City of Union

Agenda

Council Work Session Meeting
Monday, July 25, 2022 @ 6:00 PM
Leonard Almquist Council Chambers, 342 S. Main St, Union, OR 97883

Memorandum

Subject:	Stipend Pay for Mayor and Council
Meeting:	Council Work Session - Jul 25 2022
Prepared For:	Mayor and Members of Council
Staff Contact:	Doug Wiggins,

BACKGROUND INFORMATION:
Currently we budget $6900 for Mayor and Councilor stipends. The current calculation is given regardless if the Mayor or Councilor is participating or attending meetings. Council had a discussion about looking at changing the current method to a stipend per meeting or task.

FINANCIAL IMPACT:
Stipend per task would increase the stipend budget from $6900 to $8500. Currently we have $12,500 budgeted.

POLICY IMPLICATIONS:
A new resolution would have to be passed in order to change stipend pay.

ATTACHED:
Council Stipend

City of Union, Oregon

PO Box 529
342 S. Main Street
Union, OR 97883

Phone: 541-562-5197
Fax: 541-562-5196
www.cityofunion.com

Home to the Buffalo Peak Golf Course

Ref: Mayor and Council Stipend Pay

Mayor Flint and Council,

I was tasked to come up with a possible stipend scale for our Councilors and Mayor. The goal of the stipend scale was to reward those for their time for attending meetings in person and for taking care of their extra duties.

The below scale is representative to the stipend pay discussion had by those in attendance that evening.

Currently we budget $6900.00 for Councilor and Mayor annual stipend and is broken down as follows:

Councilors: $5400/Year.
Mayor: $1500/Year.

Under a stipend structure that pays per meeting/task the following will add an additional $475 annually to the budget for a base stipend ($7375) for Councilors, Council President, and Mayor. I have included the calculations below for a better understanding:

Councilors: $25/meeting in person attendance + $25/month of extra duties
Council President: $25/meeting in person attendance + $25/month of extra duties
Mayor: $25/meeting in person attendance + $25/month of extra duties

We schedule 36 total business meetings and work sessions annually. This excludes any special meetings, executive sessions, or budget meetings.

Extra duties:

Five Councilors rotate on vouchers each month in pairs of 2. This yields 4 councilors having 5 months of extra duties and 1 councilor with 4 months of extra duties throughout the year.

The Mayor and Council President sign checks twice a month, every month.

If my calculations are correct the breakdown is as follows under this scale:

Councilors: $4500 Meetings + $475 extra duties = $4975/Year
Mayor/Council President: $1800 + $600 extra duties = $2400/Year

Please keep in mind that we would also be paying for budget meetings, special meetings and executive sessions attended at the same rate. In all I would recommend raising the Council/Mayor stipend budget to $8500. This would be adequate to cover our extras above and beyond the base should additional meetings be called. It would also give staff a fee they could charge should a meeting be called for some special purpose by a citizen or entity.

I hope this would clarify our discussion and hits the essence of our discussion.

Respectfully,

Doug Wiggins
City Administrator

Memorandum

Subject:	Library Levy Resolution
Meeting:	Council Work Session - Jul 25 2022
Prepared For:	Mayor and Members of Council
Staff Contact:	Doug Wiggins,

BACKGROUND INFORMATION:
Currently the Library Levy will expire in June 2022. This would allow us to put the measure back up while reducing the levy to $1.05/$1000.

ATTACHED:
Resolution 22-10 Library Levy Measure
SEL802 (Library Levy)
SEL 803 Explan Stmt (Library Levy)

CITY OF UNION
RESOLUTION 22-10

A RESOLUTION REFFERING A BALLOT MEASURE TO THE ELECTORS OF THE CITY AUTHORIZING TO CONTINUE THE FIVE (5) YEAR LOCAL OPTION TAX FOR LIBRARY PERSONNEL AND OPERATIONS BEGINNING IN FISCAL YEAR 2018/2019

WHEREAS, the City of Union is a municipality and political subdivision organized and existing pursuant to the laws of the State of Oregon and the Charter of the City; and,

WHEREAS, municipal libraries are important assets to Cities; for the City's well-being, vitality, growth, knowledge base, access to worldly information, youth reading programs, adult education, public information, and providing a meeting place. All together with many other unique opportunities and benefits; and,

WHEREAS, the Library fund has been supported by a five (5) year operating levy which shall sunset on June 30, 2023; and,

WHEREAS, the Library Board and the Library Budget Advisory Development Committee have developed operating budgets to fund Library personnel and operations for the next five (5) years; and,

WHEREAS, the operating budgets developed by the Library Board and the Library Budget Advisory Development Committee have been reviewed by City administration; and,

WHEREAS, the assessed valuation of the City of Union in 2021/2022 was $112,391,054 according to the Union County tax assessor; and,

WHEREAS, the Union County tax assessor estimates that City of Union property values will increase approximately three (3) percent per year based on current trends; and,

WHEREAS, based on the Union County tax assessor estimate, the estimated assessed valuation for the City of Union in fiscal year 2023/2024 would be $119,235,670; and,

WHEREAS, based on an operating budget of $125,197 and the estimated assessed valuation of property in the City of Union in fiscal year 2023/2024, the estimated tax rate would be $1.05 per thousand dollars of assessed valuation; and,

WHEREAS, the estimated tax rate of $1.05 per thousand dollars of assessed valuation would support Library operations for the five (5) year levy period.

NOW, THEREFORE, be it resolved by the Common Council of the City of Union as follows:

SECTION 1. APPROVAL OF BALLOT MEASURE FOR LIBRARY LOCAL OPTION TAX LEVY.
The Common Council of the City hereby directs that at the general election being held on November 8, 2022, there shall be submitted a measure to the qualified electors of the City authorizing a local option tax for the Library in the amount of $1.05 per thousand dollars of assessed valuation beginning in Fiscal Year 2023/2024, for a period of five (5) years.

SECTION 2. SUBMISSION TO THE ELECTIONS OFFICER.
Not later than the 61 days before November 8, 2022 the City Recorder, as the Chief Elections Officer of the City, shall submit to the County Clerk for Union County, Oregon a statement of the local option tax measure together with a certified copy of this Resolution and the Ballot Title, all in order so the local option tax measure may appear on the ballot for the general election to be held on November 8, 2022. The City Recorder shall submit to the County Clerk all necessary information and perform all other acts and things necessary or appropriate, so that the measure shall appear on the ballot for such election.

SECTION 3. ADDITIONAL AUTHORIZATION.
The City Administrator, the City Recorder or their designee, are hereby authorized, empowered, and directed, for and on behalf of the City, to do and perform all acts and things necessary or appropriate to cause the Library local tax levy to appear on the ballot for the November 8, 2022 general election and to otherwise carry out the purposes and intent of this Resolution.

SECTION 4. EF'FECTIVENESS OF RESOLUTION.
This resolution shall take effect immediately upon its adoption by the Common Council of the City.

Adopted at a Regular Meeting by _____ members constituting a majority of the City Council voting therefore and approved by the Mayor this ____day of ___________, 2022.

____
Mayor, Leonard Flint

Attest:

____
Doug Wiggins, City Administrator

Notice of Measure Election

City

SEL 802

rev 01/18 ORS 250.035, 250.041, 250.275, 250.285, 254.095, 254.465

Notice

Date of Notice	Name of City or Cities	Date of Election
August 8, 2022	City of Union	November8, 2022

Final Ballot Title

The following is the final ballot title of the measure to be submitted to the city's voters. The ballot title notice has been published and the ballot title challenge process has been completed.

Caption 10 words which reasonably identifies the subject of the measure.

Continuation of the Library Operations Levy for Five Additional Years

Question 20 words which plainly phrases the chief purpose of the measure.

Shall the City of Union support library services by levying $1.05 per $1,000 assessed value for five years, beginning 2023?

Summary 175 words which concisely and impartially summarizes the measure and its major effect.

Measure renews and reduces a levy that expires in June 2023. Renewal supports the City Library of Union by funding central support and services. The expiring levy provides 100% of total City operating and personnel Library funding. Renewal of the levy will allow the Library to:
Maintain open hours, avoiding cuts in service;
Fund children's reading events, including summer reading and literacy programs for preschoolers;
Purchase books and materials that all library users have access to;
Provide reading and learning support, including online access and homework help designed to improve school success for all students in the city.
The renewed five-year levy continues library services at a fixed rate of $1.05 per $1,000 of assessed value, which is unchanged from the current rate.
In 2023, typical homeowners with an assessed value (not market value) of $200,000 would pay $210
Estimated levy amount for each year:
$125,197 in 2023-24
$128,953 in 2024-25
$132,821 in 2025-26
$136,807 in 2026-27
$140,910 in 2027-28

Explanatory Statement

500 words that impartially explains the measure and its effect.

If the county is producing a voters' pamphlet an explanatory statement must be drafted and attached to this form for:
→ any measure referred by the city governing body; **or**
→ any initiative or referendum, if required by local ordinance.

Explanatory Statement Attached? ☒ Yes ☐ No

Authorized City Official

Not required to be notarized.

Name	Title
Doug Wiggins	City Administrator
Mailing Address	**Contact Phone**
Post Office Box 529, Union Oregon 97883	541-562-5197

By signing this document:
→ I hereby state that I am authorized by the city to submit this Notice of Measure Election; **and**
→ I certify that notice of receipt of ballot title has been published and the ballot title challenge process for this measure completed.

Signature	Date Signed

Explanatory Statement

What would Measure ______ do?

Public library operations:

• Maintain operational support for the Union City Library.

• Allow the Union City Library to maintain open hours without reduction due to funding shortfalls.

• Support children's reading programs. This includes annual summer reading programs and literacy programs for preschoolers so more children enter school ready to read.

• Enhance summer reading activities designed to sustain reading retention between school years.

• Increase reading and learning programs for students, including online homework and tutoring services designed to improve school success for all children in the City.

• Increase literacy training in English and Spanish to develop reading skills for children.

• Expand purchase of books, e-books and other materials that would be available to all users of the City Library.

• Continue library services that provide information, resources, and instruction to assist those seeking jobs.

• Provide outreach services to special populations such as mail delivery of books to homebound residents.

• Support services and technologies designed to increase efficiencies in service delivery across the system.

How would this replacement levy affect a homeowner's taxes?

• The levy rate would be $1.05 per $1,000 of assessed value, which is no increase over the current rate.

• In 2023, owners of a home with an assessed value of $200,000.00 (not market value) would pay about $210.

What happens if the levy does not pass?

Because the expiring levy provides 100% of the City Library's operational and personnel funding, reductions in service levels would likely occur based on local library priorities:

• Reductions of personnel hours, book purchases and programs,

• Reductions in central support and outreach programs,

• Operational funding would not be available.

Memorandum

Subject:	Discussion of Ordinance 566
Meeting:	Council Work Session - Jul 25 2022
Prepared For:	Mayor and Members of Council
Staff Contact:	Doug Wiggins,

ATTACHED:
Ordinance 566

CITY OF UNION
STATE OF OREGON

In the Matter of an Ordinance
Amending the City of Union
Lodging Tax (Ordinance 565) ORDINANCE NO. 566

WHEREAS, the City of Union passed Ordinance 565 on March 14, 2022, with the intent that it would be administered by the Oregon State Department of Revenue (ODOR); and,

WHEREAS, upon submission of the Ordinance 565 to the ODOR, it was discovered that some required language was missing for ODOR to administer the City of Union Lodging Tax; and,

WHEREAS, it will not be possible to begin enforcement of this Ordinance 565 by July 1, 2022.

NOW THEREFORE BE IT RESOLVED, the governing body for the City of Union amends Ordinance 565 as follows:

1. Section 2. Definitions, subsection K shall read as follows:

    K. Tax Administrator means the City Administrator/Recorder, or their designee, which may include the Oregon Department of Revenue. If the city utilizes the Oregon Department of Revenue as its tax administrator, it will comply with ORS 305.620 in that it will follow the rules adopted by the Department of Revenue regarding the administration, collection, enforcement, and distribution of transient lodging taxes.

2. Section 9. Penalties and Interest, add subsection D to read as follows:

    D. Taxes, interest, and penalties paid to the tax administrator under this section shall be distributed to the City of Union's General Fund, earmarked for Economic Development and Tourism.

3. Enforcement of this Ordinance shall take effect upon the acceptance and administration by the ODOR.

First Reading: ___________________
Second Reading: ________________
Dated the ____ day of __________, 2022
CITY OF UNION, CITY COUNCIL

Attest: ___________________________________
Mayor, Leonard Flint

____
Administrator, Doug Wiggins

Memorandum

Subject:	Ziply Franchise Agreement
Meeting:	Council Work Session - Jul 25 2022
Prepared For:	Mayor and Members of Council
Staff Contact:	Doug Wiggins,

BACKGROUND INFORMATION:
Discussion of Ordinance 567

ATTACHED:
Ziply Ordinance 567 (Final)
Ziply Franchise Agreement (Exhibit A)

CITY OF UNION
ORDINANCE 567

AN ORDINANCE GRANTING A NON-EXCLUSIVE TELECOMMUNICATIONS FRANCHISE TO ZIPLY FIBER NORTHWEST LLC

Recital

A. Franchisee owns and operates a telephone communications system serving the Franchise Area under an existing agreement (Ordinance No. 328 adopted on March 13, 1978, as amended by Resolution No. 90-7, adopted August 13, 1990). Franchisee provides other services, including internet services, over its telephone communications system.

B. Franchisee desires to continue to operate the telephone communications system and to provide services to its Subscribers.

THE CITY OF UNION ORDAINS AS FOLLOWS:

Section 1: Grant of Authority.

City grants to Franchisee the right and privilege, subject to all City of Union ordinances, policies, rules and regulations, to construct, install, maintain and operate over, in, on and under the present and future City rights of way of the City of Union, facilities necessary for the purpose of providing telecommunication services. This franchise is not exclusive, and City reserves the right to grant a similar privilege to any other person or entity at any time during the period of this franchise. This grant is further subject to all prior rights, interests, agreements, permits easements or licenses granted by the City, and to the City's right to use the rights of way for any purpose it deems fit, including the same or similar purposes allowed Franchisee.

Section 2: Terms of Franchise.

This franchise is granted on the terms stated in the Franchise Agreement attached as Exhibit A.

Section 3: Authority of City Administrator.

The City Administrator is authorized to sign the Franchise Agreement with Franchisee in substantially the form attached as Exhibit A.

Section 4: Effectiveness.

This Ordinance shall be voidable at the City's sole discretion if Franchisee does not return a signed copy of the Franchise Agreement to the City within 30 days of the passage of this Ordinance or fails to provide a certificate of Insurance and endorsement to the City covering the insurance required by the Franchise Agreement.

Section 5: Repeal.

Ordinance No. 328, adopted on March 13, 1978, and Resolution NO. 90-7, adopted on August 13, 1990, are hereby repealed and rendered null and void.

This ordinance shall take effect immediately after passage.

First Reading: _________________
Second Reading: _______________

Passed this ___ day of ___________, 2022 by the common council in a regular meeting with ___ votes of the majority.

____
Mayor, Leonard Flint

Attest:

____
Doug Wiggins, City Administrator

NON-EXCLUSIVE TELECOMMUNICATIONS FRANCHISE AGREEMENT BETWEEN
THE CITY OF UNION AND ZIPLY FIBER NORTHWEST LCC

This Agreement is between the **City of Union,** an Oregon municipal corporation ("City") and **Ziply Fiber Northwest LLC,** a Delaware limited liability company ("Franchisee"), and is dated ________________________,2022, ("Effective Date").

Section 1. Definitions.

Any terms defined In the Union Code and not in this Agreement have the meaning provided by the Union Code.

"Facilities" means the conduits, cables, optic fibers, poles, wires, vaults, fixtures, aboveground and underground lines, antennae, support mast and mounts, amplifiers, receivers, equipment cabinets, through bolls, washers, nuts, power supply cabinets, power meters, grounding or bond wires, enclosures, cabinets, battery back-up units, and other physical components and related equipment of Franchisee's Telecommunication System that are in compliance With applicable laws, rules and regulations as required by Section 3.

"Gross revenue" shall have the same meaning as ORS 221.515.

"Telecommunications System" means all facilities owned, operated or used by Franchisee to provide telecommunication services, including voice, data and audio and video transmission services, and located in rights-of-way administered by the City.

Section 2. Grant of Authority.

City grants to Franchisee the right to construct, install, maintain and operate Facilities over, in, on, and under present and future City rights-of-way for the purpose of providing telecommunication services on the terms stated in this Agreement.

This Franchise is not exclusive. The City reserves the right to grant a similar franchise to any other person or entity at any time during the period of this Agreement. This Agreement is subject to all prior rights, interests, agreements, permits, easements or licenses granted by the City, and to the City's right to use and administer rights-of-way for any purpose.

Section 3. Compliance with Laws, Rules and Regulations.

Franchisee shall comply with all applicable federal, state and City laws, rules and regulations, including but not limited to Union Development Code, other provisions or revisions of the Union Code, and City ordinances. The locations and methods of installation and maintenance of all Franchisee's Facilities shall be subject at all times to regulation by the City (including City's ordinances, standards and specifications, and regulations on street cuts and use of rights-of-way or public easements). Franchisee must obtain right-of-way permits prior to installation or construction of Facilities. Franchisee must develop, site, construct, install, and at all times maintain and operate all Facilities in accordance with telecommunications industry standards and City standards and specifications, including but not limited to Union Development Code and as directed by the City Engineer in accordance with the Union Code.

Section 4. Franchisee Liability, Indemnification of City, and Insurance.

A. Liability and Indemnification. Franchisee will defend, indemnify, and hold the City, its officers, agents, employees and volunteers harmless against all liability, claims, losses, demands, suits, fees and judgments (collectively known as "claims") that may be based on, or arise out of damage or injury, including death, to persons or property caused by or resulting from any act or omission sustained in connection with the performance of this Agreement or by conditions created thereby or based upon violation of any statute, ordinance or regulation. This indemnification does not apply to claims caused by the negligence or willful misconduct of the City, its officers, agents, employees and volunteers.

Franchisee agrees that it is not an agent of the City and is not entitled to Indemnification and defense under ORS 30.285 and ORS 30.287.

B. Insurance. Franchisee must maintain, at Franchisee's expense during the term of this Agreement, commercial general liability and commercial automobile insurance covering bodily injury and property damage in an amount of $1 million per occurrence and $5 million in aggregate, which limits may be met by any combination of primary and excess or umbrella insurance. The insurance policies obtained by Franchisee shall be primary and non-contributory. Franchisee shall remain fully responsible for any claims resulting from negligence or intentional misconduct of Franchisee or its subcontractors and their officials, agents and employees in performance of this Agreement, even if not covered by, or in excess of insurance limits.

Commercial general liability coverage must name, by certificate and endorsement, the City, its officers, agents, employees and volunteers as additional insureds with respect to Franchisee's work or services conducted under this Agreement. Franchisee will require that its insurance carrier give the City 30 days' written notice of any cancellation of or reduction in insurance coverage. Any failure to comply with this provision will not affect the insurance coverage provided to City.

Franchisee must obtain and maintain workers' compensation insurance as required by ORS Chapter 656 and meeting the minimum requirements therein. Franchisee must ensure that each contractor and subcontractor obtains and maintains workers' compensation Insurance and that the carrier notifies the state of Oregon or files a guaranty contract with the State of Oregon Workers' Compensation Division before performing work.

Coverages provided by Franchisee must be underwritten by an insurance company authorized to do business in the state of Oregon and with a Best's rating of A-VII or higher.

As evidence of the insurance coverage required by this Agreement, Franchisee must provide a certificate of insurance and signed endorsement from the carrier(s). The certificate and endorsement must provide that there will be no cancellation, termination, material change or reduction in limits of the insurance coverage without a minimum 30-day written notice to City. The certificate and endorsement must also state the deductible or self-Insured retention level. This Agreement will not be in effect until the required certificate and signed endorsement have been received and approved by City, which reasonable approval may not be withheld or delayed. Renewal endorsements will be provided to City upon receipt by Franchisee. The City may terminate this Agreement for failure to maintain the required insurance.

C. Waiver of Subrogation. Franchisee grants a waiver of subrogation to the City, its officers, agents, employees and volunteers for any claims arising out of Franchisee's work or service. Further, Franchisee agrees that in the event of loss due to any of the risks for which it has agreed to provide insurance, recovery will be solely with its insurance carrier, and also grants to City, on behalf of any insurer providing coverage to either Franchisee or City with respect to the work or services of Franchisee, a waiver of any right to subrogation which any insurer or subcontractor may acquire against City by virtue of the payment of any loss under such insurance coverage.

Section 5. Performance Bond.

Before commencing any new construction or substantial improvement work in any right-of-way administered by the City, Franchisee must provide a performance bond in the amount of$100,000, or a lesser amount as agreed to in writing by the City as being sufficient to assure proper restoration of any street, sidewalk or other surface disturbed by Franchisee. Franchisee must keep the bond in full force and effect during any activities that disturb the surface of any rights-of- way and for a period of at least one year after restoration of rights-of-way. The bond may be withdrawn one year after restoration of rights-of-way, but must be restored prior to any further action that would disturb any street, sidewalk, or other surface. The bond must be issued by surety authorized to do business in the state of Oregon and with a Best's rating of A-VII or higher.

City may, in the event of any construction which is likely to be substantially greater than $100,000, or in the event the City's cost to complete or repair the construction upon Franchisee's failure to perform the same would be greater than $100,000, as reasonably determined by the City, require the amount of the performance bond to be Increased. The performance bond is subject to increase each time Franchisee applies for permits to perform work within the city of Union. Franchisee must provide to City all necessary documentation demonstrating Franchisee's cost estimation in a format reasonably acceptable to City.
General maintenance or minor improvement work in the right of way shall be exempt from the requirement to post a performance bond.

Section 6. Construction and Conditions on Right-of-Way Occupancy.

A. **Use.** Franchisee must conduct its operations under this Franchise, including installation, construction, operations, and maintenance of Its Facilities, in compliance with all lawful governmental regulations and in a safe, competent, and skillful manner so as not to present a danger to the public or City. Franchisee must construct, install, maintain and operate Its facilities in designated City rights- of-way to industry standards and City's commercially reasonable satisfaction, in compliance with all City ordinances, rules, standards and specifications, policies and regulations, in a manner so as to interfere as little as practicable with traffic and other use of rights of way, and to cause minimum interference with the rights or reasonable convenience of property owners who adjoin any of the rights of way, Including existing and future City services. All work in City right-of-way requires a permit and a traffic plan that is fully compliant with the City of Union codes regarding street standards prior to the start of any work.

B. Construction. Prior to beginning construction, Franchisee must obtain all necessary land use approvals and permits. When construction is complete, Franchisee must provide the City Engineer as-built drawings with a map showing the location of installed Facilities in City rights-of-way as required by City codes, standards and specifications, and building requirements. The City Engineer may require additional information on the as-built drawings.

C. Restoration. In case of any disturbance of pavement, sidewalk, driveway, or other surfacing by Franchisee, Franchisee must, at its own cost and expense and in compliance with the City's standards and specifications, promptly replace and restore all paving, sidewalk, driveway, landscaping or surface of any street or alley disturbed. Franchisee warrants all restoration work for a period of one year from completion of the work. If Franchisee fails to make restoration as required by this section within a reasonable timeframe following written notice from City to Franchisee or If the restoration fails within the one year warranty period, City may cause the repairs to be made at the expense of Franchisee. If Franchisee fails to reimburse the City for any costs incurred under this section within 45 days of demand for reimbursement and such failure is not a result of a good faith dispute between City and Franchisee, City may refuse to issue additional permits.

D. Notification. Franchisee must comply with the requirements of Oregon Utility Notification Law and Implementing rules and regulations.

E. Relocation. City may require Franchisee to relocate its Facilities. If the removal or relocation of Facilities is caused directly by an identifiable development of property or other third-party project and the removal or relocation of Facilities occurs within the area to be developed, or is made for the convenience of a customer, Franchisee may charge the expense of removal or relocation to the developer or customer. Franchisee will be solely responsible for enforcing collection from the developer or customer. If the removal or relocation of Facilities results from City's need to provide public facilities, a City project, or is otherwise requested by City or is made for the purpose of improving a street to City standards or other improvement for the benefit of the public, Franchisee will remove or relocate Its Facilities at Franchisee's expense within a reasonable time frame after notification by City. City will make a reasonable effort to provide Franchisee with an alternate location for its Facilities within City rights-of-way.

In cases of capital improvement projects undertaken by City, Franchisee must convert existing overhead distribution Facilities to underground at Franchisee's expense if requested to do so by City. City agrees to comply with provisions of applicable law when requiring such conversion and to do so in a non-discriminatory manner. In the event that City receives third party funding for a City project or improvement to a City street that covers Franchisee's expenses, City will remit payment to Franchisee from the third party funding for reimbursement for Franchisee's relocation expenses.

F. Placement of Facilities. Franchisee will not knowingly place its Facilities where they will interfere with any existing or future City utility, gas, electric, or telephone fixture or power, sanitary sewer, storm sewer, or water facility. Franchisee must consult with City Engineer prior to placement of Facilities, and will comply with all City ordinances, policies, rules, and regulations in connection with its placement of Facilities. Whenever all existing electric utilities, cable facilities and telecommunications facilities are located underground within a public right-of-way in the city of Union, Franchisee must also locate or relocate its facilities underground.

G. Temporary Rearrangement of Facilities. Franchisee must, consistent with City policies, ordinances, rules, and regulations, arrange to temporarily raise, lower, or otherwise move its Facilities to permit the moving of buildings or other objects if the person or entity wishing to move the building or other object makes a reasonable arrangement to reimburse Franchisee for its expenses in rearranging its Facilities. Nothing In this section precludes City from requiring Franchisee to move its Facilities at Franchisee's expense when public convenience requires the move.

<u>Section 7. Transfer of Franchise.</u>

Franchisee may not sell, assign, dispose of, or transfer in any manner whatsoever any interest in this Franchise or in the Facilities authorized by this Agreement, or any part of the Facilities, without prior written approval of City, which approval will not be unreasonably withheld. The City may impose reasonable conditions on any such approval, including but not limited to the requirement that the transferee acknowledge in writing and agree to be bound by the terms of this Agreement. Any transfer of Franchisee’s assets to another carrier which is approved by the Oregon Public Utilities Commission will receive automatic approval by the City. City has the right to collect from Franchisee City's actual administrative costs associated with processing a transfer request, including the cost of ascertaining the financial responsibility of the proposed transferee. Use of Franchisee's Facilities by third parties shall not constitute an assignment or transfer of privileges for purposes of this Agreement.

<u>Section 8. City Rights in Franchise.</u>

A. City Supervision and Inspection. City has the right to supervise all construction or Installation of Franchisee's Facilities subject to the provisions of this Agreement and make such inspections as it finds necessary to ensure compliance with governing laws, ordinances, rules, and regulations.

B. Termination or Abandonment of Agreement. Upon any termination of this Agreement, all Facilities installed or used by Franchisee must be removed by Franchisee at Franchisee's expense and the property upon which the Facilities were used restored by Franchisee to the condition it was in before installation.

C. Co-location. Franchisee must offer the City the opportunity to co-locate City conduit and lines in trenches dug by Franchisee in City rights-of-way and may charge City only any incremental additional costs incurred in making the trenches available for City use.

<u>Section 9. Franchise Fee.</u>

A. Except to the extent prohibited or limited by federal or state law or regulation, Franchisee must pay quarterly to City the sum of 7.0% of Franchisee's Gross Revenues.

1. The fee required by this section is due and payable within 60 days after the end of each calendar quarter. Any payment not made when due will bear interest at the rate of 9% per annum, compounded monthly, from the date due until paid.

2. With each payment, Franchisee must furnish City with a written statement executed under oath by an officer of Franchisee, verifying the amount of Gross Revenues of Franchisee within the City of Union for the quarterly period covered by payment.

3. City's acceptance of any payments due under this section will not be considered a waiver by City of any breach of this Agreement.

4. Franchisee agrees and covenants that it will not challenge the validity of the franchise fees under this Agreement as long as they do not exceed the maximum amounts established by applicable statutes.

B. Except to the extent prohibited by Federal or State law, the Franchise Fee is in addition to any permit fee required to comply with Section 3.

<u>Section 10. Franchisee Records and Reports</u>

Franchisee must keep accurate books of financial accounts at an office within the state of Oregon throughout the term of this Agreement and for three years after the expiration or termination of this Agreement. Franchisee must produce all books and records directly concerning its Gross Revenues and other financial information reasonably necessary by City for purposes of calculation of the franchise fee for inspection by City, upon no less than 10 days prior written notice, during normal working hours. City may require periodic reports from Franchisee relating to its operation within the boundaries of the City of Union. City has the right during the term of this Agreement or within 180 days thereafter to conduct audits of Franchisee's records for the three years prior to the audit. If the audit reveals intentional non-payment of the fee, the City may expand the audit to cover up to 25 years. Such audits will be undertaken by a qualified person or entity selected by City. The cost of any such audit will be borne by City, unless the results of any such audit reveal an underpayment of more than 8% of the franchise fee for the period audited. In the case of such underpayment, Franchisee must pay the full cost of such audit. Franchisee must immediately pay the amount of the underpayment as determined by such audit to City together with 12% per annum interest from the date such payment should have been made to the date the payment is actually made.

Any audit information obtained by City under these provisions will be kept confidential to the maximum extent allowed by Oregon law, except that this obligation does not prevent the City from introducing audit results in any forum where enforcement of the provisions of this Agreement is at issue.

Section 11. Permit and Inspection Fees,

Nothing in this Agreement may be construed to limit the right of City to require Franchisee to pay reasonable costs incurred by City in connection with the issuance of a license or permit, making an inspection, or performing any other service for or in connection with Franchisee or its Facilities, whether pursuant to this Agreement or any ordinance or regulation, subject to any limitation Imposed by Federal or state law.

Section 12. Enforcement and Termination of Agreement for Violation.

A. **Default.** Time of payment and performance are of the essence in the Agreement The following are events of default:

1. **Default In Payments**. The failure of Franchisee to pay City when due any amounts required by the Agreement pursuant to Section 9 and such failure continues for a period of 10 days after the due date.

2. **Default in Other Covenants.** The failure of Franchisee to perform any of the covenants and conditions required by this Agreement to be kept and performed by Franchisee, and such failure continues for a period of 30 days after notice from City of such failure. Upon the occurrence of an event of default, Franchisee must pay to City the sum of $200 per day for each day the default continues along with any additional damages suffered by City as a result of Franchisee's default.

B. The City may terminate this Agreement for defaults that are not cured within the time allowed by providing 30 days' notice to Franchisee of its intent to terminate. Franchisee may avoid termination by completely curing the default{s), including payment of the penalty required by Subsection A.2 of this section, unless the notice of termination is the third notice of termination within a 12 month period. Franchisee may challenge a notice of termination by providing a written protest to the City Manager within 1O business days of the date of the notice of termination. The City Manager, on receipt of the protest shall either grant the protest, in which case the Agreement will remain in place, or refer the matter to the City Council for a decision. The termination will not become final until after the decision by the City Manager or City Council.

Section 13. Remedies not Exclusive; Waiver.

All remedies granted to the City under this Agreement are cumulative, and recovery or enforcement of one remedy is not a bar to the recovery or enforcement of any other remedy. Remedies contained in this Agreement are not exclusive and City reserves the right to enforce penal provisions of any ordinance and also use any remedy available to City at law or in equity. Failure to enforce any provision of this Agreement may not be construed as a waiver of a breach of any other term, condition or obligation of this Agreement.

Section 14. Franchise Term.

This Franchise is granted for a term of ten years beginning the Effective Date ("Initial Term") and will automatically renew for two successive terms of ten years (each a "Renewal Term") unless notice of termination is provided. Franchisee and City may terminate this Agreement at the end of the Initial Term or any Renewal Term by providing notice of termination at least 60 days prior to the end of the Initial Term or relevant Renewal Term. If notice of termination is provided, the parties may negotiate a new franchise agreement. In the event the City adopts code provisions, regulations or standards and specifications applicable to this Franchise or if state or federal legislation or regulation affects any provision of this Franchise, the Parties, at the request of either Party, may request renegotiation of the Franchise to reflect the changes in law or regulation.

Section 15. Severability.

If any section, subsection, sentence, clause or portion of this Agreement becomes for any reason invalid or if any such portion of this Agreement is rendered unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity or constitutionality of the remaining portion thereof. If for any reason, the franchise fee is invalidated or amended by the act of any court or governmental agency, then the highest reasonable franchise fee allowed by such court or other governmental agency shall be the franchise fee charged by this Agreement.

Section 16. Notices.

Any notice required or permitted under this Agreement shall be deemed given when received or when deposited with the United States Postal Service, postage prepaid and sent as registered or certified mail addressed as follows:

TO CITY: City Administrator, City of Union
PO Box 529
Union, OR 97883

TO FRANCHISEE: Ziply Fiber
Attn: Legal Department
135 Lake Street South, Suite 155
Kirkland, WA 98033

legal@ziply.com

or to such other address as may be specified from time to time by either party in writing. The primary contacts may be changed at any time by a written communication, including email, without the need for formal notice.

Section 17. Interpretation / Jurisdiction.

Interpretation of the Agreement shall be governed by laws of the State of Oregon and any legal action relating to this Agreement must be brought in the state or federal courts located in Union County.

Section 18. Attorney Fees.

If any arbitration, suit, or action is instituted to interpret or enforce the provisions of this Agreement, to rescind this Agreement, or otherwise with respect to the subject matter of this Agreement, the party prevailing on an issue will be entitled to recover with respect to such issue, in addition to costs, reasonable attorney fees incurred in the preparation, prosecution, or defense of such arbitration, suit, or action as determined by the arbitrator or trial court, and, if any appeal is taken from such decision, reasonable attorney fees as determined on appeal.

Section 19. Entire Agreement / Amendment.

This Agreement (including the documents and instruments referred to in this Agreement) constitutes the entire agreement and understanding of the parties with respect to the subject matter of this Agreement and supersedes all prior understandings and agreements, whether written or oral, among the parties with respect to such subject matter.

This Agreement may be amended only by an instrument in writing executed by all the parties.

City of Union:

____
Name: ________________________
Title: ___________________________
Date: ___________________________

Ziply Fiber Northwest, LLC, Franchisee:

____
Name: _____________________________
Title: ______________________________
Date: ______________________________

Memorandum

Subject:	Discussion on Ordinance 568
Meeting:	Council Work Session - Jul 25 2022
Prepared For:	Mayor and Members of Council
Staff Contact:	Doug Wiggins,

BACKGROUND INFORMATION:
Ordinance 568 is the ban for Psilocybin and will discuss the process on this during the work session.

ATTACHED:
Ordinance 568 Psilocybin

CITY OF UNION
STATE OF OREGON

In the Matter of an Ordinance
Banning Psilocybin Service Centers and Manufacturing

ORDINANCE NO. 568

AN ORDINANCE DECLARING A BAN ON PSILOCYBIN SERVICE CENTERS AND THE MANUFACTURE OF PSILOCYBIN PRODUCTS

WHEREAS, in November 2020, Oregon voters approved Ballot Measure 109, known as the Oregon Psilocybin Service Act (codified at ORS 475A), which allows for the manufacture, delivery and administration of psilocybin at licensed facilities; and

WHEREAS, ORS 475A.235 provides that the Oregon Health Authority will regulate the manufacturing, transportation, delivery, sale and purchase of psilocybin products and the provision of psilocybin services in the state; and

WHEREAS, the Oregon Health Authority has initiated a rulemaking process to implement the state's psilocybin regulatory program and intends to begin accepting applications for psilocybin-related licenses on January 2, 2023; and

WHEREAS, ORS 475A.718 provides that a city council may adopt an ordinance to be referred to the electors of the city prohibiting the establishment of state licensed psilocybin product manufacturers and/or psilocybin service centers in the area subject to the jurisdiction of the city; and

WHEREAS, the Union City Council believes that prohibiting psilocybin product manufacturers and psilocybin service centers within the city's jurisdictional boundaries to enable the adoption of the state's psilocybin licensing and regulatory program and to allow the city to adopt reasonable time, place, and manner regulations on the operation of psilocybin facilities is in the best interest of the health, safety and welfare of the people of Union; and

WHEREAS, the City Council seeks to refer to the voters of Union the question of whether to establish a ban on state-licensed psilocybin product manufacturers and psilocybin service centers within the city's jurisdictional boundaries.

Now, therefore, THE CITY OF UNION ORDAINS AS FOLLOWS:

Section 1. Prohibition.
The establishment of psilocybin product manufacturers licensed under ORS 275A.290 and psilocybin service centers licensed under ORS 475A.305 is prohibited in the City of Union.

Section 2. Referral.
This ordinance is referred to the electors of the city of Union for approval at the next statewide general election on November 8, 2022.

Section 3. Effective Date.
This ordinance takes effect and becomes operative 30 days after the day on which it is approved by a majority of voters.

First reading this ___ day of August,2022.
Second reading and passage by this Council this ___ day of August,2022.

____
Leonard Flint, Mayor

ATTEST:

____
Doug Wiggins, City Administrator