possible with public travel and shall take all due and necessary precautions to guard the same so that damage or other injury shall not arise or occur by reason of such work; where any such trenches, ditches, or tunnels are left open at night, the Grantee shall place warning lights and barricades at such a position as to give adequate warning of such work. The Grantee shall be liable for any injury to person or persons, or damage to property sustained through its carelessness or neglect, or through any failure or neglect to properly guard or give warning of any trenches, ditches or tunnels dug or maintained by the Grantee.

B. All City Road Rights Reserved. The City in granting this franchise does not waive any rights which it now has or may hereafter acquire with respect to City roads, rights-of-way, or other City property, and this franchise shall not be construed to deprive the City of any powers, rights, or privileges which it now has or may hereafter acquire to regulate the use of and to control the City roads, rights-of-way, and other City property covered by this franchise.

C. City may Change and Improve Roads Without Liability.

1. If at any time the City determines it appropriate to improve or change any City road, right-of-way,

or other City property subject to this franchise, whether by grading or regrading, planking or paving the same, changing the grade, altering, changing, repairing or relocating the same, by construction of drainage facilities, or in any other manner, the Grantee shall, upon reasonable notice by the City and after reasonable evaluation of alternatives by the City in cooperation with the Grantee, at its own expense, move and change any items, attachments, or appurtenances it has installed pursuant to the rights granted by this ordinance to conform to such public improvement. The City will avoid the need for such moving or changing whenever reasonably possible.

2. In the event Federal, State, or other funds are specifically available for utility relocating purposes, the City shall apply for such funds and the Grantee will be reimbursed to the extent any such funds are actually obtained for utility relocating purposes.

3. The City shall in no way be held liable for any damage to said Grantee that may occur by reason of any of the City's improvements, changes, or works above enumerated, except for damage caused solely by negligence of the City's employees or agents.

4. All work performed by the Grantee under this section shall be under the direction and approval of the Director and shall be subject to the Director's approval. The

Grantee shall pay those costs and expenses incurred in the examination, inspection and approval of such work.

D. Notice of Activities by the City. The laying, construction, operation, and maintenance of the Grantee's distribution system authorized by this franchise shall not preclude the said City, its agents or its contractors from blasting, grading, excavating, or doing other necessary road work contiguous to the said lines and facilities of the Grantee providing the Grantee shall be given five (5) business days' |

notice of said work: PROVIDED THAT, the necessity of such notice shall be deemed waived if the work in question is required to be commenced immediately due to the threat to public safety.

E. Reference, Monuments and Markers. Before any work is performed under this franchise which may affect any existing monuments or markers of any nature relating to subdivisions, plats, roads and all other surveys, the Grantee shall reference all such monuments and markers. The reference points shall be so located that they will not be disturbed during the Grantee's operations under this franchise. The method of referencing these monuments or other points to be referenced shall be approved by the City Engineer. The replacement of all such monuments or markers disturbed during construction shall be made as expeditiously as conditions permit, and as directed by the Director. The cost of monuments or other markers lost, destroyed or disturbed and the expense of replacement by approved monuments shall be borne by the Grantee.

F. Vacation of City Streets, Roads, Alleys, or Rights of Way. If at any time the City determines it appropriate to vacate any City road, street, alley, or right-of-way which is subject to rights granted by this franchise and said vacation, then the City shall give ninety (90) days written notice to the Grantee, and may at their option, after granting a reasonable alternate route, terminate this franchise with reference to such vacated City street, alley, road, right-of-way: PROVIDED THAT, the vacation shall be subject to the grant to the Franchisee of a reasonable time to relocate at its sole expense the facilities it had installed in the vacated property. The City shall not be liable for any damages or loss to the Grantee by reason of such termination.

SECTION IV: Franchise Fee ~~Prohibited~~ and Financial Controls.

4.1. Washington law, RCW 35.21.860, limits the tax City may impose on Grantee's activities under this Ordinance to 6% of revenue derived from the provision of network telephone service and otherwise prohibits City from imposing a franchise fee or other fee or charge for Grantee's use of the right-of-way. In addition, the federal Internet Tax Freedom Act prohibits the imposition of a tax or other fee on revenue derived from Grantee's provision of internet access services. If federal or Washington law is changed such that City may impose a franchise fee, tax, or other charge on Grantee's services, or if City elects to impose on providers within the City a tax on network telephone service under RCW

35.21.860, City shall provide Grantee with at least 6 months' written notice of its intent to revise this Ordinance or otherwise impose such a fee, tax, or charge. As compensation for the benefits and privileges granted under this Franchise and in consideration of permission to use the City's streets, alleys, rights of way, and roads, the City may required the Grantee to pay a Franchise fee to City, throughout the duration of this Franchise. ~~As of this time, the City will not require the payment of such a fee, but specifically reserves the right to require the commencement of such a payment under the following terms and conditions:~~

~~A. Commencement: The City shall give the Grantee written notice no less than six months before the date upon which the fee will begin to be assessed. The fee shall be in an amount no greater than six percent (6%) of Grantee's Gross Subscriber Revenues derived from the operation of the telecommunications system to provide telecommunications service in the Franchise Area; PROVIDED THAT, the fee may be initially set at a lesser figure, but may be adjusted by action of the City Council on an annual basis.~~

~~B. For purposes of determination of the amount to be paid in the event a franchise fee is established, the following definitions shall apply:~~

~~1. "Gross Subscriber Revenues" is defined to mean all amounts derived by Grantee in whatever form and from all sources, from the operation of Grantee's telecommunications system to provide telecommunications service within the Franchise Area. "Gross Subscriber Revenues" shall include all amounts for all telecommunications services including internet services to the extent permitted by applicable law.~~

~~2. "Gross Subscriber Revenues" shall not include bad debt, sales taxes, or other taxes and fees that are collected by Grantee on behalf of, and for payment to, the local, state, or federal government. The Franchise fees are in addition to all other fees, assessments, taxes, or payments of general applicability that the Grantee may be required to pay under any federal, state or local law.~~

~~This Franchise and the Franchise fees paid hereunder are not in lieu of any other generally applicable required permit, authorization, fee, charge, or tax.~~

~~3. Grantee's Franchise fee payments to City shall be computed semiannually on June 30 and December 31. Each semiannual payment shall be due and payable no later than thirty (30) days after the last day of the preceding semiannual calendar period.~~

~~4.2 Acceptance of Payment and Recomputation. No acceptance of any payment shall be construed as an accord by City that the amount paid is, in fact, the correct amount, nor shall any acceptance of payments be construed as a release of any claim City may have for further or additional sums payable or for the performance of any other obligation of Grantee.~~

~~4.3. Semiannual Franchise Fee Reports. Each payment shall be accompanied by a report to the City, containing an accurate statement in summarized form.~~

~~4.4. Audits. Upon thirty (30) days' prior written notice, City shall have the right to conduct an independent audit of Grantee's records reasonably related to the administration or enforcement of this Franchise, in accordance with generally accepted accounting principles. The City may hire an independent certified public accountant to audit the Grantee's financial records, in which case the Grantee shall provide all necessary records to the certified public accountant. If the audit shows that Franchise fees have been underpaid by ten percent (10%) or more, Grantee shall pay the cost of the audit in an amount not to exceed five thousand dollars (\$5,000) per year being audited.~~

~~4.5. Additional Commitments Not Franchise Fees. No term or condition in this Franchise shall in any way modify or affect Grantee's obligation to pay Franchise fees to City. Although the total sum of Franchise fee payments and additional commitments set forth elsewhere in this Franchise may total more than the percentage of Grantee's Gross Subscriber Revenues set as the franchise fee in any 12-month period, Grantee agrees that the additional~~

~~commitments herein are not Franchise fees as defined under any federal law, nor are they to be offset or credited against any Franchise fee payments due to City. Notwithstanding the foregoing, Grantee may, in lieu of all or a portion of the franchise fee payment required pursuant to the provisions of this ordinance, provide telecommunications or other services to the City or its affiliated entities. Any agreement for the provision of such services will be as mutually agreed by the parties in separate documentation, and the offset value of any such services provided to the City or its affiliated entities will be determined based on the standard rates Grantee charges to third party customers for substantially equivalent services.~~

4.62. Costs of Publication. Grantee shall pay the reasonable cost of newspaper notices and publication pertaining to this Franchise and any amendments thereto, as such notice or publication is reasonably required by City or applicable law.

~~4.7. Tax Liability. Payment of the Franchise fees under this Franchise shall not exempt Grantee from the payment of any generally applicable license, permit fee, or other generally applicable fee, tax or charge on the business, occupation, property, or income of Grantee that may be imposed by City.~~

~~4.8. Payment on Termination. If this Franchise terminates for any reason, the Grantee shall file with the City within ninety (90) calendar days of the date of the termination, a financial statement, certified by an independent certified public accountant, showing the Gross Subscriber Revenues received by the Grantee since the end of the previous fiscal year. The City reserves the right to satisfy any remaining financial obligations of the Grantee to the City by utilizing the funds available in security provided by the Grantee.~~

SECTION V: Grantee to Indemnify City; Liability Insurance.

5.1. The Grantee does hereby agree to protect and save harmless said City from all **third party** claims, actions, or damages of every kind and description which may be asserted against such City by reason of the Grantee's negligent or intentional acts in connection with the construction, operation, and maintenance of said distribution system.

A. In case that a suit or action is brought against the City for damages arising out of or by reason of the above-mentioned causes, the Grantee will, upon notice to it of the commencement of said action, defend the same at its sole cost and expense.

B. In case a final judgment shall be rendered against the City in such suit or action, the Grantee will fully satisfy said judgment within ninety (90) days after said suit or action shall have finally been determined by a trial court, appellate court or courts, if appeal be taken, if determined adversely to said City.

C. Upon Grantee's failure to satisfy any such final judgment within the ninety (90) day period, the City, by action of the City Council, may upon due notice terminate this franchise and the City shall have a lien upon the distribution system which may be enforced against the property for the full amount of any such final judgment so taken against said City: PROVIDED THAT, such lien shall not restrict the City from taking any lawful action to collect any balance of such judgment, as well as the reasonable costs and fees incurred by the City in taking the collection action.

5.2. For the purpose of securing to the City full and complete performance of the covenants contained in this paragraph, the Grantee shall, at its own expense, procure and keep in force during the life of this franchise, liability insurance in a company or companies to be approved by the City, the minimum limits of such insurance to be not less than \$2,000,000 and such additional proof thereof shall be furnished to the City from time to time as it shall require. The policy shall be of an occurrence nature. Upon request of the City, the minimum limits of insurance shall be changed to reflect inflationary (cost of living) costs increases.

5.3. Acceptance by the City of any work performed by the Grantee at the time of completion shall not be grounds for avoidance of this covenant.

SECTION VI: Franchise Not Exclusive. This franchise shall not be deemed to be an exclusive franchise. It shall in no manner prohibit said City from granting other franchises of like nature or franchises for other public or private utilities under, along, across, over, and upon any of the City streets, alleys, roads, or rights-of-way subject to this franchise.

SECTION VII: Provisions Bind Successor. All provisions, conditions, regulations and requirements herein contained shall be binding upon the successors and assigns of the Grantee, and all privileges, as well as all obligations and liabilities of the Grantee, shall inure to its successors and assigns equally as if they were specifically mentioned wherever the Grantee is mentioned.

SECTION VIII: Revocation for Non-Compliance. If the Grantee shall willfully violate or fail to comply with any of the provisions of this franchise through willful or unreasonable neglect after the giving of written notice of such violation or failure to comply or fail to heed or comply with any other notice given the Grantee under the provisions of this grant, then Grantee shall forfeit all rights conferred hereunder, and this franchise may be revoked or annulled by the City, by action of the City Council, PROVIDED, however, that the City shall give thirty (30) days written notice of its intention to revoke or annul the franchise during which period the Grantee shall have the opportunity to remedy the situation.

SECTION IX: Grantee to File Acceptance. The full acceptance of this franchise and all its terms and conditions by Astound Broadband, LLC, in writing within thirty (30) days from the date of execution of this Ordinance by the Mayor, is to be filed with the Clerk-treasurer of the City, and shall be a condition precedent to its taking effect, and unless the franchise is accepted within such time, this grant shall be null and void.

SECTION X: Notifications, Venue & Associated Matters.

10.1. Any notice provided for or concerning this franchise to be sent to the Grantee shall be in writing and be deemed sufficiently given when either [a] personally served upon the authorized representative of the other party or [b] sent by certified or registered mail, return receipt requested, and first class mail to the address of the other set forth in the following paragraphs.

A. The address of the Grantee is Astound Broadband, LLC, 401 Kirkland Parkplace, Kirkland, WA 98033 Attention: Steve Weed, CEO, and Jim Penney, EVP.

B. The address of the City is 100 S. 3rd Street, McCleary, Washington 98557 Attention: Wendy Collins, Clerk-treasurer.

In recognition that the individuals named may leave those positions or the parties relocate, a notice shall be deemed properly addressed if it is sent to the indicated address to the attention of the position designate unless a successor address has been provided pursuant to the following paragraph. A notice shall be deemed to have been given upon the date of service, if personally served, or upon the fifth business day following its mailing, properly addressed and postage prepaid.

Either party may from time to time notify the other party in writing of a change of address to which notifications are to be sent. In the absence of such notification, the addresses set forth above shall be deemed applicable,

10.2. In the event of any litigation arising out of the performance of this Contract, it is agreed the Courts of the County of Grays Harbor, State of Washington, shall be Courts of proper venue. Further, in addition to any other relief which may be granted to the prevailing party, the Court may award the prevailing party reasonable attorneys' fees and costs.

SECTION XI: If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held to

be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this Ordinance. The Council hereby declares that it would have passed this Ordinance and each section, subsection, sentence, clause, and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases had been declared invalid or unconstitutional, and if for any reason this Ordinance should be declared invalid or unconstitutional, then the original ordinance or ordinances shall be in full force and effect.

SECTION XII: In recognition of the provisions of state law, including but not limited to RCW 35A.47.040, this Ordinance shall take effect upon the fifth day following date of publication.

SECTION XIII: Corrections by the Clerk-treasurer or Code Reviser. Upon approval of the Mayor and City Attorney, the Clerk-treasurer and the Code Reviser are authorized to make necessary corrections to this ordinance, including the correction of clerical errors, references to other local, state, or federal laws, codes, rules, or regulations, or ordinance number and section/subsection numbering.

PASSED THIS _____ DAY OF _____, 2015, by the City Council of the City of McCleary and signed in approval therewith this _____ day of _____, 2015.

CITY OF McCLEARY:

D. GARY DENT, Mayor

ATTEST:

WENDY COLLINS, Clerk-Treasurer

APPROVED AS TO FORM:

DANIEL O. GLENN, City Attorney

STATE OF WASHINGTON)
 : ss.
~~GRAYS HARBOR~~)

I, WENDY COLLINS, being the duly appointed Clerk-Treasurer of the City of McCleary, do certify that I caused to have published in a newspaper of general circulation in the City of McCleary a true and correct summary of Ordinance Number _____ and that said publication was done in the manner required by law. I further certify that a true and correct copy of the summary of Ordinance Number _____, as it was published, is on file in the appropriate records of the City of McCleary.

WENDY COLLINS

SIGNED AND SWORN to before me this _____ day of _____, 2015, by WENDY COLLINS.

NOTARY PUBLIC IN AND FOR THE STATE OF
WASHINGTON, Residing at:
My appointment expires