

Council accepts comments on agenda items during the meeting. Please fill out a form identifying the item(s) you wish to speak on prior to the meeting starting, if possible, or prior to the agenda item beginning and turn it into the City Recorder. (The exception is formal land use hearings, which requires a specific public hearing process.)

**CITY OF NEWBERG
CITY COUNCIL AGENDA
TUESDAY, JANUARY 19, 2010
7:00 P.M. MEETING
PUBLIC SAFETY BUILDING TRAINING ROOM
401 EAST THIRD STREET**

I. CALL MEETING TO ORDER*

II. ROLL CALL

III. PLEDGE OF ALLEGIANCE

IV. CITY MANAGER'S REPORT

V. PUBLIC COMMENTS

(30 minutes maximum which may be extended at the Mayor's discretion; an opportunity to speak for no more than 5 minutes per speaker allowed)

VI. CONSENT CALENDAR

1. Consider a motion approving **Resolution No. 2010-2883** initiating text amendments for flood hazard policies to the Comprehensive Plan and Development Code and adopting the current Yamhill County Flood Insurance Study and National Flood Insurance Rate Maps. (Pgs. 3-19)
2. Consider a motion approving **City Council Minutes** for December 21, 2009. (Pgs. 21-26)

VII. NEW BUSINESS

1. Consider a motion approving **Resolution No. 2010-2881** accepting the annual audit report and financial statements for fiscal year ending June 30, 2009. (Pgs. 27-48)
2. Consider a motion approving **Resolution No. 2010-2882** consenting to assign garbage services exclusive franchise with the City of Newberg to Waste Management of Oregon, Inc. (Pgs. 49-60)

VIII. EXECUTIVE SESSION

Executive Session pursuant to ORS 192.660(2)(a) relating to employment of a public officer –
Municipal Judge Recruitment.

IX. COUNCIL BUSINESS

X. ADJOURNMENT

*The Mayor reserves the right to change the order of items to be considered by the Council at their meeting. No new items will be heard after 11:00 p.m., unless approved by the Council.

INDEX OF ORDERS, ORDINANCES AND/OR RESOLUTIONS:

RESOLUTIONS:

Resolution No. 2010-2881 accepting the annual audit report and financial statements for fiscal year ending June 30, 2010.

Resolution No. 2010-2882 consenting to the assignment of the Newberg Garbage Service, Inc.'s exclusive Franchisee with the City of Newberg to Waste Management of Oregon, Inc.

Resolution No. 2010-2883 initiating a comprehensive plan text amendment for flood hazard policies, a development code amendment to create flood plain development standards, and adoption of the most current Yamhill County Flood Insurance Study and associated National Flood Insurance Rate Maps.

ACCOMMODATION OF PHYSICAL IMPAIRMENTS: In order to accommodate persons with physical impairments, please notify the City Manager's office of any special physical or language accommodations you may need as far in advance of the meeting as possible and no later than 48 hours prior to the meeting. To request these arrangements, please contact Norma Alley, City Recorder, at (503) 537-1283.

*The Mayor reserves the right to change the order of items to be considered by the Council at their meeting. No new items will be heard after 11:00 p.m., unless approved by the Council.

REQUEST FOR COUNCIL ACTION

DATE ACTION REQUESTED: January 19, 2010

Order ____	Ordinance ____	Resolution <u>XX</u>	Motion ____	Information ____
No.	No.	No. 2010-2883		

SUBJECT: Initiation of a comprehensive plan text amendment for flood hazard policies, a development code amendment to create flood plain development standards, and adoption of the most current Yamhill County Flood Insurance Study and associated National Flood Insurance Rate Maps.

Contact Person (Preparer) for this Resolution: Luke Pelz, AICP

Dept.: Planning & Building Department

File No.: CPTA-09-002
(if applicable)

RECOMMENDATION:

Adopt **Resolution No. 2010-2883** initiating a comprehensive plan text amendment for flood hazard policies, a development code amendment to create flood plain development standards, and adoption of the most current Yamhill County Flood Insurance Study and associated National Flood Insurance Rate Maps.

EXECUTIVE SUMMARY:

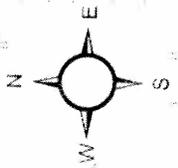
This resolution would initiate changes to Newberg's flood plain management standards. If initiated, the Planning Commission and City Council will hold hearings on whether to adopt the standards. The National Flood Insurance Program is a federal program enabling property owners in participating communities to purchase insurance as a protection against flood losses in exchange for state and community floodplain management regulations that reduce flood damages. The Federal Emergency Management Agency (FEMA) has recently updated the Flood Insurance Study for Yamhill County and Incorporated Areas. The study is used to determine flood hazard present as well as flood zones that are used to write flood insurance. Maps are produced to illustrate the study data. The maps, known as Flood Insurance Rate Maps, are used to implement the floodplain development regulations. Currently Newberg does not have floodplain management regulations. Adopting the FEMA flood insurance study, flood insurance rate maps, and floodplain development regulations will allow property owners to purchase flood insurance. A map showing the flood hazard areas can be viewed in Attachment "1".

FISCAL IMPACT:

Notice of hearings will be provided to all property owners within the floodplain areas. This is estimated to be 100 notices, at a total cost of \$100. Adopting flood hazard policies and development standards will have a net positive fiscal impact on the community. Development standards will help to: minimize public and private financial losses, minimize expenditure of public money and costly flood control projects, minimize damage to public facilities, and maintain a stable tax base by providing for the sound use and development of areas of special flood hazard.

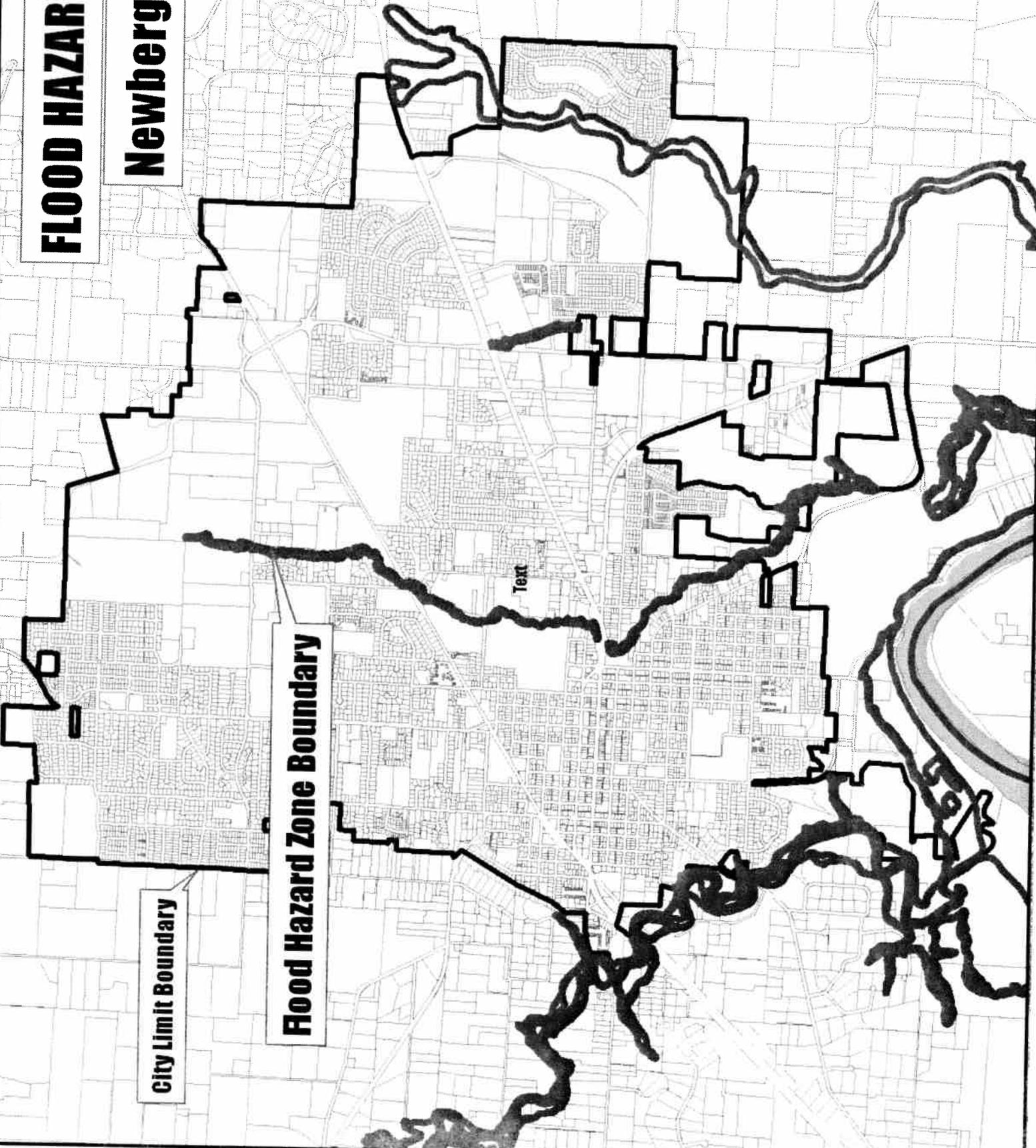
STRATEGIC ASSESSMENT:

Flood plain development in Newberg is rare because of existing local and state land use policies – the Stream Corridor Sub-District and Willamette Greenway. However there are flood hazard areas that extend beyond these existing overlay districts. The National Flood Insurance Program was primarily established to relieve communities of the fiscal burden caused by flood relief. Amending the Development Code to provide standards for floodplain development reduces the potential for property and life loss caused by flooding. Adopting the FEMA Flood Insurance Rate Maps allows property owners within flood hazard areas to purchase flood insurance, thus reducing the potential fiscal burden for the City.



FLOOD HAZARD AREAS

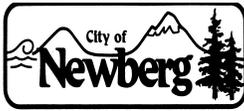
Newberg, OR



City Limit Boundary

Flood Hazard Zone Boundary

Text



RESOLUTION No. 2010-2883

A RESOLUTION INITIATING A COMPREHENSIVE PLAN TEXT AMENDMENT FOR FLOOD HAZARD POLICIES, A DEVELOPMENT CODE AMENDMENT TO CREATE FLOOD PLAIN DEVELOPMENT STANDARDS, AND ADOPTION OF THE MOST CURRENT YAMHILL COUNTY FLOOD INSURANCE STUDY AND ASSOCIATED NATIONAL FLOOD INSURANCE RATE MAPS

RECITALS:

1. The flood hazard areas of Newberg are subject to periodic inundation which may result in: loss of life and property, disruption of commerce and governmental services, and extraordinary public expenditures for flood protection and relief.
2. Flood hazard development standards minimize the negative impacts of flooding. Currently the City of Newberg does not have development code regulations for flood hazard areas.
3. In order for local property owners to participate in the National Flood Insurance Program local governments are required to adopt the Federal Emergency Management Agency Flood Insurance Study, Flood Insurance Rate Maps, and flood hazard development regulations. Newberg Code Section 151.122 provides that the Newberg City Council may initiate amendments to the development code by resolution.

THE CITY OF NEWBERG RESOLVES AS FOLLOWS:

1. The City Council hereby initiates an amendment to the comprehensive plan inventory of cultural and natural resources policies. The text shown in Exhibit "A", which is hereby adopted and by this reference incorporated, is a starting point. This text may be amended through the review process.
2. The City Council hereby initiates an amendment to the development code policies. The text shown in Exhibit "B", which is hereby adopted and by this reference incorporated, is a starting point. This text may be amended through the review process.
3. By so doing, the Council does not commit to adopting any particular amendment. The Council only wishes the amendments be given full consideration at public hearings.

➤ **EFFECTIVE DATE** of this resolution is the day after the adoption date, which is: January 20, 2010.

ADOPTED by the City Council of the City of Newberg, Oregon, this 19th day of January, 2010.

Norma I. Alley, City Recorder

ATTEST by the Mayor this 21st day of January, 2010.

Bob Andrews, Mayor

Exhibit "A"
Resolution No. 2010-2833

The following text of the Newberg Comprehensive Plan shall be amended as follows:

NOTE: Proposed text shown in underline font
Deleted text is shown with ~~striketrough~~ font
Existing text shown in regular font

II. GOALS AND POLICIES

F. AREAS SUBJECT TO NATURAL ~~DISASTERS AND~~ HAZARDS

GOAL: To protect life and property from flooding and other natural ~~disasters and~~ hazards.

POLICIES:

1. The City will coordinate with the Federal Emergency Management Agency to ensure continued compliance with federal flood plain regulations.

2. The City will adopt the most current Federal Emergency Management Agency Flood Insurance Rate Maps to ensure that property owners may participate in the National Flood Insurance Program.

3. The City will adopt flood plain development standards to:

- a. minimize public and private losses,
- b. protect human life and health,
- c. minimize expenditure of public money and costly flood control projects,
- d. minimize damage to public facilities, and
- e. help maintain a stable tax base by providing for the sound use and development of areas of special flood hazard.

~~2.~~ 3. The largest floodplain area within the Urban Growth Boundary is located within the Willamette Greenway. As such, this area will be subject to Greenway plans and regulations.

~~3.~~ 4. In other areas of potential or existing hazards, development shall be subject to special conditions. Reasonable development may be permitted in these areas when it can be shown, based on sound engineering and planning criteria, that adverse impacts can be mitigated and kept to a minimum. Hazardous areas shall be considered to be lands with slopes 20% or greater, potential and existing slide areas, fault areas, and areas with sever soil limitations.

~~4.~~ 5. The City will discourage development on hazardous slope areas and natural resource areas in the Riverfront District. (Ordinance 2002-2564, April 15, 2002)

Exhibit “B”
Resolution No. 2010-2833

The Newberg Development Code shall be amended as follows:

NOTE: Proposed text shown in underline font
Deleted text is shown with ~~striketrough~~ font
Existing text shown in regular font

151.003 DEFINITIONS.

AREA OF SHALLOW FLOODING. Designated AO, or AH Zone on the Flood Insurance Rate Map (FIRM). The base flood depths range from one to three feet; a clearly defined channel does not exist; the path of flooding is unpredictable and indeterminate; and, velocity flow may be evident. AO is characterized as sheet flow and AH indicates ponding.

AREA OF SPECIAL FLOOD HAZARD. The land in the flood plain within a community subject to a one percent or greater chance of flooding in any given year. Designation on maps always includes the letters A or V.

BASE FLOOD. The flood having a one percent chance of being equaled or exceeded in any given year. Also referred to as the 100-year flood. Designation on maps always includes the letters A or V.

BASEMENT. Any area of the building having its floor subgrade (below ground level) on all sides.

BELOW-GRADE CRAWL SPACE. An enclosed area below the base flood elevation in which the interior grade is not more than two feet below the lowest adjacent exterior grade and the height, measured from the interior grade of the crawlspace to the top of the crawlspace foundation, does not exceed 4 feet at any point.

BREAKAWAY WALL. A wall that is not part of the structural support of the building and is intended through its design and construction to collapse under specific lateral loading forces, without causing damage to the elevated portion of the building or supporting foundation system.

CRITICAL FACILITY. A facility for which even a slight chance of flooding might be too great. Critical facilities include, but are not limited to schools, nursing homes, hospitals, police, fire and emergency response installations, installations which produce, use or store hazardous materials or hazardous waste.

ELEVATED BUILDING. A nonbasement building which has its lowest elevated floor raised above ground level by foundation walls, shear walls, post, piers, pilings, or columns.

FLOOD OR FLOODING. A general and temporary condition of partial or complete inundation of normally dry land areas from:

- (1) The overflow of inland or tidal waters and/or
- (2) The unusual and rapid accumulation of runoff of surface waters from any source.

FLOOD INSURANCE RATE MAP (FIRM). The official map on which the Federal Insurance Administration has delineated both the areas of special flood hazards and the risk premium zones applicable to the community.

FLOOD INSURANCE STUDY. The official report provided by the Federal Insurance Administration that includes flood profiles, the Flood Boundary-Floodway Map, and the water surface elevation of the base flood.

FLOODPLAIN DEVELOPMENT. Within the floodplain, any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials located within the area of special flood hazard.

FLOODWAY. The channel of a river or other watercourse and the adjacent land areas that must be

reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot.

LOWEST FLOOR. The lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access or storage, in an area other than a basement area, is not considered a building's lowest floor, provided that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of this ordinance found at Section 151.484.2(A).

MANUFACTURED HOME. A structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when attached to the required utilities. The term manufactured home does not include a recreational vehicle.

MANUFACTURED HOME PARK OR SUBDIVISION. A parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

STATE BUILDING CODE. The combined specialty codes.

STRUCTURE. A walled and roofed building including a gas or liquid storage tank that is principally above ground.

SUBSTANTIAL DAMAGE. Damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

SUBSTANTIAL IMPROVEMENT. Any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure either:

- (1) Before the improvement or repair is started; or
- (2) If the structure has been damaged and is being restored, before the damage occurred. For the purposes of this definition, substantial improvement is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure.

The term does not, however, include either:

- (1) Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions or
- (2) Any alteration of a structure listed on the National Register of Historic Places or a State Inventory of Historic Places.

WATER DEPENDENT. A structure for commerce or industry which cannot exist in any other location and is dependent on the water by reason of the intrinsic nature of its operations.

151.480 AREAS OF SPECIAL FLOOD HAZARD OVERLAY (FHO)

151.481 PURPOSE

(A) It is the purpose of this ordinance to promote the public health, safety, and general welfare, and to minimize public and private losses due to flood conditions in specific areas by provisions designed:

- (1) To protect human life and health;
- (2) To minimize expenditure of public money and costly flood control projects;
- (3) To minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
- (4) To minimize prolonged business interruptions;
- (5) To minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, streets, and bridges located in areas of special flood hazard;
- (6) To help maintain a stable tax base by providing for the sound use and development of areas of special flood hazard so as to minimize future flood blight areas;

- (7) To ensure that potential buyers are notified that property is in an area of special flood hazard; and,
- (8) To ensure that those who occupy the areas of special flood hazard assume responsibility for their actions.

(B) In order to accomplish its purposes, this ordinance includes methods and provisions for:

- (1) Restricting or prohibiting uses which are dangerous to health, safety, and property due to water or erosion hazards, or which result in damaging increases in erosion or in flood heights or velocities;
- (2) Requiring that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;
- (3) Controlling the alteration of natural flood plains, stream channels, and natural protective barriers, which help accommodate or channel flood waters;
- (4) Controlling filling, grading, dredging, and other development which may increase flood damage;
- (5) Preventing or regulating the construction of flood barriers which will unnaturally divert flood waters or may increase flood hazards in other areas.
- (6) Coordinating and supplementing the provisions of the state building code with local land use and development ordinances

151.482 GENERAL PROVISIONS

151.482.1 LANDS TO WHICH THIS ORDINANCE APPLIES

This ordinance shall apply to all areas of special flood hazards within the jurisdiction of Newberg, Oregon as designated in the Flood Insurance Study for Yamhill County and Incorporated Areas and on the Federal Emergency Management Agency (FEMA) Flood Insurance Rate Maps (FIRM) dated March 2, 2010.

151.482.2 BASIS FOR ESTABLISHING THE AREAS OF SPECIAL FLOOD HAZARD

The areas of special flood hazard identified by the Federal Insurance Administration in a scientific and engineering report entitled “The Flood Insurance Study for Yamhill County, Oregon and Incorporated Areas,” dated March 2, 2010, with accompanying Flood Insurance Maps are hereby adopted by reference and declared to be a part of this ordinance. The Flood Insurance Study is on file at Newberg City Hall. The best available information for flood hazard area identification as outlined in Section 151.482.2 shall be the basis for regulation until a new Flood Insurance Rate Map is issued which incorporates the data utilized under section 151.482.2.

151.482.3 PENALTIES FOR NONCOMPLIANCE

No structure or land shall hereafter be constructed, located, extended, converted, or altered without full compliance with the terms of this ordinance and other applicable regulations. Violations of the provisions of this ordinance by failure to comply with any of its requirements (including violations of conditions and safeguards established in connection with conditions) are subject to enforcement. Nothing herein contained shall prevent the City of Newberg from taking such other lawful action as is necessary to prevent or remedy any violation.

151.482.4 ABROGATION AND GREATER RESTRICTIONS

(A) This ordinance is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed

restrictions. However, where this ordinance and another ordinance, state building code, easement, covenant, or deed restriction conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

- (B) Floodplain development in Newberg is rare. Most areas of special flood hazard in Newberg are within the existing Stream Corridor Sub-District, the Willamette Greenway, or in wetlands or waterways subject to Federal and State regulations. This ordinance should not be read as allowing development that is otherwise restricted or prohibited by other city, state, or federal laws.

151.482.6 WARNING AND DISCLAIMER OF LIABILITY

- (A) The degree of flood protection required by this ordinance is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur on rare occasions. Flood heights may be increased by man-made or natural causes. This ordinance does not imply that land outside the areas of special flood hazards or uses permitted within such areas will be free from flooding or flood damages. This ordinance shall not create liability on the part of the City of Newberg, any officer or employee thereof, or the Federal Insurance Administration, for any flood damages that result from reliance on this ordinance or any administrative decision lawfully made hereunder.

151.483 ADMINISTRATION

151.483.1 ESTABLISHMENT OF DEVELOPMENT PERMIT

- (A) *Development Permit Required.* Property owners shall obtain a development permit before construction or development begins within any area of special flood hazard established in Section 151.482.2. The permit shall be for all structures including manufactured homes, as set forth in Section 151.003, and for all development including fill and other activities, also as set forth in the Section 151.003.
- (B) *Application for Development Permit.* Application for a development permit shall be made on forms furnished by the Planning and Building Department and may include but not be limited to plans in duplicate drawn to scale showing the nature, location, dimensions, and elevations of the area in question; existing or proposed structures, fill, storage of materials, drainage facilities, and the location of the foregoing. Specifically, the following information is required:
- (1) Elevation in relation to mean sea level, of the lowest floor (including basement) of all structures;
 - (2) Elevation in relation to mean sea level of floodproofing in any structure;
 - (3) Certification by a registered professional engineer or architect that the floodproofing methods for any nonresidential structure meet the floodproofing criteria in Section 151.484.2; and
 - (4) Description of the extent to which a watercourse will be altered or relocated as a result of proposed development.

151.483.2 DESIGNATION OF THE LOCAL ADMINISTRATOR

- (A) The Planning and Building Director is hereby appointed to administer and implement this ordinance by granting or denying development permit applications in accordance with its provisions.

151.483.3 DUTIES AND RESPONSIBILITIES OF THE LOCAL ADMINISTRATOR

- (A) *Duties of the local administrator shall include, but not be limited to:*

(1) Permit Review

- (a) Review all development permits to determine that the permit requirements and conditions of this ordinance have been satisfied.
- (b) Review all development permits to determine that all necessary permits have been obtained from those Federal, State, or local governmental agencies from which prior approval is required.
- (c) Review all development permits to determine if the proposed development is located in the floodway. If located in the floodway, assure that the encroachment provisions of Section 151.486 (1) are met.

(2) Use of Other Base Flood Data (In A and V Zones)

- (a) When base flood elevation data has not been provided (A and V Zones) in accordance with Section 151.482.2, BASIS FOR ESTABLISHING THE AREAS OF SPECIAL FLOOD HAZARD, the local administrator shall obtain, review, and reasonably utilize any base flood elevation and floodway data available from a Federal, State or other source, in order to administer Sections 151.484.2, SPECIFIC STANDARDS, and 151.486 FLOODWAYS.

(B) Information to be Obtained and Maintained

- (1) Where base flood elevation data is provided through the Flood Insurance Study, FIRM, or required as in Section 151.483.3, obtain and record the actual elevation (in relation to mean sea level) of the lowest floor (including basements and below-grade crawlspaces) of all new or substantially improved structures, and whether or not the structure contains a basement.
- (2) For all new or substantially improved floodproofed structures where base flood elevation data is provided through the Flood Insurance Study, FIRM, or as required in Section 151.483.3:
 - (a) Verify and record the actual elevation (in relation to mean seal level), and
 - (b) Maintain the floodproofing certifications required in Section 151.483.1 (B).
- (3) Maintain for public inspection all records pertaining to the provisions of this ordinance.

(C) Alteration of Watercourses

- (1) Notify adjacent communities, the Department of Land Conservation and Development and other appropriate state and federal agencies, prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Insurance Administration.
- (2) Require that maintenance is provided within the altered or relocated portion of said watercourse so that the flood carrying capacity is not diminished.

(D) Interpretation of FIRM Boundaries. Make interpretations where needed, as to exact location of the boundaries of the areas of special flood hazards (for example, where there appears to be a conflict between a mapped boundary and actual field conditions). The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in Section 151.483.3.

151.483.3 APPEAL PROCEDURE

(A) Appeal Board

The Planning Commission shall hear and decide appeals when it is alleged there is an error in any requirement, decision, or determination made by the Director in the enforcement or administration of this ordinance. Those aggrieved by the decision of the Planning Commission may appeal such decision to the City Council.

(B) Decision Criteria

- (1) In passing upon such applications, the Planning Commission shall consider all technical evaluations, all relevant factors, standards specified in other sections of this ordinance, and:
 - (a) The danger that materials may be swept onto other lands to the injury of others;
 - (b) The danger to life and property due to flooding or erosion damage;
 - (c) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
 - (d) The importance of the services provided by the proposed facility to the community;
 - (e) The necessity to the facility of a waterfront location, where applicable;
 - (f) The availability of alternative locations for the proposed use which are not subject to flooding or erosion damage;
 - (g) The compatibility of the proposed use with existing and anticipated development;
 - (h) The relationship of the proposed use to the comprehensive plan and flood plain management program for that area;
 - (i) The safety of access to the property in times of flood for ordinary and emergency vehicles;
 - (j) The expected heights, velocity, duration, rate of rise, and sediment transport of the flood waters and the effects of wave action, if applicable, expected at the site; and,
 - (k) The costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems, and streets and bridges.

(C) Conditions of Approval

Upon consideration of the factors of Section 151.483.3 (A)(4) and the purposes of this ordinance, the Planning Commission may attach such conditions to the appeal decision as it deems necessary to further the purposes of this ordinance.

(D) Record of Appeal

The local floodplain administrator shall maintain the records of all appeal actions.

151.483.4 VARIANCE PROCEDURE

(A) Procedure

- (1) Variance requests shall be processed as a Type II land use action.
- (2) The decision shall be based upon the criteria established in Section 151.483.4(C).
- (3) Those aggrieved by the decision of the Director may appeal the decision to the Planning Commission.
- (4) The local floodplain administrator shall report any variances to the Federal Insurance Administration upon request.

(B) Eligibility

- (1) A variance from the elevation standard may be issued for new construction and substantial improvements.
- (2) The lot size of the proposed development must be one-half acre or less in size.
- (3) The location must be contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing items (a-k) in Section 151.483.3 (A)(4) have been fully considered.
- (4) Variances shall not be issued within a designated floodway if any increase in flood levels during

the base flood discharge would result.

- (5) Variations shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

(C) Criteria

- (1) Variations shall only be issued upon:

(a) A showing of good and sufficient cause:

- i. A determination that failure to grant the variance would result in exceptional hardship to the applicant;
- ii. A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public as identified in Section 151.483.3 (A)(4), or conflict with existing local laws or ordinances.

(b) Reconstruction, rehabilitation, or restoration of local landmarks and structures listed on the National Register of Historic Places or the Statewide Inventory of Historic Properties.

(D) Procedure

(1) Variations as interpreted in the National Flood Insurance Program are based on the general zoning law principle that they pertain to a physical piece or property; they are not personal in nature and do not pertain to the structure, its inhabitants, economic or financial circumstances. They primarily address small lots in densely populated residential neighborhoods. As such, variations from the flood elevations should be quite rare.

(2) Variations may be issued for nonresidential buildings in very limited circumstances to allow a lesser degree of floodproofing than watertight or dry-floodproofing, where it can be determined that such action will have low damage potential, complies with all other variance criteria except 151.483.3(B), and otherwise complies with Sections 151.484.1(A) through 151.484.1(C) of the GENERAL STANDARDS.

(3) Any applicant to whom a variance is granted shall be given written notice that the structure will be permitted to be built with a lowest floor elevation below the base flood elevation and that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation.

151.484 PROVISIONS FOR FLOOD HAZARD REDUCTION

151.484.1 GENERAL STANDARDS

In all areas of special flood hazards, the following standards are required:

(A) Anchoring

(1) All new construction and substantial improvements shall be anchored to prevent flotation, collapse, or lateral movement of the structure.

(2) All manufactured homes must likewise be anchored to prevent flotation, collapse, or lateral movement, and shall be installed using methods and practices that minimize flood damage. Anchoring methods may include, but are not limited to, use of over-the-top or frame ties to ground anchors (Reference FEMA's "Manufactured Home Installation in Flood Hazard Areas" guidebook for additional techniques).

(B) Construction Materials and Methods

- (1) All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage.
- (2) All new construction and substantial improvements shall be constructed using methods and practices that minimize flood damage.
- (3) Electrical, heating, ventilation, plumbing, and air-conditioning equipment and other service facilities shall be designed and/or otherwise elevated or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

(C) Utilities

- (1) All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system.
- (2) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharge from the systems into flood waters.
- (3) On-site waste disposal systems, if allowed, shall be located to avoid impairment to them or contamination from them during flooding consistent with the Oregon Department of Environmental Quality.

(D) Tentative Subdivision & Partition Plat Proposals

- (1) Where floodplain development is proposed or reasonably likely, all tentative subdivision and partition plat proposals shall be consistent with the need to minimize flood damage.
- (2) All tentative subdivision and partition plat proposals shall have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize or eliminate flood damage.
- (3) All tentative subdivision and partition plat proposals shall have adequate drainage provided to reduce exposure to flood damage.
- (4) For any proposed structure, proposed subdivision or partition, and other proposed development which contains at least 50 lots or 5 acres (whichever is less), flood elevation data shall be provided.

(E) Review of Building Permits. Where elevation data is not available either through the Flood Insurance Study, FIRM, or from another authoritative source (Section 151.483.3(A)(2)), applications for building permits shall be reviewed to assure that proposed construction will be reasonably safe from flooding. The test of reasonableness is a local judgment and includes use of historical data, high water marks, photographs of past flooding, etc., where available. Failure to elevate at least two feet above grade in these zones may result in higher insurance rates.

(F) AH Zone Drainage. Adequate drainage paths are required around structures on slopes to guide floodwaters around and away from proposed structures. AH zones are areas that have a 1% annual chance of shallow flooding, usually in the form of a pond, with an average depth ranging from 1 to 3 feet.

151.484.2 SPECIFIC STANDARDS

In all areas of special flood hazards where base flood elevation data has been provided (Zones A1-30, AH, and AE) as set forth in Section 151.482.2, BASIS FOR ESTABLISHING THE AREAS OF SPECIAL FLOOD HAZARD or Section 151.483.3, Use of Other Base Flood Data (In A and V Zones), the following provisions are required:

(A) Residential Construction

- (1) New construction and substantial improvement of any residential structure shall have the lowest floor, including basement, elevated to a minimum of one foot above the base flood elevation.
- (2) Fully enclosed areas below the lowest floor that are subject to flooding are prohibited, or shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must be either be certified by a registered professional engineer or architect or must meet or exceed the following minimum criteria:
 - (a) A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided.
 - (b) The bottom of all openings shall be no higher than one foot above grade.
 - (c) Openings may be equipped with screens, louvers, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.

(B) Nonresidential Construction

- (1) New construction and substantial improvement of any commercial, industrial or other nonresidential structure shall either have the lowest floor, including basement, elevated at or above the base flood elevation; or, together with attendant utility and sanitary facilities, shall:
 - (a) Be floodproofed so that below the base flood level the structure is watertight with walls substantially impermeable to the passage of water;
 - (b) Have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy;
 - (c) Be certified by a registered professional engineer or architect that the design and methods of construction are in accordance with accepted standards of practice for meeting provisions of this subsection based on their development and/or review of the structural design, specifications and plans. Such certifications shall be provided to the official as set forth in Section 151.483.3(A)(2);
 - (d) Nonresidential structures that are elevated, not floodproofed, must meet the same standards for space below the lowest floor as described in 151.484.2(A)(2);
 - (e) Applicants floodproofing nonresidential buildings shall be notified that flood insurance premiums will be based on rates that are one foot below the floodproofed level (e.g. a building floodproofed to the base flood level will be rated as one foot below.

(C) Manufactured Homes

- (1) All manufactured homes to be placed or substantially improved on sites:
 - (a) Outside of a manufactured home park or subdivision,
 - (b) In a new manufactured home park or subdivision,
 - (c) In an expansion to an existing manufactured home park or subdivision, or
 - (d) In an existing manufactured home park or subdivision on which a manufactured home has incurred “substantial damage” as the result of a flood;

shall be elevated on a permanent foundation such that the finished floor of the manufactured home is elevated to a minimum 18 inches (46 cm) above the base flood elevation and be securely anchored to an adequately designed foundation system to resist flotation, collapse and lateral movement.

- (2) Manufactured homes to be placed or substantially improved on sites in an existing manufactured home park or subdivision within Zones A1-30, AH, and AE on the community’s FIRM that are not subject to the above manufactured home provisions be elevated so that either:
 - (a) The finished floor of the manufactured home is elevated to a minimum of 18 inches (46

- cm) above the base flood elevation, or
- (b) The manufactured home chassis is supported by reinforced piers or other foundation elements of at least equivalent strength that are no less than 36 inches in height above grade and be securely anchored to an adequately designed foundation system to resist flotation, collapse, and lateral movement.

(D) Recreational Vehicles

- (1) Recreational vehicles placed on sites are required to either:
 - (a) Be on the site for fewer than 180 consecutive days
 - (b) Be fully licensed and ready for highway use, on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions; or
 - (c) Meet the requirements of 151.484.2(C) above and the elevation and anchoring requirements for manufactured homes.

(E) Below-grade crawl spaces

- (1) Below-grade crawlspaces are allowed subject to the following standards as found in FEMA Technical Bulletin 11-01, *Crawlspace Construction for Buildings Located in Special Flood Hazard Areas*:
 - (a) The building must be designed and adequately anchored to resist flotation, collapse, and lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy. Hydrostatic loads and the effects of buoyancy can usually be addressed through the required openings stated in Section B below. Because of hydrodynamic loads, crawlspace construction is not allowed in areas with flood velocities greater than five (5) feet per second unless the design is reviewed by a qualified design professional, such as a registered architect or professional engineer. Other types of foundations are recommended for these areas.
 - (b) The crawlspace is an enclosed area below the base flood elevation (BFE) and, as such, must have openings that equalize hydrostatic pressures by allowing the automatic entry and exit of floodwaters. The bottom of each flood vent opening can be no more than one (1) foot above the lowest adjacent exterior grade.
 - (c) Portions of the building below the BFE must be constructed with materials resistant to flood damage. This includes not only the foundation walls of the crawlspace used to elevate the building, but also any joists, insulation, or other materials that extend below the BFE. The recommended construction practice is to elevate the bottom of joists and all insulation above BFE.
 - (d) Any building utility systems within the crawlspace must be elevated above BFE or designed so that floodwaters cannot enter or accumulate within the system components during flood conditions. Ductwork, in particular, must either be placed above the BFE or sealed from floodwaters.
 - (e) The interior grade of a crawlspace below the BFE must not be more than two (2) feet below the lowest adjacent exterior grade.
 - (f) The height of the below-grade crawlspace, measured from the interior grade of the crawlspace to the top of the crawlspace foundation wall must not exceed four (4) feet at any point. The height limitation is the maximum allowable unsupported wall height according to the engineering analyses and building code requirements for flood hazard areas.
 - (g) There must be an adequate drainage system that removes floodwaters from the interior area of the crawlspace. The enclosed area should be drained within a reasonable time

after a flood event. The type of drainage system will vary because of the site gradient and other drainage characteristics, such as soil types. Possible options include natural drainage through porous, well-drained soils and drainage systems such as perforated pipes, drainage tiles or gravel or crushed stone drainage by gravity or mechanical means.

- (h) The velocity of floodwaters at the site should not exceed five (5) feet per second for any crawlspace. For velocities in excess of five (5) feet per second, other foundation types should be used. For more detailed information refer to FEMA Technical Bulletin 11-01.

151.485 BEFORE REGULATORY FLOODWAY

In areas where a regulatory floodway has not been designated, no new construction, substantial improvements, or other development (including fill) shall be permitted within Zones A1-30 and AE on the community's FIRM, unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot at any point within the community.

151.486 FLOODWAYS

Located within areas of special flood hazard established in Section 151.482.2 are areas designated as floodways. Since the floodway is an extremely hazardous area due to the velocity of floodwaters which carry debris, potential projectiles, and erosion potential, the following provisions apply:

- (1) Encroachments are prohibited unless evidence is provided by a registered professional civil engineer demonstrating that encroachments shall not result in any increase in flood levels during the occurrence of the base flood discharge.
- (2) If Section 151.486 (1) is satisfied, all new construction and substantial improvements shall comply with all applicable flood hazard reduction provisions of Section 151.484, PROVISIONS FOR FLOOD HAZARD REDUCTION.
- (3) Projects for stream habitat restoration may be permitted in the floodway provided:
 - (a) The project qualifies for a Department of the Army, Portland District *Regional General Permit for Stream Habitat Restoration* (NWP-2007-1023); and,
 - (b) A qualified professional (a Registered Professional Engineer; or staff of NRCS; the county; or fisheries, natural resources, or water resources agencies) has provided a feasibility analysis and certification that the project was designed to keep any rise in 100-year flood levels as close to zero as practically possible given the goals of the project; and,
 - (c) No structures would be impacted by a potential rise in flood elevation; and,
 - (d) An agreement to monitor the project, correct problems, and ensure that flood carrying capacity remains unchanged is included as part of the local approval.
- (4) New installation of manufactured dwellings are prohibited (2002 Oregon Manufactured Dwelling and Park Specialty Code). Manufactured dwellings may only be located in floodways according to one of the following conditions:
 - (a) If the manufactured dwelling already exists in the floodway, the placement was permitted at the time of the original installation, and the continued use is not a threat to life, health, property, or the general welfare of the public; or
 - (b) A new manufactured dwelling is replacing an existing manufactured dwelling whose

original placement was permitted at the time of installation and the replacement home will not be a threat to life, health, property, or the general welfare of the public and it meets the following criteria

- i. As required by 44 CFR Chapter 1, Subpart 60.3(d)(3), it must be demonstrated through hydrologic and hydraulic analyses performed in accordance with standard engineering practices that the manufactured dwelling and any accessory buildings, accessory structures, or any property improvements (encroachments) will not result in any increase in flood levels during the occurrence of the base flood discharge;
- ii. The replacement manufactured dwelling and any accessory buildings or accessory structures (encroachments) shall have the finished floor elevated a minimum of 18 inches (46 cm) above the BFE as identified on the Flood Insurance Rate Map;
- iii. The replacement manufactured dwelling is placed and secured to a foundation support system designed by an Oregon professional engineer or architect and approved by the authority having jurisdiction;
- iv. The replacement manufactured dwelling, its foundation supports, and any accessory buildings, accessory structures, or property improvements (encroachments) do not displace water to the degree that it causes a rise in the water level or diverts water in a manner that causes erosion or damage to other properties;
- v. The location of a replacement manufactured dwelling is allowed by the local planning department's ordinances; and
- vi. Any other requirements deemed necessary by the authority having jurisdiction.

151.487 STANDARDS FOR SHALLOW FLOODING AREAS (AO ZONES)

Shallow flooding areas appear on FIRMs as AO zones with depth designations. The base flood depths in these zones range from 1 to 3 feet above ground where a clearly defined channel does not exist, or where the path of flooding is unpredictable and where velocity flow may be evident. Such flooding is usually characterized as sheet flow. In these areas, the following provisions apply:

- (1) New construction and substantial improvements of residential structures and manufactured homes within AO zones shall have the lowest floor (including basement) elevated above the highest grade adjacent to the building, a minimum of one foot above the depth number specified on the FIRM (at least two feet if no depth number is specified).
- (2) New construction and substantial improvements of nonresidential structures within AO zones shall either:
 - (a) Have the lowest floor (including basement) elevated above the highest adjacent grade of the building site, one foot or more above the depth number specified on the FIRM (at least two feet if no depth number is specified); or
 - (b) Together with attendant utility and sanitary facilities, be completely flood proofed to or above that level so that any space below that level is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. If this method is used, compliance shall be certified by a registered professional engineer or architect as in section 151.484.2(B)(1)(c).
- (3) Require adequate drainage paths around structures on slopes to guide floodwaters around and away from proposed structures.

- (4) If allowed, recreational vehicles placed on sites within AO Zones on the community's FIRM either:
- (a) Be on the site for fewer than 180 consecutive days, and
 - (b) Be fully licensed and ready for highway use, on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions; or
 - (c) Meet the requirements of 151.487 above and the elevation and anchoring requirements for manufactured homes.

151.488 CRITICAL FACILITIES

Construction of new critical facilities shall be, to the extent possible, located outside the limits of the Special Flood Hazard Area (SFHA) (100-year floodplain). Construction of new critical facilities shall be permissible within the SFHA if no feasible alternative site is available. Critical facilities constructed within the SFHA shall have the lowest floor elevated three feet above BFE or to the height of the 500-year flood, whichever is higher. Access to and from the critical facility should also be protected to the height utilized above. Floodproofing and sealing measures must be taken to ensure that toxic substances will not be displaced by or released into floodwaters. Access routes elevated to or above the level of the base flood elevation shall be provided to all critical facilities to the extent possible.

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REQUEST FOR COUNCIL ACTION

DATE ACTION REQUESTED: January 19, 2010

Order ___ Ordinance ___ Resolution ___ Motion XX Information ___
No. No. No.

SUBJECT: Approve the December 21, 2009, City Council Meeting minutes.

Contact Person (Preparer) for this Motion: **Norma Alley, City Recorder**

Dept.: **Administration**

File No.:
(if applicable)

RECOMMENDATION:

Approve the December 21, 2009, City Council minutes for preservation and permanent retention in the City's official records.

EXECUTIVE SUMMARY:

On December 21, 2009, the City of Newberg City Council held a public meeting. At that meeting, minutes were recorded in text.

FISCAL IMPACT:

None.

STRATEGIC ASSESSMENT:

None.

**CITY OF NEWBERG CITY COUNCIL MINUTES
DECEMBER 21, 2009
7:00 P.M. MEETING
PUBLIC SAFETY BUILDING TRAINING ROOM
401 EAST THIRD STREET**

An Executive Session pursuant to ORS 192.660(2)(h) to consult with counsel concerning the legal rights and duties of a public body with regard to current litigation or litigation likely to be filed was held during Work Session prior to the meeting. No decisions were made.

I. CALL MEETING TO ORDER

Mayor Bob Andrews called the meeting to order at 7:22 PM.

II. ROLL CALL

Members

Present:	Mayor Bob Andrews	Denise Bacon	Bob Larson
	Stephen McKinney	Bart Rierson	Marc Shelton
	Wade Witherspoon		

Staff

Present:	Daniel Danicic, City Manager	Terrence Mahr, City Attorney
	Howard Hamilton, Public Works Director	Janelle Nordyke, Finance Director
	Barton Brierley, Planning and Building Director	Norma Alley, City Recorder
	Dawn Wilson, Senior Paralegal	Jennifer Nelson, Recording Secretary

Others

Present: Douglas Steding, Renee Willer, Steven C. Crosby, and Doug Cooley

III. PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was performed.

IV. CITY MANAGER'S REPORT

Mr. Daniel Danicic, City Manager, informed council the City received two proposals for an affordable housing project on the existing animal shelter site; staff will review them and report to the Council later. A pre-bid for the Construction Manager/General Contractor (CM/GC) Animal Shelter project was held with twenty-four attendees; a report will be brought before the Council on March 1, 2010.

V. PUBLIC COMMENTS

None.

VI. CONSENT CALENDAR

1. Consider a motion appointing Janet Irish, Thomas Barnes, and Deanna Moore to the Budget Committee for terms expiring December 31, 2012.
2. Consider a motion appointing David Maben and Tony Rourke to the Citizen Rate Review Committee for terms expiring December 31, 2012.

3. Consider a motion appointing Lon Wall and Warren Parrish for terms expiring December 31, 2012; appoint Thomas Barnes for a term expiring December 31, 2010; and ratify the Newberg Urban Area Management Commission (NUAMC) appointment of Sally Dallas for a term expiring December 31, 2012, to the NUAMC.
4. Consider a motion approving City Council Minutes for November 16, 2009.

MOTION: Witherspoon/Larson to approve the Consent Calendar including a motion appointing Janet Irish, Thomas Barnes, and Deanna Moore to the Budget Committee, a motion appointing David Maben and Tony Rourke to the Citizen Rate Review Committee, a motion appointing Lon Wall, Warren Parrish, and Thomas Barnes to the Newberg Area Management Commission (NUAMC), ratifying the NUAMC appointment of Sally Dallas to NUAMC, and the City Council Minutes for November 16, 2009. (7 Yes/0 No) Motion carried.

VII. PUBLIC HEARING

Consider a motion to approve **Order No. 2009-0025** approving the findings that the proposed annexation and concurrent zone change meet the applicable Newberg Development Code criteria and approve **Ordinance No. 2009-2722** annexing property located at 1409 South Sandoz Road and scheduling the annexation for the May 18, 2010, General Election.

TIME – 7:27 PM

Mayor Andrews introduced the hearing and called for any abstentions, biases, ex parte contact, or objections to jurisdiction.

Councilor Bart Rierson disclosed a possible bias based on his being chair on the Animal Shelter Subcommittee and his efforts to help find the piece of property although he did not feel it would affect his decision tonight.

Councilor Marc Shelton stated he also served on this committee but his decision will not be affected and will be based on presentation tonight.

Mayor Andrews also sat in on the subcommittee meetings as an ex officio member, but the record will determine his decision.

Councilor Stephen McKinney added he served as a subcommittee member as well.

Mr. Terrence Mahr, City Attorney, stated the required legal statements for quasi-judicial hearing process.

Mr. Barton Brierley, Planning and Building Director, presented the staff report (see official meeting packet for full report).

Councilor Shelton discussed the Oregon Department of Transportation's (ODOT) concerns for traffic impacts and the long term plans for the entire nineteen acre parcel; he asked if there were any significant changes foreseen after the wastewater treatment plant is built by 2040. Staff said there may only be a few changes to operation and maintenance purposes with the potential use as a maintenance yard and/or equipment storage for the Public Works Department. Addressing ODOT's concerns, staff added there would be some trips with equipment, but they would only intend to have access through a service road within the parcel.

Mayor Andrews asked about the proposed development concept plan and impact of the airport overlay. Staff stated the major impacts to development were the limits on the height of the structures built and interference in radio transmission or lighting. The height limitations extend four to five hundred feet south in any direction from the runway strip itself and within a cone from the ends of the runway.

Mr. Danicic added this location is far enough away to build a couple stories high and still be compatible.

Councilor Rierson asked what the property conditions might be and if staff will be the only ones approving them. Staff replied they had meetings with neighbors and no negative comments were made or letters submitted other than the one concern from ODOT about traffic; it is unlikely that any conditions would be imposed by the County that the City would not impose themselves.

Mayor Andrews asked for more detail on communications from Mr. and Mrs. Gene Spaugh concerning noise and vision buffering, increased traffic impacts, and onsite parking. Staff stated as Sandoz Road is a dead end road, there is minimal traffic now and any traffic from the site would be to the south and off-street parking within the site will be sufficient. On-street parking will also be allowed and could be taken advantage of from the surrounding residences.

Mayor Andrews opened and closed the public testimony as no one appeared to make a statement. Staff recommended approval of both the order and the ordinance. The city waived the right to keep the record open for seven days and the public hearing was closed.

MOTION: Larson/Rierson to approve **Order No. 2009-0025** approving the findings that the proposed annexation and concurrent zone change meet the applicable Newberg Development Code criteria (7 Yes/0 No) Motion carried.

MOTION: Rierson/Shelton to approve **Ordinance No. 2009-2722** annexing property located at 1409 South Sandoz Road and scheduling the annexation for the May 18, 2010, General Election, read by title only. (7 Yes/0 No) Motion carried.

VIII. NEW BUSINESS

Consider a motion approving **Resolution No. 2009-2880** consenting to the transfer of control of the Verizon Cable TV Franchise to Frontier.

TIME – 8:00 PM

Ms. Dawn Wilson, Senior Paralegal, presented the staff report (see official meeting packet for full report).

Mr. Mahr added there was a last minute additional condition to number twelve (12) of Section 3 in the Resolves about the \$10,000.00 contribution to the City's annual operation of the community access channel. Frontier pointed out there are provisions to support community access through the Public, Education and Governmental ("PEG") access funding fee; Council has chosen not to levy this "PEG" fee at this point.

Councilor Shelton asked for some clarifications about the merger language. Staff described the merger agreement as a transfer of control from Verizon Northwest, Inc. to Frontier Communications Corporation.

Councilor Rierson asked what assurances are there that Frontier will continue to staff Verizon's current 11,000 employees and the same level of high speed internet services since it seems they intend to only keep 75% of the current cable channels. Staff stated Frontier will be contracted to keep the technicians for one year and the City will enforce a requirement to maintain the same standard of customer service.

References to changing merger language on pages 97-98 of the meeting packet were discussed as well as other changes made to the resolves to eliminate confusion.

Councilor Rierson wondered why the internet lines were being covered under an ordinance since the television cable lines run with the same pipe in the ground and how this is separated. Staff stated when the ordinance is adopted it regulates the right of way under federal regulations regarding franchises for television.

Mr. Doug Steding, Stoel Rives LLP, Verizon's legal counsel, said from a legal standpoint, the "PEG" issue can be taken care of in the franchise agreement and is not required to be stated in the resolution.

Mr. Mahr asked when the merger is over, will things be controlled by Verizon and Frontier or Frontier only.

Ms. Renee Willer, Verizon, stated Frontier will take control of all the copper and fiber optic (FiOS) network in the ground and on poles for telephone and television services for Newberg. Verizon intends to maintain control over wireless services and larger business contracts. The parent company is Verizon Communications, which is changing who controls access to the lines from Verizon Northwest (a subsidiary of Verizon Communications) to Frontier and the larger Verizon Corporation is not a part and will no longer have ownership.

Councilor Shelton wanted to know where citizens could go if problems developed in services due to the transfer of control.

Mr. Steven C. Crosby, Frontier Communications Corporation, stated a problem would come to Frontier and felt confident any issues could be handled.

Councilor Shelton stated Verizon marketed FiOS from Sherwood to Newberg and customers would not be interested in seeing a reduction in internet service speed, so he hoped Frontier would also be getting high-speed fiber optic internet as well. Mr. Crosby said they will live by the commitments they made. Where there is no fiber optics, they will offer a Digital Subscriber Line (DSL) and they are not planning on lowering the speed. As far as channel availability, what is being carried must be negotiated, but they plan to mirror the same line-up that is now available with Verizon. Concerning television services, they currently use Dish Network and also plan to take Direct TV in the transfer with Verizon.

Councilor Shelton asked if those homes retrofitted to FiOS without copper available could go back to Comcast. Ms. Willer stated if Verizon brought FiOS to a property they did not pull out the copper lines unless requested so the customer has the option to change if they wish.

Councilor Witherspoon asked about the condition to include at least 75% of the current channels and whether Frontier would be satisfied with that 75% or if they anticipate including 100%. Mr. Crosby said he cannot say they will receive 100% of the contracts, but in order to be competitive, they will not be satisfied with only 75%.

Discussions followed about the viability of the fiber optic versus copper networks, new developments are building with fiber optics only, and Frontier's experience with fiber optics.

Mr. Mahr reviewed the changes to the resolution (see official meeting packet for full report).

Mr. Doug Cooley, Comcast, said he was not aware of any other comments other than what has been written and he is not opposed or in support of the decision.

Councilor Rierson asked if there was anything the Council may be missing that they should cover in order to best represent the citizens. Mr. Cooley stated he did not see anything was missing and felt the Council was on target with their questions. He felt Verizon's and Frontier's answers were good, although there are no guarantees with the future. His primary concerns were for the agreements to be equitable for all when discussing "PEG" dollars or annual franchise fees.

Discussions continued concerning the availability of community access channels from Comcast and Frontier.

A brief recess was taken at 9:17 PM for staff to provide Council with a copy of changes. The meeting reconvened at 9:38 PM.

MOTION: Rierson/Shelton to adopt **Resolution No. 2009-2880** consenting to the transfer of control of the Verizon Cable TV Franchise to Frontier as corrected. (7 Yes/0 No) Motion carried.

IX. COUNCIL BUSINESS

Mr. Danicic spoke of the need for Portland Community College (PCC) to use some space in the library annex building to hold some classes for the 2010-2011 school year until the primary space within the cultural center is completed. Their rental lease would be for \$700.00 to \$800.00 per month with funds used for improvements. Parking needs and access were discussed by the Council as well as using revenue after the upgrades for the Making Room to Read foundation. Council appeared to be in favor of the arrangement.

Discussions were held briefly on continuing efforts to expand community access and cable channel options as well as declaring biases for hearings when working on Council subcommittees.

1. Executive Session pursuant to ORS 192.660(2)(a) relating to employment of a public officer – Municipal Judge Recruitment.

TIME – 10:03 PM

Executive Session was held and recorded. No decisions were made.

2. Executive Session pursuant to ORS 192.660(2)(h) to consult with counsel concerning the legal rights and duties of a public body with regard to current litigation or litigation likely to be filed – Initiative Petition.

This Executive Session was held and recorded during the Work Session. No decisions were made.

X. ADJOURNMENT

The meeting adjourned at 11:08 PM.

ADOPTED by the Newberg City Council this 19th day of January, 2010.

Norma I. Alley, City Recorder

ATTEST by the Mayor this ____ day of January, 2010.

Bob Andrews, Mayor

REQUEST FOR COUNCIL ACTION

DATE ACTION REQUESTED: January 19, 2010

Order ___ Ordinance ___ Resolution XX Motion ___ Information ___
No. No. No. 2010-2881

SUBJECT:
To accept the annual audit report and financial statements for Fiscal Year Ended June 30, 2009.

Contact Person (Preparer) for this
Resolution: Janelle Nordyke

Dept.: Finance
File No.:
(if applicable)

RECOMMENDATION:

Adopt **Resolution No. 2010-2881** accepting the annual auditor's report and financial statements for Fiscal Year Ended June 30, 2009.

EXECUTIVE SUMMARY:

Each year following the close of the fiscal year the selected auditors will come to the City to review the financial records. The current auditors are Boldt, Carlisle and Smith, LLC of Salem, Oregon. The audit team was at the City the week of September 14, 2009 conducting field work. This process includes: obtaining an understanding of the City's internal controls, review of City Council minutes, examining and testing samples of various transactions, and inquiring of management and other employees about fraud risks.

On January 4, 2010, Boldt, Carlisle & Smith issued an unqualified opinion on the City's financial report for the year ended June 30, 2009. An unqualified opinion is the highest opinion an auditor can give. A qualified opinion means that the auditors found something that was irregular with the City's financial records and internal controls. Therefore, the auditors did not find any irregularities with the City's financial records and internal controls.

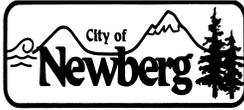
The financial reports are a summary of all the fiscal activity, debt, assets, and other obligations categorized by fund type. The notes to the financial statements disclose the City's significant accounting policies and provide details of significant year end balances.

The Transmittal Letter and Management Discussion and Analysis provide a narrative of significant financial activities that have transpired during the fiscal year. These documents also disclose significant issues that may have a future financial impact. These reports are found in the audit report.

For the past 16 years Newberg has prepared the CAFR and submitted it to the Government Financial Officers Association (GFOA) for an award. Newberg has received this award each year which includes national recognition.

FISCAL IMPACT: none

STRATEGIC ASSESSMENT: The City of Newberg financial statements for the year ended June 30, 2009, have been prepared in conformity with Generally Accepted Accounting Principles and Oregon Local Budget Law. These statements will be filed with all regulatory agencies that monitor City financial activities



RESOLUTION No. 2010-2881

A RESOLUTION TO ACCEPT THE ANNUAL AUDIT REPORT AND FINANCIAL STATEMENTS FOR FISCAL YEAR ENDED JUNE 30, 2009

RECITALS:

1. The week of September 14, 2009, the auditing firm of Boldt, Carlisle and Smith, LLC. conducted field work with review of the financial records of fiscal year ended June 30, 2009.
2. On January 4, 2010, Boldt, Carlisle & Smith issued an unqualified opinion on the City's financial report for the year ended June 30, 2009.
3. The annual audit was completed for fiscal year ended June 30, 2009, and submitted to Council.
4. The City of Newberg financial statements for the year ended June 30, 2009, have been prepared in conformity with Generally Accepted Accounting Principles and Oregon Local Budget Law.

THE CITY OF NEWBERG RESOLVES AS FOLLOWS:

The Council accepts the annual audit report and financial statements for fiscal year ended June 30, 2009, which is attached herewith as Exhibit "A" and by this reference adopted.

➤ **EFFECTIVE DATE** of this resolution is the day after the adoption date, which is: January 20, 2010.

ADOPTED by the City Council of the City of Newberg, Oregon, this 19th day of January, 2010.

Norma I. Alley, City Recorder

ATTEST by the Mayor this 21st day of January, 2010.

Bob Andrews, Mayor

LEGISLATIVE HISTORY

By and through _____ Committee at ____ / ____ /200x meeting. Or, ___ None.
(committee name) (date) (check if applicable)

**Comprehensive Annual Financial Report
Executive Summary**

For the full report, please contact the Finance Department at (503) 537-1216 or [click here](#) to open the document or visit the City's website at <http://www.newbergoregon.gov/finance/comprehensive-annual-financial-report>



BOLDT, CARLISLE & SMITH LLC
CERTIFIED PUBLIC ACCOUNTANTS
PARTNERSHIP ■ ASSURANCE ■ INNOVATION

INDEPENDENT AUDITOR'S REPORT

Honorable Mayor and Members of the City Council
CITY OF NEWBERG
Newberg, Oregon

We have audited the accompanying financial statements of the governmental activities, the business-type activities, each major fund, and the aggregate remaining fund information of **CITY OF NEWBERG**, as of and for the year ended June 30, 2009, which collectively comprise the City's basic financial statements as listed in the table of contents. These financial statements are the responsibility of the City's management. Our responsibility is to express opinions on these financial statements based on our audit.

We conducted our audit in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and the significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audit provides a reasonable basis for our opinions.

In our opinion, the financial statements referred to above present fairly, in all material respects, the respective financial position of the governmental activities, the business-type activities, each major fund, and the aggregate remaining fund information of the **CITY OF NEWBERG**, as of June 30, 2009, the respective changes in financial position, and cash flows, where applicable, thereof, and the respective budgetary comparisons for the General, Street, and Building Inspection Funds, for the year then ended in conformity with accounting principles generally accepted in the United States of America.

The management's discussion and analysis on pages *a* through *n* is not a required part of the basic financial statements but is supplementary information required by accounting principles generally accepted in the United States of America. We have applied certain limited procedures, which consisted principally of inquiries of management regarding the methods of measurement and presentation of the required supplementary information. However, we did not audit the information and express no opinion on it.

A

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Established - 1968

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ALBANY: 321 1st AVENUE E STE 2A ■ ALBANY, OR 97321 ■ PHONE: (541) 928-6500 ■ FAX: (541) 928-6501

**Honorable Mayor and Members of the City Council
CITY OF NEWBERG
Newberg, Oregon**

INDEPENDENT AUDITOR'S REPORT (Continued)

Our audit was conducted for the purpose of forming opinions on the financial statements that collectively comprise the City's basic financial statements. The introductory section, combining and individual fund financial statements and schedules, and statistical section are presented for purposes of additional analysis and are not a required part of the basic financial statements. The combining and individual fund financial statements and schedules have been subjected to the auditing procedures applied in the audit of the basic financial statements and, in our opinion, are fairly stated in all material respects in relation to the basic financial statements taken as a whole. The introductory and statistical sections have not been subjected to the auditing procedures applied in the audit of the basic financial statements and, accordingly, we express no opinion on them.

Boldt, Carlisle & Smith LLC
Certified Public Accountants
Salem, Oregon
January 4, 2010

By: 

Douglas C. Parham, Member

CITY OF NEWBERG, OREGON**Management's Discussion and Analysis***For the Year Ended June 30, 2009*

The management of the City of Newberg, Oregon (City) presents this narrative overview and analysis to facilitate both a short and a long-term analysis of the financial activities of the City for the fiscal year ended June 30, 2009. This Management's Discussion and Analysis (MD&A) is based on currently known facts, decisions, and conditions that existed as of the date of the independent auditor's report. Additional information outside the scope of this analysis can be found in the Letter of Transmittal.

FINANCIAL HIGHLIGHTS

- Total assets of the City exceeded its liabilities by \$142 million. Of this amount, \$16.1 million were reported as unrestricted net assets, amounts which are available for use to meet the City's on-going obligations to citizens and creditors.
- The City's net assets remained nearly unchanged as a result of operations during the 2008-09 fiscal year (\$0.1 million increase).
- Long-term obligations of the City's governmental activities decreased by \$1.1 million (11.8%) during the fiscal year due in part to a \$0.4 million early bond redemption on the City's General Obligation debt.
- The City's long-term obligations for business-type activities increased \$1.9 million, or 8.7%, due to a loan agreement with Oregon Economic and Community Development Department to fund the Effluent Reuse system capital improvements.
- Franchise and public service taxes increased approximately \$0.4 million, or 19.5% over the prior year.
- Total cost of all programs was \$26.4 million, up 8% over last year.

Overview of the Financial Statements

The City's annual financial report consists of several sections. The components of the report include the following:

- **Management's Discussion and Analysis.** This section of the report provides financial highlights, overview and economic factors affecting the City.
- **Basic Financial Statements.** These statements include the government-wide statements, fund financials, and the notes to the financial statements.
 - **Government-wide financial statements.** The government-wide financial statements are designed to provide readers with a broad overview of the City's finances, in a manner similar to a private-sector business. Within

CITY OF NEWBERG, OREGON**Management's Discussion and Analysis***For the Year Ended June 30, 2009*

this view, all City operations are categorized and reported as either governmental or business-type activities and are presented using the full accrual basis of accounting. Governmental activities include basic services such as public safety, library, community development and general government administration. Business-type activities are water, wastewater, storm water and emergency medical services. The government-wide statements include the Statement of Net Assets and the Statement of Activities.

- **Statement of Net Assets.** The Statement of Net Assets presents information on all of the City's assets and liabilities, with the difference between the two reported as net assets. Over time, increases or decreases in net assets may serve as a useful indicator of whether the financial position of the City is improving or deteriorating.
- **Statement of Activities.** The focus of the Statement of Activities is to present the major program costs and match major resources with each. To the extent a program's cost is not recovered by grants and direct charges, it is paid from general taxes and other general resources. This Statement summarizes and simplifies the user's analysis to determine the extent to which programs are self-supporting and/or subsidized by general revenues.
- **Fund Financial Statements.** Fund financial statements focus separately on major governmental funds and proprietary funds. Governmental funds are used to account for activities where the emphasis is placed on available financial resources, rather than upon net income determination. Therefore, unlike the government-wide financial statements, governmental fund financial statements focus on the acquisition and use of current available resources, as well as on balances of current resources available at the end of the fiscal year. Such information may be useful in evaluating a government's near-term requirements.

Due to the fact that the focus of the governmental funds is narrower than that of the government-wide financial statements, it is useful to compare the information presented for governmental funds with similar information presented for governmental activities in the government-wide financial statements. By doing so, readers may further understand the long-term impact of the government's near-term financial decisions.

- **Governmental Funds.** The City maintains 15 individual governmental funds. Information is presented separately in the Governmental Fund Balance Sheet and in the Governmental Fund Statement of Revenues, Expenditures, and Changes in Fund

CITY OF NEWBERG, OREGON**Management's Discussion and Analysis***For the Year Ended June 30, 2009*

Balances for those funds that are considered significant (major) to the City taken as a whole. These financial statements report three major funds: General Fund, Street Fund, and Building Inspection Fund. Data from the other 12 governmental funds are combined into a single, aggregated presentation. For each major fund, a Budgetary Comparison Statement is presented. Readers who wish to obtain information on nonmajor funds can find it in the Combining Schedules of Nonmajor Funds and/or the Supplemental Information-Budgetary Comparison Schedules sections of this report.

- **Proprietary funds** are used to account for activities where the emphasis is placed on net income determination. The City maintains two different types of proprietary funds – enterprise funds and internal service funds. Enterprise funds are used to report the same functions presented as business-type activities in the government-wide financial statements. The City uses enterprise funds to account for its water, wastewater, storm water, and emergency medical services operations. Internal service funds are an accounting device used to accumulate and allocate costs internally among the City's various functions. The City uses internal service funds to account for facilities and fleet services, information systems, finance, legal, administration, human resources, vehicle/equipment replacement, and risk management activities. The assets and liabilities of the internal service funds have been allocated among the governmental and business-type activities.

The enterprise funds, all of which are considered to be major funds (on a consolidated basis) of the City, are reported separately as proprietary fund financial statements in the basic financial statements. Conversely, all internal service funds are combined into a single, aggregated presentation in the proprietary fund financial statements. Individual fund data for the internal service funds is provided as other supplementary information in the form of combining statements.

- **Fiduciary Funds.** Fiduciary funds are used to account for resources held for the benefit of parties outside the government. Fiduciary funds are not reflected in the government-wide financial statement because the resources of those funds are not available to support the City of Newberg's own programs. The accounting used for fiduciary funds is similar to the treatment used for proprietary funds. The City has two fiduciary funds: Employee Pension Trust Fund and the Bail Fund.

CITY OF NEWBERG, OREGON**Management's Discussion and Analysis***For the Year Ended June 30, 2009*

- **Notes to the Financial Statements.** The notes provide additional information that is essential to a full understanding of the data provided in the government-wide and fund financial statements.
- **Other Supplementary Data.** The supplementary data section includes combining statements for the non-major governmental funds, combining statements by fund type, and budgetary comparison statements. The combining internal service fund statements are also included in this section.
- **Other Information.** This section includes capital asset and other financial schedules.
- **Statistical Section.** This section includes trend information and demographics.
- **Reports of Independently Certified Public Accountants Required by Statutes.** Supplemental communication on City compliance and internal controls as required by Oregon statutes.

GOVERNMENT-WIDE FINANCIAL ANALYSIS

The following table reflects the condensed Statement of Net Assets compared to prior year.

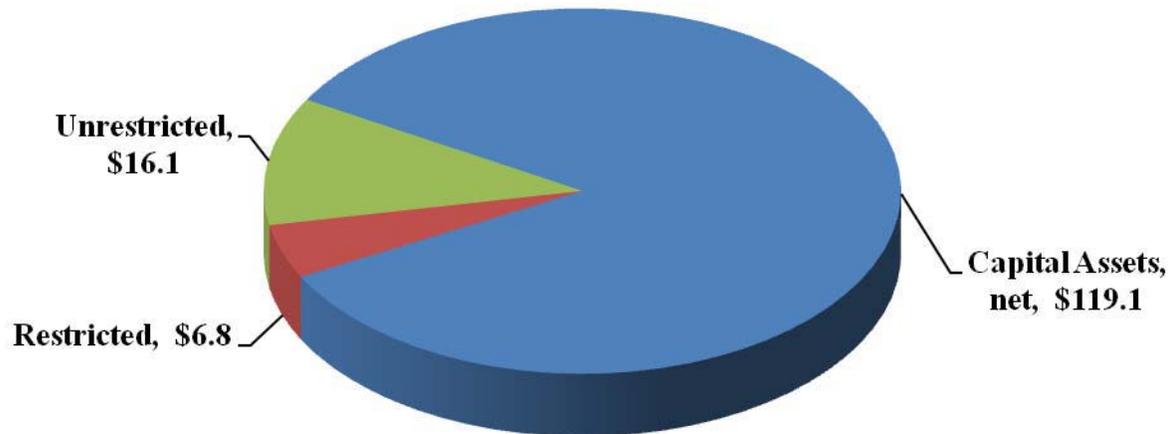
TABLE 1
NET ASSETS AT YEAR END
(in millions)

	Governmental Activities		Business-type Activities		Total Government	
	2009	2008	2009	2008	2009	2008
Cash and investments	\$ 11.5	\$ 11.6	\$ 13.3	\$ 12.7	\$ 24.8	\$ 24.3
Other assets	3.1	3.3	1.3	1.3	4.4	4.6
Capital assets	77.3	78.3	70.1	68.9	147.4	147.2
Total assets	91.9	93.2	84.7	82.9	176.6	176.1
Long-term obligations	8.2	9.3	23.7	21.8	31.9	31.1
Other liabilities	1.6	1.5	1.1	1.7	2.7	3.2
Total liabilities	9.8	10.8	24.8	23.5	34.6	34.3
Net assets:						
Invested in capital assets, net of related debt	72.5	72.6	46.6	47.3	119.1	119.9
Restricted	2.4	2.0	4.4	4.7	6.8	6.7
Unrestricted	7.1	7.9	9.0	7.4	16.1	15.3
Total net assets	\$ 82.0	\$ 82.5	\$ 60.0	\$ 59.4	\$ 142.0	\$ 141.9

CITY OF NEWBERG, OREGON
Management's Discussion and Analysis
For the Year Ended June 30, 2009

As indicated in the following chart , \$119.1 million , or 83.9 % of the City's net assets as of June 30, 2009 reflect the government's investment in capital assets (land, building, equipment, infrastructure, net of depreciation) less any related outstanding debt used to acquire those capital assets. The City uses these capital assets to provide services to citizens and consequently, they are not available for future spending. Restricted net assets total \$6.8 million, or 4.8% and represent cash and investments that are legally restricted for capital expansion or debt service. The remaining balance of unrestricted net assets totaling \$16.1 million, or 11.3%, may be used to meet the City's ongoing obligations.

City of Newberg - 2009 Net Assets
(in millions)



Governmental Activities

The City's net assets from governmental activities decreased \$0.5 million, from \$82.5 million to \$82 million. This decrease is the change in net assets reflected in the Statement of Activities, shown in Table 2, and explained below:

- Other assets decreased \$0.2 million during 2008-09 due to amortization of Prepaid Pension Costs and lower accounts receivable and inventory balances.
- Capital assets decreased by \$1 million, primarily as a result of depreciation expense (\$1.6 million) coupled with little contributed infrastructure revenue from local developers and almost no significant capital project expenditures during 2008-09.

CITY OF NEWBERG, OREGON**Management's Discussion and Analysis***For the Year Ended June 30, 2009*

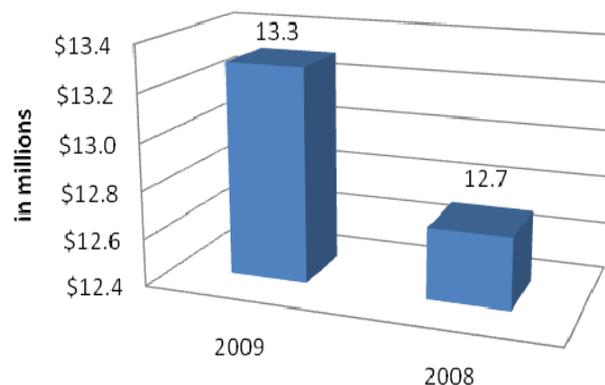
- Long-term obligations decreased \$1.1 million due to no new debt issuances, regular debt services payments, and \$0.4 million in early bond redemption activity.

Business-type Activities

The City's net assets from business-type activities increased 1%, from \$59.4 million to \$60 million. This increase is the change in net assets reflected in the Statement of Activities, shown in Table 2, and explained in the following:

- Cash and investments increased \$0.6 million, or 4.7% as a result of increases in cash flows from operations of the water, wastewater and emergency medical services divisions.
- Capital assets increased \$1.2 million (net of depreciation), primarily as a result of:
 - \$2.1 million to complete the Wastewater Effluent Reuse project
 - \$0.4 million in improvements contributed to the City through the course of subdivision development.
- Long-term obligations increased by \$1.9 million, or 8.7% due to the use of financing with Oregon Community and Economic Development Department to complete the Wastewater Effluent Reuse Project.
- Other liabilities decreased \$0.6 million, or 35.3% due to less payables relating to significant capital projects.

Cash & Investments Business-Type Activities



CITY OF NEWBERG, OREGON**Management's Discussion and Analysis***For the Year Ended June 30, 2009***STATEMENT OF ACTIVITIES**

The following table reflects the condensed Statement of Activities and Changes in Net Assets compared to prior year.

TABLE 2
GOVERNMENTAL AND PROPRIETARY ACTIVITIES
FOR FISCAL YEARS ENDING JUNE 30, 2008 and 2009
(in millions)

	Governmental Activities		Business-type Activities		Total Government	
	2009	2008	2009	2008	2009	2008
Revenues						
Charges for services	\$ 3.3	\$ 4.4	\$ 9.8	\$ 9.0	13.1	13.4
Operating grants and contributions	1.0	1.7	-	-	1.0	1.7
Capital grants and contributions	1.6	2.9	1.7	3.1	3.3	6.0
Taxes	8.8	7.9	-	-	8.8	7.9
Interest	-	0.5	0.3	0.5	0.3	1.0
Other	-	0.1	-	-	-	0.1
Total revenues	<u>14.7</u>	<u>17.5</u>	<u>11.8</u>	<u>12.6</u>	<u>26.5</u>	<u>30.1</u>
Expenses						
General government	0.3	1.1	-	-	0.3	1.1
Public safety	8.7	8.0	-	-	8.7	8.0
Library	1.2	1.1	-	-	1.2	1.1
Community development	4.5	3.9	-	-	4.5	3.9
Interest on long-term debt	0.5	0.5	-	-	0.5	0.5
Water	-	-	4.7	4.0	4.7	4.0
Sewer	-	-	4.4	3.9	4.4	3.9
Storm	-	-	0.9	0.7	0.9	0.7
Emergency medical services	-	-	1.2	1.2	1.2	1.2
Total expenses	<u>15.2</u>	<u>14.6</u>	<u>11.2</u>	<u>9.8</u>	<u>26.4</u>	<u>24.4</u>
Increase in net assets before transfers	<u>(0.5)</u>	<u>2.9</u>	<u>0.6</u>	<u>2.8</u>	<u>0.1</u>	<u>5.7</u>
Transfers	-	0.4	-	(0.3)	-	0.1
Changes in net assets	<u>(0.5)</u>	<u>3.3</u>	<u>0.6</u>	<u>2.4</u>	<u>0.1</u>	<u>5.8</u>
Beginning net assets	82.5	79.2	59.4	57.0	141.9	136.2
Ending net assets	<u>\$ 82.0</u>	<u>\$ 82.5</u>	<u>\$ 60.0</u>	<u>\$ 59.4</u>	<u>\$ 142.0</u>	<u>\$ 141.9</u>

Governmental Activities

Governmental activities resulted in a \$0.5 million decrease to the City's net assets. This decrease is attributable to lower revenues in nearly every category, along with rising program costs. The economic slowdown adversely affected revenues driven by construction activities.

- Charges for services – These are revenues that arise from charges to customers, applicants, or others who purchase, use or directly benefit from the goods, services, or privileges provided, or are otherwise directly affected by the services. Revenues primarily consist of fees charged for services, licenses and permits.

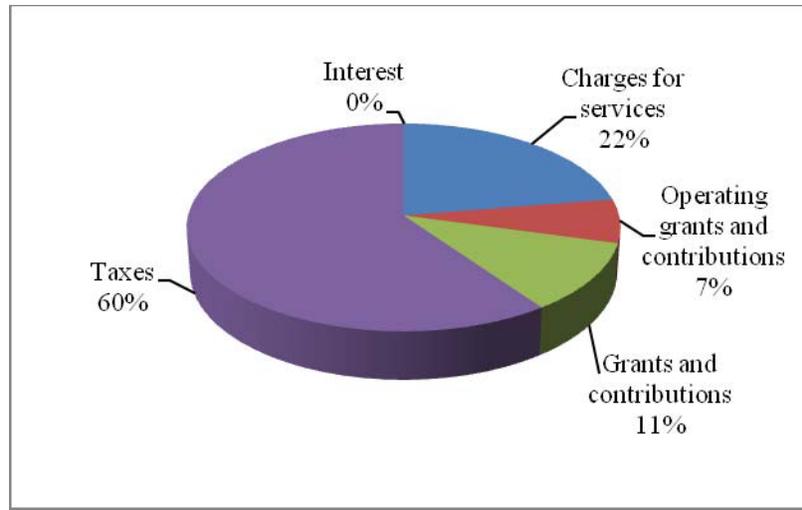
CITY OF NEWBERG, OREGON**Management's Discussion and Analysis***For the Year Ended June 30, 2009*

This category also includes municipal court revenues from issuance of traffic citations, which decreased during 2008-09 by approximately \$76,000 (9.7%). Revenues generated from community development and planning fees decreased by 29% as new housing and commercial endeavors slowed down due to negative economic pressures. Revenues generated by building inspection services were 40% lower than the prior year.

- Grants and contributions – These are revenues arising from mandatory and voluntary non-exchange transactions with other governments, organizations, or individuals that are restricted for use in a particular program.
- Operating grants/contributions revenues primarily consist of state gas tax disbursed to the City to use for road maintenance. Revenues from this source continued to decline. During 2008-09, gas taxes decreased by nearly \$64,000 to \$855,227. Other small state and private contributions are also included in the total. These funds go to support specific activities within the City. The overall decrease in operating grants was largely due to no pass-through grant activity during the current fiscal year. During 2007-08, the City had administered a \$0.8 million grant for CASA of Oregon.
- Capital grants/contributions revenues primarily consist of grants and developer infrastructure contributions (e.g. fair market value of subdivision's infrastructure such as streets, roads, and right-of-way/easements). Overall grant/contributions decreased \$1.9 million from \$2.5 million to \$0.6 million due to a significant slow down in street related infrastructure contributions. However, the City received approximately \$0.8 million in reimbursements from Oregon Department of Transportation during 2008-09 related to street projects completed in previous years.
- Taxes – These are revenues that consist primarily of property taxes, hotel/motel taxes, and franchise fees based on gross revenues. Property taxes increased \$0.3 million or 5.4% over the prior fiscal year. Franchise fees increased approximately \$0.1 million. Payments in lieu of taxes from the City's utility operations to the General Fund in the amount of \$0.4 million were reclassified as franchise fees during 2008-09.
- Interest – This is revenue derived from the City's investment of temporarily idle assets which decreased by \$0.5 million reflecting the significant reduction in market investment rates.
- Other - This is miscellaneous revenue not related to services provided.

CITY OF NEWBERG, OREGON
Management's Discussion and Analysis
For the Year Ended June 30, 2009

Governmental Activities-Revenues by Source



- Programs – These are direct expenses that are specifically associated with a service, program, or department and, thus, are clearly identifiable to a particular function. The following table reflects the changes in program expenses:

Table 3
Governmental Activities - Program Expenses
for the fiscal year ended June 30, 2009
(in millions)

Programs	FY 2008-09		Compared to FY 2007-08	
	Amount	Percent of Total	Amount	Percent
General government	\$ 0.3	2.0%	\$ (0.8)	-72.7%
Public safety	8.7	57.2%	0.7	8.7%
Library	1.2	7.9%	0.1	9.1%
Community development	4.5	29.6%	0.6	15.4%
Interest on long-term debt	0.5	3.3%	-	0.0%
Total expenses	\$ 15.2	100.0%	\$ 0.6	4.1%

- General government consists of costs relating to operations of the City Council and fundraising efforts by the Newberg Friends of the Animal Shelter. The decrease of \$0.8 million is related to a one-time grant expenditure that occurred during fiscal year 2007-08.
- Public safety consists of the police, fire, court, and 911 operations. The increase in program expense is primarily due to increases in personnel costs.

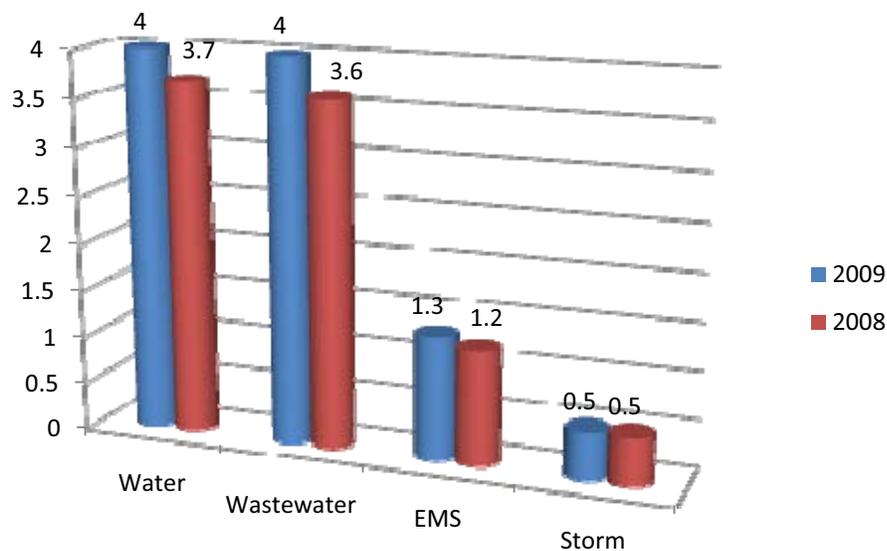
CITY OF NEWBERG, OREGON
Management's Discussion and Analysis
For the Year Ended June 30, 2009

- Library costs increased slightly due to rising personnel costs.
- Community development consists of planning, economic development, building inspection, and road maintenance programs. Cost for road maintenance increased by \$0.4 million over 2007-08. Economic development endeavors also increased overall costs in 2008-09.

Business-type Activities

Overall revenues decreased by \$0.8 million over the prior fiscal year due to less in capital infrastructure contributions from local building projects. Operating rate increases in all business-type divisions positively impacted revenues. System development fees decreased by \$0.5 million from the 2007-08 fiscal year.

Business-Type Activities – Operating Revenues by Service



CITY OF NEWBERG, OREGON**Management's Discussion and Analysis***For the Year Ended June 30, 2009*

The following table reflects the changes in program expenses for the business-type activities:

Table 4
Business-Type Activities - Program Expenses
for the fiscal year ended June 30, 2009
(in millions)

Programs	FY 2008-09		Compared to FY 2007-08	
	Amount	Percent of Total	Increase/(Decrease) Amount	Percent
Water	4.7	42.0%	0.7	17.5%
Sewer	4.4	39.3%	0.5	12.8%
Storm	0.9	8.0%	0.2	28.6%
Emergency medical services	1.2	10.7%	-	0.0%
Total expenses	<u>\$ 11.2</u>	<u>100.0%</u>	<u>\$ 1.4</u>	<u>14.3%</u>

The \$0.7 million increase in the water service division was attributable to higher depreciation expense, materials and services, and interest costs on long-term debt for capital projects that were completed in the latter part of fiscal 2007-08. The wastewater division also experienced a rise in depreciation and material and services costs of \$0.5 million. Storm water operations experienced increases in personal and materials and services costs.

FUND-BASED FINANCIAL ANALYSIS

As previously discussed, the City uses fund accounting to ensure and demonstrate compliance with finance-related legal requirements.

Governmental Funds

The focus of the City's governmental funds is to provide information on near-term inflows, outflows, and balances of available resources. Such information is useful in assessing the City's financing requirements. In particular, unreserved fund balance may serve as a useful measure of a government's net resources available for spending at the end of the fiscal year.

As of the end of the current fiscal year, the City's governmental funds reported combined ending fund balances of \$9.3 million, a decrease of \$0.4 million. Approximately 73% of this total amount constitutes unreserved fund balance, which is available for spending at the government's discretion, subject to reporting fund-type limitations. The remainder of fund balance is reserved to indicate that it is not available for new spending because it has already been committed to pay debt service, invested in inventory, or has been reserved for other purposes.

CITY OF NEWBERG, OREGON**Management's Discussion and Analysis***For the Year Ended June 30, 2009*

The General Fund is the chief operating fund of the City. The fund balance of the City's General Fund decreased by \$0.4 million, or 10.8%, during the current fiscal year. Key components to the change for the year ended June 30, 2009 are as follows:

- Property taxes increased \$0.3 million, or 6.8%. Assessed values are limited to 3% growth, thus the remaining 3.8% is related to new construction and collections on delinquent taxes. New construction still continues within the City limits. However, the rate is at a slower pace than in the past.
- Other taxes, which consist of franchise fees, public service taxes, and motel taxes, increased slightly over the prior fiscal year.
- Licenses and permits experienced a 47% decrease or \$0.5 million. Due to the recent downturn in the economy, new construction permitting activity has slowed down.
- Expenditures in the General Fund grew by \$1.1 million or 12.3% over the prior fiscal year. Public safety functions continued to be the largest contributor to cost increases at \$0.9 million. Personnel costs in these divisions continue to rise.

The Street Fund ending balance decreased by \$305,043 due to a continuation of expenditures exceeding incoming revenues. Incoming revenues are not able to support the current level of activity within the fund. Gasoline tax revenues received from the State continue to decrease and were approximately \$64,000 less than the prior fiscal year. Costs were consistent with prior year activity.

The Building Inspection Fund continued to struggle during 2008-09. Building inspection revenues were \$0.3 million lower than the prior fiscal year. Spending cuts were made to the department in an effort to scale back costs. However, expenditures were still nearly \$80,000 higher than the prior fiscal year.

Other governmental fund balances increased by \$579,614 due primarily to the receipt of \$880,000 in Federal Exchange Grant money for reimbursed costs related to the Mountainview Drive road construction project. Other significant activity included a decrease in the Debt Service Fund balance of \$413,238 due to early redemption of a portion of the City's general obligation debt.

Proprietary Funds

Net assets of the water utility increased slightly by 1.6% during 2008-09. Charges for services increased by nearly 11% during the fiscal year due to a rate increase effective July 2008. Increases in revenues were offset by a significant rise in both material and services costs and depreciation. The total percentage increase of these two costs was 40%. System development charge revenues, capital contribution revenues, and interest

CITY OF NEWBERG, OREGON**Management's Discussion and Analysis***For the Year Ended June 30, 2009*

costs were relatively consistent with the prior fiscal year. Interest revenue decreased noticeably due to the declining yields in the investment market.

The net assets of the wastewater utility increased by \$0.3 million (1.4%) during fiscal year 2008-09. Charges for services increased 14% due to a significant rate increase adopted in July of 2008. Operating expenses increased by 13.3% over the prior year. The operating result of the division was negative for 2008-09 (\$277,194), reflecting a multi-year trend of insufficient operating revenues. Implemented rate increases have been effective in reducing the scope of the operating loss, but not enough to make the division break even. Infrastructure contributions from developers fell \$0.5 million as construction activity decreased. Similarly, lack of new projects resulted in a 32% reduction in system development revenues.

The net assets of the storm water utility decreased \$0.2 million. Operating costs continued to outpace operating revenues resulting in an operating loss of (\$340,522). Storm water charges for services were consistent with the prior fiscal year, while operating costs increased 23.3%.

Net assets of the emergency medical services division experienced almost no change. Operating revenues increased 5.9% while operating expenses grew 7.6%.

BUDGETARY HIGHLIGHTS

General Fund budget appropriation revisions totaled \$45,000 during 2008-09 for the following:

- To expend \$10,000 in unanticipated State Rural Investment Grant money
- To cover the \$35,000 in additional cost for provide planning services to City of Dundee

Actual expenditures were \$1,443,917 less than budgeted as a result of lower costs than had been anticipated in the budget process. In particular, the fire department had anticipated a \$300,000 FEMA grant to be received and expended during the 2008-09 fiscal year. This grant ended up not being awarded during the 2008-09 fiscal year.

The police and communications departments also expended \$351,426 less than anticipated in the budget process.

The City did not have to use any of the \$626,840 in Contingency that had been budgeted for 2008-09.

CITY OF NEWBERG, OREGON

Management's Discussion and Analysis

For the Year Ended June 30, 2009

CAPITAL ASSETS AND DEBT ADMINISTRATION

Capital Assets. As of June 30, 2009, the City had invested \$147.4 million in capital assets as reflected in the following table, which represents a net increase (additions, deductions and depreciation) of \$0.2 million.

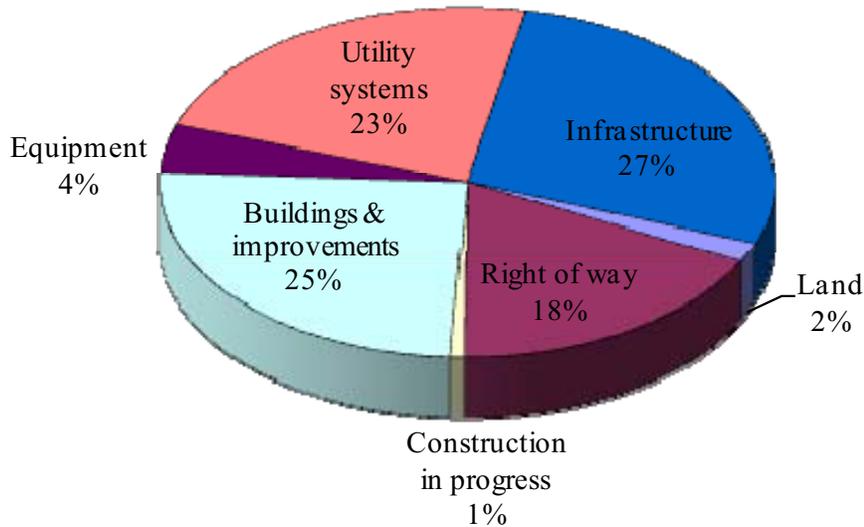
TABLE 5
CAPITAL ASSETS AT YEAR END
(NET OF DEPRECIATION)
 (in millions)

	Governmental Activities		Business-type Activities		Totals	
	2009	2008	2009	2008	2009	2008
	Land	\$ 1.0	\$ 1.0	\$ 1.6	\$ 1.4	\$ 2.6
Right of way	26.2	25.8	-	-	26.2	25.8
Construction in progress	0.1	0.8	0.9	7.8	1.0	8.6
Buildings & improvements	7.5	7.7	29.5	21.8	37.0	29.5
Equipment	2.1	2.3	4.4	4.7	6.5	7.0
Utility systems	-	-	33.7	33.2	33.7	33.2
Infrastructure	40.4	40.7	-	-	40.4	40.7
Total	\$ 77.3	\$ 78.3	\$ 70.1	\$ 68.9	\$ 147.4	\$ 147.2

Major capital asset events during the current fiscal year included the following:

- Purchase of six new vehicles for various departments
- Purchase of land for a new wastewater pump station for \$284,425
- Completion of the Wastewater Effluent Reuse project. Costs related to the project were \$2.1 million for 2008-09.

Government-Wide Totals
Capital Assets



CITY OF NEWBERG, OREGON**Management's Discussion and Analysis***For the Year Ended June 30, 2009*

Additional information on the City's capital assets can be found in the notes to the basic financial statements on page 37 of this report.

Debt. As of June 30, 2009, the City had a total long-term debt obligation of \$30.8 million. Of this amount, \$7.3 million represented outstanding bonded indebtedness. Outstanding bonded debt included \$2.5 million to be serviced by property taxes, \$4.8 million to be serviced by the City Hall fee and internal charges to departments. All of these debts are backed by the full faith and credit of the City.

TABLE 6
OUTSTANDING DEBT AT YEAR END
(in millions)

	Governmental Activities		Business-type Activities		Totals	
	2009	2008	2009	2008	2009	2008
General obligation	\$ 2.5	\$ 3.2	\$ -	\$ -	\$ 2.5	\$ 3.2
Certificates of participation	2.1	2.2	-	-	2.1	2.2
Limited tax bonds	2.7	2.7	-	-	2.7	2.7
Notes payable	-	-	23.5	15.7	23.5	15.7
Interim financing	-	-	-	5.8	-	5.8
Total	<u>\$ 7.3</u>	<u>\$ 8.1</u>	<u>\$ 23.5</u>	<u>\$ 21.5</u>	<u>\$ 30.8</u>	<u>\$ 29.6</u>

The City maintained its A-3 debt rating from Moody's Investors Service, which was affirmed in March 1998.

The City exercised an early redemption call on two General Obligation Bonds. \$400,000 in debt was paid off early, thus saving the City current and future interest costs.

The City received proceeds of \$2.7 million from an interim financing agreement with OECD (Oregon Economic and Community Development Department) during 2008-09. In May of 2009, this interim financing was converted to a long-term loan. The funds were used to finance the WWTP Effluent Reuse Project.

Additional information on the City's long-term obligations can be found in the notes to the basic financial statements on page 39 of this report.

ECONOMIC FACTORS

Providing stable funding for City services during the current economic recession poses a challenge for the next few years. For 2008-09, the City did not experience a significant decrease in overall revenues, except in those categories related directly to new construction. However, with the June unemployment rate for Yamhill County at 13.2% and Oregon home foreclosure rates for the first half of 2009 being the 11th highest in the nation, the situation may worsen in the near future.

CITY OF NEWBERG, OREGON**Management's Discussion and Analysis***For the Year Ended June 30, 2009*

Due to economic hardships, property tax remittances may be less than in previous years, utility billing collections may be more difficult, and the City's ability to raise rates to cover rising costs may be limited. Revenues that come directly from the State of Oregon are becoming scarce as well.

The City's building and planning departments implemented cost saving measures during fiscal year 2008-09 to compensate for less local construction activity. More cost cutting measures will be explored, if necessary, to keep costs in line with revenues.

The City is heavily dependent upon the inflow of property tax revenues each year to fund core services. For 2009-10, the City will be exploring the concept of a public safety fee to provide additional funding for police services.

Business-type activities are funded by utility charges, charges for medical transport, and systems development charges. Utility charges were 32% of total government-wide revenues for the City. The City periodically increases its water, wastewater, storm water, and emergency medical services charges to keep up with the cost of services. Newberg area citizens take an active role in deciding upon these increases through committee meetings. Of particular concern in the future is to assure that utility rates reflect the need to expand the existing systems. There are several major capital improvements on the horizon that will need to be funded via increases to utility user charges. The City is also actively seeking suitable property to expand the WWTP, relocate the Water Treatment Plant and establish new well fields in the future. All three utility rates were raised effective July of 2008. The increases were as follows: Water 6.5%, Wastewater 20%, and Storm Water 7.5%.

Construction of the Allison Inn was almost complete at the close of 2008-09. The Inn features 85 guest rooms, meeting rooms, a spa, and a restaurant and lounge on an extensively landscaped 35-acre site. The facility will open October of 2009. The development of this property will generate more property and hotel/motel tax revenue for the City, as well as draw more business into the local economy.

More detail about the impacts of the economy on the City is found in the Letter of Transmittal.

CITY OF NEWBERG, OREGON

Management's Discussion and Analysis

For the Year Ended June 30, 2009

REQUESTS FOR INFORMATION

This financial report is designed to provide a general overview of the City's finances for those with an interest in the government's finances. Questions concerning any of the information provided in this report or requests for additional financial information should be addressed to:

Finance Director
City of Newberg
PO Box 970
Newberg, OR 97132

REQUEST FOR COUNCIL ACTION

DATE ACTION REQUESTED: January 19, 2010

Order ____ Ordinance ____ Resolution XX Motion ____ Information ____
No. No. No. 2010-2882

SUBJECT: Consent to assign Newberg Garbage Service's exclusive franchise with the City of Newberg

Contact Person (Preparer) for this
Resolution: Dawn Wilson

Dept.: City Attorney's Office

File No.:
(if applicable)

RECOMMENDATION:

Adopt **Resolution No. 2010-2882** to consent to assign the exclusive garbage franchise to Waste Management of Oregon, Inc.

EXECUTIVE SUMMARY:

Newberg Garbage Service, Inc. ("Newberg Garbage") has provided the residents and business in Newberg with outstanding service, and the City has enjoyed its business relationship with Owner Merlin LaJoie. However, Mr. LaJoie has "...agreed to sell his assets used in the commercial and residential solid waste collection services business..." in the city of Newberg to Waste Management of Oregon, Inc. ("Waste Management."). As such, he also requests consent of the City Council to assign the exclusive garbage franchise to Waste Management pursuant to Section 5 of the franchise (Ordinance No. 1909), which reads as follows:

Section 5. Assignment of Rights under Franchise

The Grantee shall not during the term of this franchise, sell, assign, transfer or convey this franchise or any rights under this franchise, nor shall the Grantee sell or assign the controlling stock interest in said Grantee's corporation without first obtaining the consent of the Council of the City expressed by resolution. Whenever the Grantee shall be mentioned in this ordinance, it shall be understood to include such successors or assigns in interest of the present Grantee as shall have been consented to by the Council in the before mentioned manner.

Waste Management - Business Operations:

Mr. LaJoie and Waste Management will keep the City informed as to the closing of the transaction. The transfer should not interrupt services to customers because Newberg Garbage and Waste Management will continue service status quo by means of retaining current employees. Waste Management has plans for improvements to the service. Newberg Garbage and Waste Management have given the City assurances that they will continue to provide the same level of service to the Newberg customers.

Waste Management - Background:

Please see Waste Management's letter dated December 30, 2009, along with a few financial documents, which are attached to this RCA.

Additional Information:

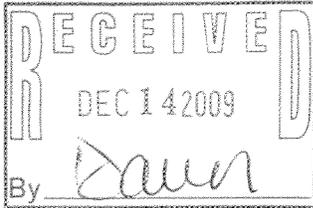
Additionally, the director of operations (Adam Winston) and someone (e.g. either Merlin LaJoie, owner, or Sharon Bjorn, operations manager) from Newberg Garbage will be at the Council meeting to answer questions.

FISCAL IMPACT:

None.

STRATEGIC ASSESSMENT:

There are certainly risk factors in business acquisitions. Waste Management has in-depth experience in this area and already provides garbage hauling and collection, as well as recycling services not only throughout Oregon but also in Washington and Idaho. Based on the legal, technical, and financial ability of the new company to fulfill the obligations of the outgoing company, Waste Management meets all the criteria.



Newberg ATTACHMENT to RCA
GARBAGE & RECYCLING (Resolution No. 2010-2882)
Service 1 of 7

December 10, 2009

Daniel Danici, City Manager
Newberg City Hall
414 E. First Street
Newberg, OR 97132

Re: Consent to assign Newberg Garbage Service, Inc.'s ("Newberg") exclusive franchise with the City of Newberg

Dear Mr. Danicic

On behalf of Newberg, I would like to thank you for your support and patronage of our company. Newberg recently agreed to sell assets used in its commercial and residential solid waste collection services business in the City of Newberg ("City"), to Waste Management of Oregon, Inc. ("Waste Management").

Pursuant to Section 5 of City Ordinance No. 1909, as amended by Ordinance No. 2056, which jointly adopt the exclusive franchise granted to Newberg for the hauling and collection of solid waste, refuse, recyclable materials and recyclable solid wastes in the City and disposal, recovery or sale thereof (the "Franchise Agreement"), we hereby request the consent, expressed by resolution, of the City council to assign the Franchise Agreement to Waste Management.

Both Newberg and Waste Management remain committed to keeping you informed, including the consummation of the transaction, and in ensuring a smooth transition. If you have any questions, or need any additional information to proceed with our request for assignment, please do not hesitate to contact me.

Sincerely,

NEWBERG GARBAGE SERVICE, INC.

Merlin LaJoie
Merlin LaJoie





December 30 2009

Mayor and City Council
City of Newberg
414 East First St.
Newberg, OR 97132

WASTE MANAGEMENT

Northwest Area
7227 NE 55th Avenue
Portland, OR 97218
(503) 331-2221
(503) 493-7883 Fax

Re: Newberg Franchise Transfer Request

Dear Mayor Andrews and Council Members,

Please accept this letter as a formal request to transfer the City of Newberg Solid Waste Franchise Agreement from Newberg Garbage Service Inc., to Waste Management of Oregon, Inc. As you know, Waste Management has entered into an agreement to purchase Newberg Garbage, contingent on the successful transfer of all city and county franchise agreements.

Waste Management has been in existence in Oregon since the 1980's and has extensive experience in waste collection, recycling and customer service to ensure a smooth transition. In Oregon, we currently operate hauling facilities throughout the Metro area as well as, Klamath Falls and Columbia County. In addition to Oregon, as part of Waste Management of the Pacific Northwest, we also operate a number of collection, transfer, recycling and landfill facilities in Washington and Idaho.

At Waste Management, we are not just a garbage company. In fact, we look at waste as a resource. Below are our company's current sustainability goals:

1. By 2020, we expect to create enough energy through our landfill gas to energy plants to power more than 2 million homes. Locally at the Riverbend landfill, we will open one of these plants in 2010.
2. By 2020, we expect to triple the amount of recyclable materials we manage, from 8 million to more than 20 million tons.
3. Over the next 10 years, we will ask our suppliers to develop a truck that improves the fuel efficiency of our fleet by 15% and reduces fleet emissions by 15%.
4. By 2020, we want Waste Management to achieve a fourfold increase in the number of our wildlife habitats certified by the Wildlife Habitat Council. Currently we have Wildlife Habitat Certifications at our Riverbend and Hillsboro Landfills.

The waste industry will continue to evolve and we look forward to being a part of the Newberg community and help promote the City's sustainability goals.

As discussed with City Manager, Dan Danicic, we will be reviewing the franchise agreement and offer suggestions for updating purposes. We expect that we can get this accomplished in an expedient manner. While we will continue to look for additional services and recycling opportunities, all services currently provided by Newberg Garbage will remain the same and will be serviced by current Newberg Garbage employees.

For your reference, attached is the year end consolidated statement of operations, statement of cash flows and balance sheet for our parent company, Waste Management Inc.

Thank you for considering our request and if you have any questions, please do not hesitate to contact me at 503-493-7858.

Best Regards,



Adam Winston
Director of Operations
Waste Management
503-493-7858
awinston@wm.com

Waste Management (WM)
Income Statement

PERIOD ENDING	31-Dec-08	31-Dec-07	31-Dec-06
Total Revenue	13,388,000	13,310,000	13,363,000
Cost of Revenue	8,466,000	8,402,000	8,587,000
Gross Profit	4,922,000	4,908,000	4,776,000
Operating Expenses			
Research Development	-	-	-
Selling General and Administrative	1,477,000	1,432,000	1,388,000
Non Recurring	(27,000)	(37,000)	25,000
Others	1,238,000	1,259,000	1,334,000
Total Operating Expenses	-	-	-
Operating Income or Loss	2,234,000	2,254,000	2,029,000
Income from Continuing Operations			
Total Other Income/Expenses Net	22,000	51,000	70,000
Earnings Before Interest And Taxes	2,211,000	2,224,000	2,019,000
Interest Expense	455,000	521,000	545,000
Income Before Tax	1,756,000	1,703,000	1,474,000
Income Tax Expense	669,000	540,000	325,000
Minority Interest	(41,000)	(46,000)	(44,000)
Net Income From Continuing Ops	1,087,000	1,163,000	1,149,000
Non-recurring Events			
Discontinued Operations	-	-	-
Extraordinary Items	-	-	-
Effect Of Accounting Changes	-	-	-
Other Items	-	-	-
Net Income	1,087,000	1,163,000	1,149,000
Preferred Stock And Other Adjustments	-	-	-
Net Income Applicable To Common Shares	\$1,087,000	\$1,163,000	\$1,149,000

Waste Management (WM)
Cash Flows

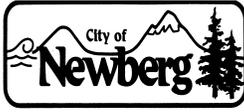
PERIOD ENDING	31-Dec-08	31-Dec-07	31-Dec-06
Net Income	1,087,000	1,163,000	1,149,000
Operating Activities, Cash Flows Provided By or Used In			
Depreciation	1,356,000	1,259,000	1,334,000
Adjustments To Net Income	221,000	98,000	76,000
Changes In Accounts Receivables	216,000	(22,000)	12,000
Changes In Liabilities	(301,000)	(70,000)	(21,000)
Changes In Inventories	-	-	-
Changes In Other Operating Activities	(4,000)	11,000	(10,000)
Total Cash Flow From Operating Activities	2,575,000	2,439,000	2,540,000
Investing Activities, Cash Flows Provided By or Used In			
Capital Expenditures	(1,221,000)	(1,211,000)	(1,329,000)
Investments	-	304,000	122,000
Other Cashflows from Investing Activities	38,000	146,000	419,000
Total Cash Flows From Investing Activities	(1,183,000)	(761,000)	(788,000)
Financing Activities, Cash Flows Provided By or Used In			
Dividends Paid	(587,000)	(515,000)	(498,000)
Sale Purchase of Stock	(373,000)	(1,279,000)	(777,000)
Net Borrowings	(260,000)	(256,000)	(500,000)
Other Cash Flows from Financing Activities	(36,000)	104,000	(28,000)
Total Cash Flows From Financing Activities	(1,256,000)	(1,946,000)	(1,803,000)
Effect Of Exchange Rate Changes	(4,000)	2,000	(1,000)
Change In Cash and Cash Equivalents	\$132,000	(\$266,000)	(\$52,000)

Waste Management (WM)
Balance Sheet

PERIOD ENDING	31-Dec-08	31-Dec-07	31-Dec-06
Assets			
Current Assets			
Cash And Cash Equivalents	480,000	348,000	614,000
Short Term Investments	-	-	-
Net Receivables	1,649,000	1,943,000	1,940,000
Inventory	110,000	103,000	101,000
Other Current Assets	96,000	86,000	527,000
Total Current Assets	2,335,000	2,480,000	3,182,000
Long Term Investments	-	-	-
Property Plant and Equipment	11,402,000	11,351,000	11,179,000
Goodwill	5,462,000	5,406,000	5,292,000
Intangible Assets	158,000	124,000	121,000
Accumulated Amortization	-	-	-
Other Assets	870,000	814,000	826,000
Deferred Long Term Asset Charges	-	-	-
Total Assets	20,227,000	20,175,000	20,600,000
Liabilities			
Current Liabilities			
Accounts Payable	1,750,000	1,807,000	1,991,000
Short/Current Long Term Debt	836,000	329,000	822,000
Other Current Liabilities	451,000	462,000	455,000
Total Current Liabilities	3,036,000	2,598,000	3,268,000
Long Term Debt	7,491,000	8,008,000	7,495,000
Other Liabilities	2,031,000	2,056,000	1,975,000
Deferred Long Term Liability Charges	1,484,000	1,411,000	1,365,000
Minority Interest	283,000	310,000	275,000
Negative Goodwill	-	-	-
Total Liabilities	14,325,000	14,383,000	14,378,000
Stockholders' Equity			
Misc Stocks Options Warrants	-	-	-
Redeemable Preferred Stock	-	-	-
Preferred Stock	-	-	-

Waste Management (WM)
Balance Sheet

Common Stock	6,000	6,000	6,000
Retained Earnings	5,631,000	5,080,000	4,410,000
Treasury Stock	(4,381,000)	(4,065,000)	(2,836,000)
Capital Surplus	4,558,000	4,542,000	4,513,000
Other Stockholder Equity	88,000	229,000	129,000
Total Stockholder Equity	5,902,000	5,792,000	6,222,000
Net Tangible Assets	\$282,000	\$262,000	\$809,000



RESOLUTION No. 2010-2882

**A RESOLUTION CONSENTING TO THE ASSIGNMENT OF THE
NEWBERG GARBAGE SERVICE, INC.'S EXCLUSIVE FRANCHISEE WITH
THE CITY OF NEWBERG TO WASTE MANAGEMENT OF OREGON, INC.**

RECITALS:

1. Newberg Garbage Service, Inc. (“Newberg Garbage”) currently has an exclusive Franchise with the City of Newberg for the hauling of garbage and collection of recyclable solid waste in the city of Newberg.
2. Newberg Garbage Service, Inc. is the Grantee under the exclusive Franchise Agreement approved and granted by the City in 1978 as Ordinance No. 1909. This ordinance/franchise was amended in 1981 by Ordinance No. 2056 and in 1986 by Ordinance No. 2186.
3. This term of this Franchise is for a term of ten (10) years and shall be renewed for a full term of ten (10) years upon January 1st of each succeeding year unless cancelled by Council before December 31st.
4. The City has received a request, by means of a letter dated December 10, 2009, from Newberg Garbage, to consent to assign the exclusive Franchise to Waste Management of Oregon, Inc. (“Waste Management.”) pursuant to Section 5 of the franchise (Ordinance No. 1909).
5. Newberg Garbage Service has provided the residents and business in Newberg with outstanding service, and the City has enjoyed its business relationship with Owner Merlin LaJoie. Mr. LaJoie has “...agreed to sell his assets used in the commercial and residential solid waste collection services business...” in the city to Waste Management.
6. Following the completion of the sale and purchase transaction constituting the assignment, Waste Management would assume the responsibility of the collection of commercial and residential solid waste as well as providing recycling services.
7. Section 5 of the Franchise authorizes the City to consider and approve by resolution any proposed sale, assignment, transfer, or conveyance of the Franchise. The December 10, 2009, letter from Newberg Garbage and the December 30, 2009, letter from Waste Management was used to determine the impact on the Grantee’s ability to perform the Franchise obligations based on the legal, financial, and technical qualifications of the assignee.
8. No prior public hearing concerning the proposed Assignment has occurred by the City of Newberg.
9. The City Council deems it to be in furtherance of the public interest and the welfare of its citizens to consent to the Assignment request, subject to appropriate conditions.

THE CITY OF NEWBERG RESOLVES AS FOLLOWS:

Section 1. Legal, Technical and Financial Qualifications of the Assignee. Upon review of the limited materials that have been supplied to the City, which are attached to the Request for Council Action, the Franchisee and Assignee have the necessary legal, technical and financial qualifications to perform the required duties under the exclusive Franchise Agreement, provided certain conditions are imposed on the proposed Assignment.

Section 2. Consent to the Assignment. The City of Newberg hereby consents to the Assignment as set forth in the letter dated December 10, 2009, requesting such consent to assign the exclusive garbage franchise between Newberg Garbage Service, Inc., and the City of Newberg to Waste Management of Oregon, Inc., subject to the conditions set forth in Section 3, below.

Section 3. Conditions to the Assignment. The approval of the proposed transfer of control will not take effect until such time as each of the following conditions is met:

1. The Newberg Garbage/Waste Management sale and purchase transaction must close with all material terms substantially consistent with the agreement that they entered into on the purchase of Newberg Garbage.
2. The hauling and collection of commercial and residential solid waste and recycling services by Newberg Garbage/Waste Management is approved by all required Federal and Oregon State Laws.
3. Grantee, under the consent of Assignment, agrees to remedy any franchise non-compliance issues, including any underpayment of franchise, regardless of whether such non-compliance issues are discovered prior to or following the close of the Assignment. Grantee, under the Assignment, will remain responsible for any and all Franchise requirements (including but not limited to payment of Franchise fees and other amounts due under the Franchise, and indemnification of the Grantor as provided in the Franchise) and non-compliance issues under the Franchise or any obligation that may now exist or may later be discovered to have existed during the term of the Franchise, even if prior to the closing of this Assignment.
4. Grantee shall comply with all valid local laws, agreements, and Franchise requirements consistent with applicable federal and state law including all terms of the City of Newberg/Newberg Garbage Franchise Agreement. In all respects and without exception, Grantee, under the consent of Assignment agrees to continue to abide by all terms of the existing Franchise and acknowledges that the transfer of control will not affect, diminish, impair or supersede the binding nature of the Franchise and any other valid codes, ordinances, resolutions, and agreements with the City that are applicable to the operation of the commercial and residential solid waste and recycling services.
5. Franchisee, under the Assignment, provides and maintains an irrevocable letter of credit or performance bond in a form acceptable to the City in the amount of \$25,000 to secure the payment of franchise fees and any penalties, for a period of five years after closing of the Newberg Garbage/Waste Management sale and purchase transaction.

6. Assignee provides current contact information for notice recipients.
7. Assignee provides a current and updated (as change occurs) contact information to City on key operations personnel.
8. The City's consent to the Assignment will not be construed to constitute a waiver or release of any rights they may have under the Franchise and any separate written agreements with the Franchisee and Franchisee's lawful successors.
9. Newberg Garbage/Waste Management will provide the City on the progress and consummation of the sale and purchase transaction.
10. Assignee acknowledges these conditions of approval of the Assignment in writing in a form and by a date acceptable to the City.
11. Approvals granted by the City will be valid for one (1) year upon the date of passage of this resolution in order for the consummation of the Newberg Garbage/Waste Management sale and purchase transaction. If the transaction is not completed prior to this one (1) year timeframe, Newberg Garbage/Waste Management will meet with City representatives and advise them on the status of the transaction. The City will consider the information provided by Newberg Garbage/Waste Management and consider whether to extend the previously granted approvals. Such extensions shall not be unreasonably withheld.

Section 4. Authorization to Execute and File Resolution. The mayor and his designee(s) shall ensure that a copy of this Resolution is filed and the terms are accepted by the Grantee (Newberg Garbage) and Assignee (Waste Management).

➤ **EFFECTIVE DATE** of this resolution is the day after the adoption date, which is: January 20, 2010.

ADOPTED by the City Council of the City of Newberg, Oregon, this 19th day of January, 2010.

Norma I. Alley, City Recorder

ATTEST by the Mayor this 21st day of January, 2010.

Bob Andrews, Mayor

LEGISLATIVE HISTORY

By and through _____ at _____ meeting. Or, X None.