



**TOPPENISH CITY COUNCIL
STUDY SESSION AGENDA
MAY 6, 2024 – 5:00 P.M.**

1. Call To Order/Roll Call
2. Approve Agenda
3. Public Comment

The City Council welcomes public attendance at Council meetings. This meeting is for the conduct of regular City business. At this time, citizen comments and inquiries about agenda business or general City matters are encouraged. If you wish to address the City Council, please stand or raise a hand so you can be called upon. After you are recognized, please come forward to the lectern, state your name, and address for the public record. Your remarks must be limited to three minutes or less. Please use the microphone.

4. Old Business

AB 24-028 [Proposed] Ordinance 2024-04, Vehicle License Fee Increase
AB 24-029 [Proposed] Ordinance 2024-07, Utility Rate Increase for Solid Waste Rates
5. AB 24-034 [Proposed] Ordinance 2024-09, Updating TMC Chapter 2.32 for Public Safety Committee
6. AB 24-035 [Proposed] Resolution 2024-24, Hearing Examiner Services Agreement
7. AB 24-036 Discussion of Planning Commission Appointments
8. Adjournment

Next Regular Council Meeting will be on May 13, 2024

City Council meetings are accessible to persons with disabilities. For individuals who may require special accommodations, please contact City Hall at (509) 865-6754, 24 hours in advance.

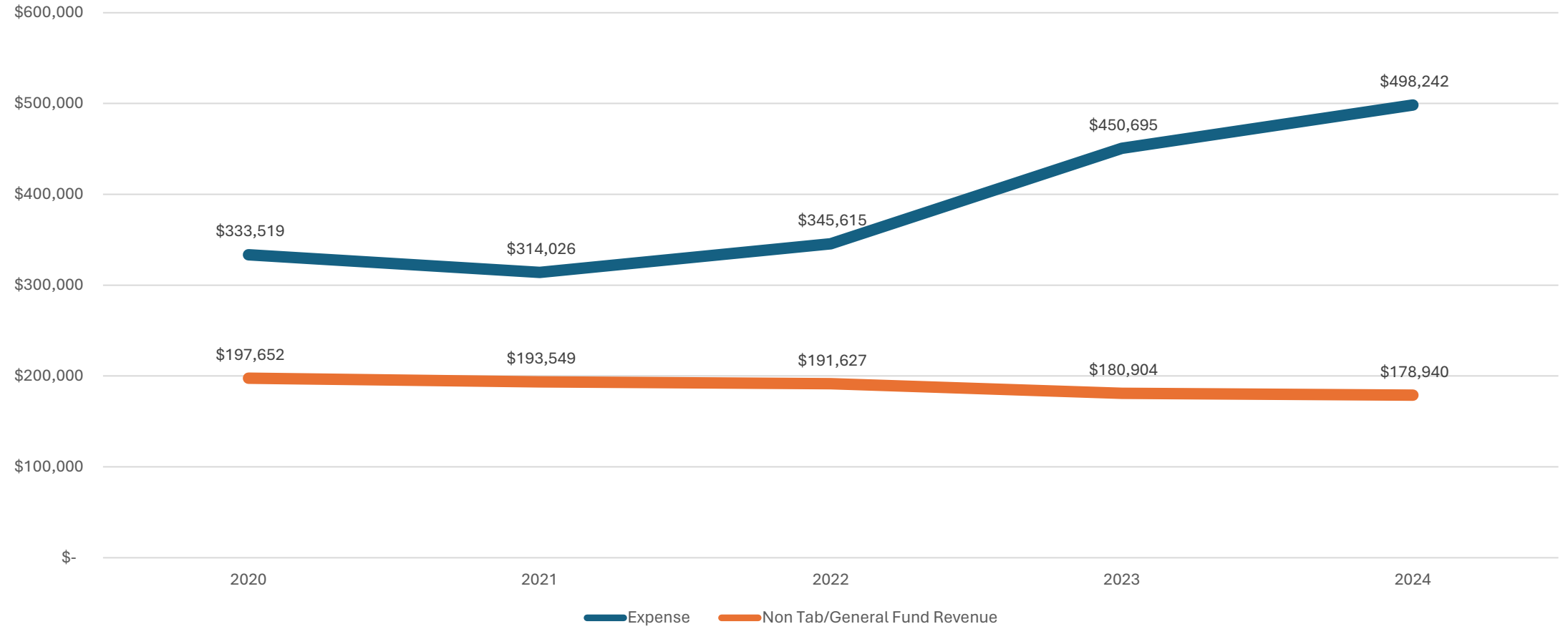
Vehicle License Fee

Vehicle License Fee Increase

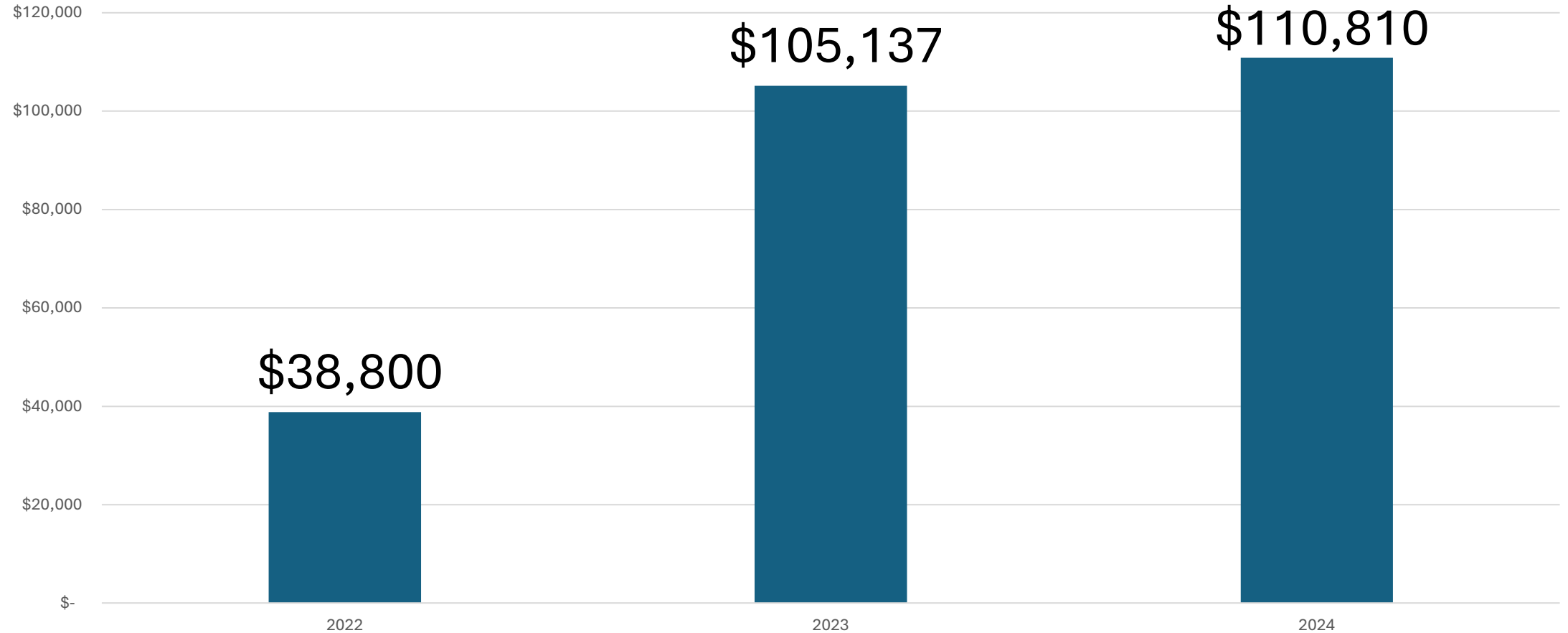
- Increase Vehicle License Fee as provided for by RCW 36.73.040
- Vehicle License Fee revenue supports the City's Street Maintenance and Operation Fund, and provides for the required match or contribution for capital street grants
- Current revenue for the Street Maintenance Fund is insufficient to fund expenditures, requiring General Fund subsidies of over \$100,000 a year
- Current annual license fee \$20.00, generates \$156,000 of street revenue
- Increase annual fee \$10.00, generates approximately \$78,000 of street revenue
- Increase annual fee \$20.00, generates approximately \$156,000

Current license fees are \$20, and the City receives about \$155,000 a year – the City can charge a maximum of \$40

Street Fund Expense vs. Non-Vehicle License Fee and General Fund Revenue



General Fund Street Subsidy



Projected 2025 General Fund Subsidy

(5% growth assumption)

- \$10 increase in TAB fees
 - ~\$97,267
- \$20 increase in TAB fees
 - ~\$19,267



CITY OF TOPPENISH
REQUEST FOR COUNCIL ACTION
Agenda Bill No.: 24-028

Meeting Date: April 22, 2024

Subject: Vehicle License Fee Increase

Attachments: Ordinance 2024-04

Presented by: Adam Vaughn, Finance Director

Approved For Agenda By: Dan Ford, Interim City Manager

Discussion:

RCW 36.74 and TMC Chapter 12.18 authorize the city to impose a fee for vehicle licensing. The revenue from this fee is used to directly fund street maintenance in the City's Street fund. The \$20 vehicle licensing fee has been in place since May 14, 2012. RCW 36.73.065 states that if a \$20 fee has been in place for at least two years, the city is then able to increase the fee up to \$40.

Costs for street maintenance continue to rise, whereas revenue for the fund has not. Since 2022 the General Fund has had to use its discretionary funds to subsidize the street fund, to the point that it is budgeted to transfer over \$100,000 in 2024.

Outside of vehicle licensing and General Fund revenue, the street funds revenue had not increased, and shows signs of long-term decreasing as the motor-fuel tax becomes less of a reliable source of revenue. Without an increase in revenue from the Vehicle Licensing fees, the General Fund will have to continue making substantial contributions to the street fund or the City will need to make cuts to street services.

Fiscal Impact: Approximately \$156,000 of additional revenue each year for the Street Fund.

Recommendation: Adopt Ordinance 2024-04 to increase the annual vehicle license fee to \$40.

Alternatives: 1) Do not adopt. 2) Forward to Study Session for further review.

ORDINANCE 2024-04

AN ORDINANCE AMENDING CHAPTER 12.18 OF THE TOPPENISH MUNICIPAL CODE, BY IMPOSING A \$40 VEHICLE FEE AUTHORIZED RCW 82.80.140, PROVIDING FOR SEVERABILITY, CORRECTIONS, AND ESTABLISHING AN EFFECTIVE DATE

WHEREAS, in accordance with the authority set forth in RCW Chapter 36.73 and RCW Chapter 36.74 and by means of Ordinance 2016-06, the City assumed all rights, powers, immunities, functions, and obligations of the Toppenish Transportation Benefit District as established in Toppenish Municipal Code (TMC) Chapter 12.18, and

WHEREAS, RCW 82.80.140 and TMC Section 12.18.030 authorize the City to impose, up to \$40.00 of the vehicle fee if a vehicle fee has been imposed for at least twenty-four months, and

WHEREAS, the \$20.00 vehicle fee imposed by the transportation benefit district (or city) has been in place since May 14, 2012, and

WHEREAS, the City Council of the City of Toppenish, Washington finds it in the best interest of the City to increase the annual vehicle license fee by an additional \$20.00 for a total of \$40.00 per vehicle for the purpose of making transportation improvements that preserve, maintain and improve the transportation infrastructure of the City of Toppenish, consistent with Chapter 36.73 RCW,

NOW THEREFORE THE CITY COUNCIL OF THE CITY OF TOPPENISH, WASHINGTON DO ORDAIN AS FOLLOWS:

Section 1. Amendment. Section 12.18.030 of the Toppenish Municipal Code is hereby amended as follows:

12.18.030 Authority of the City - \$40.00 Vehicle license fee.

A. The city, acting by and through its city council, ~~may shall~~ continue to collect a vehicle fee previously authorized by the Toppenish transportation benefit district of \$20.00 per vehicle as provided by RCW 82.80.140 ~~or authorize a vehicle fee as follows: and said fee shall be increased so as to collect an additional vehicle fee of \$20.00 per vehicle for a total vehicle fee of \$40.00 per vehicle of the vehicle fee authorized in RCW 82.80.140. The increased vehicle license fee will not be collected sooner than six months after approval of the increase as provided in RCW 82.80.140 and the existing vehicle license fee in the amount of \$20.00 per vehicle shall remain in effect and be collected by the Department of Licensing until the increased vehicle license fee begins to be collected.~~

~~1. Up to \$40.00 of the vehicle fee authorized in RCW 82.80.140 if a vehicle fee of \$20.00 has been imposed for at least 24 months; and/or~~

B.2. The city, acting by and through its city council, may collect a vehicle fee of up to

to \$50.00 of the vehicle fee authorized in RCW 82.80.140 if a vehicle fee of \$40.00 has been imposed for at least 24 months and the requirements of RCW 36.73.065(6) have been met.

CB. Any expansion of the authorized purposes of the district shall be undertaken only after notice, hearing and adoption of an ordinance in accordance with RCW 36.73.050 or a vote of the people pursuant to RCW 36.73.065.

DC. The city shall have and exercise all powers and functions provided by Chapter 36.73 RCW to fulfill the functions and purposes of Chapter 36.73 RCW and this chapter.

Section 2. Severability: If any section, sentence, clause, or phrase of this Ordinance should be held to be unconstitutional or unlawful by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause, or phrase of this ordinance.

Section 3. Corrections: The city clerk and the codifiers of this ordinance are authorized to make necessary clerical corrections to this ordinance including, but not limited to, the corrections of scriveners/clerical errors, references, section or subsection numbers and any references thereto.

Section 4. Effective Date: This Ordinance shall be effective six months after passage, approval and publication as required by law.

PASSED by the Toppenish City Council at its regular meeting held on the ____ day of April, 2024.

ELPIDIA SAAVEDRA, Mayor

ATTEST:

HEIDI RIOJAS, CMC, City Clerk

APPROVED AS TO FORM:

GARY M. CUILIER, City Attorney



CITY OF TOPPENISH
REQUEST FOR COUNCIL ACTION
Agenda Bill No.: 24-029

Meeting Date: April 22, 2024

Subject: Utility Rate Increase

Attachments: Ordinance 2024-05 – Water Rates
Ordinance 2024-06 – Sewer Rates
Ordinance 2024-07 – Solid Waste Rates

Presented by: Adam Vaughn, Finance Director

Approved For Agenda By: Dan Ford, Interim City Manager

Discussion:

During April 1, 2024, and April 8, 2024, Council meetings staff presented the outcome to the enterprise funds with no utility rate increases for 2023 and 2024. In 2022, it was recommended to increase utility rates by 5% in both 2023 and 2024. Both 2023 and 2024 have maintained utility rates without that, or any, increase.

The City is currently contracting with FCS Group to complete a utility rate study that will recommend where the City's rates should be based on future need and regional benchmarking. This study is expected to be completed in early summer of 2024.

The 2024 budget was completed with basic services funded, with the assumption that a rate increase would be discussed in spring of 2024 that would allow for 2024 budget enhancements. In lieu of waiting for the FCS study to be completed in the summer, staff recommends going forward with a 5% rate increase effective July 1, 2024, with further consideration at the completion of the FCS study.

Fiscal Impact: 2024 Revenue increase of \$62,308 in the General Fund; \$73,462 in the Water Fund; \$97,030 in the Wastewater Fund; and \$44,365 in the Solid Waste Fund.

Recommendation: Adopt Ordinance 2024-05 for Water Rate Increase effective July 1, 2024; Ordinance 2024-06 for Sewer Rate Increase effective July 1, 2024; and Ordinance 2024-07 for Solid Waste Rate Increase effective July 1, 2024.

Alternatives: 1) Do not adopt. 2) Forward to Study Session for further review.

ORDINANCE 2024-07

AN ORDINANCE ADJUSTING SOLID WASTE RATES BY AMENDING SECTION 8.10.170 OF THE TOPPENISH MUNICIPAL CODE, PROVIDING FOR SEVERABILITY, CORRECTIONS, AND ESTABLISHING AN EFFECTIVE DATE

WHEREAS the City of Toppenish has delayed the three-year utility rate study for the solid waste fund based on the recommendation by FCS Group during its Study Session on June 6, 2022, and

WHEREAS the City Council declined to increase the City’s revenues in 2023 and 2024 to provide the funding necessary for the increasing expenses and capital costs as documented by FCS Group in 2022, and

WHEREAS the solid waste fund will see a significant increase in expenses due to debt service for capital improvements, as noted in the FCS Group utility rate study, and

WHEREAS the FCS Group suggested that the City include all expenses of the utility within the rate to be charged, some of which have been decreased as noted in Ordinance 2022-18, and that the said rate be increased by five percent effective July 1, 2024, by amending Section 8.10.170 of the Toppenish Municipal Code,

NOW THEREFORE THE CITY COUNCIL OF THE CITY OF TOPPENISH, WASHINGTON DO ORDAIN AS FOLLOWS:

Section 1: Section 8.10.170 of the Toppenish Municipal Code is amended as follows:

8.10.170 Fees schedule.

A. The schedule of charges and collection fees to be paid to the city is as follows:

		Rate Effective January 1, 2020	Rate Effective January 1, 2021	Rate Effective January 1, 2022	<u>Rate Effective July 1, 2024</u>
All Accounts City-Owned Containers					
First Container	Number of Pickups				
90-gallon	1 per week	<u>\$23.66</u>	<u>\$24.61</u>	<u>\$25.59</u>	<u>\$26.87</u>
300-gallon	1 per week	<u>\$85.89</u>	<u>\$89.33</u>	<u>\$92.90</u>	<u>\$97.55</u>
350-gallon	1 per week	<u>\$100.31</u>	<u>\$104.32</u>	<u>\$108.50</u>	<u>\$113.93</u>
420-gallon	1 per week	<u>\$119.70</u>	<u>\$124.49</u>	<u>\$129.47</u>	<u>\$135.94</u>

Each Additional Container	Number of Pickups				
90-gallon	1 per week	\$21.34	\$22.19	\$23.08	<u>\$24.23</u>
300-gallon	1 per week	\$83.56	\$86.90	\$90.38	<u>\$94.90</u>
350-gallon	1 per week	\$97.98	\$101.90	\$105.98	<u>\$111.28</u>
420-gallon	1 per week	\$117.38	\$122.08	\$126.96	<u>\$133.31</u>

Charges shall be assessed per container. Number of containers multiplied by number of calendar days collected for one week equals the monthly charge.

B. The classification of each recipient of garbage service, size of container and type of container shall be determined by the public works director or his designee.

C. Rates will be increased as rates increase at the disposal site by ordinance amendment or as other conditions such as inflation or other matters render such increases necessary.

D. A callback fee will be charged to those accounts which have failed to put out solid waste on the proper day or proper time of day, which results in the required return of the collection truck to the account. Callback fees shall be established by resolution of the city council, as amended from time to time.

E. There shall be extra hauling fees for special items, weekend pickups, or unusual volumes of solid waste outside of containers and these shall be agreed upon with the public works director or his designee prior to pickup by the city. Such items shall include but not be limited to automobile tires and parts, large metal pieces or objects, concrete chunks, stone, tree limbs and heavy wood pieces. Extra hauling fees shall be established by resolution of the city council, as amended from time to time.

F. Compost collection containers shall be marked “Grass and Leaves Only” and will be provided to residents upon request. The containers for grass and leaves only shall not be used for any other garbage, refuse, swill or trash. If such a container shall be used for unauthorized materials, the rate for the month during which the unauthorized use occurs shall be the same as the monthly rate for other 90-gallon containers.

		Rate Effective January 1, 2020	Rate Effective January 1, 2021	Rate Effective January 1, 2022	<u>Rate Effective July 1, 2024</u>
Compost Collection (Grass and Leaves Only)					
Type of Container	Number of Pickups				
90-gallon	1 per week	\$14.72	\$15.31	\$15.93	<u>\$16.73</u>
300-gallon	1 per week	\$20.44	\$21.25	\$22.10	<u>\$23.21</u>
350-gallon	1 per week	\$21.74	\$22.61	\$23.52	<u>\$24.70</u>
420-gallon	1 per week	\$23.64	\$24.58	\$25.57	<u>\$26.85</u>

G. Overfull Containers. The schedule of fees under subsection A of this section is for one container with lid closed. Whenever the lid is not flush with top of container, city collectors may choose to collect or leave for special pickup. If collectors pick up the overfull container, a fee shall be assessed. Overfull container fees shall be established by resolution of the city council, as amended from time to time.

H. The City Manager is authorized to adjust the service level or container size to match the garbage and rubbish actually collected from the premises, to match the amount of garbage and rubbish reasonably anticipated from the premises, or to accommodate existing inventory and/or equipment restrictions. The customer will be responsible for the appropriate charges for the adjusted service level in accordance with this section.

I. Pickups on calendar days not regularly scheduled shall be at a rate established by resolution of the city council, as amended from time to time.

J. Any additional disposal costs incurred by the city due to the placement in residential or commercial containers of materials which are prohibited under TMC 8.10.060(D) or are declared to be unacceptable under TMC 8.10.140, or are determined to be hazardous under Chapter 173-303 WAC or result in charges to the city collection service in an amount more than the standard domestic or commercial refuse disposal rate (including, but not limited to, dead animals, tires or asbestos) shall be passed on to and paid by the user of the container. Any damage caused to the residential or commercial containers or equipment resulting from the placement of any of the above-referenced materials in the containers shall be the responsibility of the container user, and the user shall bear the cost of repairing or replacing the container. All delinquent and unpaid charges for sanitation, water, sewer or other charges shall be a lien against the premises to which the same are furnished.

Section 2. Severability: If any section, sentence, clause or phrase of this ordinance should be held to be unconstitutional or unlawful by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this ordinance.

Section 3. Corrections: The city clerk and the codifiers of this ordinance are authorized to make necessary clerical corrections to this ordinance including, but not limited to, the corrections of scriveners/clerical errors, and any references thereto.

Section 4. Effective Date: This ordinance shall become effective on July 1, 2024, which is more than five (5) days after publication of a summary thereof.

PASSED by the Toppenish City Council at its regular meeting held on April 22, 2024.

ELPIDIA SAAVEDRA, Mayor

ATTEST:

HEIDI RIOJAS, CMC, City Clerk

APPROVED AS TO FORM:

GARY M. CUILIER, City Attorney



CITY OF TOPPENISH
REQUEST FOR COUNCIL ACTION
Agenda Bill No.: 24-034

Meeting Date: May 6, 2024

Subject: Updating Toppenish Municipal Code Chapter 2.32 Public Safety Committee

Attachments: Proposed Ordinance 2024-09

Presented by: Dan Ford, Interim City Manager

Approved For Agenda By: Dan Ford, Interim City Manager

Discussion:

In consideration of requested changes to the Public Safety Committee in an effort to better support the committee and serve the council, the following code changes are being sought.

- Changing Deputy City Clerk to City Clerk, and
- Adding an opportunity for an alternate staff member “designee” should one be needed.

The proposed changes are specific to the staff assigned to serve on the Public Safety Committee, which is an advisory committee to the City Council, are intended to provide flexibility to assign staffing as the needs arise.

Fiscal Impact: None

Recommendation: Adopt Ordinance 2024-09 amending section within Chapter 2.32 of the Toppenish Municipal Code.

Alternatives: 1) Do not adopt. 2) Forward to Study Session for further review.

ORDINANCE 2024-09

**AN ORDINANCE OF THE CITY OF TOPPENISH, WASHINGTON,
AMENDING CHAPTER 2.32 OF THE TOPPENISH MUNICIPAL CODE
FOR THE PUBLIC SAFETY COMMITTEE, TO PROVIDE FOR
SEVERABILITY, CORRECTIONS, AND AN EFFECTIVE DATE**

WHEREAS, the Toppenish City Council has decided to make adjustments to the staffing to serve the Public Safety Committee in an effort to better serve the needs of the community,

NOW THEREFORE THE CITY COUNCIL OF THE CITY OF TOPPENISH, WASHINGTON DO ORDAIN AS FOLLOWS:

Section 1: Section 2.32.070 of the Toppenish Municipal Code is hereby amended to read as follows:

2.32.070 City staff.

Attendance by city staff at committee meetings shall be determined by the meeting agenda and the city manager, who shall require such city personnel to attend as shall best serve the needs of the committee with its deliberation of the topics on the meeting agenda. Unless excused by the committee, the police chief, fire chief, ~~deputy~~ city clerk, ~~and the~~ city manager, or designee, shall attend all committee meetings.

Section 2. Severability: If any section, sentence, clause, or phrase of this Ordinance should be held to be unconstitutional or unlawful by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause, or phrase of this ordinance.

Section 3. Corrections: The city clerk and the codifiers of this ordinance are authorized to make necessary clerical corrections to this ordinance including, but not limited to, the corrections of scribes/clerical errors, references, section or subsection numbers and any references thereto.

Section 4. Effective Date: This ordinance shall become effective five days after publication of a summary hereof.

PASSED by the Toppenish City Council during its meeting held on May 6, 2024.

ELPIDIA SAAVEDRA, Mayor

ATTEST:

HEIDI RIOJAS, CMC, City Clerk

APPROVED AS TO FORM:

GARY M. CUIILLIER, City Attorney



CITY OF TOPPENISH
REQUEST FOR COUNCIL ACTION
Agenda Bill No.: 24-035

Meeting Date: May 6, 2024

Subject: Hearing Examiner Services Agreement

Attachments: Proposed Resolution 2024-24, Hearing Examiner Services Agreement

Prepared by: Dan Ford, Interim City Manager

Approved For Agenda By: Dan Ford, Interim City Manager

Discussion:

The City has a need for a Hearing Examiner. Dan Heid has excellent experience with land use decisions and the rules and regulations associated with development, zoning, and environmental reviews. Mr. Heid was also a previous city attorney for Toppenish.

The proposed Professional Services Agreement provides for Mr. Heid's services until either party jointly or unilaterally terminate the agreement.

The 2024 Budget includes the proposed expense.

Fiscal Impact: 2024 Budgeted Hearing Examiner Services \$10,000.

Recommendation: Motion to approve Resolution 2024-24 to authorize the Interim City Manager to sign the Hearing Examiner Services Agreement.

Alternatives: 1) Do not adopt. 2) Forward to Study Session for further review.

RESOLUTION 2024-24

**A RESOLUTION APPROVING
PROFESSIONAL SERVICES AGREEMENT
FOR HEARING EXAMINER SERVICES**

WHEREAS the City of Toppenish desires to enter into a professional services contract for hearing examiner services, and

WHEREAS Daniel B. Heid, Attorney at Law, has agreed to serve as the City of Toppenish Hearing Examiner as set forth in the attached Agreement,

NOW THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF TOPPENISH, WASHINGTON AS FOLLOWS:

The Professional Services Agreement for Hearing Examiner Services between the City of Toppenish and Daniel B. Heid is approved, and the Mayor is authorized to execute said Agreement on behalf of the City.

This Resolution shall be effective immediately upon passage and signatures hereto.

PASSED by the Toppenish City Council during its meeting held on May 6, 2024.

ELPIDIA SAAVEDRA, Mayor

ATTEST:

HEIDI RIOJAS, CMC, City Clerk

Hearing Examiner Services Agreement

In consideration of the mutual promises and obligations hereinafter set forth herein, the Parties agree as follows:

1. **Parties.** The Parties to this Agreement are the City of Toppenish, a Washington State municipal corporation, hereinafter the "City," and Daniel B. Heid, an attorney, hereinafter "Hearing Examiner."

2. **Scope of Services.** In accordance with Chapter 2.50 of the Toppenish Municipal Code (TMC), the Hearing Examiner shall serve as the City's Hearing Examiner with respect to cases directed to the Hearing Examiner pursuant to Chapter 2.50 TMC or as directed to the Hearing Examiner by the City Manager, the City Council or City Ordinance.

The services to be provided by the Hearing Examiner shall be as a quasi-judicial officer, and not as a lawyer for the City or any party of interest in any case coming before the Hearing Examiner.

3. **Term of Agreement.** This Agreement shall be effective when signed by both Parties. This agreement shall remain in effect until either or both Parties jointly or unilaterally terminate the Agreement.

Either party may terminate this Agreement at any time, with or without cause, by giving 60 days written notice to the other party. In the event of termination, the Hearing Examiner shall be entitled to compensation under the terms of this Agreement to the extent of the actual work performed hereunder prior to the termination effective date. Notice periods contained in this paragraph may be waived if agreed to by both parties in writing.

4. **Compensation.** As compensation for the services performed under this Agreement, the City shall pay the Hearing Examiner at a rate that is measured by the amount of time that the Hearing Examiner expends in providing hearing examiner services for the City. The Hearing Examiner rate shall be \$125.00 per hour of service provided for the City. The Hearing Examiner will measure the time that the Examiner expends in providing services for the City, including site visits, in a minimum amount of, and in increments of, one tenth of an hour, with invoices reflecting the totals thereof.

The Hearing Examiner shall also be reimbursed for the Hearing Examiner's direct expenses advanced on the City's behalf. Representative examples of such expenses include mileage and mailing costs, but not costs for materials. The Examiner shall be compensated for mileage at the rate established in federal Internal Revenue Service regulations. Rather than being reimbursed for travel time to and from Toppenish City Hall, the Examiner shall be paid a Travel Time Fee of \$ 20.00 per trip to Toppenish City Hall or to locations within the Toppenish vicinity for site visits when site visits are appropriate for consideration of cases, issues or matters coming before the Hearing Examiner.

The above fees and charges include all labor, materials, and expenses provided and/or

required under this Agreement.

The Hearing Examiner will submit a monthly billing statement to the City itemizing the hours spent performing Hearing Examiner functions, time spent for staff compensable under this Agreement, and any direct expenses which may be charged to the City under this Agreement.

The Hearing Examiner shall be paid monthly within thirty (30) days after the City receives the Hearing Examiner's billing statement.

5. **Payment.** To obtain payment for services, the Hearing Examiner shall submit a completed invoice to the City on a form acceptable to the City, which shall include supporting documentation that may be requested by the City. The City shall be obligated to promptly pay the Hearing Examiner for its services, but no more frequently than monthly, made through the City's ordinary payment process.

6. **Hearing Examiner Qualifications and Performance.** The Hearing Examiner warrants that he has sufficient education, training, skill, knowledge, ability, and experience to competently provide hearing examiner services for the City. The Hearing Examiner further warrants that his conduct will conform to all applicable statutory and regulatory requirements, including those set forth in the City of Toppenish Code of Conduct, Chapter 2.25 of the Toppenish Municipal Code (TMC), the Code of Ethics for Municipal Officers, Chapter 42.23 of the Revised Code of Washington (RCW), and the Appearance of Fairness Doctrine of RCW Chapter 42.36.

The Hearing Examiner further warrants that his conduct in handling any cases, issues or matters coming before the Hearing Examiner shall be in conformity with the provisions of the Office of the Hearing Examiner, Chapter 2.50 TMC.

7. **Conflict of Interest.** The Hearing Examiner warrants that he/she shall disqualify himself from hearing any case, issue, or matter about which the Hearing Examiner has had pre-hearing contact with proponents or opponents, or that the Examiner has a personal financial interest or other conflict. In the case of any potential conflict, the Hearing Examiner will endeavor to give the City as much advance notice of a possible conflict to hear any item so that the case, issue or matter can be assigned to another hearing examiner.

8. **Performance Measures.** The performance of the Examiner will be evaluated at least annually according to the following measures of effectiveness.

- The logic of findings and conclusions and the reasoning of recommendations and decisions.
- The decorum, demeanor and effectiveness of the Examiner in the management and conduct of the proceedings assigned.
- The efficiency, effectiveness and service demonstrated, including cost effectiveness, timeliness, and responsiveness to all who appear before the Examiner.

- Preparation of reports, including format, clarity, comprehensibility, timeliness, thoroughness, completeness, grasp of and responsiveness to the issues presented, and familiarity with and application of applicable and relevant criteria, policies, regulations, and/or law.

In order for the City to evaluate the functions and cost effectiveness of Hearing Examiner's services, the Hearing Examiner may be requested to prepare a Report to the City Manager on the Hearing Examiner activities for the City on an annual or as-needed basis.

9. **Scheduling Work.** The Parties agree to schedule hearings or related services within the time constraints and/or deadlines that are applicable to hearing examiner proceeding, while making reasonable accommodations for the schedules of the Parties.

The Hearing Examiner shall promptly notify the City of any conflicts of interest or other circumstances that prevent him from acting as the City's hearing examiner pursuant to this Agreement.

10. **Force Majeure.** The Hearing Examiner is not responsible for delay or default caused by fire, flood, riot, acts of God or war if the event is beyond Hearing Examiner's reasonable control and Hearing Examiner gives notice to the City promptly after occurrence of the event causing the delay or default or that is reasonably expected to cause a delay or default.

11. **Ownership of Materials.** All Hearing Examiner's notes, rough drafts and other work product are the property of and owned by the City and shall be "works for hire" as defined by the U.S. Copyright Act of 1976. These materials include, but are not limited to: books, computer programs, data, documents, films, pamphlets, records, reports, sound reproductions, studies, surveys, tapes of such materials.

12. **Confidentiality.** The Hearing Examiner may use confidential information and other sensitive information gained by reason of the provision of services to the City, or by access to its property, only for City purposes. The Hearing Examiner shall not disclose, transfer, or sell any such information to any party, except as provided by law, or in the case of personal information, with the prior written consent of the person to whom the personal information pertains. The Hearing Examiner shall maintain the confidentiality of all personal information and other information gained by reason of its provision of services to the City, or by access to its property.

13. **Independent Contractor.** The Hearing Examiner acknowledges that his appointment as Hearing Examiner is as an independent contractor and not an employee of the City. The Hearing Examiner shall not claim any rights, privileges, or benefits that would accrue to an employee or other representative of the City, except those that are expressly identified in this Agreement. In connection herewith, the Hearing Examiner is a Form 1099 Contractor, rather than a W-4 employee.

14. **Indemnification and Hold Harmless.** The Hearing Examiner shall be an official of the City pursuant to Chapter 2.98 TMC in performing this Agreement and shall be covered by said Chapter.

The City shall protect, defend, indemnify and save harmless the Hearing Examiner from any and all costs, claims, judgments or awards of damages, arising out of or in any way resulting from claims of the negligent acts or omissions of the City, its officers, employees or agents in performing this Agreement.

The Hearing Examiner does not assume liability or responsibility for, or in any way release the City from liability or responsibility that arises, in whole or in part, from the existence or effect of the City's ordinances, code, policies, rules or regulations. If any cause, claim or action of any kind is commenced in which the enforceability and/or validity of any City ordinance, code, policy or regulation, including its constitutionality, is at issue, the City shall defend the same at its sole cost and expense, and if judgment is entered, or damages are awarded against the Hearing Examiner, or the Hearing Examiner and City jointly, the City shall promptly satisfy the same.

15. **Notices.** All notices that relate to this Agreement shall be personally delivered or mailed by certified or registered mail, postage prepaid to the following addresses, or to such other address as either party shall specify in a written notice so given:

If to the City:

Toppenish City Manager
City of Toppenish
21 West First Avenue
Toppenish, WA 98948
Phone: (509) 865-2080
Phone: (509) 865-3864

If to the Hearing Examiner:

Daniel B. Heid
P.O. Box 747
Richland, WA 99352
Phone: (206) 321-7672

16. **Assignment.** The Parties may not assign this Agreement, or any rights or obligations contained in this Agreement without the express written consent of the other Party.

17. **Waiver.** No waiver of any provision of this Agreement shall be valid unless it is in writing and signed by the person or party against whom it is charged. The failure of the City to require Hearing Examiner's strict compliance with the terms of this Agreement shall not constitute or be construed as a waiver or relinquishment of the City's right thereafter to enforce any such term, but the same shall continue in full force and effect.

18. **Time.** Time is of the essence for the performance of every provision of this Agreement.

19. **Applicable Law and Venue.** The venue for any legal action arising from this Agreement shall be Yakima County, Washington. This Agreement shall be governed, construed, and interpreted according to the laws of the State of Washington.

20. **Severability.** The invalidity or unenforceability of any particular provision of this Agreement shall not affect the other provisions, and the remaining provisions of this

Agreement shall be construed as if they are severed from the invalid or unenforceable provisions.

19. **Modifications.** This Agreement shall not be modified, unless such modification is in writing and signed by the City and the Hearing Examiner.

20. **Complete Agreement.** This Agreement contains the entire understanding between the parties hereto with respect to the subject matter hereof, and supersedes all prior and contemporaneous agreements and understandings, inducements or conditions, express or implied, oral or written, except as herein contained.

21. **Counterparts.** This Agreement may be executed in any number of counterparts, and such counterparts shall collectively constitute the entire Agreement.

Dated April 11, 2024.



Daniel B. Heid, Hearing Examiner

Dated _____, 2024.

Elpidia Saavedra, Mayor

Attest:

Heidi Riojas, CMC, City Clerk

Approved as to Form:

Gary M. Cuillier, City Attorney



CITY OF TOPPENISH
REQUEST FOR COUNCIL ACTION
Agenda Bill No.: 24-036

Meeting Date: May 6, 2024

Subject: Discussion of Planning Commission Appointments

Attachment: None

Presented by: Dan Ford, Interim City Manager

Discussion:

During the April 22, 2024, Regular Meeting, the City Council discussed revising the membership and duties of the Planning Commission by adopting Ordinance 2024-08, by amending Toppenish Municipal Code Chapter 2.30.

It is now time to consider the applicants and appoint members to serve on the Planning Commission.

The City Clerk will work with the selection committee to review the received applications along with a staff review and recommendation for selection. Once the selection committee has made its selections the City Clerk will place that information on the next available regular meeting agenda for Council appointment.

Fiscal Impact: No Fiscal Impact.

Recommendation: Discussion of staff and selection committee process for the appointment of planning commission members.

Alternatives: Table for further discussion further review.