

Council accepts comments on agenda items during the meeting. Fill out a form identifying the item you wish to speak on 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  
MAY 3, 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**

Consider a motion approving [City Council Minutes](#) for March 15, 2010, and April 5, 2010. (Pg 3-17)

**VII. PUBLIC HEARING**

Consider a motion approving [Ordinance No. 2010-2725](#) amending the Administrative Building Code providing for issuance of civil penalties for violations, and using the current International Code Council Building Valuation Data Tables. (Pgs. 19-34)  
**(Legislative)**

**VIII. COUNCIL BUSINESS**

**IX. EXECUTIVE SESSION**

Executive Session pursuant to ORS 192.660(2)(I) relating to performance review of the city manager.

**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:

### ORDINANCES:

**Ordinance No. 2010-2725** amending the Newberg Administrative Building Code to allow issuance of administrative civil penalties and to use the current International Code Council Building Valuation Data Tables.

*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.*

Public testimony will be heard on all agenda items at the Council meeting. The City Council asks written testimony be submitted to the City Recorder before 5:00 p.m. on the preceding Thursday. Written testimony submitted after that will be brought before the Council on the night of the meeting for consideration and a vote to accept or not accept it into the record.

\*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: May 3, 2010

Order \_\_\_ Ordinance \_\_\_ Resolution \_\_\_ Motion XX Information \_\_\_  
No. No. No.

**SUBJECT:** Approve the March 15, 2010, and April 5, 2010, City Council Meeting minutes.

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

Dept.: **Administration**

File No.:  
*(if applicable)*

## RECOMMENDATION:

Approve the March 15, 2010, and April 5, 2010, City Council minutes for preservation and permanent retention in the City's official records.

## EXECUTIVE SUMMARY:

On March 15, 2010, and April 5, 2010, the City of Newberg City Council held public meetings. At those meetings, minutes were recorded in text.

## FISCAL IMPACT:

None.

## STRATEGIC ASSESSMENT:

None.

**CITY OF NEWBERG CITY COUNCIL MINUTES  
MARCH 15, 2010  
7:00 P.M. MEETING  
PUBLIC SAFETY BUILDING TRAINING ROOM  
401 EAST THIRD STREET**

Work Session was held prior to the meeting. A discussion on Budget prioritization occurred. No decisions were made.

**I. CALL MEETING TO ORDER**

Mayor Bob Andrews called the meeting to order at 7:00 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
	Barton Brierley, Planning and Building Director	Norma Alley, City Recorder
	Leah Griffith, Library Director	Jennifer Nelson, Recording Secretary

Others

Present: Lee Does, Sid Friedman, Saj Jivanjee, Roger Grahn, Roy Powell, Jared E. Jones, Lory Albright, Rick Rogers, Lisa Stephens, William Sweat, Joanne Dunkin, Doug Bartlett, and Mike Ragsdale

**III. PLEDGE OF ALLEGIANCE**

The Pledge of Allegiance was performed.

**IV. CITY MANAGER'S REPORT**

Mr. Daniel Danicic, City Manager, reported on the success of the residential drug take-back program and the Cultural Center's ribbon cutting ceremony scheduled for this Thursday, March 18, 2010 at 3:30 PM. He also reminded members of the Chamber of Commerce banquet at 6:00 PM on April 8, 2010 at Newberg High School; an RSVP is needed by this coming Friday.

**V. PUBLIC COMMENTS**

None.

**VI. CONSENT CALENDAR**

1. Consider a motion approving a **Proclamation** declaring March 28-April 4, 2010 as Farm Worker Awareness Week and March 31, 2010 César Chávez Day.
2. Consider a motion approving **City Council Minutes** for February 16, 2010.

**MOTION: Shelton/Larson** approving the Consent Calendar including a Proclamation declaring March 28-April 4, 2010, as Farm Worker Awareness Week and March 31, 2010, César Chávez Day and the City Council Minutes for February 16, 2010. (7 Yes/0 No) Motion carried.

Mayor Andrews read the proclamation and presented it to Mr. Angel Diaz who thanked the Council.

## VII. PUBLIC HEARING

Consider a motion approving **Ordinance No. 2010-2724** adopting amendments to the Newberg Comprehensive Plan housing element and the Comprehensive Plan housing and institutional land needs and supply data.

TIME – 7:14 PM

Mayor Andrews opened the public hearing and called for any conflicts of interest or abstentions; none appeared.

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

Mayor Andrews questioned why data from 2008 was being used for population and demographics when we are so close to the 2010 Census. Staff replied the federal government is more about counting people rather than statistics, so it does not have the detailed information found in the American Community Survey, plus information on the 2010 Census will not be available for at least a year.

Mayor Andrews opened the public testimony.

Mr. Lee Does stated that breaking the process up into small pieces makes it hard to see what is really going. He expressed that concerns remained about the eleven to twelve hundred acres of land the City plans to acquire within a twenty to forty year period for industrial use. He discouraged the City from condemning so much land all at once when the prospect of filling that land with the desired development was highly unlikely in the immediate future. He also argued against the term “buildable land” because he believed the land in question is not buildable, well used by the public, and could be considered park land adjacent to the City. He spoke of the Willamette Valley be one of the largest agricultural producers and how farming is recession proof; unlike other industries. He pointed out the opponents always seem to outnumber the proponents in these hearings and he felt the City needed to take a look at what land they have now and how it is being used and encouraged finding options for industry that are able to be accommodated by lands already within the City.

Mr. Sid Friedman, 1000 Friends of Oregon, stated the ultimate size of a city and its configurations depends on this background and re-justifying what is mandated by the state for the territorial ambitions of a city is not the best way. He spoke of reducing pressure on farmland and the infrastructure that would be needed to extend the limits, saying the plan was short-sited and would be the ultimate cause of undercutting agricultural jobs in the community (which is ironic based on the proclamation made earlier tonight). He spoke of the idea of infilling being different from what staff proposed. He said he felt although this hearing is addressing the affordable housing plan, it is all intertwined. He felt Council should defer action on the affordable housing plan.

Mr. Saj Jivanjee, Architect and urban planner, presented a slide-show of some of his projects in Portland requiring higher density housing in lower density areas, like a forty-seven unit structure on three thousand square feet. He spoke of the only way to build affordable is to have some sort of System Development Charge (SDC) waivers or tax abatement because the City has to give something in order to create housing that is affordable. He also discussed the use of infilling and that he felt there were tremendous flaws in the affordable housing plan; he recommended not approving it because there are more imaginative ways to build a city and

reduce transportation costs. He called the plan a “1950’s plan” because it did not contain any sustainable efforts.

Councilor Bart Rierson stated he was not opposed to seeing something like Mr. Jivanjee’s examples built in Newberg, but felt Newberg would require more parking since there is no access to light rail and the transit options are limited.

Mr. Roger Grahn said there is a two-edged sword here because if the City needs eleven hundred acres and they add eleven hundred acres, then they will destroy affordability and put market forces into play. He said the high cost of land is one reason there is not enough affordable housing today. He also said he disagreed with Mr. Friedman’s comments a little concerning infill projections because infilling can be difficult and expensive to do.

Councilor Rierson wanted him to clarify that he felt there does need to be additional land in the Urban Growth Boundary (UGB) because it creates more supply, which lowers the cost.

Mr. Grahn said on the basis of land costs, more land supply helps lower the land cost, which helps builders build more affordably. He felt if the City did away with the UGB entirely it would be reflected in the land cost immediately; the costs would do down.

Mayor Andrews closed the public testimony.

Mr. Brierley recommended not adopting the ordinance tonight because the findings (Exhibit “C”) were left out of the staff report and to continue the hearing to the next meeting.

**MOTION: Larson/Shelton** To table **Ordinance No. 2010-2724** adopting amendments to the Newberg Comprehensive Plan housing element and the Comprehensive Plan housing and institutional land needs and supply data until the April 5, 2010, meeting and keep the record open. (7 Yes/0 No) Motion carried.

## VIII. NEW BUSINESS

1. Consider a motion directing the city manager to prepare a development agreement with a private developer to construct an affordable housing project at 921 South Blaine Street.

TIME – 8:00 PM

Mr. Mahr talked about whether or not Councilor Denise Bacon’s position on the board of directors for Habitat for Humanity would be considered a conflict of interest. He stated that it would not be considered a conflict of interest because it is a non-profit organization; however, she may choose not to participate because of a possible appearance of bias.

Councilor Denise Bacon said she would choose not to be part of the hearing. No other conflicts of interest or bias were noted.

Mr. Danicic presented the staff report (see official meeting packet for full report).

Councilor Bob Larson asked about reimbursement for the cost of land. Staff replied that neither applicant is proposing to purchase or pay for the property; as part of the development agreement the City planned to donate the land for an affordable housing project specifically, since land cost is a significant barrier in building affordably.

Councilor Marc Shelton asked the City Attorney if there would be any legal advantages to selling the lot for one dollar rather than giving it as a donation. Mr. Mahr said there would be no advantage to doing that.

Councilor Stephen McKinney added it would still be important to show a change of title when donating the land to show the City no longer owns it. Mr. Mahr agreed and said it would be part of the development agreement to follow through with that so the builder can use it as security to obtain loans, but if they do not follow through on their commitment, then the City could get the land back.

Councilor McKinney asked about the amount of parking on both proposed projects and expressed his belief that there needs to be a parking spot for every bedroom in order to prevent overflow issues that have not been addressed in the past.

Councilor Wade Witherspoon wished to ask a Habitat for Humanity representative how many people the units were designed to house.

Mr. Roy Powell, Habitat for Humanity staff member, approached and answered that the homes were designed around the families in need; for this project they are three bedroom units since one family has two kids and the other has four.

Councilor Larson asked him to address the parking question, noting that other affordable homes built with limited parking have ended up with twice as many cars as planned, which have overflowed onto the streets. Mr. Powell stated they do not encourage this and the projects were not designed for that.

Mr. Jared E. Jones, Chair of the Habitat for Humanity board of directors, stated he was here to represent the four-hundred some volunteers from Newberg and discussed the partnership between the City and community on these types of projects. He said if the City would not be donating the land, they would not be able to build for another two to three years because raising money is difficult for charity type projects. He spoke of grant writing and donations from churches as their primary funding options and to their unique ability to build on small parcels of land with very “green” building. He noted there were many board members present this evening as well as part-time employees and families who received homes through the organization.

Ms. Lory Albright said she has been a member of the Newberg community for thirty-five years and part of Habitat for Humanity for twenty years. As an educator in Newberg she often sees constant moving around as a problem for students and she feels they need safe homes and support to stay in those homes. She said there are benefits for families to be responsible homeowners and would rather have the Habitat home than apartments.

Mr. Rick Rogers, Habitat for Humanity, spoke of this being a fantastic and tangible moment in the history of afford housing in this community because it would demonstrate a way for a city and a non-profit organization to create a partnership. He spoke of the impact on children to build successful legacies by completing school and applying to college because the homes are built to create stability and opportunities for families they would not otherwise have. He also mentioned the plans were proposed as the zoning currently stands.

Councilor Shelton spoke of the traffic concerns and the unfinished road; he asked if Habitat for Humanity would be willing to help complete the roads as the other applicant suggested. Mr. Rogers stated they would be willing to be a partner in this as well.

Ms. Lisa Stephens stated, as an owner of a Habitat home, she was grateful and she spoke of the difference it made for her living in her own home rather than an apartment. She said she takes a lot more pride in her home because it belongs to her and not someone else and how it benefited her financially to keep her job and stay in the home.

Mr. William Sweat, a member of the Habitat for Humanity board of directors and Chair of the finance committee, spoke of Habitat creating the opportunity for homeownership and stability so kids can focus on

education, which correlates to kids getting out of poverty. He said the no interest loans allow owners to pull out of poverty because of the equity gained.

Ms. Joanne Duncan declined to speak.

Mr. Doug Bartlett spoke of people being caught in a bind without the resources to get ahead and being trapped in poverty even though they work hard. He said he is a fan of all affordable housing and appreciates the Council and staff considering this exciting model for many other places to copy. He said he was not opposed to affordable rental units, but he felt home ownership helps turn families' lives around.

Councilor Shelton asked staff to explain the completion of Blaine Street further as well as the issues of right-of-way with the railroad. Mr. Danicic said it would be done with a payment in-lieu which would be placed into the City bank account until the time comes for Blaine Street to be improved. The right-of-way is held by the County rather than the railway and a process has been initiated to declare it as a City right-of-way.

Councilor Rierson questioned the other applicant Mr. Roger Grahn about his proposal to improve the road.

Mr. Roger Grahn approached and answered that he planned to complete the road just in front of the property. Between Blaine Street and 9<sup>th</sup> Street it would remain undeveloped. He said he's been doing what he does for a long time now and he knows how to get more yield from a smaller area. He said both applicants have problems with finding land cheap enough to build affordable housing. If the land were not being donated by the City, he would be sniveling about the SDC charges; so he applauds this as a first step. He spoke of his belief that the lot is actually bigger than everyone thinks and about being able to do the street improvements cheaper than others. He spoke of the parking issue stating he did expect one or two of the tenants that will not have cars, so he did not see it as a problem.

Discussions followed concerning the issues surrounding the street. Staff spoke of adverse possession and working with the County, they did not feel there would be any issues with the paper mill property owners, and they felt they would be able to work with Chehalem Park and Recreation District (CPRD) concerning the entrance to the BMX track. The City Attorney spoke of the burden of maintenance and taking over jurisdiction of the road and annexing it. Improvements could be completed by a Local Improvement District (LID) or a half-street improvement, but CPRD has the strongest interest in the improvement.

Mr. Grahn said he is proposing to participate, although he wants to do the improvements himself because he can do it more cost efficient. Curb and gutter would need to be run around the corner of 11<sup>th</sup> Street; it would not be a full street, but it would be paved as far as it could go with a physical barrier to keep kids and cars from going around the rail and to get drainage for storm water.

Mr. Rogers said they plan to do what would be customary and mentioned their good working relationship with CPRD and with the contractors; he said they could do whatever the City felt was in the best interest of everyone to provide access to a busy park and alleviate other homeowners concerns about traffic in the area.

Mayor Andrews asked staff about supplying water to the site and if the current pipes were adequate to support this or if an upgrade would be required. Staff said they expected it was currently standard residential at ¾-inch and sewer is available as well to support either proposed plans.

Discussions continued concerning the assessed values of the proposed projects for tax purposes; Mr. Grahn's project was said to be assessed higher than the Habitat proposal with taxes estimated at \$6,800.00 per year. Mr. Rogers stated taxes are customarily \$2,000.00 a year for their homes. Both parties mentioned several times that it was difficult to compare the two projects because they were so very different.

Mayor Andrews asked if the applicants were going to request some other concessions, such as a waiver of SDC and permit fees.

Mr. Rogers stated the City has the ability to waive fees for two affordable housing units per year and because they are a non-profit organization, every dollar of waived fees or in kind donation is a dollar that does not have to be raised from the citizens.

Mr. Grahn replied the donation of the land is enough to make the project to be built affordably.

Councilor Witherspoon asked about the differences in size and shape of the lot from page 115 to page 129. Mr. Danicic replied that Mr. Grahn's plan included an additional portion of adjacent land that he would acquire to build his project; the example used in the Habitat for Humanity proposal is more accurate to what is currently owned by the City.

Councilor Shelton shared that he felt the details of the site and infrastructure were too overwhelming for him to make a good decision tonight; he wondered if the Council would consider tabling the topic to allow for diagramming and road improvement plans.

Councilor McKinney also agreed he was not prepared to make a decision and would like more details about the road improvement issue; he was reluctant to decide without these matters being worked out.

Councilor Larson argued he would like to decide tonight because he did not feel it would be a problem for either applicant to plan to include the necessary improvements.

Mayor Andrews discussed the acquisition of the additional property and if that would change plans for the Habitat for Humanity proposal. Mr. Rogers replied they would consider another unit if it was economically worthwhile, but the costs of the necessary zone change would be a determining factor.

Mr. Grahn added he would also be asking the City to do zone change, rather than paying for it himself. He has had difficulty with this in the passed and felt the City would have more success initiating the zone change.

Mayor Andrews recessed at 9:24 PM and reconvened at 9:35 PM. He reminded the Council they were being asked to give direction to the City Manager to negotiate the terms of the development agreement; they had to just choose which applicant he would be doing that with.

Councilor Shelton said he understood that there were items that have come up that were outside of the original Request for Proposal (RFP), but he finds it difficult to make a decision about things like the City being asked to take care of the expense of a zone change and other expenses that may come from road improvements.

Both applicants stated they agreed these were two very different approaches to affordable housing but the choice came down to whether the City wanted to see homeownership or low income rental housing on this piece of property. Then the development agreement process can begin, which would come back to the Council; if those issues cannot be resolved between the City and the chosen applicant then either party has the right to walk away.

Councilor Rierson commended the creativity of both projects and the applicants. He felt that either choice has pros and cons, but ultimately he would be more supportive of building the Habitat for Humanity project because of the resulting home ownership. He did not feel he was approving the actual development agreement tonight, he is just choosing to support initiating the agreement process with Habitat for Humanity.

Councilor Larson also felt he could decide tonight to go with Habitat for Humanity and the zoning and street issues could be resolved later.

**MOTION: Larson/Witherspoon** approving a motion directing the City Manager to negotiate a development agreement with Habitat for Humanity and meet the intent of the RFP and the proposal submitted. The City Manager is delegated, authorized, and empowered to negotiate, propose, and initiate any terms and conditions for the development agreement which will address the road improvements, needed public utilities, and all the details necessary for the development. The intent is to specify in the development agreement the details and obligations of each party. The final approval shall be with the City Council.

Councilor Shelton said he agreed with the motion but he did not want to let CPRD off the hook on this because it is not our responsibility to make sure the park has access that does not create dust. He would like to see CPRD included in on those discussions.

Councilor McKinney said he was reluctant to vote based on the fact that things were not written down regarding unresolved issues.

Mayor Andrews emphasized this was not a final decision and the details will be included in the final agreement and the Council is only asking the City Manager to represent the City with a particular group.

**VOTE:** To approve the motion directing the City Manager to negotiate a development agreement with Habitat for Humanity. (5 Yes/1 No[McKinney]/1 Rescues [Bacon]) Motion carried.

2. Consider a motion approving **Resolution No. 2010-2891** approving a list of pro tem judges, setting the rate for on-call pro tem services, and restructuring of judicial services.

TIME – 9:54 PM

Mr. Mahr presented the staff report (see official meeting packet for full report).

Councilor Larson asked if the judge ever went on vacation. Staff replied that sufficient notice is given before a vacation so court can be called off, so a pro tem is not needed.

**MOTION: Larson/Witherspoon** approving **Resolution No. 2010-2891** approving a list of pro tem judges, setting the rate for on-call pro tem services, and restructuring of judicial services. (7 Yes/0 No) Motion carried.

3. Consider a motion approving **Resolution No. 2010-2892** authorizing the city manager to purchase the house and property located at 211 North School Street and transfer City funds necessary to make the purchase.

TIME – 9:59 PM

Mr. Mahr presented the staff report (see official meeting packet for full report).

Councilor Larson questioned the names of the property owners listed in the resolution and the recitals because there are discrepancies. Staff replied only Todd W. Thurman is the current owner; Megan C. Buell is no longer an owner.

**MOTION: Shelton/Rierson** to amend **Resolution No. 2010-2892** to make the market value of \$238,005.00 the consistent figure in the resolution and to remove Megan C. Buell in the resolution and in recital number three to show Todd W. Thurman as the only current owner. (7 Yes/0 No) Motion carried.

**MOTION: Shelton/Larson** approving **Resolution No. 2010-2892** authorizing the city manager to purchase the house and property located at 211 North School Street and transfer City funds necessary to make the purchase as amended. (7 Yes/0 No) Motion carried.

## **IX. COUNCIL BUSINESS**

Continued Discussion of Council Goals (Time Permitting)

TIME – 10:09 PM

Mr. Mike Ragsdale requested the Council to contribute \$500.00 in funds to the local Farmers' Market for marketing material and website updates.

Mr. Danicic replied the money could come from available funds for tourism.

**MOTION: Rierson/McKinney** approving a contribution of \$500.00 for marketing material and website updates for the Tunes on Tuesday and the Farmers' Market. (7 Yes/0 No) Motion carried.

Councilor Rierson spoke of the school district deciding on a day-time curfew and discussed efforts made in the past by Council. It was discussed how citizens are incorrectly assuming this is a City effort.

Discussions also followed about the Council being more informed ahead of time about issues going on within the community that may be found in the newspaper so they are not taken by surprise by the public and reviewing Council Rules regarding submission of testimony and not voting on items that are not in complete final formats.

Ms. Leah Griffith, Library Director, gave updates on the Chehalem Valley Transit system.

Discussions continued on budget prioritization that began earlier during the work session.

## **X. ADJOURNMENT**

The meeting adjourned at 11:19 PM.

**ADOPTED** by the Newberg City Council this 3<sup>rd</sup> day of May, 2010.

\_\_\_\_\_  
Norma I. Alley, City Recorder

**ATTEST** by the Mayor this \_\_\_\_ day of May, 2010.

\_\_\_\_\_  
Bob Andrews, Mayor

**CITY OF NEWBERG CITY COUNCIL MINUTES  
APRIL 5, 2010  
7:00 P.M. MEETING  
PUBLIC SAFETY BUILDING TRAINING ROOM  
401 EAST THIRD STREET**

Work Session was held prior to the meeting. A discussion on the Budget occurred; a presentation from County Commissioner Mary Stern regarding YCAP; an update from Portland-Vancouver Regional Partners Council for Economic Development; and a presentation on base fine amounts were given. No decisions were made.

**I. CALL MEETING TO ORDER**

Mayor Bob Andrews called the meeting to order at 7:05 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
	Barton Brierley, Planning and Building Director	Norma Alley, City Recorder
	Howard Hamilton, Public Works Director	Jennifer Nelson, Recording Secretary

Others

Present: Bryan Stewart, Deborah Galardi, Phil Smith, Mike Gougler, Patrick Fale, Tony Rourke, Chuck Zickefoose, Louis C. Larson, Pat Haight, Ron Morgan, Brenda Dotson, Hank Grum, Martha Goldenstein, Shirley J. Cooper, Laura Nunn, Grace Schaad, and Sid Friedman

**III. PLEDGE OF ALLEGIANCE**

The Pledge of Allegiance was performed.

**IV. CITY MANAGER'S REPORT**

Mr. Daniel Danicic, City Manager, reminded Council of upcoming events such as the Chehalem Valley Chamber of Commerce 2010 Awards Banquet this Thursday, April 8, 2010 at 6:00 PM in the Newberg High School Cafeteria Commons; George Fox University's (GFU) Candidate Forum this Friday, April 9, 2010; and the Chamber will be hosting a County Commissioner Candidate Luncheon on April 29, 2010 at the Friendsview facility. He discussed a letter from the school district about considering a daytime curfew, a meeting is scheduled for Monday and he will report back. Finally, he announced the Newberg Oregon City Council Facebook page is up and running as another tool to keep the public informed; there are currently twenty-six fans and there were eighty-two visits last week.

**V. PUBLIC COMMENTS**

Mr. Bryan Stewart, City Landscaper/Gardener, wished to personally thank the Council as a representative from the Camellia Planning Group for their generosity and support. He said a proclamation was passed forty-nine years ago yesterday to make the Camellia the official City Flower and he spoke of the television coverage at the Camellia Festival and expected air times.

## VI. CONSENT CALENDAR

1. Consider a motion approving a **Resolution No. 2010-2894** awarding the construction contract to LCG Pence Construction for the Animal Shelter Project.
2. Consider a motion approving a **Proclamation** declaring April 11-17, 2010, as National Public Safety Telecommunications Week.
3. Consider a motion approving **City Council Minutes** for March 1, 2010.

**MOTION: Shelton/Larson** approving the Consent Calendar including **Resolution No. 2010-2894** awarding the construction contract to LCG Pence Construction for the Animal Shelter Project, a Proclamation declaring April 11-17, 2010, as National Public Safety Telecommunications Week, and the City Council Minutes for March 1, 2010 as amended. (7 Yes/0 No) Motion carried.

Mayor Andrews presented the proclamation to Ms. Mary Newell, Support Services Manager.

## VII. PUBLIC HEARING

1. Consider a motion approving **Resolution No. 2010-2885** adopting new Water Rates effective July 1, 2010.

TIME – 7:20 PM

Mayor Andrews introduced the hearing indicating it will be broken up into two City Council meetings. He said the staff reports will be heard on each utility rate increase and oral testimony accepted this evening, then the record will remain open for written testimony only through April 12, 2010; Council deliberations will continue at the April 19, 2010 meeting. He asked for all citizens to indicate if they wish to provide general testimony for all three rate increases or if they have specific comments for any one of the three. He opened the legislative hearing and called for any conflicts of interest or abstentions; none appeared.

Mr. Howard Hamilton, Public Works Director, presented the staff report with assistance from Ms. Deborah Galardi, Galardi Rothstein Group (see official meeting packet for full report).

Councilor Marc Shelton asked how soon the City would be hearing if the state and federal monies might be available.

Mr. Hamilton replied the Clean Water State Revolving Fund information will be let in July for fund recipients; Newberg is still ranked on the list and could expect up to \$9,500,000.00 if the City can show it has the funding to pay it back. The City also had an application for the Recovery Zone Economic Development Bonds. Newberg was the only city in Yamhill County and the County declined to receive them.

Councilor Shelton said he appreciated the work the Citizens' Rate Review Committee (CRRC) has done to look at not putting as much as in reserve, but if 1% were pulled to fund current needs with potential suits for a system which has not being upgraded in years; he asked how much that would be. Ms. Galardi stated it would be about \$10.83 per month in combined savings or about \$1.00 a month. It was mentioned this would be an advantage for potential grants to have money built up and available to help projects move forward if needed. Councilor Shelton asked how much of a reduction occurred from what was proposed to be put in reserve two years ago. Ms. Galardi stated the target was a couple million dollars to go into reserve, but the water rate was significantly reduced which cut that amount in half and wiped out the ability to generate a reserve; this added to the economic struggles with a reduction in customers not only prevented adding to the reserve but is also now potentially preventing the City from meeting its debt requirement.

Mayor Andrews opened the public testimony.

Proponents:

Mr. Tony Rourke, CRRC, spoke of the City's risk assessment possibly increasing if fines are sanctioned and expressed concerns for the difficulty of trying to come up with unplanned money, especially if the State begins calling for Newberg to start paying back its outstanding debt. He spoke of the actual debt payment in interest being thirty million dollars over what original debt and having to be spread those costs across all the citizens will make the rates go up. He spoke of today's citizens paying for the past decisions to hold rates flat for ten years and how the City needed to stop the madness and gain control, not dig deeper into debt. He recognized the difficult economic times and spoke of people needing to look into the assistance program.

Mr. Charles Zickefoose, CRRC, emphasized Mr. Rourke's statements by adding they looked at all alternatives and cut where they could. He said infrastructure is continuing to fail and the economy is a nation wide problem, but two more years of letting this go increases the risks, particularly at the waste water treatment plant; the rate increase is the only way to get Newberg back on its feet again.

Mr. Mike Gougler, CRRC, stated he and the entire committee shared a deep appreciation and concern for the impact of rate increases on themselves and their neighbors. He spoke of meeting every other week for a year with a talented group of individuals with great understanding of water, sewer, and storm utilities as well as some interested citizens. He said they all acknowledged the consequences of previous actions and made recommendations based on the current needs. He asked for the Council's support.

Councilor Bart Rierson spoke of the thankless position of the CRRC volunteers serve and how the majority of people will not approve or appreciate the recommendations, but he said there are very real needs and someone has to pay although it is difficult to do in tough economic times.

Mr. Patrick Fale spoke of the risks verses the benefits and stated he was reluctantly in favor of the increases. He said he was aware of the economic climate, but he felt the financial hardship does not outweigh the financial repercussions. He said he is just a citizen with limited information on the subject, but he figured the City either pays now or later and he would rather pay while it's cheaper.

Mr. Phil Smith, Planning Commission, stated it is irresponsible for a city government to gamble with city money when they do not make prudent investments.

Opponents:

Mr. Louis C. Larson passed around groupings of money to represent to the Council the monthly utility increases he would be subject to in the first and second year of the proposed new rates, which he averaged at twelve to thirteen dollars. He spoke of average unemployment benefits being \$300.00 a week, the increase in demand for free meals, and the increase in house foreclosures as top reasons why families could not afford even an additional twelve to thirteen dollars a month. He said that \$400.00 represents the annual impact on families with the increases and proposed a delay of increase and to predicate rates based on the individuals' ability to pay instead on a usage basis.

Ms. Pat Haight spoke of being a fourth generation citizen of Newberg and her concerns for how far in debt the City Councils of this town have put its citizens in debt. She also noted that not everyone gets notices in the mail if they do not own property. She spoke of living on \$800.00 a month and needing to borrow money to cover the fact that the City overspent the citizens' money. She spoke of there being citizens that still have jobs and can still go out to eat for dinner not caring about the rest of the citizens who do not have any more money to pay

increasing bills without an increase in income. She said there will not be a town if the people cannot afford to live here and how people do not think they are being heard when the City keeps spending money and expecting the citizens to pay for it when they can't.

Mr. Ron Morgan spoke of attending some CRRC meetings and his concerns for seniors and others living on fixed incomes or Social Security. He spoke of the value of the dollar going down and the cost of things going up and how this is putting people in a position where they cannot afford to pay their bills. He spoke of the citizens of Newberg being expected to balance the scales when there is not enough money to do so. He asked for a maximum increase of \$7.00 a month or \$84.00 a year because no one can afford anything more.

Ms. Brenda Dotson spoke of recently buying a trailer for \$7,000.00 which was assessed at \$10,000.00 shortly after, increasing her taxes. She said she does not pay for water but any increase will be reflected in her rent and being on disability, she does not get any raises. She spoke of already getting assistance from other organizations in town already to take care of her family and how continuing to raise rates without people having extra money coming in is going to be a problem.

Mr. Hank Grum said those on fixed incomes are not entirely fixed because depending on the interest rates sometimes that income is shrunken. He spoke of the City building a treatment plant with grant money and letting twenty years go by without saving any money. He said it was time for the water business to be privatized in this town because all levels of government think there are ever deepening pockets when the citizens' purses are shrinking everyday. He noted that there was a lot of talk at the CRRC meetings to raise revenue, but not of mitigating costs.

Ms. Laura Nunn was not present to testify when her name was called.

Ms. Martha Goldenstein said she was a retired U.S. Army Sergeant who has lived in Newberg for twenty-five years and now lives with her sister. She said she is on Social Security benefits and military retirement; neither income is subject to a cost of living raise. She said all of her bills have increased, such as water, property taxes, and electricity, but there is zero money coming to pay for them. She said she is legally blind and diabetic and must now hire a caretaker for her sister who is currently in the hospital. She said with no money, these increases are hurting her and many others in similar situations.

Ms. Shirley Cooper said she has been a resident of Newberg for thirty years and has been undecided on the matter because she did not get to look at all the information concerning capital improvements. She wondered how much of the projections would cover the costs of building facilities to take care of the future industrial site. She wondered if putting costs for capital improvements onto the citizens was right at this time.

Mr. Danicic stated at this time the projects in the capital improvement program are for providing services to existing customers and dealing with deficiencies in the existing infrastructure; any industrial sites would require system enhancements, which would be paid for by System Development Charges (SDCs) as they are developed.

Ms. Cooper wished to know where in the budget she would find that in writing because it looks to her like the individual ratepayers are paying to cover past debts and future capital improvements. Mr. Danicic stated he could have that put together for her.

Councilor Rierson added concerns for the issues of overflow during recent heavy rainfalls and the high levels of raw sewage flowing into the Willamette River, which could have the City facing huge fines if they do not bring the system up to code. He also spoke of it being a main focus of the CRRC to see that funds are spent fairly.

Mayor Andrews closed the oral public testimony leaving the written record open.

Councilor Rierson asked if the City Manager could find a place on the website to post any information he is preparing to address questions so anyone could access it.

Councilor Shelton emphasized the money paid through water rates cannot be used in the general fund because it is against the law, just as dumping raw sewage into the Willamette River is.

Mayor Andrews recessed for five minutes at 8:42 PM. Deliberations will continue at the April 19, 2010, City Council meeting.

2. Consider a motion approving **Resolution No. 2010-2886** adopting new Wastewater Rates effective July 1, 2010.

Deliberations will continue at the April 19, 2010 City Council meeting.

3. Consider a motion approving **Resolution No. 2010-2887** adopting new Stormwater Rates effective July 1, 2010.

Deliberations will continue at the April 19, 2010 City Council meeting.

4. Consider a motion approving **Ordinance No. 2010-2724** adopting amendments to the Newberg Comprehensive Plan Housing Element and the Comprehensive Plan Housing and Institutional Land Needs and Supply Data.

TIME – 8:48 PM

Mayor Andrews called for any conflicts of interest or abstentions; none appeared.

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

Andrews opened public testimony.

Ms. Grace Schaad said she was concerned with possible conflict of interest because according to page 194 of the staff report a document the City used to justify findings showed a citation from The Benkendorf Associates Corporation where while Al Benkendorf worked for the City of Newberg while he was also a consultant for Lewis and Clark College's proposal for fifty-nine acres on Corral Creek Road to be in the Urban Growth Boundary (UGB) that was never in the Urban Reserve Area (URA) and information was filtered to the ad hoc committee to support development of that land which is a conflict of interest.

Councilor Stephen McKinney asked staff if the date associated with the citation was correct as appears on page 194 as June 30, 2004. Staff replied the date was correct.

Mr. Sid Friedman, 1000 Friends of Oregon, said he had a fundamental disagreement over how to determine what land can be brought into the UGB. He said he did provide additional written testimony addressing the requirement of a city to see if rezoning can be used to meet needs prior to expansion as it relates to housing affordability. He said more a compact development pattern reduces costs rather than expanding out to the fringe. Discussions followed concerning proposed future site for development of Newberg High School being on the edge of the reserve.

Mayor Andrews closed the public testimony.

Mr. Brierley addressed and clarified some issues brought up including the fact that the City did use the Benkendorf Associates, but Mr. Benkendorf was not under contract with any property owners. He recommended the Council uphold the Planning Commission decision by adopting the Comprehensive Plan amendments which are minor changes consistent with the Ad hoc Committee for Newberg's Future and the community's expressed goals for the future of Newberg.

Mayor Andrews closed the public hearing for deliberation.

**MOTION: Larson/Shelton** approving **Ordinance No. 2010-2724** adopting amendments to the Newberg Comprehensive Plan Housing Element and the Comprehensive Plan Housing and Institutional Land Needs and Supply Data read by title only. (7 Yes/0 No) Motion carried.

## VIII. COUNCIL BUSINESS

Mayor Andrews discussed population growth projections with staff. General discussions followed to pursue alternative ways of helping people who cannot pay their utility bills.

Mr. Danicic asked for direction with the request from Commissioner Mary Stern for a donation to YCAP. Council thought it should be brought before the budget committee; there was interest in supporting the request, but there were questions of how much.

## IX. ADJOURNMENT

The meeting adjourned at 9:35 PM.

**ADOPTED** by the Newberg City Council this 3<sup>rd</sup> day of May, 2010.

\_\_\_\_\_  
Norma I. Alley, City Recorder

**ATTEST** by the Mayor this \_\_\_\_ day of May, 2010.

\_\_\_\_\_  
Bob Andrews, Mayor

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# REQUEST FOR COUNCIL ACTION

DATE ACTION REQUESTED: May 3, 2010

Order \_\_\_\_\_ Ordinance XX Resolution \_\_\_\_\_ Motion \_\_\_\_\_ Information \_\_\_\_\_  
No. No. 2010-2725 No.

**SUBJECT:** Amendments to the Administrative Building Code providing for issuance of civil penalties for violations, and using the current International Code Council building valuation data tables.

Contact Person (Preparer) for this Ordinance: Barton Brierley, AICP  
Planning and Building Director

Dept.: Planning and Building

File No.: G-10-003  
*(if applicable)*

HEARING TYPE:  LEGISLATIVE  QUASI-JUDICIAL

## RECOMMENDATION:

Adopt **Ordinance No. 2010-2725**, which adopts a procedure for issuing civil penalties for building code violations, and requires use of the of the current International Code Council building valuation data table in calculating valuation for permit fees.

## EXECUTIVE SUMMARY:

1. Senate Bill 915, passed in 2009, prohibits cities from citing building code violations into municipal court. It does allow the building official to issue a civil penalty for such violations. Cities may establish a process issuing such penalties, and handling appeals of the penalties. The attached ordinance allows the building official to issue penalties up to the maximum allowed (\$5,000 or \$1,000 per day). It provides for appeal of those penalties to the City Manager, or to a hearings officer appointed by the City Manager.
2. Building permit fees are calculated based on the valuation of a project, as determined by the International Code Council Building Valuation Data Table. Amendments to OAR 918-050 require that cities update to the new valuation data table each April. The attached ordinance would update the Newberg Administrative Building Code so that this table is automatically updated each April 1.

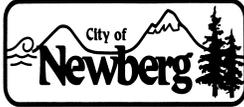
**FISCAL IMPACT:** The civil penalty provisions would on rare occasions generate a few thousand dollars of revenue. These costs likely would cover some of the costs needed to gain compliance.

The building valuation data table change will keep permit fees in line with current costs. Note the valuations can go up or down in any particular year. This past year the valuations were less.

**STRATEGIC ASSESSMENT:** Adopting these two changes will keep the city in line with state requirements. Building code violations rarely result in issuance of a citation, so it is likely this ordinance will be employed only on rare occasions, and only after significant efforts have been made to gain compliance.

## Attachments:

- Ordinance 2010-2725
- Information on SB 915
- Information on Uniform Fees Methodology



## ORDINANCE No. 2010-2725

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**AN ORDINANCE AMENDING THE NEWBERG ADMINISTRATIVE BUILDING CODE TO ALLOW ISSUANCE OF ADMINISTRATIVE CIVIL PENALTIES AND TO USE THE CURRENT INTERNATIONAL CODE COUNCIL BUILDING VALUATION DATA TABLES**

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### RECITALS:

1. Senate Bill 915, passed in 2009, prohibits cities from issuing citations to municipal court for building code violations, and restricts a municipality's monetary penalties for violations of the state building code to civil penalties.
2. Amendments to OAR 918-050, Effective January 1, 2009, require use of the current International Code Council Building Valuation Data Tables to calculate permit fees.
3. The Newberg City Council held a hearing on May 3, 2010 to consider this matter.
4. The Council desires to update the Newberg Administrative Building Code to comply with these changes.

### THE CITY OF NEWBERG ORDAINS AS FOLLOWS:

1. The following shall be added as Newberg Code Section 14.05.120 to 14.05.123:

#### **14.05.120 Violations; Penalties; Remedies.**

A. No person, firm, corporation or other entity however organized shall erect, construct, enlarge, alter, repair, move, improve, remove, convert or demolish, equip, use, occupy or maintain a building or structure in the City, or cause the same to be done, contrary to or in violation of this code.

B. Violation of a provision of this ordinance shall be subject to an administrative civil penalty not to exceed \$5,000 for each offense or, in the case of a continuing offense, not more than \$1,000 for each day of the offense, and shall be processed in accordance with the procedures set forth in this code.

C. Each day that a violation of a provision of this ordinance exists constitutes a separate violation.

D. In addition to the above penalties, a condition caused or permitted to exist in violation of this ordinance is a public nuisance and may be abated by any of the procedures set forth under law.

E. The penalties and remedies provided in this section are not exclusive and are in addition to other penalties and remedies available to the City under any ordinance, statute or law.

#### **14.05.121 Building Official: Authority to Impose Administrative Civil Penalty.**

A. Upon a determination by the building official that any person, firm, corporation or other entity however organized has violated a provision of this chapter or a rule adopted thereunder, the building official may issue a notice of civil violation and impose upon the violator and/or any other responsible person an administrative civil penalty as provided by subsections A. to K. of this section. For purposes of this subsection, a responsible person includes the violator, and if the violator is not the owner of the building or property at which the violation occurs, may include the owner as well.

B. Prior to issuing an order to correct a violation under this section, the building official may pursue reasonable attempts to secure voluntary correction.

C. Prior to issuing a notice of civil violation and imposing an administrative civil penalty under this section, the building official shall issue an order to correct a violation to one or more of the responsible persons. Except where the building official determines that the violation poses an immediate threat to health, safety, environment, or public welfare, the time for correction shall be not less than five calendar days.

D. Following the date or time by which the correction must be completed as required by an order to correct a violation, the building official shall determine whether such correction has been completed. If the required correction has not been completed by the date or time specified in the order, the building official may issue a notice of civil violation and impose an administrative civil penalty to each responsible persons to whom an order to correct was issued.

E. Notwithstanding subsections B. and C., the building official may issue a notice of civil violation and impose an administrative civil penalty without having issued an order to correct violation or made attempts to secure voluntary correction where the building official determines that the violation was knowing or intentional or a repeat of a similar violation.

F. In imposing an administrative civil penalty authorized by this section, the building official shall consider:

1. The person's past history in taking all feasible steps or procedures necessary or appropriate to correct the violation;

2. Any prior violations of statutes, rules, orders, and permits;

3. The gravity and magnitude of the violation;

4. Whether the violation was repeated or continuous;

5. Whether the cause of the violation was an unavoidable accident, negligence, or an intentional act;

6. The violator's cooperativeness and efforts to correct the violation; and

7. Any relevant rule of the building official.

G. Any notice of a civil violation that imposes an administrative civil penalty under this section shall either be served by personal service or shall be sent by registered or certified mail and by first class mail. Any such notice served by mail shall be deemed received for purposes of any time computations hereunder three days after the date mailed if to an address within Oregon, and seven days after the date

mailed if to an address outside Oregon. Every notice shall include:

1. Reference to the particular code provision, ordinance number, or rule involved;
2. A short and plain statement of the matters asserted or charged;
3. A statement of the amount of the penalty or penalties imposed;
4. The date on which the order to correct was issued and time by which correction was to be made, or if the penalty is imposed pursuant to subsection E., a short and plain statement of the basis for concluding that the violation was knowing, intentional, or repeated; and
5. A statement of the party's right to appeal the civil penalty to the City Manager; a description of the process the party may use to appeal the civil penalty; and the deadline by which such an appeal must be filed.

H. Any person, firm, corporation or other entity however organized that is issued a notice of civil penalty may appeal the penalty to the City Manager. The City Manager may appoint a hearings officer or other designee to hear and decide the appeal. The designee shall not be the building official or building inspector. The provisions of Section 14.05.122 of this code shall govern any requested appeal.

I. A civil penalty imposed hereunder shall become final upon expiration of the time for filing an appeal, unless the responsible person appeals the penalty to the City Manager pursuant to, and within the time limits established by 14.05.122. If a person, firm, corporation or other entity however organized appeals a civil penalty to the City Manager, the penalty shall become final, if at all, upon issuance of the City Manager or the Manager's designee's decision affirming or modifying the imposition of the administrative civil penalty.

J. Each day the violator fails to remedy the code violation shall constitute a separate violation.

K. The civil administrative penalty authorized by this section shall be in addition to:

1. Assessments or fees for any costs incurred by the City in remediation, cleanup, or abatement, and
2. Any other actions authorized by law, provided that the City shall not issue a citation to Municipal Court for a violation of this Chapter.

#### **14.05.122 Appeal of Civil Administrative Penalty.**

A. A person, firm, corporation or other entity however organized that was issued a civil administrative penalty under Section 14.05.122 may, within 14 days after the date of notice of the penalty was received, appeal the penalty in writing to the City Manager. The written appeal shall be accompanied by an appeal fee established under Section 14.05.270 and shall include:

1. The name and address of the appellant;
2. Reference to the penalty being appealed;
3. The reason the appellant feels the penalty was not appropriately assessed; and

4. A description of any corrective actions taken.

B. Unless the appellant and the City agree to a longer period, an appeal shall be heard by the City Manager or the Manager's designee within 60 days of the receipt of the notice of intent to appeal. At least seven days prior to the hearing, the City shall mail notice of the time and location thereof to the appellant.

C. The City Manager or designee shall hear and determine the appeal on the basis of the appellant's written statement and any additional evidence the he or she deems appropriate. At the hearing, the appellant may present testimony and oral argument personally or by counsel. The burden of proof shall be on the building official. The rules of evidence as used by courts of law do not apply.

D. The City Manager or designee shall issue a written decision within 14 days of the close of the hearing. The written decision of the City Manager or the Manager's designee is final.

E. Other than as provided in this subsection, the appeal fee is not refundable. On the motion of the appellant, the City Manager or designee may make a determination that the appeal fee shall be refunded to the appellant upon finding that the appeal was not frivolous.

**14.05.123 Unpaid Penalties.**

A. Failure to pay an administrative penalty imposed pursuant to this code within seven days after the penalty becomes final shall constitute a violation of this code. Each day the penalty is not paid shall constitute a separate violation. The building official is authorized to collect the penalty by any administrative or judicial action or proceeding authorized by subsection B. below, other provisions of this code, or state statutes.

B. If an administrative civil penalty is imposed on a responsible person or entity, and the penalty remains unpaid 30 days after such penalty become final, the building official shall assess the property the full amount of the unpaid fine and shall enter such an assessment as a lien in the docket of City liens. At the time such an assessment is made, the building official shall notify the responsible person or entity that the penalty has been assessed against the real property upon which the violation occurred and has been entered in the docket of City liens. The lien shall be enforced in the same manner as all City liens. Interest shall commence from the date of entry of the lien in the lien docket.

C. In addition to enforcement mechanisms authorized elsewhere in this code, failure to pay an administrative civil penalty imposed pursuant to this code shall be grounds for withholding issuance of requested permits or licenses, issuance of a stop work order, if applicable, or revocation or suspension of any issued permits or certificates of occupancy.

2. The initial fee for appeal of a civil administrative penalty shall be \$250.

3. The following shall be added as Newberg Code Section 14.05.290:

**14.05.290 Calculation of Valuation.**

A. A structural permit fee for new residential construction and additions shall be calculated using the International Code Council (ICC) Building Valuation Data Table current as of April 1 of each year (typically published in February), multiplied by the square footage of the dwelling to determine the

valuation.

B. For commercial construction permits, the fee shall be calculated using the valuation based on the ICC Building Valuation Data Table current as of April 1 of each year, (typically published in February) using the occupancy and construction type as determined by the building official, multiplied by the square footage of the structure; or

1. The value as stated by the applicant.

2. When the construction or occupancy type does not fit the ICC Building Valuation Data Table, the valuation shall be determined by the building official with input from the applicant.

C. Effective Date.

The fee shall be calculated based on the valuation data in effect at the time of permit issuance, except that the fee for any permit application submitted and complete prior to April 1 of each year and issued prior to June 1 of that year shall be calculated based on the valuation data in effect just prior to April 1 of that year.

➤ **EFFECTIVE DATE** of this ordinance is 30 days after the adoption date, which is: June 2, 2010.

**ADOPTED** by the City Council of the City of Newberg, Oregon, this 3<sup>rd</sup> day of May, 2010, by the following votes: **AYE:**      **NAY:**      **ABSENT:**      **ABSTAIN:**

\_\_\_\_\_  
Norma I. Alley, City Recorder

**ATTEST** by the Mayor this 6<sup>th</sup> day of May, 2010.

\_\_\_\_\_  
Bob Andrews, Mayor

**LEGISLATIVE HISTORY**

By and through \_\_\_\_\_ Committee at \_\_\_\_ / \_\_\_\_ /200x meeting. Or, X None.  
(committee name) (date) (check if applicable)



The provisions of Senate Bill 915 (2009) will take effect on January 1, 2010. This legislation affects any municipality that administers a building inspection program under ORS 455.148 or 455.150.

The following is a summary of Senate Bill 915 adapted from information provided by the Oregon Building Codes Division (BCD) and League staff:

- Senate Bill 915 establishes procedures for local jurisdictions to follow when issuing monetary penalties for building code violations;
- The bill restricts a municipality's monetary penalties for violations of the state building code to civil penalties. Cities may no longer issue citations to municipal court for building code violations;
- Municipalities must provide notice to the individual or company before assessing a civil penalty for a violation under a building inspection program. The notice must describe the alleged violation, including citation to the relevant code or ordinance (write it, cite it), and the amount of the proposed penalty;
- The notice must also state that the individual or company has the right to challenge the proposed penalty and inform them of the method and the relevant timelines for challenging it;
- The bill limits municipal civil penalties to those established in statute already (ORS 455.895): \$5,000 for a single violation or \$1,000 a day for a continuing violation;
- The bill does not restrict municipalities from assessing a "double permit" or investigation fee for failure to obtain a permit;
- The bill also does not restrict a municipality from seeking an injunction or other non-monetary penalties;
- Under the bill, a municipality must have an administrative method for challenging the civil penalty. The process could involve challenging the assessed penalty before an individual, other than the building official, a department, or another body that is not a court of law; and
- A municipality may adopt or raise fees to cover the costs of providing notice and the opportunity to challenge a penalty in accordance with established notice requirements (ORS 455.210).

Jurisdictions developing an enforcement plan under this bill do not require BCD's approval, although such plans might require a change in a city's operating plan adopted pursuant to OAR 918-020-0080.

The League has drafted a model ordinance that cities can adopt to comply with the requirements of Senate Bill 915. The model ordinance is intended to become a part of your existing building code. Accordingly, should a city choose to adopt this model ordinance, it will need to amend both existing law and the model ordinance to provide conformity in the language of each. For example, if local law currently makes it an infraction to violate your building code, a city will need to delete that language from its code and amend section one of the model ordinance to conform to the other existing provisions of its building code. In addition, language in italics in the model ordinance will need to be changed to conform to a local code and/or a city's preferences. Finally, the model code does not increase fees to cover the costs of complying with SB 915. Cities will need to do that separately if they so choose.

The League of Oregon Cities would like to thank the Beaverton city attorney's office and the law firm of Jordan, Schrader Ramis for their generous assistance with this project. The model ordinance is largely based on an ordinance originally drafted by the Beaverton city attorney's office.



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**Consistent Forms and Fee Methodology  
OAR 918-050**

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The division, with the assistance of a Consistent Forms and Fees Committee, has developed a uniform methodology for determining permit fees throughout the state. Municipalities have until January 1, 2009 to bring their fees into compliance with the new rules, which are modeled after the Tri-County methodology. The methodology provides predictability for customers and will assist contractors calculating bids. A consistent fee methodology *does not* mean consistent fees. The new rules establish a consistent method and adopt a standard valuation, but jurisdictions continue to have the freedom to set their fee schedules to ensure sufficient operating funds.

- Where fees change only as a result of a municipality coming into compliance with the new rules and the current ICC table, the division will not consider it a fee change subject to the notice requirements of 918-020-0220. (See below for more information).
- For items not expressly covered by the new methodology, a municipality may either, fit the item within the appropriate program area or develop a reasonable permit fee.
- Municipalities can use the model forms provided by the division or develop their own forms meeting the division's minimum content. The division will post model forms and minimum content on its web site.

**Important features of the new rules****ICC VALUATION TABLE**

Because regional modifiers won't be used, the average national construction costs provided by the ICC Valuation Table will provide for uniformity of valuation across the state. The appropriate valuation is plugged into the municipality's fee schedule to determining the permit cost.

- The ICC Valuation Table is published twice a year, but municipalities will only be required to use the table that is current as of April 1<sup>st</sup> of each year. Municipalities will not have to update tables when a new one is published after April 1.
  - ❖ The yearly update of the table won't subject jurisdictions to the 918-020-0220 notice requirements because the version of the table is in rule. But local requirements may apply.
  - ❖ Because the table's valuation is "plugged into" a jurisdiction's fee schedule, changes in the table will not necessarily affect fees charged.
  - ❖ The notice requirements of 918-020-0220 will apply to changes to fee schedules (but see Additional Information below).
- Residential Structural Permit fees will be based off the ICC table.
  - ❖ "Residential structures" means R3 occupancies covered under the ORSC – it does not include apartments.
- Commercial Structural Permit fees will be calculated using either the ICC table or the stated value of a project to determine valuation.
- For remodels and alterations, valuation is determined by fair market value.

**OTHER PERMIT FEES**

- Electrical permit categories and procedures will be those set out in OAR 918-309-0020 thru 918-309-0070.



- Residential plumbing permit fees will be calculated on a graduated scale based on the number of bathrooms – from one to three.
  - ❖ Base cost includes: one kitchen, the first 100 feet of water and sewer lines; hose bibs, icemakers; underfloor low-point drains, and rain drain packages that include piping, gutters, downspouts, and perimeter system.
  - ❖ For more than 1 kitchen or 3 bathrooms a set fee will be charged for each additional kitchen or bathroom.
- Commercial plumbing fees will be based on the number of fixtures and the footage of piping.
- Residential mechanical fees will be figured per appliance and related equipment with a set minimum fee.
- Commercial mechanical fees will be calculated by the value of the mechanical equipment and installation costs. The valuation will be applied to the fee schedule, with a set minimum fee.
- Fire suppression system permit fees will be a graduated set fee based on square footage.
- Manufactured Home Siting will be a single fee for installation and set-up.
  - ❖ The fee includes: concrete slab, runners or foundations when they comply with the prescriptive requirements of the code. Also includes electrical feeder, plumbing connections and all cross-over connections.
  - ❖ Accessory structures outside prescriptive requirements, and utility connections beyond 30 lineal feet, new or additional electrical services or plumbing, may require additional permits.

## **FEE SCHEDULES**

- ORS 455.210(3) allows municipalities to adopt “reasonable fees” to “provide for the administration and enforcement” of the building code program.
- Municipalities must incorporate all of their building inspection program administrative fees into their fee schedules. A municipality is not precluded from communicating to customers exactly how fees are arrived at.
- If a municipality assesses a charge on all its permits (for instance a parks surcharge), whether or not they relate to the building code program, then it will not need to be incorporated into its fee schedule. If a municipality assesses a charge only for actions related to the building inspection program then it must be figured into its building permit fee schedule.

## **ADDITIONAL INFORMATION**

- These changes will require some municipalities to recalculate fees to accommodate the new methodology. Where fee changes are *revenue neutral* or due only to the adoption of the new valuation table, the division will not require notice under 918-020-0220.
  - ❖ To determine if a fee change is revenue neutral, a municipality can calculate the cost of a permit under its old method and the same permit under the new method, using the new fee schedule for both – if the fee is the same, then the change is revenue neutral and won’t trigger notice to BCD; OR
  - ❖ Where a change in fees is purely the result of switching to the new methodology, and no changes are made to the fee schedule, BCS won’t require notice.
  - ❖ Municipalities may still have to comply with 294.160 (requiring opportunity for public comment) and any other local notice requirements.
  - ❖ Future fee changes, but not simple updates of the ICC table, must comply with the 918-020-0220 notice to BCD.

**Contact:** If you have any questions please contact Aeron Teverbaugh at 503-373-1354 or [aeron.teverbaugh@state.or.us](mailto:aeron.teverbaugh@state.or.us).

**Consistent Form & Fee Methodology Rules**  
Effective: January 1, 2009

**DIVISION 50**  
**MUNICIPAL ADMINISTRATION**

**918-050-0000**

**Purpose and Scope**

Division 50 provides administrative procedures for use in all regions of the state and, where applicable, to specified regions of the state. These rules address a uniform methodology for arriving at building permit and inspection fees to provide consistency in fee calculation. Where a permitted item is not covered by the methodology in these rules, a municipality may either, fit the item within the appropriate program area or develop a reasonable permit fee. These rules do not supersede or repeal the existing provisions of the state building code and related rules. These rules become effective on January 1, 2009.

Stat. Auth.: ORS 455.020 & 455.048

Stats. Implemented: ORS 455.020 & 455.046

**918-050-0010**

**Definitions**

Terms not specifically defined will have the meanings ascribed in the state building code.

(1) "Administrative fees" refers to fees assessed by a municipality to cover costs of administering and enforcing the building code apart from inspection and plan review services. Surcharges, assessed as part of the cost of doing business within a municipality and that are assessed without regard to whether the municipal action relates to the administration of the building code, are not administrative fees for the purposes of these rules.

(2) "Tri-county region" or "Tri-county regional" refers to the geographical area that includes Clackamas, Multnomah and Washington counties.

Stat. Auth.: ORS 455.020

Stats. Implemented: ORS 455.020

**Consistent Form & Fee Methodology Rules**  
Effective: January 1, 2009

**918-050-0020**

**Standard Statewide Application Forms**

(1) A municipality must use standard permit applications containing at least the minimum content required by the division.

(2) All municipalities within the Tri-County region shall use intake checklist forms approved by the division

(3) The division shall consider for adoption proposed amendments to the standard application and intake checklist forms.

(a) Proposals for amendment to the application forms shall include: The existing unamended form(s);

(A) The form(s) containing the appropriate amendments; and

(B) A brief explanation of the need for the amendments.

(b) Proposals to amend the approved forms must be filed with the division no later than February 1 or August 1.

(c) The division shall notify all municipalities and interested parties of the division's determination regarding proposed amendments and provide copies of the amended form(s).

(d) Any form changes shall be effective in all regional jurisdictions on July 1 or January 1 following adoption.

Stat. Auth.: ORS 455.020 & 455.048

Stats. Implemented: ORS 455.020 & 455.046

**918-050-0030**

**Standard Tri-County Regional Processes**

All jurisdictions within the Tri-County region shall use uniform processes for permit application, plan review, permit issuance and recording inspections as approved by the division, including, but not limited to:

(1) Minor labels;

(2) Issuing permits when no plan review is required;

(3) Recording inspections;

(4) Partial permits;

(5) Deferred submittals;

**Consistent Form & Fee Methodology Rules**

Effective: January 1, 2009

- (6) Over-the-counter permits that require plan review; and
- (7) Plan review issue resolution.

Stat. Auth.: ORS 455.048

Stats. Implemented: ORS 455.046

**Uniform Fee Methodology**

**918-050-0100**

**Statewide Fee Methodologies for Residential and Commercial Permits**

(1) Residential construction permit fees shall be calculated using the following methodologies:

(a) A plumbing permit fee for new construction includes one kitchen and is based on the number of bathrooms, from one to three, on a graduated scale. An additional set fee shall be assessed for each additional bath or kitchen.

(A) No additional fee shall be charged for the first 100 feet of water and sewer lines, hose bibbs, icemakers, underfloor low-point drains and rain drain packages that include the piping, gutters, downspouts and perimeter system.

(B) The plumbing permit fee described in this section does not include:

(i) Any storm water retention/detention facility;

(ii) Irrigation and fire suppression systems; or

(iii) Additional water, sewer and service piping or private storm drainage systems exceeding the first 100 feet.

(C) Permit fees for an addition, alteration, or repair shall be calculated based on the number of fixtures, appurtenances and piping, with a set minimum fee.

(b) A mechanical permit fee shall be calculated per appliance and related equipment, with a set minimum fee.

(c) Effective January 1, 2009, a structural permit fee for new construction and additions shall be calculated using the ICC Building Valuation Data Table current as of April 1 of each year, multiplied by the square footage of the dwelling to determine the valuation. The valuation shall then be applied to the municipality's fee schedule to determine the permit fee. The plan review fee shall be based on a predetermined percentage of the permit fee set by the municipality.

**Consistent Form & Fee Methodology Rules**

Effective: January 1, 2009

(A) The square footage of a dwelling, addition, or garage shall be determined from outside exterior wall to outside exterior wall for each level.

(B) The square footage of a carport, covered porch, patio, or deck shall be calculated separately at fifty percent of the value of a private garage from the most current ICC Building Valuation Data Table.

(C) Permit fees for an addition, alteration, or repair shall be calculated based on the fair market value as determined by the building official, and then applying the valuation to the jurisdiction's fee table.

(2) Commercial construction permit fees shall be calculated using the following methodologies:

(a) A plumbing permit fee shall be calculated based on the number of fixtures and footage of piping, with a set minimum fee.

(b) A mechanical permit fee shall be calculated based on the value of the mechanical equipment and installation costs and applied to the municipality's fee schedule with a set minimum fee.

(c) A structural permit fee shall be calculated by applying the valuation to the municipality's fee schedule with a minimum set fee. Valuation shall be the greater of either:

(A) The valuation based on the ICC Building Valuation Data Table current as of April 1 of each year, using the occupancy and construction type as determined by the building official, multiplied by the square footage of the structure; or

(B) The value as stated by the applicant.

(C) When the construction or occupancy type does not fit the ICC Building Valuation Data Table, the valuation shall be determined by the building official with input from the applicant.

Stat. Auth.: ORS 455.020 & 455.048

Stats. Implemented: ORS 455.020 & 455..46

**918-050-0110**

**Fees and Fee Schedules**

(1) A municipality may develop its fee schedule in any reasonable manner to provide for the administration and enforcement of the Building Code program.

**Consistent Form & Fee Methodology Rules**

Effective: January 1, 2009

(2) Administrative fees assessed by a municipality to cover administration and enforcement shall be incorporated into a municipality's fee schedule. Changes to a municipalities fee schedule must be adopted in accordance with OAR 918-020-0220.

(3) The plan review fees shall be based on a predetermined percentage of the permit fee set by the municipality.

Stat. Auth.: ORS 455.020, 455.048 & 455.210

Stats. Implemented: ORS 455.020, 455.046 & 455.210

**918-050-0120**

**Statewide Fee Methodology for Electrical Permits**

An electrical permit fee shall be calculated based on the categories, procedures and requirements established in OAR 918-309-0020 to 918-309-0070.

Stat. Auth.: ORS 455.020, 455.048 & 479.870

Stats. Implemented: ORS 455.020, 455.046 & 479.870

**918-050-0130**

**Statewide Fee Methodology for Manufactured Home Siting Permits**

(1) A municipality shall charge a single fee for the installation and set-up of manufactured homes. This fee shall include the concrete slab, runners or foundations when they comply with the prescriptive requirements of the Oregon Manufactured Dwelling and Park Specialty Code, electrical feeder and plumbing connections and all cross-over connections.

(2) Decks, other accessory structures and foundations that do not comply with the prescriptive requirements of the Oregon Manufactured Dwelling and Park Specialty Code, utility connections beyond 30 lineal feet, new electrical services or additional branch circuits, new plumbing and other such items that fall under the building code may require separate permits.

(3) When a municipality has reason to believe that the existing electrical service to a manufactured dwelling may be unsafe or inadequate, the municipality may require a separate permit to inspect the electrical service.

[Publications: Publications referenced are available from the agency.]

**Consistent Form & Fee Methodology Rules**  
Effective: January 1, 2009

Stat. Auth.: ORS 455.020 & 455.048  
Stats. Implemented: ORS 455.020 & 455.046

**918-050-0140**

**Statewide Fee Methodology for Residential Fire Suppression Systems**

Stand-alone and multi-purpose fire suppression system permit fees shall each be calculated as separate flat fees based on the square footage of the structure with graduated rates for dwellings with 0 to 2000 square feet, 2001 to 3600 square feet, 3601 to 7200 square feet and 7201 square feet and greater. The permit fee shall be sufficient to cover the costs of inspection and plan review.

Stat. Auth.: ORS 455.020 & 455.048  
Stats. Implemented: ORS 455.020 & 455.046

**918-050-0150**

**Statewide Fee Methodology for Medical Gas Installations**

(1) A plumbing permit fee for the installation of a medical gas system shall be determined based on the value of installation costs and the system equipment, including but not limited to, inlets, outlets, fixtures and appliances and applied to the municipality's fee schedule, with a set minimum fee.

(2) The plan review fee shall be based on a predetermined percentage of the permit fee as set by the municipality.

Stat. Auth.: ORS 455.020 & 455.048  
Stats. Implemented: ORS 455.020 & 455.046

**918-050-0160**

**Statewide Fee Methodology for Phased Projects**

A municipal plan review fee for a phased project is based on a minimum phasing fee, determined by the municipality, plus 10 percent of the total project building permit fee not to exceed \$1,500 for each phase.

**Consistent Form & Fee Methodology Rules**  
Effective: January 1, 2009

Stat. Auth.: ORS 455.020 & 455.048  
Stats. Implemented: ORS 455.020 & 455.046

**918-050-0170**

**Statewide Fee Methodology for Deferred Submittals**

A fee charged for processing and reviewing deferred plan submittals shall be an amount equal to a percentage, determined by the municipality, of the building permit fee calculated according to OAR 918-050-0110(2) and (3) using the value of the particular deferred portion or portions of the project, with a set minimum fee. This fee is in addition to the project plan review fee based on the total project value.

Stat. Auth.: ORS 455.020 & 455.048  
Stats. Implemented: ORS 455.020 & 455.046