

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  
SEPTEMBER 20, 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. 2010-2919** supporting the submission of a grant application to the State of Oregon to fund bike/pedestrian improvements along College Street.(Pg.3-10)
2. Consider a motion approving **Resolution No. 2010-2920** supporting Chehalem Park and Recreation District's grant application to the State of Oregon to fund construction of a multi-use path along Dayton Avenue. (Pgs. 11-26)
3. Consider a motion approving a **Proclamation** recognizing Police Canine Akay for his seven and one-half (7.5) years of distinguished service to the citizens of Newberg and Dundee as a member of the Newberg-Dundee Police Department. (Pgs. 27-28)
4. Consider a motion approving a **Proclamation** declaring September 17-23, 2010 as Constitution Week. (Pgs. 29-30)

**VII. PUBLIC HEARING**

Consider a motion adopting **Order No. 2010-0028** finding the conditional use permit/design review application for the proposed Fred Meyer gas station at 3300 Portland Road meets the applicable Newberg Development Code criteria, reversing the Planning Commission decision and approving the application. (Pgs. 31-66)  
**(Quasi-Judicial Hearing)**

**VIII. NEW BUSINESS**

Consider a motion establishing the funding methodology for a Visitor Information Center. (Pg. 67-122)

\*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.

**IX. COUNCIL BUSINESS**

**X. ADJOURNMENT**

**INDEX OF ORDERS, ORDINANCES AND/OR RESOLUTIONS:**

**ORDER:**

**Order No. 2010-0028** finding that the conditional use permit/design review application for the proposed Fred Meyer gas station at 3300 Portland Road meets the applicable Newberg Development Code criteria, reversing the Planning Commission decision and approving the application.

**RESOLUTIONS:**

**Resolution No. 2010-2919** approving the submission of a grant application to the State of Oregon for funding of bike/pedestrian improvements along College Street (Highway 219) between Vermillion Street and Pinehurst Street.

**Resolution No. 2010-2920** supporting a grant application by Chehalem Park and Recreation District to the State of Oregon for funding of a multi-use trail along Dayton Avenue between Newberg and Dundee.

*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: September 20, 2010

Order \_\_\_\_ Ordinance \_\_\_\_ Resolution XX Motion \_\_\_\_ Information \_\_\_\_  
No. No. No. 2010-2919

**SUBJECT: Proposed grant application to State of Oregon for funds to construct bike/pedestrian improvements along College Street from Vermillion Street to Pinehurst Street.**

Contact Person (Preparer) for this  
Resolution: David Beam, AICP

Dept.: Planning and Building  
File No.: GR-10-004

**RECOMMENDATION:** Adopt Resolution No. 2010-2919, supporting the submission of a grant application to the State of Oregon to fund bike/pedestrian improvements along College Street. The application would be submitted under ODOT's Transportation Enhancement Program.

## EXECUTIVE SUMMARY:

The State of Oregon recently announced that it is accepting grant applications under the ODOT's Transportation Enhancement Program (Attachment 1). In June 2010, the City of Newberg submitted a Notice of Intent to submit a grant application. In July 2010, ODOT reviewed the Notice and gave the City permission to submit a full application. Complete grant applications are due September 30, 2010.

The proposed project was submitted two years ago for grant funding under the Transportation Enhancement Program. While the project has not been funded to-date, the project has been placed on a reserve list and still may be considered for funding. For this reason, staff feels this project is very competitive.

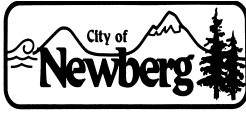
The proposed project area is along State Highway 219, between Vermillion Street and Pinehurst Street (Attachments 2 and 3). The surrounding area around the project is mostly residential. Local bicyclists (many tourists as well) and pedestrians use this part of the highway extensively. However, the almost complete lack of bicycle and pedestrian facilities in the project area makes these alternative modes of transportation very dangerous. According to ODOT, average daily trips (ADT's) in this section Highway 219 averages around 9,000.

Improvements would include bike lanes on both sides of the highway and a sidewalk (setback as much as feasible) on the east side of the highway for the length of the project area. Highway widening, ROW acquisition, and storm drainage work may also be required. The project would also include significant upgrades to a railroad crossing. The Portland and Western Railroad has expressed their support for the project.

One requirement of the grant application is that formal support must be demonstrated (e.g. resolution) by the local government.

**FISCAL IMPACT:** City staff estimates the total cost of the project to be \$726,720. The grant request would be for \$646,720. The remaining \$80,000 of the project costs would come from the estimated city staff time for survey, design, engineering and project management and would apply to the required local match.

**STRATEGIC ASSESSMENT:** The proposed project would greatly improve the safety of pedestrians and bicyclists using this portion of Colleges Street that experiences heavy daily vehicular traffic.



## ***RESOLUTION No. 2010-2919***

---

---

**A RESOLUTION APPROVING THE SUBMISSION OF A GRANT APPLICATION TO THE STATE OF OREGON FOR FUNDING OF BIKE/PEDESTRIAN IMPROVEMENTS ALONG COLLEGE STREET (HIGHWAY 219) BETWEEN VERMILLION STREET AND PINEHURST STREET**

---

---

### **RECITALS:**

1. The State of Oregon recently announced that it is accepting grant applications under the ODOT's Transportation Enhancement Program. In June 2010, the City of Newberg submitted a Notice of Intent to submit a grant application. In July 2010, ODOT reviewed the Notice and gave the City permission to submit a full application. Complete grant applications are due September 30, 2010.
2. The proposed project was submitted two years ago for grant funding under the Transportation Enhancement Program. While the project has not been funded to-date, the project was considered competitive enough to be placed on a project reserve list.
3. The proposed project area is along State Highway 219, between Vermillion Street and Pinehurst Street. The surrounding area around the project is mostly residential. Local bicyclists (many tourists as well) and pedestrians use this part of the highway extensively. However, the almost complete lack of bicycle and pedestrian facilities in the project area makes these alternative modes of transportation very dangerous. According to ODOT, average daily trips (ADT's) in this section Highway 219 averages around 9,000.
4. Improvements would include bike lanes on both sides of the highway and a sidewalk (setback as much as feasible) on the east side of the highway for the length of the project area. Highway widening, ROW acquisition, and storm drainage work may also be required. The project would also include significant upgrades to a railroad crossing. The Portland and Western Railroad has expressed their support for the project.
5. One requirement of the grant application is that formal support must be demonstrated by the local government.

### **THE CITY OF NEWBERG RESOLVES AS FOLLOWS:**

1. The Newberg City Council supports the grant application under ODOT's Transportation Enhancement Program to construct bike/pedestrian improvements along College Street from Vermillion Road to Pinehurst Road.

2. If the grant application is successful, the Newberg City Council authorizes the City Manager to negotiate and enter into all contracts necessary to secure the grant.

➤ **EFFECTIVE DATE** of this resolution is the day after the adoption date, which is: September 21, 2010.

**ADOPTED** by the City Council of the City of Newberg, Oregon, this 20th day of September, 2010.

\_\_\_\_\_  
Norma Alley, City Recorder

**ATTEST** by the Mayor this 23rd day of September, 2010.

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

**LEGISLATIVE HISTORY**

By and through \_\_\_\_\_ Committee at \_\_\_\_ / \_\_\_\_ /2010 meeting. Or,  None.  
(committee name) (date) (check if applicable)



April 23, 2010

File Code:

**To All Interested Parties:**

The Oregon Department of Transportation is pleased to announce a **request for project proposals in the Transportation Enhancement program**. About \$17 million is available statewide for projects that can be ready for contract in 2013 and 2014. Projects selected will become part of Oregon's 2012-2015 Statewide Transportation Improvement Program (STIP).

The "TE" program provides federal funds for projects that strengthen the cultural, aesthetic, and environmental value of our transportation system. This can include sidewalk, bike path and streetscape projects, restoration of transportation-related historic buildings, wildlife crossing and water quality mitigation projects, or landscaping, viewpoints, and interpretive sites that help travelers appreciate the scenery and history along Oregon roads and highways. A list of the twelve eligible activities is on the next page.

Projects are selected through a statewide competitive process based on written application and field review. Applicants may include local, state or federal agencies, Indian tribes, and tax-funded districts. A private organization may apply in partnership with a public agency. Recipients must supply matching funds to cover at least 10.27% of the project cost. Results will be announced after approval by the Oregon Transportation Commission in April or May 2011.

The TE application process has two steps:

- 1) **Notice of Intent due June 30, 2010**
- 2) **Application due September 30, 2010**



Instructions and application forms will be posted on the ODOT Local Government Section web site on May 18, 2010: <http://www.oregon.gov/ODOT/HWY/LGS/enhancement.shtml>  
Materials are also available by email from: [patricia.r.fisher@odot.state.or.us](mailto:patricia.r.fisher@odot.state.or.us)

For further information on the Transportation Enhancement program and the project selection cycle announced above, please feel free to call me at (503) 986-3528.

Sincerely,

*Patricia R. Fisher*

Patricia R. Fisher  
Transportation Enhancement Program Manager

*Photo: Union Street  
Railroad Bridge, Salem*

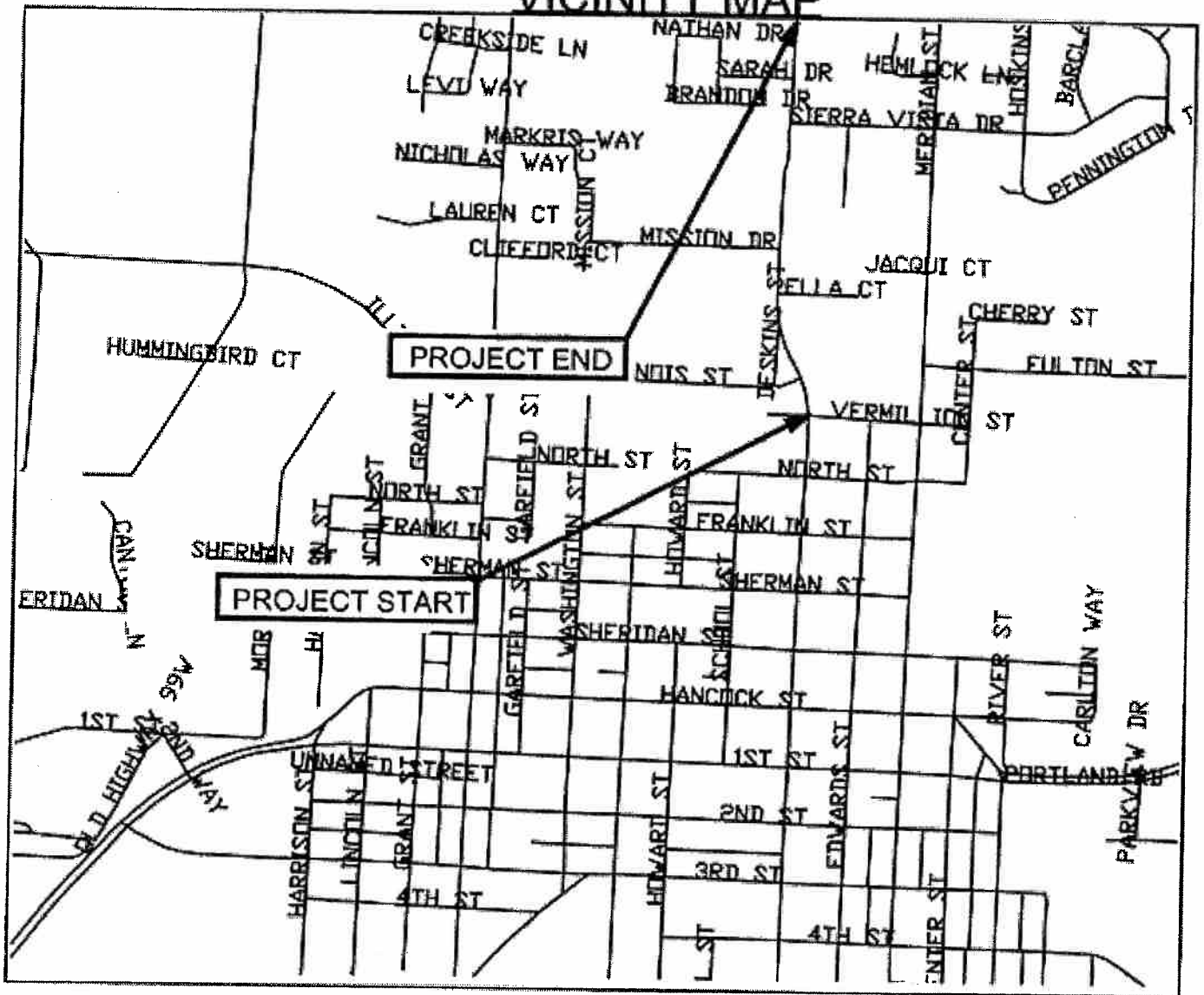
## ***TRANSPORTATION ENHANCEMENT ACTIVITIES***

1. Provision of facilities for pedestrians and bicyclists
2. Provision of safety and educational activities for pedestrians and bicyclists
3. Acquisition of scenic easements and scenic or historic sites (including historic battlefields)
4. Scenic or historic highway programs (including the provision of tourist and welcome center facilities)
5. Landscaping and other scenic beautification
6. Historic preservation
7. Rehabilitation and operation of historic transportation buildings, structures, or facilities (including historic railroad facilities and canals)
8. Preservation of abandoned railway corridors (including the conversion and use of the corridors for pedestrian or bicycle trails)
9. Inventory, control and removal of outdoor advertising
10. Archaeological planning and research
11. Environmental mitigation (i) to address water pollution due to highway runoff; or (ii) reduce vehicle-caused wildlife mortality while maintaining habitat connectivity
12. Establishment of transportation museums

*NOTE:* Projects to build pedestrian or bicycle facilities within a public road right-of-way may also be eligible for grants from the ODOT Bicycle and Pedestrian Program. That is a separate state-funded program with its own application process which is open through July 9, 2010. Information and forms are posted on the Bicycle and Pedestrian Program web site at <http://www.oregon.gov/ODOT/HWY/BIKEPED/grants1.shtml> or from the program managers at (503) 986-3555 or (503) 986-3554.

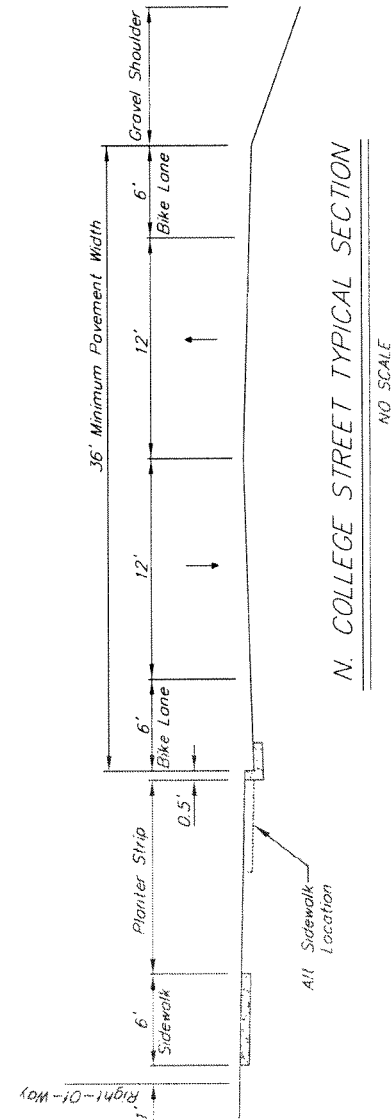
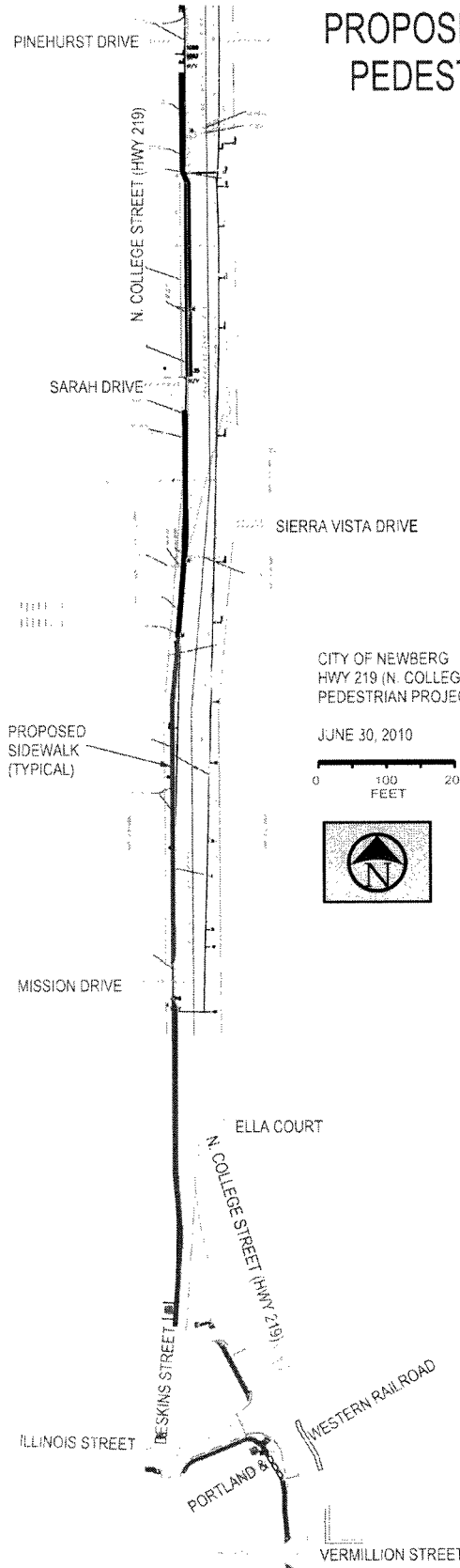
PROPOSED HIGHWAY 219 (N. COLLEGE STREET)  
PEDESTRIAN / BIKE IMPROVEMENT PROJECT, NEWBERG  
(from Vermillion Street to Pinehurst Street)  
JUNE 30, 2010

VICINITY MAP





# PROPOSED HIGHWAY 219 (N. COLLEGE STREET) PEDESTRIAN / BIKE IMPROVEMENT PROJECT



**THIS PAGE INTENTIONALLY LEFT BLANK**

# REQUEST FOR COUNCIL ACTION

DATE ACTION REQUESTED: September 20, 2010

Order \_\_\_ Ordinance \_\_\_ Resolution XX Motion \_\_\_ Information \_\_\_  
No. No. No. 2010-2920

**SUBJECT: Support for grant application by Chehalem Park and Recreation District to State of Oregon for funds to construct a multi-use path along Dayton Avenue between Newberg and Dundee**

Contact Person (Preparer) for this Resolution: David Beam, AICP

Dept.: Planning and Building

File No.: GR-10-004  
(if applicable)

## RECOMMENDATION:

Adopt **Resolution No. 2010-2920** supporting CPRD's submission of a grant application to the State of Oregon for funding to construct a multi-use path along Dayton Avenue between Newberg and Dundee. The application would be submitted under ODOT's Transportation Enhancement Program.

## EXECUTIVE SUMMARY:

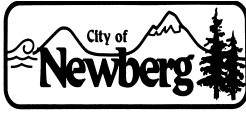
The State of Oregon recently announced that it is accepting grant applications under the ODOT's Transportation Enhancement Program. Completed grant applications are due September 30, 2010.

CPRD is proposing to submit grant application for funds to construct a multi-use path along Dayton Avenue between Newberg and Dundee. In an effort to strengthen their application, CPRD is requesting support of their application from the City of Newberg. Attachment 1 is the request from CPRD and a brief description of the proposed project. CPRD is also seeking support for this project from the City of Dundee and Yamhill County.

**FISCAL IMPACT:** CPRD staff estimates the total cost of the project to be \$1,331,000. The grant request would be for \$1,065,000. The remaining \$226,000 would be comprised of match resources.

**STRATEGIC ASSESSMENT:** For the last few years, CPRD has planning for a trail system within the District boundaries that is intended to improve the quality of life for all citizens within the region. If constructed, the proposed project would provide an important component towards the completion of the planned trail system. In addition, this multi-use path would provide a connection between Newberg and Dundee that would be more attractive and likely safer route for potential users than the utilization of Highway 99W.

Attachments: Attachment 1 – CPRD letter requesting support and project area maps



## RESOLUTION No. 2010-2920

---

---

**A RESOLUTION SUPPORTING A GRANT APPLICATION BY CHEHALEM PARK AND RECREATION DISTRICT TO THE STATE OF OREGON FOR FUNDING OF A MULTI-USE TRAIL ALONG DAYTON AVENUE BETWEEN NEWBERG AND DUNDEE**

---

---

### RECITALS:

1. The State of Oregon recently announced that it is accepting grant applications under the ODOT's Transportation Enhancement Program. Completed grant applications are due September 30, 2010.
2. The Chehalem Park and Recreation District is proposing to submit grant application for funds to construct a multi-use path along Dayton Avenue between Newberg and Dundee. CPRD has requesting support of their proposed application from the City of Newberg. CPRD is also seeking support for this project from the City of Dundee and Yamhill County.
3. For the last few years, CPRD has planning for a trail system within the District boundaries that is intended to improve the quality of life for all citizens within the region. If constructed, the proposed project would provide an important component towards the completion of the planned trail system. In addition, this multi-use path would provide a connection between Newberg and Dundee that would be more attractive and likely safer route for potential users than the utilization of Highway 99W.

### THE CITY OF NEWBERG RESOLVES AS FOLLOWS:

The Newberg City Council supports CPRD's submission of a grant application to the State of Oregon for funding to construct a multi-use path along Dayton Avenue between Newberg and Dundee.

- **EFFECTIVE DATE** of this resolution is the day after the adoption date, which is: June 22, 2010.

**ADOPTED** by the City Council of the City of Newberg, Oregon, this 20<sup>th</sup> day of September, 2010.

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

**ATTEST** by the Mayor this 23<sup>rd</sup> day of September, 2010.

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

### LEGISLATIVE HISTORY

By and through \_\_\_\_\_ Committee at \_\_\_ / \_\_\_ /2010 meeting. Or, X None.



## Chehalem Park and Recreation District

125 S. Elliott Road, Newberg, Oregon 97132  
(503) 537-2909 • (503) 538-9669 Fax

August 31, 2010

Mr. David Beam  
Economic Development Planner  
414 E. 1<sup>st</sup> St.  
Newberg, OR 97132

Dear David,

The Chehalem Park and Recreation District is applying for a transportation enhancement grant with the Oregon Department of Transportation to develop a safe bike/ped trail along Dayton Avenue between the cities of Newberg and Dundee. The park district is asking for a letter of support from the City of Newberg for this portion of the trail.

This will be the first segment of safe bike/ped trails that tie the two communities together. Future plans would include a bike/ped trail along the river as well as other connecting trails within the city limits of Newberg and Dundee.

I have included with this letter maps of where the Dayton Ave. trail will be situated. Our application is due before September, 30<sup>th</sup> 2010. The letters of support would need to be returned to the district prior to that date.

If you have any questions, please do not hesitate to contact me.

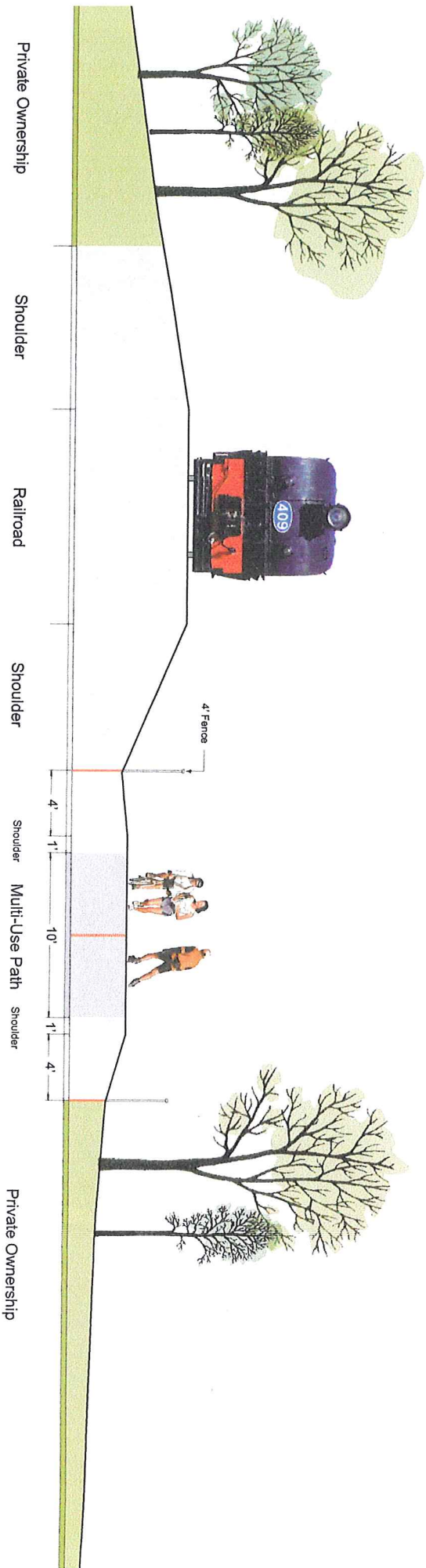
Sincerely,

A handwritten signature in dark ink, appearing to read "Jim McMaster".

Jim McMaster,  
Park Supervisor

# Chehalem Heritage Trail Typical Cross-Section

Dayton Ave to Edwards St connection  
Multi-Use path adjacent to the Railway



**From:** Paul Agrimis [pagrimis@vigil-agrimis.com]  
**Sent:** Thursday, September 02, 2010 4:03 PM  
**To:** David Beam  
**Cc:** Jim McMaster; clemend@cprdnewberg.org; Michael Yun  
**Subject:** Dayton Ave./Newberg-Dundee Connector Trail  
 Hello David:

Mike Yun passed your information request on to me while he modifies the map to black and white, 8.5 x 11.

This trail would begin at Memorial Park (5<sup>th</sup> and Howard) as a bike boulevard (bikes and cars share road with demarcation on pavement and signage along street) and proceed west to Dayton before turning south. The intersections at 5<sup>th</sup> and Howard, 5<sup>th</sup> and Blaine, and 5<sup>th</sup> and Dayton would be modified slightly with Traffic Calming facilities (curb extensions, safety median, signage, etc. as determined in the master planning process just getting underway) to improve safety for bicyclists. Existing sidewalks on the side of Fifth and Dayton would potentially be widened to support anticipated increased usage. The bike boulevard would extend 2,000 LF within Newberg.

Just south of Johanna Court the trail would transition from bike boulevard and sidewalk to a multiuse trail on the south side of Dayton. A Traffic Calming facility would provide for a safe transition at this location. The multiuse path follows the route of the existing paved path separated from the road by curb. The proposed multiuse trail would be 10 feet minimum. This can be accommodated within the Dayton Ave. ROW. No decision has been made about using pervious paving, and minor drainage modifications are anticipated if the trail is surfaced with impermeable paving. The multiuse trail would extend 800 LF within Newberg.

The multiuse trail would continue along the south side of Dayton Ave. to County Road 179 near Dundee and turn parallel to the Railroad to connect to Edwards. Traffic Calming facilities would be designed to cross this road. The trail project team is currently contacting the two property owners immediately south of County Road 179 about their willingness to sell or donate their property for the trail project. The multiuse trail would continue to SE Edwards and transition to bike boulevard on Edwards and end where it intersects SE 5<sup>th</sup> in Dundee. Traffic Calming facilities would be designed to provide this transition. SE 5th currently is developed with bike lanes west across 99W.

Thanks for presenting this information. I hope it addresses the questions you have anticipated.  
 Regards,  
 Paul

Paul Agrimis, R.L.A., P.E., P.W.S.  
*Vice President*

**VIGIL**  **AGRIMIS**  
*design professionals*

819 SE Morrison Street, Suite 310  
 Portland, Oregon 97214  
 503-274-2010  
 503-274-2024 fax  
 pagrimis@vigil-agrimis.com  
[www.vigil-agrimis.com](http://www.vigil-agrimis.com)

Engineering • Landscape Architecture • Environmental Science

# Chehalem Heritage Trail

## Proposed Trail Alignments

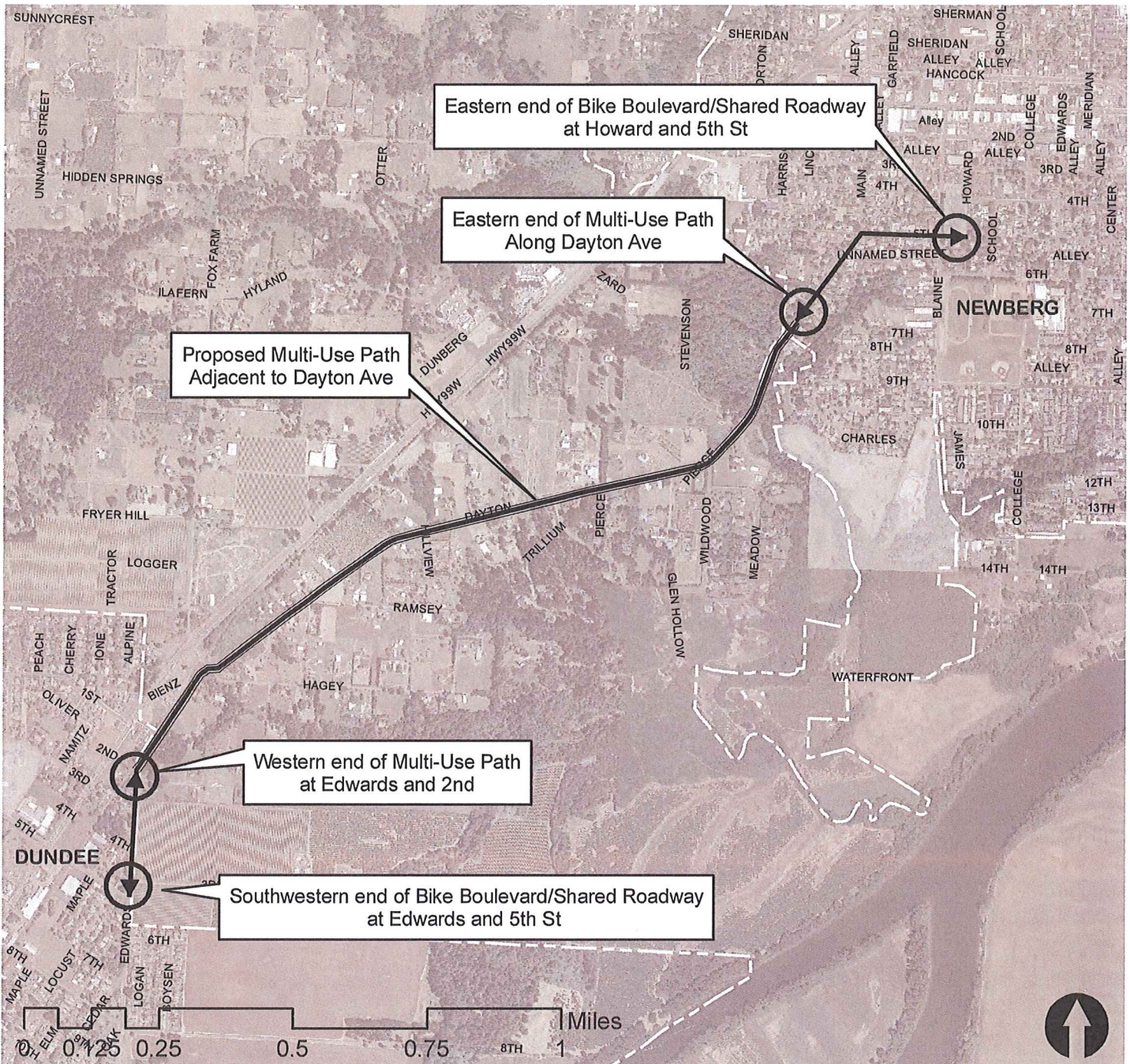
### Dayton Avenue Segment



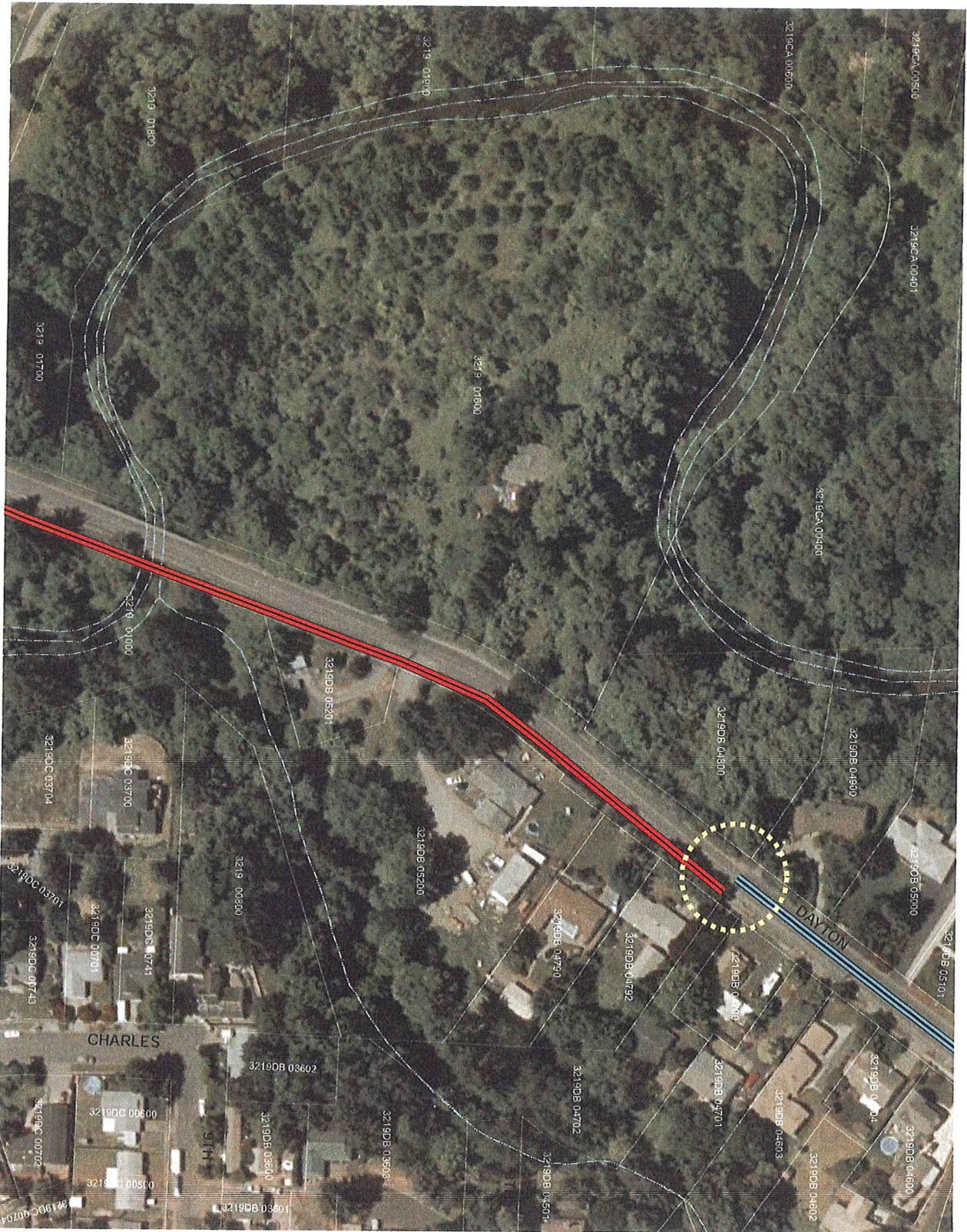
### Legend

↔ Bike Boulevard/Shared Roadway




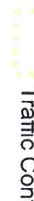
— Multi-Use Trail



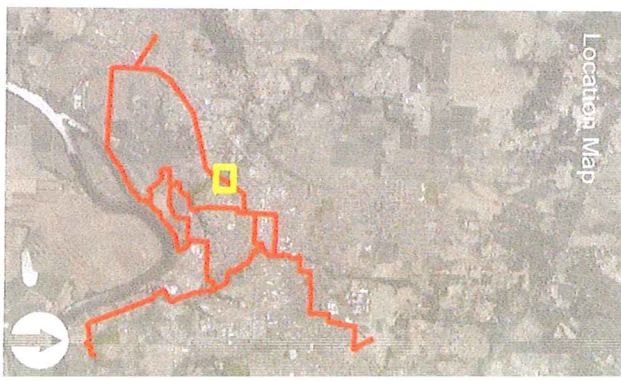
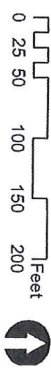




**Chehallem Heritage Trail  
Proposed Trail Alignments  
Segment A015**

-  Bike Lanes
-  Bike Boulevard
-  Multi-Use Path
-  Traffic Control Areas

-  Parks
-  Parcels
-  NWI Wetlands
-  Streams

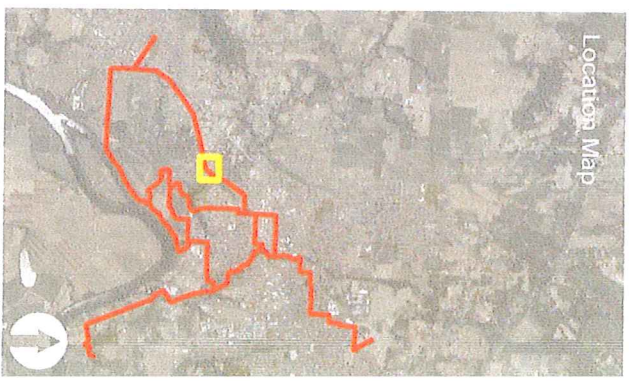
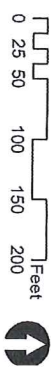




**Chehallem Heritage Trail  
Proposed Trail Alignments  
Segment A016**

- Bike Lanes
- Bike Boulevard
- Multi-Use Path
- Traffic Control Areas

- Parks
- Parcels
- NWI Wetlands
- Streams

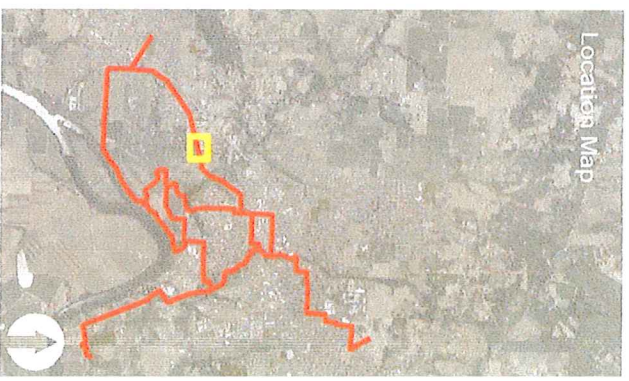


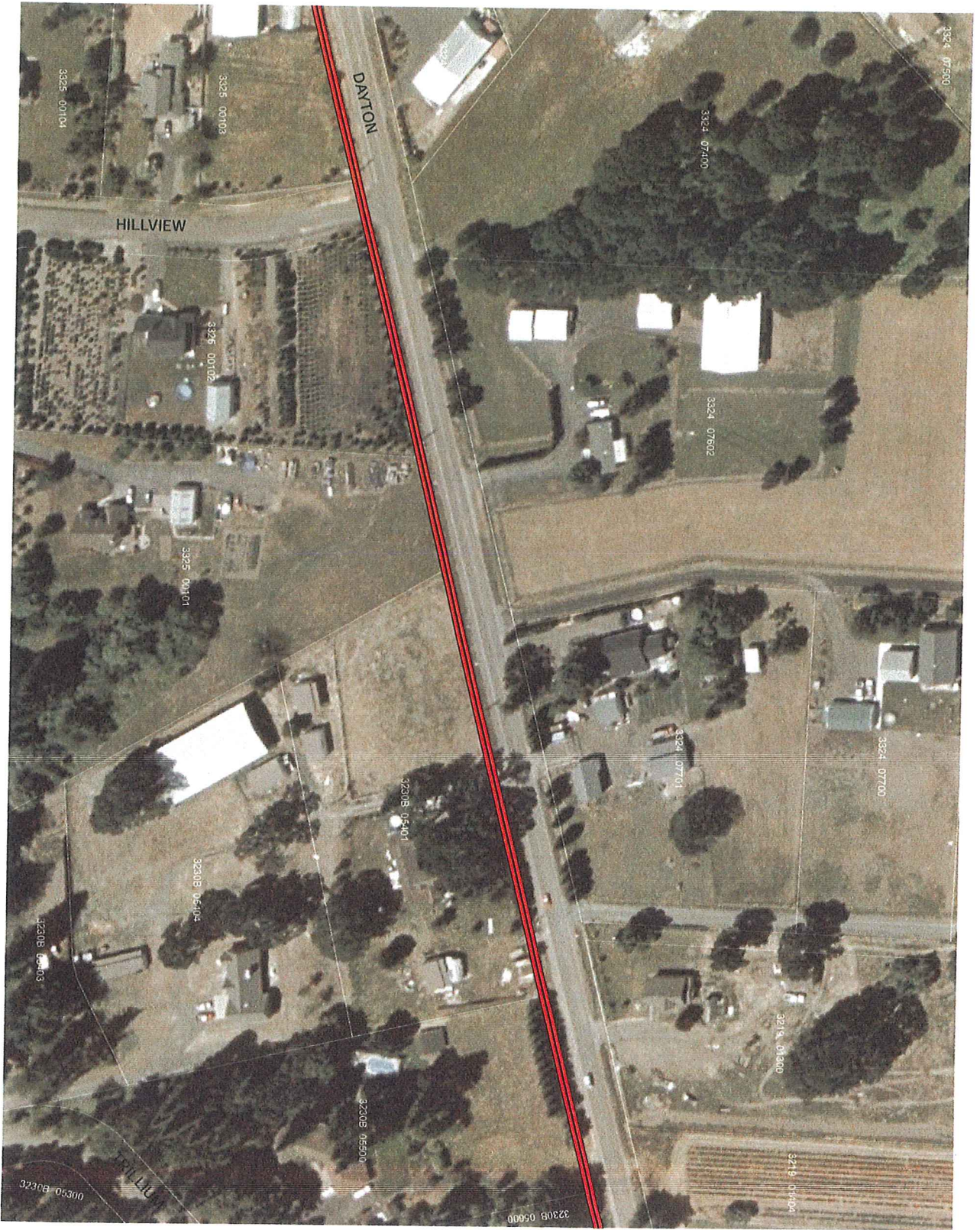


**Chehalem Heritage Trail  
Proposed Trail Alignments  
Segment A017**





- Bike Lanes
- Bike Boulevard
- Multi-Use Path
- Traffic Control Areas

- Parks
- Parcels
- NWI Wetlands
- Streams

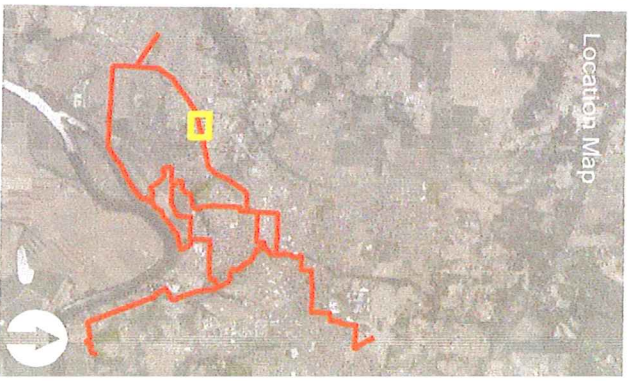
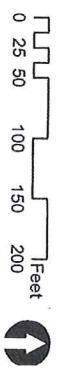




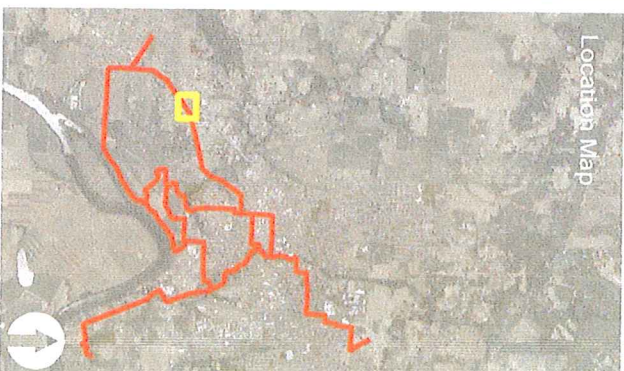
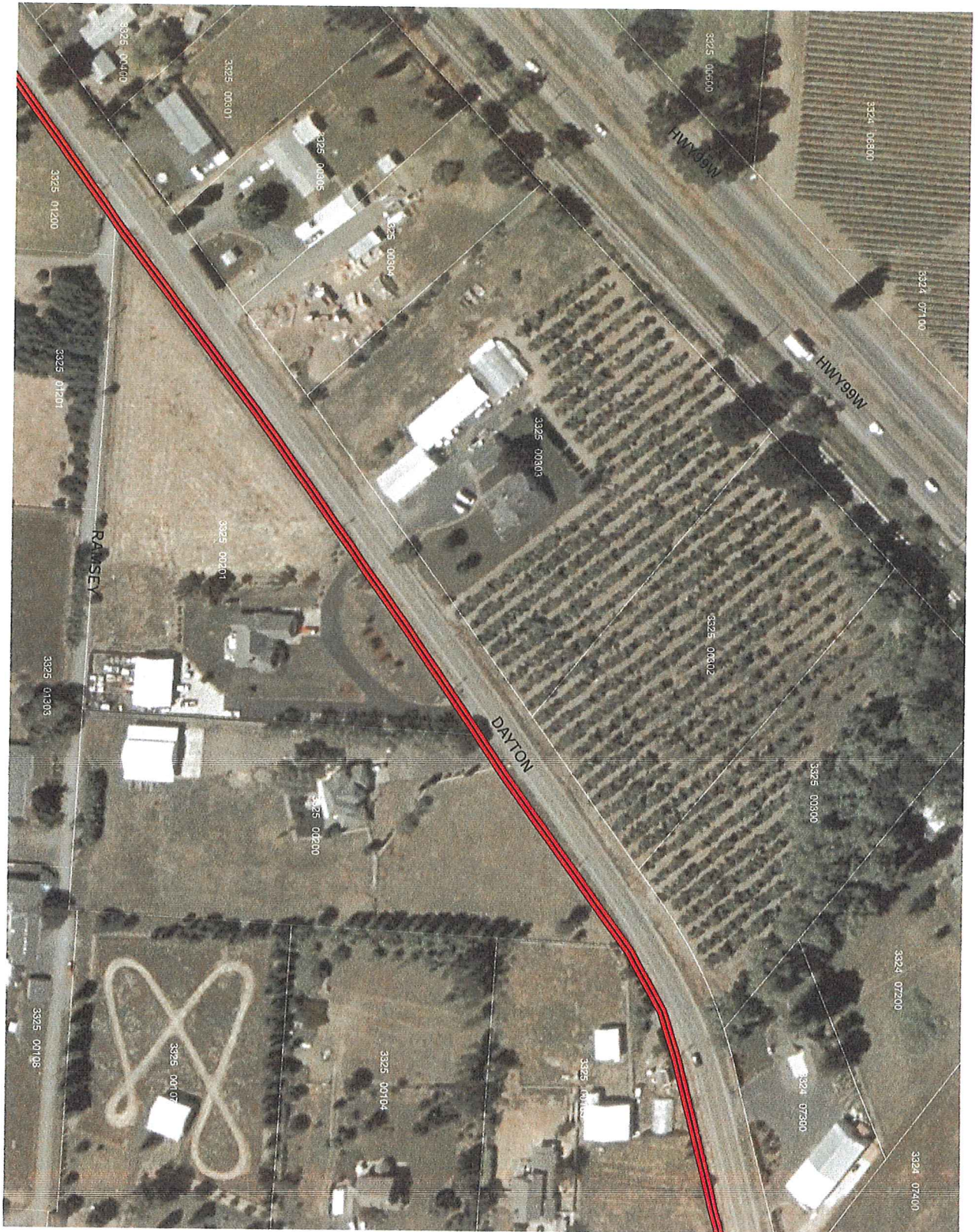
**Chehallem Heritage Trail  
Proposed Trail Alignments  
Segment A018**

-  Bike Lanes
-  Bike Boulevard
-  Multi-Use Path
-  Traffic Control Areas

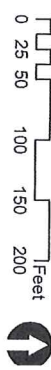
-  Parks
-  Parcels
-  NWI Wetlands
-  Streams



**Chehallem Heritage Trail  
Proposed Trail Alignments  
Segment A019**



- Bike Lanes
- Bike Boulevard
- Multi-Use Path
- Traffic Control Areas
- Parks
- Parcels
- NWI Wetlands
- Streams



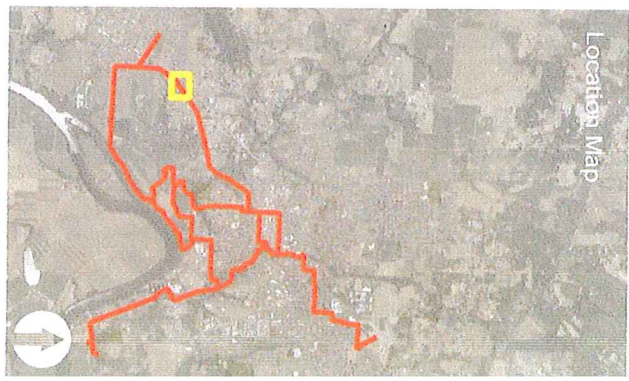
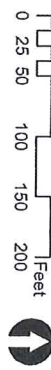
Location Map



**Chehallem Heritage Trail**  
 Proposed Trail Alignments  
 Segment A020


- Bike Lanes
- Bike Boulevard
- Multi-Use Path
- Traffic Control Areas

- Parks
- Parcels
- NWI Wetlands
- Streams

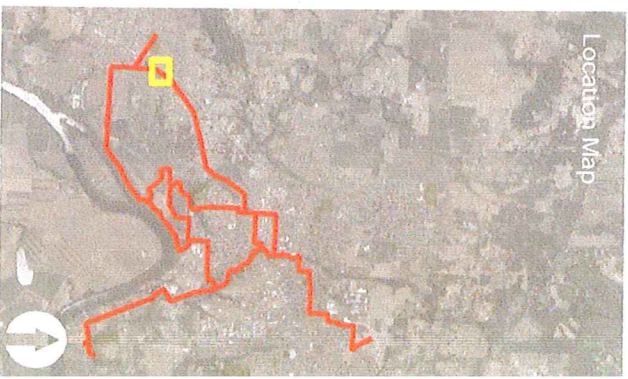




**Chehalis Heritage Trail  
Proposed Trail Alignments  
Segment A021**

-  Bike Lanes
-  Bike Boulevard
-  Multi-Use Path
-  Traffic Control Areas

-  Parks
-  Parcels
-  NWI Wetlands
-  Streams

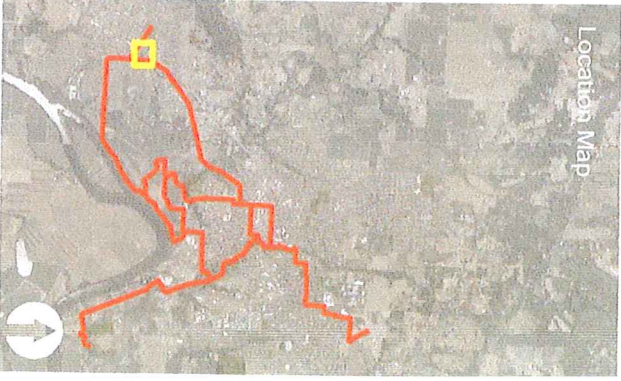
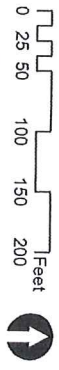




**Chehallem Heritage Trail**  
**Proposed Trail Alignments**  
**Segment A022**

-  Bike Lanes
-  Bike Boulevard
-  Multi-Use Path
-  Traffic Control Areas

-  Parks
-  NWI Wetlands
-  Streams



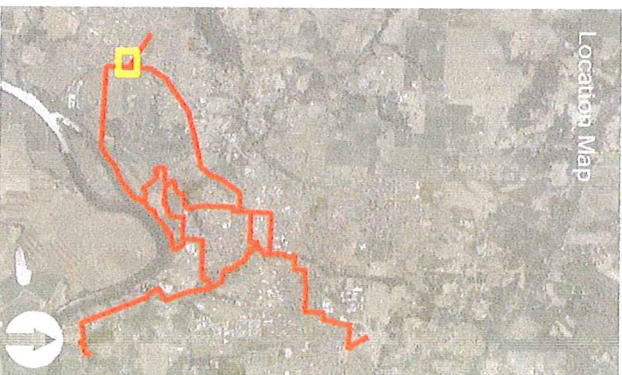
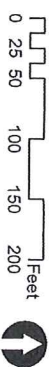




**Chelalem Heritage Trail  
Proposed Trail Alignments  
Segment A023**

- Bike Lanes
- Bike Boulevard
- Multi-Use Path
- Traffic Control Areas

- Parks
- Parcels
- Streams
- NWI Wetlands



**THIS PAGE INTENTIONALLY LEFT BLANK**

# REQUEST FOR COUNCIL ACTION

DATE ACTION REQUESTED: September 20, 2010

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

**SUBJECT: Approve a Proclamation recognizing Police Canine Akay for his seven and one-half (7.5) years of distinguished service to the citizens of Newberg and Dundee as a member of the Newberg-Dundee Police Department.**

Contact Person (Preparer) for this Motion: **Chris Bolek, Captain**

Dept.: Police

File No.:  
*(if applicable)*

## RECOMMENDATION:

Approve a Proclamation recognizing Police Canine Akay for his seven and one-half (7.5) years of distinguished service to the citizens of Newberg and Dundee as a member of the Newberg-Dundee Police Department.

## EXECUTIVE SUMMARY:

Police canine, Akay was born on March 4, 2001, in The Netherlands. He became a member of the Newberg-Dundee Police Department in January 2003.

Police canine, Akay is an Oregon Police Canine Association certified police canine and is responsible for over fifty-five (55) suspect apprehensions and locating of evidence items. Additionally, Akay has won eight (8) awards in competition at the Washington County K9 Trials; two (2) of those awards being for handler protection.

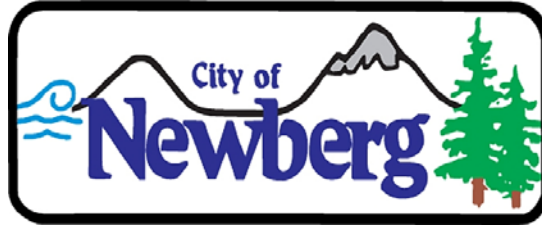
Police canine, Akay has given enthusiastic, uncompromising, and dedicated service as a member of the Newberg-Dundee Police Department for seven and one-half years (7.5). Due to his age and work, Akay suffers from arthritis and bone spurs, causing Akay to retire as a police canine as of July 5, 2010.

## FISCAL IMPACT:

None.

## STRATEGIC ASSESSMENT:

This supports the Council's desire in recognizing outstanding service to our community.



## PROCLAMATION

### ***RECOGNIZING POLICE CANINE AKAY FOR HIS DEDICATION AND SERVICE TO THE CITIZENS OF NEWBERG AS A MEMBER OF THE NEWBERG-DUNDEE POLICE DEPARTMENT***

***WHEREAS***, Akay became a member of the Newberg-Dundee Police Department in January 2003; and

***WHEREAS***, Akay earned the designation of an Oregon Police Canine Association certified police canine tracking dog; and

***WHEREAS***, Akay is responsible for over fifty-five (55) suspect apprehensions and the locating of items of evidence; and

***WHEREAS***, Akay has won eight (8) awards in competition at the Washington County K9 Trials, two (2) of those being for handler protection; and

***WHEREAS***, Akay has given uncompromising dedication to his handler of five (5) years, Officer Chris Powell, and his handler of two and one-half years (2.5) years, Sr. Officer Steve Schoening; and

***WHEREAS***, due to Akay's age and work he has developed arthritis and bone spurs making it difficult for him to meet the demands of a police canine; and

***WHEREAS***, Akay retired from the Newberg-Dundee Police Department on July 5, 2010.

***NOW, THEREFORE, IT IS PROCLAIMED*** by Mayor Bob Andrews and the City Council of the City of Newberg, Oregon, that the citizens of Newberg express their warm appreciation and gratitude to ***Police Canine Akay*** for his seven and one-half (7.5) years of dedicated service as a Police Canine for the City of Newberg and its citizens.

**IN WITNESS WHEREOF**, I have hereunto set my hand and cause the Seal of the City of Newberg to be affixed on this 20<sup>th</sup> day of September, 2010.

---

Bob Andrews, Mayor

# REQUEST FOR COUNCIL ACTION

DATE ACTION REQUESTED: September 20, 2010

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

**SUBJECT: Approve a Proclamation affirming the week of September 17 – 23, 2010, as Constitution Week.**

Contact Person (Preparer) for this Motion: **Jennifer Nelson, Recording Secretary**

Dept.: Admin

File No.:  
*(if applicable)*

## RECOMMENDATION:

Approve a Proclamation affirming the week of September 17 – 23, 2010, as Constitution Week.

## EXECUTIVE SUMMARY:

According to Public Law 915, a proclamation is to be issued each year by the President of the United States of America to designate the week of September 17-23 as Constitution Week to annually recognize and honor the anniversary of the drafting of the Constitution of the United States of America by the Constitutional Convention. As this marks the two hundred twenty-third anniversary, it is fitting and proper to officially recognize this occasion in Newberg.

## FISCAL IMPACT:

None.

## STRATEGIC ASSESSMENT:

This supports the Council's desire to act in accordance to federal laws and regulations.



## PROCLAMATION

### **AFFIRMING THE WEEK OF SEPTEMBER 17 – 23, 2010, AS CONSTITUTION WEEK**

**WHEREAS**, September 17, 2010, marks the two hundred twenty-third anniversary of the drafting of the Constitution of the United States of America by the Constitutional Convention; and

**WHEREAS**, it is fitting and proper to accord official recognition to this magnificent document and its memorable anniversary; and to the patriotic celebrations which will commemorate the occasion; and

**WHEREAS**, Public Law 915 guarantees the issuing of a proclamation each year by the President of the United States of America designating September 17 – 23, as Constitution Week,

**NOW, THEREFORE, IT IS PROCLAIMED**, by the Mayor and the City Council of the City of Newberg, Oregon, that September 17 – 23, 2010, is hereby designated as Constitution Week and all citizens are encouraged to reaffirm the ideals the Framers of the constitution had in 1787 by vigilantly protecting the freedoms guaranteed to us through this guardian of our liberties, remembering lost rights may never be regained.

**IN WITNESS WHEREOF**, I have hereunto set my hand and cause the Seal of the City of Newberg to be affixed on this 20<sup>th</sup> day of September, 2010.

---

Bob Andrews, Mayor

# REQUEST FOR COUNCIL ACTION

DATE ACTION REQUESTED: September 20, 2010

Order XX Ordinance \_\_\_ Resolution \_\_\_ Motion \_\_\_ Information \_\_\_  
No. 2010-0028 No. No.

SUBJECT: The Fred Meyer gas station conditional use permit/design review application.

Contact Person (Preparer) for this Order: Steve Olson, AICP

Dept.: Planning and Building

File No.: CUP-08-004/DR2-08-036  
(if applicable)

HEARING TYPE:  LEGISLATIVE  QUASI-JUDICIAL

## RECOMMENDATION:

Adopt **Order No. 2010-0028**, which has findings that the Fred Meyer gas station proposal meets the applicable Newberg Development Code criteria as conditioned and approves the conditional use permit/design review application.

## EXECUTIVE SUMMARY:

Fred Meyer submitted a conditional use permit/design review application on January 9, 2009 to add a gas station to the western part of the site, near the garden center. The Planning Commission held a hearing on February 12, 2009, during which questions arose about whether the Oregon Department of Transportation would require other changes to the site. The hearing was continued to an undetermined date to allow the applicant time to work with ODOT, and the applicant and others time to submit additional information. The applicant obtained access permits from ODOT and submitted additional information. The Planning Commission held the continued hearing on May 13, 2010, continued it to June 10, 2010, and tentatively decided to deny the application pending revised findings. The Planning Commission adopted Resolution 2010-262 on July 8, 2010 with findings denying the conditional use permit/design review application. The Planning Commission denial was primarily based on concerns about an increase in vehicle traffic in front of the main door causing safety issues, and on-site congestion causing drivers to use surrounding streets as part of the parking lot circulation. The applicant appealed the decision to the City Council.

The City Council held a hearing on August 16, 2010 to consider the appeal. After the staff report and public testimony, the City Council continued the hearing to September 7, 2010 at the point of deliberation, and left the record open until September 2, 2010 to allow the applicant to submit a written rebuttal. The City Council continued the hearing on September 7, 2010. They deliberated and found that the proposal does meet the applicable Newberg Development Code criteria with conditions, and does not cause on-site traffic congestion issues or require drivers to use neighboring streets as part of the parking lot circulation. Order 2010-0027 had been drafted to affirm the Planning Commission denial of the proposal; the City Council decided instead to approve the project and reverse the Planning Commission denial, and therefore voted to deny Order 2010-0027 and directed staff to prepare new findings in support of the proposal. A new order number (Order 2010-0028) was assigned for approval of the gas station proposal findings. The City Council needs to vote on Order 2010-0028 with attached findings in order to formally approve the Fred Meyer gas station proposal.

**FISCAL IMPACT:** No fiscal impact.

**STRATEGIC ASSESSMENT:** The proposal would be a type of infill commercial development. In general, Newberg should be supporting infill development as an efficient use of resources as long as it does not result in overall detrimental impacts.

Attachments:

Order 2010-0028 with:

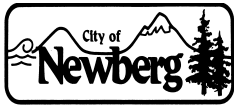
Exhibit A: Findings

Exhibit B: Overall site plan

Exhibit C: Fuel facility site plan

Exhibit D: West 99W access drive





## **ORDER No. 2010-0028**

---

---

**AN ORDER FINDING THAT THE CONDITIONAL USE PERMIT/DESIGN REVIEW APPLICATION FOR THE PROPOSED FRED MEYER GAS STATION AT 3300 PORTLAND ROAD MEETS THE APPLICABLE NEWBERG DEVELOPMENT CODE CRITERIA, REVERSING THE PLANNING COMMISSION DECISION AND APPROVING THE APPLICATION.**

---

---

### **RECITALS:**

1. On January 9, 2009 an application was submitted by Fred Meyer Stores, Inc. requesting a conditional use permit and design review approval for a new gas station at the Fred Meyer property located at 3300 Portland Road. On February 12, 2009, a hearing was held by the Newberg Planning Commission and public testimony was accepted. The hearing was continued to February 26, 2009. This was later extended to May 14, 2009 and then to an undetermined date at the applicant's request to allow the applicant time to work with ODOT and allow the applicant and others time to submit additional information. The applicant submitted additional information on March 10, 2010 and the hearing was finally rescheduled for May 13, 2010.
2. On May 13, 2010, the Newberg Planning Commission held a public hearing, accepted public testimony, closed public testimony, and continued the hearing at the point of deliberation to June 10, 2010. They left the record open for 7 days for additional written testimony to be submitted into the record, and gave the applicant 7 days to respond to the additional testimony. On June 10, 2010, the Planning Commission continued the public hearing, deliberated, and decided that the application did not meet some of the applicable criteria, primarily due to problems with on-site traffic and circulation on neighborhood streets. The Planning Commission tentatively decided to deny the application pending revised findings.
3. On July 8, 2010 the Newberg Planning Commission adopted Resolution 2010-262, finding that the conditional use permit/design review application does not meet the applicable Newberg Development Code criteria, and therefore denying the application.
4. On July 21, 2010 the applicant appealed the Planning Commission decision to the City Council.
5. After proper notice, the Newberg City Council held a hearing on August 16, 2010 to consider the appeal application. After the staff report and public testimony, the City Council continued the hearing to September 7, 2010 at the point of deliberation, and left the record open until September 2, 2010 to allow the applicant to submit a written rebuttal.
6. The Newberg City Council continued the hearing on September 7, 2010. They deliberated and found that the proposal does meet the applicable Newberg Development Code criteria as conditioned. Order 2010-0027 had been drafted to affirm the Planning Commission denial of the proposal; the City Council decided to instead approve the project and reverse the Planning Commission denial, and therefore voted to deny Order 2010-0027 and directed staff to prepare new findings in support of the proposal. A new order number (Order 2010-0028) was assigned for

approval of the gas station proposal findings. Approval of Order 2010-0028 with attached findings will formally approve the Fred Meyer gas station proposal.

**THE CITY OF NEWBERG ORDERS AS FOLLOWS:**

1. The City Council finds that the conditional use permit/design review application does meet the applicable Newberg Development Code criteria as conditioned, and adopts the findings and conditions of approval, which are attached hereto as Exhibit A. Exhibits B, C and D are included for supplemental information. Exhibits A, B, C and D are hereby adopted and by this reference incorporated. This decision reverses the Planning Commission decision.
2. The conditional use permit/design review application is hereby approved with the conditions as shown in Exhibit A.

➤ **EFFECTIVE DATE** of this order is the day after the adoption date, which is: September 21, 2010.

**ADOPTED** by the City Council of the City of Newberg, Oregon, this 20<sup>th</sup> day of September, 2010.

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

**ATTEST** by the Mayor this 23<sup>rd</sup> day of September, 2010.

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

- Exhibits:
- A: Findings & Conditions of Approval
  - B: Overall site plan
  - C: Fuel facility site plan
  - D: West 99W access drive

**QUASI-JUDICIAL HISTORY**

By and through the Planning Commission Committee at the 7/8/2010 meeting.  
*(committee name)* *(date)*

**EXHIBIT A: CONDITIONAL USE PERMIT/DESIGN REVIEW FINDINGS**  
**CUP-08-004/DR2-08-036**  
**Fred Meyer gas station**

**I. Procedural issues:**

- 1) One public comment said that the application should be considered void because state law ORS 227.178(5) requires a decision to be made within 365 days (120 day deadline for a decision, plus a maximum of 245 days of extensions), and the application is older than that. The comment also said that in *Stoloff v. City of Portland*, the Land Use Board of Appeals (LUBA) found that ORS227.178(5) renders void any decisions made after the 365 days has expired.

**Excerpt:**

**ORS 227.178 Final action on certain applications required within 120 days; procedure; exceptions; refund of fees.** (1) Except as provided in subsections (3), (5) and (11) of this section, the governing body of a city or its designee shall take final action on an application for a permit, limited land use decision or zone change, including resolution of all appeals under ORS 227.180, within 120 days after the application is deemed complete.

(5) The 120-day period set in subsection (1) of this section may be extended for a specified period of time at the written request of the applicant. The total of all extensions, except as provided in subsection (11) of this section for mediation, may not exceed 245 days.

(6) The 120-day period set in subsection (1) of this section applies:

(a) Only to decisions wholly within the authority and control of the governing body of the city; and

(b) Unless the parties have agreed to mediation as described in subsection (11) of this section or ORS 197.319 (2)(b).

**Finding:** ORS 227.178(6) states that the 120-day period applies only to decisions wholly within the authority and control of the governing body of the city. The Planning Commission decided at the first hearing that they did not want to make a decision on the conditional use permit until they knew what ODOT's decision on access permits would be. The applicant waived the 120 day rule at that time to allow time to apply to ODOT for access permits and return to the Planning Commission. This decision by the Planning Commission meant that the timing of the final decision was no longer wholly under the control of the city, and that the 120 day rule should no longer apply to the decision. The applicant has also noted that the intent of the 120 day rule was to protect the applicant against delay by a public decision-making body. ORS 227.179 says that if the city does not take action within the required time then the applicant can file a petition for a writ of mandamus in the circuit court and request approval of the application. The applicant did not request an extension of the 120 day decision deadline in this case. They instead waived their right to the 120 day deadline. This does not make the application void.

The *Stoloff v. City of Portland* LUBA case does not actually apply to this situation. LUBA did not find in this case that ORS 227.178(5) rendered void any decision made after the 365 days has expired. LUBA noted that they did not need to address that argument because the case was under county law, and ORS 227.178 only applies to cities, not counties.

All of the participants had a full and fair opportunity to argue their case and were not prejudiced. There had been no change to the criteria or standards affecting this application between the time the application was filed and the time the decision was made. No one has identified anything in the local code that was violated, nor anything that could not be met because of the timing of the application and hearing. All parties who had appeared at anytime received continuing notices of all subsequent hearings.

- 2) One public comment said that the appeal application should be dismissed for failure to meet code requirements for a complete application.

**151.056 NOTICE OF APPEAL - TYPE I, II AND III.**

**(A) An appeal for Type I, II, and III decisions shall include an identification of the decision sought to be reviewed, the date of the decision and shall be accompanied by a notice of appeal form provided by the Planning and Building Department. The notice of appeal shall be completed by the applicant and shall contain:**

**(1) An identification of the decision sought to be reviewed, including the date of the decision.**

**(2) A statement of the interest of the person seeking review and that they were a party to the initial proceedings.**

**(3) A detailed statement of the specific grounds on which the appeal is filed.**

**(B) Notice shall be filed with the Community Development Department together with the filing fee and deposit for transcript costs.**

**Finding:** The applicant filed an appeal application using the City's appeal form, identified the decision to be reviewed, the date of the decision, provided a statement of interest as the applicant, and detailed the findings that they felt were flawed as the basis of the appeal. The applicant did not request that a transcript be prepared and therefore did not need to deposit funds for transcript costs. The City determined that the application met the code requirements for completeness, and therefore reviewed the application, and made a decision on the application.

**II. Design Review Criteria That Apply - Newberg Development Code § 151.194 (B):**

**(1) Design compatibility. The proposed design review request incorporates an architectural design which is compatible with and/or superior to existing or proposed uses and structures in the surrounding area. This shall include, but not be limited to, building architecture, materials, colors, roof design, landscape design, and signage.**

**Finding:** During design review the City typically compares the proposed building to the existing buildings that would be immediately adjacent to it for the purpose of determining design compatibility. In this case the proposed gas station is only adjacent to two buildings; the main Fred Meyer store, and the bank building to the north (approximately 200 feet away). The next closest building is at Crossroads Plaza, which is over 400 feet away and is west of Springbrook Road. The proposed gas station will consist of a simple metal canopy over seven fuel dispensers, with a small cashier's kiosk. The canopy will be 18 feet tall, flat-roofed, and 43 feet wide by 126 feet long (5,418 square feet). The cashier's kiosk is a small simple box structure (96 square feet). The canopy and kiosk will be painted beige and light brown, which are similar to colors used on the existing main store building. The existing Fred Meyer store is a large simple box structure with a flat roof. It has a flat masonry wall along most of the western side and a garden center at the southwest corner. The bank building north of the proposed site has a simple modern style, with a similar simple metal canopy structure over its drive-up ATMs. Across the street is an additional gas station with canopy structure which is very similar to the proposal yet larger. Directly across the street is an auto repair facility, which when all of its six bay doors are open, resembles a shell type structure in some respects similar to a canopy. The applicant has provided site plan and elevation drawings of the proposed gas station, which is sufficient information to determine if the proposed design is compatible with nearby buildings. The City does not require renderings or models for proposed new buildings. The proposed signs will be similar to the existing signs on site. Exterior lights will be directed onto the site so as to not adversely affect the adjoining properties. The overall design will

blend with the surrounding area by the use of landscaping buffering and screening. As proposed, the Fred Meyer gas station proposal is compatible with structures in the surrounding area because the structure has been designed to match the existing Fred Meyer building in style and color, and the canopy is similar in style to the bank building canopy to the north.

Redevelopment of this portion of the parking lot will take down two large overhead parking lot lights. The applicant has also agreed to shield two lights along the side of the building of the main structure so as to reduce the amount of light generated from this side of the site. All of the new lights utilized by the canopy will be recessed and directed so that the light only shines down. The new light generated from the development will be inconsequential at the property line, and the removal of two parking lot lights and the shielding of two other lights will reduce the amount of light generated by the current site. The applicant also intends to build a fence, and add additional landscaping to the westerly edge of the new development which will further obscure any light intrusion off site.

The proposed new structures will be of the same color pattern as the current structure. This will allow the new structure to blend in with the current structure. The proposed structure has a very similar design to the two canopies near by (US Bank and gas station) and is similar in nature to the auto repair facility. Its architectural design is compatible and /or superior to the surrounding structures. Signage proposed also is of similar style to the signage at these nearby buildings. There is sufficient detail in all of the materials provided by the applicant to make this determination. It is not necessary to have a rendering or three dimensional images to assess the compatibility of the development.

Because of these design features, the Council finds that the architectural design is compatible with and/or superior to existing or proposed uses and structures in the surrounding area in terms of building architecture, materials, colors, roof design, landscape design, and signage.

- (2) ***Parking and on-site circulation. Parking areas shall meet the requirements of § 151.610. Parking studies may be required to determine if adequate parking and circulation are provided for uses not specifically identified in § 151.610. Provisions shall be made to provide efficient and adequate on-site circulation without using the public streets as part of the parking lot circulation pattern. Parking areas shall be designed so that vehicles can efficiently enter and exit the public streets with a minimum impact on the functioning of the public street.***

**Finding:** The site includes the main Fred Meyer store, the proposed fueling facility, an in-store bank, a beauty shop, a print shop, and a key shop. The parking requirements are calculated below:

<b>USE</b> (square feet)	<b>PARKING STANDARD</b>	<b>SPACES REQUIRED</b>
Existing F.M. store (143,181 s.f.)	1 space per 300 s.f.	477.3
Fueling facility kiosk (96 s.f.)	1 space per 300 s.f.	0.32
Bank (736 s.f.)	1 space per 400 s.f.	1.84
Beauty shop (1,500 s.f.)	1 space per 75 s.f.	20
Key shop (288 s.f.)	1 space per 300 s.f.	0.96
Print shop (1,500 s.f.)	1 space per 300 s.f.	5
<b>Total required parking</b>		<b>506</b>
<b>Parking available after project completed</b>		<b>666</b>
<b>Surplus parking</b>		<b>160</b>

The minimum number of required parking spaces for the site is 506. The proposed fueling facility and southeast pedestrian walkway will remove approximately 60 spaces, leaving a total of 666 spaces. The site will still have 160 more parking spaces than required. The reduction of surplus parking is a positive step and makes more efficient use of the site.

The surplus parking spaces near the garden center are lightly used by customers most of the year. One question that was asked at the February hearing was how the fueling facility would affect the garden center during the times when the garden center was active (typically spring and summer weekends). Staff has observed that the garden center is currently open on the weekends, and a recent visit on a Saturday afternoon showed that approx. 1/3 of the nearby parking was being used. While this was not a thorough parking study, it did not appear that adding a fueling facility near the garden center would create a parking conflict. The applicant does not expect parking conflicts to occur during peak garden center use.

One concern raised at the hearing was that there were many storage containers on the south and west portions of the site. Fred Meyer has offered to remove all storage containers from the site. Storage containers should not be placed in the parking areas, even though the applicant has surplus parking. Storage containers can reasonably be left for a time in the loading area south of the building. The applicant is therefore conditioned to remove storage containers from the parking areas, and to only place storage containers in the loading area on the south side of the building.

The driveway access on Springbrook Road was changed to right-in/right-out approximately two years ago, and should limit the amount of traffic that travels south on Springbrook Road to reach the gas station.

As part of this project, the applicant will widen the radius of the west 99W entrance to better accommodate large vehicles, and widen the one-lane access driveway to provide separate left- and right-turn lanes at the intersection with the Fred Meyer access drive. This new widened entry will have a 3 way stop sign control and speed bumps will be removed. These changes will improve the flow of traffic turning right at the access drive to reach the gas station, and keep traffic from backing up onto 99W. By adding a three way stop control at this location, there will be a quicker absorption on the site of the incoming traffic. However, that stop control will continuously create gapping in front of the main entrance. The main entrance on this site is a bit of a misnomer, because the grocery store entrance is actually utilized the most with about sixty percent of the traffic from the site. However, the main entry has the potential for pedestrian conflict because the main drive aisle crosses in front of the main entry between the entry and parking area. The stop signs at the entry mentioned above, and stop signs at the secondary 99W entry, will create gapping and slowing of the traffic as it approaches the main entry. The applicant has also proposed in two different locations adding a concrete surface with differentiated color where the pedestrians will cross. There are also stop signs at the pedestrian crossing, so not only are the vehicles to stop at the entry ways, but they are also required to stop at the pedestrian crossing area which because of its different material and color will be quite noticeable to vehicles. These changes on the entry and/or pedestrian ways will improve pedestrian safety throughout the site. These changes will provide efficient and adequate on site circulation for both automobiles and for pedestrians. There was no testimony in any of the extensive public hearings that indicated that there had ever been any pedestrian accidents and/or injuries on the site. In the absence of any such evidence, and in consideration of these changes, pedestrian safety and vehicle circulation will be improved.

The applicant supplied a drawing showing the travel path of a semi-truck (type WB-50, approx. 50 feet long) using the redesigned west access drive. The consultant also furnished a drawing showing

how fuel delivery vehicles would access the site from Springbrook Road, and commented that while the delivery truck is at the fuel facility, only the two southernmost pumps will be blocked. Fred Meyer has committed to limiting fuel deliveries to off-peak times.

ODOT reviewed the revised access plan and fuel delivery vehicle drawings in the March 10, 2010 submittal. The Roadway Engineer's comments on the Fred Meyers right-in approach road improvement schematic are:

The proposed WB-50 should be adequate for the fuel delivery design vehicle.

The consultant's off-tracking design looks adequate.

ODOT will still need to ensure that all work within ODOT right-of-way meets ODOT standards and engineering plans will need to be review and approved by ODOT, therefore our recommend condition remains the same.

- Prior to the insurance of a building permit for construction, the applicant shall provide evidence that all improvements required by the Oregon Department of Transportation are constructed and provide evidence of valid approach road permits to serve the new proposed use have been obtained from the Oregon Department of Transportation.

The proposed modifications to the western access involve changes in the public right-of-way, which is under ODOT's jurisdiction, and on private property, which is under the City's jurisdiction. In order to ensure coordination with both ODOT and the City the condition above will be modified to state that ODOT permits for the western access drive modifications must be obtained before the City will issue a building permit for the gas station and other on-site improvements, and that the ODOT and City approved modifications must be completed before the City will approve occupancy of the gas station.

The applicant has proposed changes to the on-site pedestrian circulation. The current pedestrian walkway from the NW corner of the Fred Meyer store to the U.S. Bank building is a long diagonal path. The fueling facility is expected to increase the amount of vehicle traffic near the bank driveway, so the diagonal walkway has been changed to two shorter walkways at right angles to vehicle traffic. The total walking distance is longer but should be safer. Stop bars have been added to improve the control of vehicle traffic between Fred Meyer and the bank building. The applicant has also proposed adding another pedestrian walkway at the southeast corner of the site. This SE walkway will help the existing building better meet the pedestrian connectivity standards in the Newberg Development Code.

This criterion requires adequate on-site circulation without using the public streets as part of the parking lot circulation pattern. The City Council interprets this provision to mean that vehicles, once entering the site, should not have to exit the site onto a public street to access a different potential destination on the site, nor should the public streets serve essentially the same function as the drive aisle in a parking lot. There is no evidence to suggest that vehicle circulation on site will utilize public streets. There is complete access in and around the structures on the site. This includes access completely around the large grocery store structure. With the ability to go in front of or behind the store to access the other sides of the site, there is no rational basis to believe that vehicles will go offsite utilizing a public street to circulate to another part of the site. Once on site, all vehicle trips to other parts of the site will occur on site.

When Fred Meyer was initially designed, Newberg did not have a maximum parking standard. As a result, Fred Meyer parking lot contains many more spaces than would now be allowed. The changes have occurred because Newberg has taken a more proactive approach to avoid under utilizing impervious surfaces. This area is a great example of an unutilized and impervious surface as this

parking area is often empty and even during the growing season, only a small portion of it is utilized. By allowing this redevelopment, the City is meeting their strategic goal of supporting infill development.

Some public comments were concerned about the increase in vehicle traffic in front of the north entrance to the main store. The applicant’s traffic engineer has estimated that the increase will be approximately 41 trips per hour in each direction, and that the total volume will be below that at other Fred Meyer stores in the region. The applicant has proposed revising the traffic controls in front of the north entrance by adding stop signs, striping and textured concrete crossing areas to reinforce that the area is a pedestrian crossing, which will mitigate the impact of the project to pedestrians.

Following completion of design review conditions, the parking lot design will enable improved and more efficient use of the existing parking area and will also provide an internal pedestrian connection with adjacent property. The proposal meets this criterion as conditioned because it will provide efficient and adequate on-site circulation without using the public streets as part of the parking lot circulation pattern, and vehicles will be able to efficiently enter and exit the public streets with a minimum impact on the functioning of the public street.

- (3) ***Setbacks and general requirements. The proposal shall comply with §§ 151.535 through 151.540 dealing with height restrictions and public access; and §§ 151.550 through 151.568 dealing with setbacks, coverage, vision clearance, and yard requirements.***

***Exterior Lighting: 151.588 REQUIREMENTS.***

***(A) General requirements: All zoning districts.***

***(1) Low level light fixtures include exterior lights which are installed between ground level and six feet tall. Low level light fixtures are considered non-intrusive and are unrestricted by this code.***

***(2) Medium level light fixtures include exterior lights which are installed between six feet and 15 feet above ground level. Medium level light fixtures must either comply with the shielding requirements of division (B) below, or the applicant shall show that light trespass from a property has been designed not to exceed 0.5 foot-candle at the property line.***

***(3) High level light fixtures include exterior lights which are installed 15 feet or more above ground level. High level light fixtures must comply with the shielding requirements of (B) below, and light trespass from a property may not to exceed 0.5 foot-candle at the property line.***

***(B) Table of shielding requirements***

<i>Fixture Lamp Type</i>	<i>Shielded</i>
<i>Low/High Pressure Sodium, Mercury Vapor, Metal Halide and Fluorescent over 50 watts</i>	<i>Fully</i>
<i>Incandescent over 160 watts</i>	<i>Fully</i>
<i>Incandescent 160 watts or less</i>	<i>None</i>
<i>Fossil fuel</i>	<i>None</i>
<i>Any light source of 50 watts or less</i>	<i>None</i>
<i>Other sources</i>	<i>As approved by § <a href="#">151.587</a></i>

*Note: Incandescent includes tungsten-halogen (quartz) lamps*

**Finding:** The proposed canopy is 18 feet tall, setback over 70 feet from any property line, and does not create any corner vision clearance problems. The proposed freestanding sign on Springbrook Road is close to the vision clearance area; the applicant will need to confirm at the building permit stage that the sign is outside the vision clearance setback. The C-2 zone does not have a set height



limit, and only requires a 10 foot setback from the front property line. The site has public access. Following compliance with design review conditions, the proposed project will meet the height restrictions and public access requirements, setback, coverage, vision clearance and yard requirements of the Code.

The applicant's photometric plan shows that the proposed lighting for the fueling facility does meet the light trespass standard (maximum 0.5 foot-candles) at the property lines. The canopy lights are all located under the canopy, and do not project on the sides of the canopy. The western side of the canopy only has an internally illuminated logo sign. The underside canopy lights are required to be fully shielded, and therefore should all be recessed lights. The recessed lights will control light more effectively than the flat Encore or movable Focus light fixtures. The applicant has also offered to add shields to the existing wall-mounted lights above the garden center, which will further reduce the light impact. The development will also remove two tall parking lot lights. As a result there will be a net reduction in light.

Many public comments were concerned about the impact of increased ambient light on the drive-in theater to the west. This is a concern that the City shares, and is an example of why light-trespass standards were added to the Development Code in the past. The applicant is removing two tall parking lot lighting standards from the site, and will provide recessed lighting under the canopy to ensure that it does not exceed the light trespass standard. As conditioned, this may actually reduced the amount of ambient light that currently comes from the site. One other light source that should be considered are the headlights of vehicles using the gas station. Some of these headlights will point west in the general direction of the theater. This impact can be controlled by a dense landscape buffer along the western edge of the site. The existing western landscape buffer is quite dense and largely meets the need for a light barrier. There are a few gaps in the buffer that should be filled in with additional evergreen trees. The applicant will also build a light obscuring fence at this location. The applicant has agreed to also add a fence along the western side of the gas station in the landscape buffer to block headlights (approx. 5-6 feet tall). The applicant will also need to ensure that construction lights are not pointed towards the drive-in during times when movies will be shown. If all of the previously mentioned conditions are required then a light study done in the field is not necessary. It should be noted that the proposed development site is approximately 950 feet from the drive-in screen, which will further diminish any potential light impact from the site. As conditioned, the proposed fueling facility will meet the Development Code light trespass standard and control the impact of lights from the facility.

The Council finds the proposal complies with §§ 151.535 through 151.540 dealing with height restrictions and public access; and §§ 151.550 through 151.568 dealing with setbacks, coverage, vision clearance, and yard requirements as conditioned.

**(4) *Landscaping requirements. The proposal shall comply with § 151.580 dealing with landscape requirements and landscape screening.***

**Finding:** The proposed fueling facility will remove some parking lot landscape islands and reconfigure a few others. The overall amount of landscaping coverage on site will decrease slightly to 15.47%. This exceeds the 15% minimum landscape requirement. As noted above, the western landscape buffer is in good condition and will be an effective buffer against headlights once the few gaps are filled in. The gaps without evergreen trees should be planted with evergreens similar to the existing trees. The applicant intends to plant the reconfigured parking lot landscape islands with trees and shrubs similar to the existing landscape islands in the parking lot. The landscape plan should include replacement trees along the reconfigured western 99W access drive. The existing parking lot

islands elsewhere on the site should be inspected; any missing or damaged parking lot trees should be replaced. The code also requires that a parking or loading area must have at least 25 square feet of landscaping per parking space. As proposed, the site will have 666 parking spaces, which requires at least 16,650 square feet of landscaping. The site has approx. 116,970 square feet of landscaping overall, and over 23,000 square feet of landscaping in the parking area, which exceeds the standard. All areas subject to the final design review plan and not otherwise improved are landscaped. Following compliance with design review conditions, the landscape plan and parking lot complies with § 151.580.

(5) ***Signs. Signs shall comply with § 151.590 et seq. dealing with signs.***

**Finding:** The existing freestanding sign on Portland Road is just under 20 feet tall, setback 25 feet from the front property line, and has 119 square feet of signage. This sign meets the height and setback requirements and is allowed to have up to 200 square feet of signage because the site is larger than 10 acres and has over 200 feet of frontage on Portland Road. The applicant is proposing to remove one panel from the sign and replace it with price signs for the fueling station. This will meet the code standards as long as the sign remains under 200 square feet in area.

The applicant is also proposing a new freestanding sign on Springbrook Road that will be 9'6" tall, setback approximately 12 feet from the front property line, and have 40 square feet of signage. The applicant will need to move the sign location slightly so that it is setback at least 15 feet from the front property line, and verify that it meets the vision clearance setback at the corner.

The canopy will have attached signs on each side. There will be a 26 square foot logo and Fred Meyer sign on each side, and an additional 60 square foot sign on the east side facing the store. The proposed signs are under the maximum size for the canopy (43 square feet on the short sides, and 126 square feet on the long sides) and are allowed.

Following compliance with design review conditions, the proposed signage complies with § 151.590.

(6) ***Manufactured home, mobile home and RV parks. Manufactured home, mobile home, and recreational vehicle parks shall also comply with the standards listed in §§ 151.655 et seq., in addition to the other criteria listed in this section.***

**Finding:** Not applicable - not a manufactured home, mobile home or RV park.

(7) ***Zoning district compliance. The proposed use shall be listed as a permitted or conditionally permitted use in the zoning district in which it is located as found in §§ 151.280 through 151.438. Through this site review process, the Director may make a determination that a use is determined to be similar to those listed in the applicable zoning district, if it is not already specifically listed. In this case, the Director shall make a finding that the use shall not have any different or more detrimental effects upon the adjoining neighborhood area than those specifically listed.***

**Finding:** The site is zoned C-2 Community Commercial. A service station is a permitted use in the C-2 zone. The proposed use is a service station, the use is listed as a permitted use.

(8) ***Sub-district compliance. Properties located within sub-districts shall comply with the provisions of those sub-districts located in §§ 151.450 through 151.526.***

**Finding:** A portion of the Fred Meyer site has a Stream Corridor zoning sub-district on it. The Stream Corridor is west of the proposed fueling facility, and no development will take place within the overlay area. Erosion control measures will be required as part of the grading plan to ensure that

demolition and construction will not create any short-term impacts on the stream. Following compliance with design review conditions, the project meets the provisions of §§ 151.450 through 151.526.

- 9) *Alternative circulation, roadway frontage improvements and utility improvements. Where applicable, new developments shall provide for access for vehicles and pedestrians to adjacent properties which are currently developed or will be developed in the future. This may be accomplished through the provision of local public streets or private access and utility easements. At the time of development of a parcel, provisions shall be made to develop the adjacent street frontage in accordance with city street standards and the standards contained in the transportation plan. At the discretion of the city, these improvements may be deferred through use of a deferred improvement agreement or other form of security.*

**Finding:** The proposed development will be within the existing Fred Meyer site and will use existing driveway accesses and drive aisles. The applicant has applied for and obtained access permits from ODOT for the project. One requirement was to modify the western 99W access drive (a right-in only access). The modifications would widen the radius of the entrance to better accommodate large vehicles, and would widen the one-lane access driveway to provide separate left- and right-turn lanes at the intersection with the Fred Meyer access drive and add stop sign on all legs of the intersection. No modifications were required at the eastern right-in/right-out 99W access drive.

No other major roadway, driveway, or utility improvements are proposed. The pedestrian walkways and traffic controls in the drive aisle directly north of the site will be reconfigured to make pedestrian crossings safer (at right angles to traffic) and change the vehicle flow so that it will be easier to access the fuel facility area of the site. The pedestrian walkway in the SE area will improve pedestrian access to the site for the Springbrook Oaks neighborhood. The traffic controls in front of the north entrance to the main store will be improved by adding stop signs, striping and textured concrete crossing areas, which will mitigate the impact of the project to pedestrians. Following compliance with design review conditions, the new development will meet the standards contained within the Transportation Plan. All utilities, including telephone, cable and power, are required to be placed underground.

The Fire Department commented that the construction site cannot hinder fire access to the main building. New fire hydrants may be necessary.

The existing parking lot catch basins discharge stormwater into a vegetated bioswale located west of the parking lot. Public Works commented that all on-site utilities are to be private, constructed per the plumbing code. Provide an oil-water separator for the under canopy drainage area that is in use at all times. The utility plan does not show any water lines, but one will be needed for the water/air service area. This water line must be a private water line. If a fire hydrant is required then the hydrant and line to it will be public, and will need a public utility easement. Following compliance with design review conditions, the proposal will meet the City's stormwater standards and other public utility standards.

- (10) *Traffic study improvements. If a traffic study is required, improvements identified in the traffic study shall be implemented as required by the Director.*

**Finding:** Some public comments have said that the City is relying solely on the applicant's traffic

study to identify impacts. That is incorrect. The Development Code requires projects that will generate over 40 trips in the p.m. peak hour to supply a traffic study by a professional traffic engineer. The city Planning and Engineering divisions then review the traffic study as part of their review of the proposal and decide whether they think the traffic study's analysis and conclusions are reasonable. Staff also uses the input from ODOT to determine if the traffic study results are reasonable. ODOT focuses primarily on impacts to state highways, but their input provides another valuable perspective on the project and its overall traffic impacts. The ultimate findings and conditions are based on the facts that have been judged reasonable and relevant, based on input from the applicant, the public, ODOT, and staff.

A traffic impact study was prepared for the proposed development by Group Mackenzie, a professional engineering firm. ODOT required that the applicant change how they performed the peak hour factor analysis, queuing analysis, and TIS capacity analysis. Group Mackenzie revised the traffic study and submitted it to the city and ODOT. The study reviewed the impact of the fuel facility development on the driveways and surrounding intersections. The study also looked at the crash history in the area, completed a site distance review, and considered the queuing impact at the entrances. The review projected the traffic impact in 2009 as well as in 2025, both with and without the bypass. The study also reviewed the on-site circulation, and recommended that the traffic controls in the drive aisle north of the fuel facility be changed to an all-way stop, as mentioned above, which will both better control vehicle traffic and improve the safety of pedestrian crossings.

The study concluded that the site distances at the existing driveways exceeded AASHTO (American Association of State and Highway Transportation Officials) standards and did not require any improvements. The crash history of nearby intersections and the queuing analysis also did not indicate a need for any improvements. The queuing analysis indicates that vehicles on Springbrook may spill back to the Fred Meyer access under existing conditions, and this would continue with the addition of fuel facility trips. This does not pose a safety problem, as the Fred Meyer driveway is limited to right turns. Vehicles entering Springbrook from the Fred Meyer driveway would simply need to wait for the queue to clear before entering the roadway. This only occurs occasionally during peak times.

The trip generation study used standard ITE (Institute of Transportation Engineers) trip generation estimates, which assume that approximately 20% of the trips to the fuel facility would be internal trips or shared trips. This is probably a conservative estimate, as Fred Meyer surveys at other stores have shown that approx. 70% of the fuel customers also had Reward cards and had shopped at the store at least once in the previous month. The actual percentage of shared or internal trips may be as high as 30 or 40%. Using the conservative 20% internal trip assumption, the study estimated that the fuel facility would generate 74 new trips in the PM peak hour. These trips were assigned to nearby intersections and their impact was analyzed. The study concluded that the impact was minor and no mitigating improvements were required to meet city standards. The nearby intersections will meet City level of service standards in 2009. The Springbrook and Brutscher intersections on 99W, however, are above ODOT's desired v/c (volume to capacity ratio) of 0.75 already, and the addition of traffic from this development has some impact on intersection capacity (increases the v/c ratio by 0.01). ODOT required the applicant to propose mitigation to address the v/c increase in the revised traffic study.

The study determined that modifying the existing Springbrook lane configurations could improve the v/c ratio from 0.84 to 0.81 but would create other issues. The overall intersection performance would not improve, and the study did not recommend making these changes. Any significant mitigation would require widening and redesign of the intersection. ODOT commented that they did not support

the mitigation as it would not improve the overall intersection operation, and agreed that any significant mitigation would require widening and redesign of this intersection. The study found that the 99W/Brutscher intersection could be mitigated to reduce the v/c ratio from 0.86 to 0.80 by switching the signal from a northbound/southbound common green to split phases, and changing the northbound lane configurations to a left turn only and shared left/through/right turn. ODOT has commented that they do not support the mitigation, due to expected increase in property damage crashes caused by shared left/through/right lanes and increased delays on 99W due to split-phasing the traffic lights.

ODOT commented that if the city places a condition requiring the developer to contribute towards future improvements at the Springbrook/99W intersection then that will satisfy ODOT's concerns regarding impacts from this development at those intersections. The city will require a traffic impact fee for future improvements at the Springbrook/99W intersection, as ODOT requested, based on the impact from this development. The traffic study estimated that this project would add 45 trips during the PM peak hour to the Springbrook/99W intersection. This is approximately 8/10 of 1% of the total trips through the intersection in the peak hour. The estimated cost of a future intersection improvement is \$1,500,000.00, so the applicant's impact fee will be \$12,400.00. These funds would be used to either improve the intersection directly or indirectly by providing alternate improvements that would reduce volumes through the intersection.

The applicant has applied for and obtained access permits from ODOT for the project. One requirement was to modify the western 99W access drive (a right-in only access). The modifications would widen the radius of the entrance to better accommodate large vehicles, and would widen the one-lane access driveway to provide separate left- and right-turn lanes at the intersection with the Fred Meyer access drive. ODOT's specific comments in the access permit were:

1. The two lane right-in only approach shall be constructed so that it is long enough to ensure that traffic going to the fueling station in the right lane is not blocked by traffic turning left to go to the store. If necessary to correct any problems caused by queuing, an all-way stop shall be added to the main aisle later if it is needed.
2. The radius of the right-in approach shall be constructed in such a way that it can accommodate large vehicles without being damaged. Fred Meyer shall be required to obtain ODOT's approval for a design vehicle and approach design.

ODOT access permit approval letter noted that two conditions would apply:

1. If traffic backs up to the property line at any time, ODOT reserves the right to review approval of the right-in only approach.
2. If the crash history changes due to the weaving pattern between Springbrook and the right-in only approach, ODOT reserves the right to review approval of the right-in only approach.

ODOT did not require any modifications at the eastern right-in/right-out 99W access drive. The access permit included one condition:

1. If the eastbound traffic queue backing up from the signal at Brutscher begins to block the right-in right-out approach, ODOT reserves the right to review approval of the approach and to require changes.

In the March 10, 2010 submittal the traffic engineer supplied a drawing showing the travel path of a semi-truck (type WB-50, approx. 50 feet long) using the redesigned west access drive. The consultant also furnished a drawing showing how fuel delivery vehicles would access the site from Springbrook Road, and commented that while the delivery truck is at the fuel facility, only the two southernmost pumps will be blocked. Fred Meyer has committed to limiting fuel deliveries to off-peak times. The

traffic engineer also addressed comments from Robert Bernstein about the impact at the Springbrook/99W intersection and the utilization factors in the analysis. The traffic engineer summarized that the utilization factors are appropriate, consistent with ODOT standards, and that the project will add only slight delays at the intersection, not significant congestion. This seems to be a reasonable conclusion, as ODOT tends to take a conservative approach to traffic analysis and it seems unlikely that the addition of 74 new trips in the p.m. peak hour, distributed across all of the Fred Meyer accesses, could create significant additional congestion at the Springbrook/99W intersection.

ODOT reviewed the March 10, 2010 submittal, including the revised access plan and fuel delivery vehicle drawings. The Roadway Engineer's comments on the Fred Meyer right-in approach road improvement schematic are:

The proposed WB-50 should be adequate for the fuel delivery design vehicle.

The consultant's off-tracking design looks adequate.

ODOT will still need to ensure that all work within ODOT right-of-way meets ODOT standards and engineering plans will need to be review and approved by ODOT, therefore our recommend condition remains the same.

- Prior to the insurance of a building permit for construction, the applicant shall provide evidence that all improvements required by the Oregon Department of Transportation are constructed and provide evidence of valid approach road permits to serve the new proposed use have been obtained from the Oregon Department of Transportation.

The proposed modifications to the western access involve changes in the public right-of-way, which is under ODOT's jurisdiction, and on private property, which is under the City's jurisdiction. In order to ensure coordination with both ODOT and the City the condition above will be modified to state that ODOT permits for the western access drive modifications must be obtained before the City will issue a building permit for the gas station and other on-site improvements, and that the ODOT and City approved modifications must be completed before the City will approve occupancy of the gas station.

The applicant also submitted an analysis of the traffic impacts if the gas station was located on the eastern side of Fred Meyer, near the bottle return. The net result was a decrease in traffic at the Springbrook and 99W driveways, and an increase in traffic at the Brutscher driveways. This would also put the gas station farther from the drive-in and reduce the potential light impact. Staff would not recommend approving the eastern location, however, due to the increase in traffic at a busy part of the Fred Meyer site, and the potential for negative impacts on the residential properties to the south.

At the conclusion of this project, the following transportation and access improvements will be completed:

- Reconfigure the private walkway and traffic controls north of the fueling facility as proposed on the site plan.
- Add a new private walkway on the southeast portion of the site as proposed on the site plan.
- Revise the traffic controls in front of the north entrance to the main store by adding stop signs, striping and textured concrete crossing areas.
- Change main pedestrian striping, to concrete of a contrasting color.
- City will collect a traffic impact fee towards future improvements at the Springbrook/99W intersection.
- Widen the radius of the west 99W entrance to better accommodate large vehicles, and widen the one-lane access driveway to provide separate left- and right-turn lanes at the intersection with the Fred Meyer access drive and add stop signs.

- Obtain construction permits from ODOT for any work within the right of way.

Several public comments were concerned about the proposal increasing the amount of traffic in the area, especially cutting through residential neighborhoods south of the site and making it more dangerous for children playing outside. One neighbor collected information on traffic traveling through the townhouses southeast of the Fred Meyer store (Little Oak Street area), and stated that most of the traffic was due to Fred Meyer, and not due to neighborhood residents. It should be noted that the streets in this neighborhood are public streets that anyone may travel on, and that the neighborhood is not a cul-de-sac. When the townhouses were built the streets were already in place and connected from Hayes Street through to the existing Fred Meyer exit as an access to Brutscher Street. It would not be reasonable to expect that only neighborhood residents will use the streets, and it would also not be reasonable to make changes that would add substantial through traffic to the neighborhood streets. The traffic study determined that this proposal would only generate a small increase in trips to the Fred Meyer site, which would be split between all of the Fred Meyer driveways. The traffic engineer also thought that most trips to the fuel facility from the residential area south of the site would travel west on Hayes Street and then north on Springbrook, which would be faster than driving through the Fred Meyer site to reach the fuel facility. If traffic could be discouraged from cutting through behind Fred Meyer then that would probably reduce the amount of traffic that cuts through the neighborhood. One condition of this project should be a requirement to post the loading area behind the store “No through traffic – delivery trucks only.” The 5/27/10 follow-up letter from Group Mackenzie estimated that one-half of one percent of the trips generated by the existing Fred Meyer store cut through the Little Oak neighborhood. Applying this percentage to the additional trips from the fuel facility would only add one trip through the neighborhood during the p.m. peak. Even if Group Mackenzie’s estimates are too low, and the traffic is four times larger than they estimated, then that would still be only 4 additional through trips in the neighborhood in the p.m. peak hour, which is not a substantial increase.

Following compliance with the design review conditions noted above, the proposal meets the applicable Newberg Development Code criteria for transportation improvements.

### **III. § 151.196 ADDITIONAL REQUIREMENTS FOR DEVELOPMENT IN THE C-2 ZONING DISTRICT.**

*The purpose of this section is to ensure that development in the C-2 Zoning District is designed to promote pedestrian and bicycle uses and improve aesthetics and compatibility. An applicant for a new development or redevelopment within the C-2 Zoning District, which is subject to the Site Design Review process, must demonstrate that the following site and building design elements have been incorporated into the design of the project. Exceptions to these additional development requirements may be granted if the requirements would result in construction that is out of character with surrounding development. Applicants for redevelopment of a designated landmark will not be subject to these additional requirements, except for requirements regarding parking and service drives.*

*(A) Building entrances. Each building on a lot shall have a primary pedestrian entrance oriented to the primary street. “Oriented to a street” means that the building entrance faces the street or is connected to the street by a direct and convenient pathway not exceeding 60 feet in length. “Primary street” means the street which has the highest estimated volume of pedestrian traffic. This requirement does not apply to buildings that are located behind other buildings on the lot such that 50% or more of their building frontage is blocked by*

*the front building, as measured by sight lines that are perpendicular to the street right-of-way. Such rear buildings shall have a primary entrance oriented to an internal sidewalk or pedestrian pathway system which is internally connected and provides a connection to the primary street.*

**Finding:** The primary street in this case is Portland Road to the north. Portland Road has extensive sidewalks and high pedestrian utilization and Springbrook does not. The site of the kiosk and canopy will be obscured by the U.S. Bank such that 50% or more of the building frontage is blocked by the front building. As a result, this requirement does not apply. The kiosk will be connected to internal pedestrian pathways that are connected to 99W.

The fueling facility is an unusual addition in that it does not have a pedestrian entrance. There is a pedestrian connection to the main store via internal walkways to Springbrook Road and Portland Road. Almost all customers to the fueling facility, however, will naturally be in vehicles. The only pedestrians on the site will typically be the station attendants. The main Fred Meyer building does have a main pedestrian entrance that faces Portland Road.

*(B) Parking and service drives. No off-street parking or service drives shall be placed within the required front yard setback. No off-street parking shall be placed between the front property line of the primary street, as defined in division (A) above, and the building. This requirement does not apply to buildings that are located behind other buildings on the lot such that 50% or more of their building frontage is blocked by the front building, as measured by sight lines that are perpendicular to the street right-of-way.*

**Finding:** The proposal will not place off-street parking or a service drive within the required 10 foot deep front yard setback, and will not place off-street parking between the building and any street. The proposal therefore meets this criterion. The existing site does have parking between the west side of the main building and Springbrook Road. This fueling facility will remove some of this parking and bring the overall site closer to meeting this criterion.

The primary street is Portland Road not Springbrook, because Portland Road has extensive sidewalks and high pedestrian utilization and Springbrook does not. The site of the kiosk and canopy will be obscured from Portland Road by the U.S. Bank Building. As a result, the requirement that no parking be placed between the building and the road does not apply.

*(C) Exceptions. The review body may approve exceptions to the above provided there are no reasonable alternatives that would allow access to or parking on the lot.*

**Finding:**

The building is not required to meet the building orientation rules of Section A (see above), and the proposal meets the standards under Section (B). Therefore an exception is not needed.

*(D) Building mass. Where building elevations are oriented to the street in conformance with (A) above, architectural features such as windows, pedestrian entrances, building offsets, projections, detailing, change in materials or similar features, shall be used to break up and articulate large building surfaces and volumes.*

**Finding:** The building is not required to meet the building orientation rules of Section A (see above).



Therefore this provision does not apply. Nevertheless, the proposed building is a canopy and has very little mass. No architectural detailing or off-sets are needed to break up the mass of the building because there are no large building surfaces or volumes. The gas station meets this criterion as proposed.

***(E) Corner lots. Buildings on corner lots shall have their primary entrance oriented to the street corner, or within 40 feet of the street corner (i.e., as measured from the lot corner). In this case, the street corner shall provide an extra-wide sidewalk or plaza area with landscaping, seating or other pedestrian amenities. The building corner shall provide architectural detailing or beveling to add visual interest to the corner.***

**Finding:** This standard does not apply, as the fueling facility is not near a corner. The corner of the lot at Springbrook/99W is dedicated to a stormwater detention pond.

If the site were deemed to be a corner lot then an exception should be approved. Orienting the kiosk to the corner would be out of character with the adjacent gas station, bank and car repair shop and would serve no pedestrian or aesthetic purpose.

***(F) Pedestrian-scale building entrances. Recessed entries, canopies, and/or similar features shall be used at the entries to buildings in order to create a pedestrian-scale.***

**Finding:** The canopy does not have a pedestrian entrance, and the kiosk and is not open to the public. The kiosk building, although not open to the public, is of pedestrian scale (at 96 square feet) and is served by a canopy. This standard is met.

***(G) Windows.***

***(1) On commercial building facades facing a public street, windows shall comprise a minimum of 40% of the ground floor facade. For large-scale buildings and developments meeting the standards under subsection (H) below, windows shall comprise a minimum of 20% of the ground floor façade.***

***(2) For large-scale buildings and developments meeting the standards under subsection (H) below, 50% of all required window area shall allow view into an active space. An active space is defined as any area within a building that is used for shopping, dining, office space, and so forth. Merchandise display windows with displays that change at least semi-annually shall be considered an active space. Examples of areas that are considered non-active spaces are storage and mechanical equipment areas, and windows that are obscured by shelving or material affixed to the window.***

**Finding:** The canopy does not have any walls and therefore does not have any windows. It is an active open work space. The cashier's kiosk is a small building that is not open to the public. It does have windows, and its interior is an active space. The area under the canopy can also be considered an active space. The nature of the structure does not allow the canopy to meet this window standard, but it meets the intent of not allowing a large blank wall on a structure. If the structure was required to add walls and windows then it would be out of character with surrounding development, such as the drive-through canopy on the bank to the north. An exception to this standard is therefore justified under the conditional use permit. The fueling facility helps the main building come closer to meeting this standard by adding activity to a side of the building that is largely a blank wall.

***(H) Design of large-scale buildings and developments. All buildings on a development site***

*shall conform to the design standards included under § 151.196 (H) where the total square footage of one commercial building exceeds 30,000 square feet of total ground floor area or all commercial buildings exceed 50,000 square feet of total ground floor area. Deviations from these standards may be approved, where appropriate, through the conditional use permit process.*

*(1) Façade articulation. Incorporate changes in building direction (i.e., articulation), and divide large masses into varying heights and sizes. Such changes may include building offsets; projections; changes in elevation or horizontal direction; sheltering roofs; terraces; a distinct pattern of divisions in surface materials; and use of windows, screening trees; small-scale lighting (e.g., wall-mounted lighting); and similar features. At least five of the following elements shall be included along each 100 feet of building frontage facing a street:*

*(a) A building offset or projection of at least 6 feet depth and width.*

*(b) An awning or roof sheltering a pedestrian walkway or seating area.*

*(c) A building façade shall be comprised of at least two building materials, with the lesser comprising not less than 10% of the total façade.*

*(d) Contrasting brick, stone, or natural wood trim.*

*(e) Pitched roofs or gable-end roofs.*

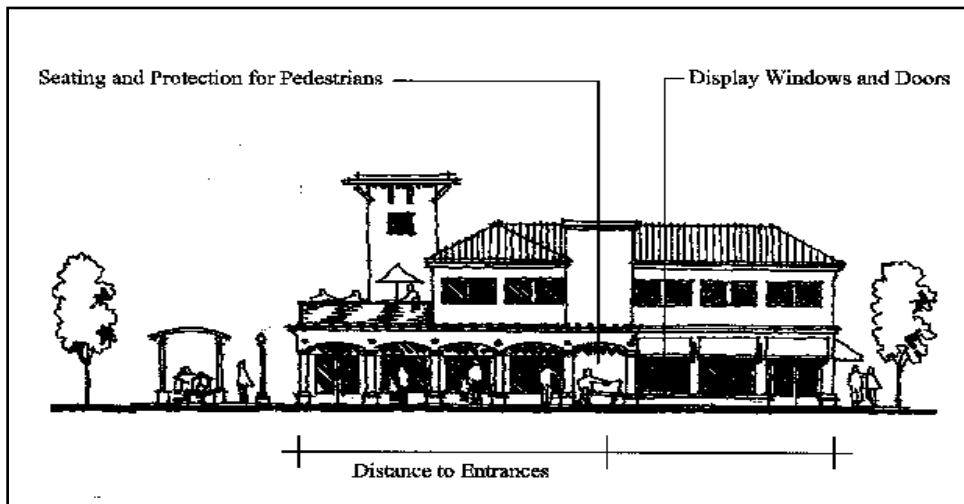
*(f) Curved arches or roof line features.*

*(g) A tower, spire, or cupola.*

*(h) A cornice.*

*(i) Second story windows that comprise a minimum of 10 percent of the second floor façade.*

*[Note: the example shown here is meant to illustrate these building design elements, and should not be interpreted as a required architectural style.]*



**Finding:** The proposed canopy structure does not have a large mass and therefore does not need an articulated façade to break up its mass. An exception to this standard is required and can be granted as long as the proposal meets the conditional use permit criteria. The applicant has applied for a conditional use permit and addressed the conditional use permit criteria below. The canopy will help make the flat western wall of the main Fred Meyer building less visible.

Alternatively, these large scale building code provisions apply when the commercial building exceeds 30,000 square feet. The kiosk will be 96 square feet and the total space over which the canopy will cover is 5,530 square feet. The size of this proposed improvement does not trigger these code requirements. It is not practicable to apply all of the code provisions to the pre-existing main structure when adding an unattached kiosk and canopy. The proposed improvements do not make the site more nonconforming in contrast it improves the conformity by breaking up the blank wall of the main structure.

***(2) Pedestrian entrance. Every building elevation facing a street with a horizontal dimension of more than 100 feet, as measured from end-wall to end-wall, shall have a building entrance no more than 100 from another entrance or end-wall; except that buildings elevations that are unable to provide an entrance due to the internal function of the building space (e.g., mechanical equipment, areas where the public or employees are not received, etc.) may not be required to meet this standard. Pathways shall connect all entrances to the street right-of-way.***

**Finding:** The kiosk does not have a horizontal dimension of 100 feet and therefore this provision does not apply. Alternatively, the fueling facility does not have a pedestrian entrance and an exception to this requirement is appropriate. An exception to this standard can be granted as long as the proposal meets the conditional use permit criteria. The applicant has applied for a conditional use permit and addressed the conditional use permit criteria below

***(3) Building facades not fronting a street. For all ground floor facades that do not face a public street, windows shall comprise a minimum of 20 % of the ground floor façade or a landscape strip shall be provided adjacent to the building. The landscape strip shall be a minimum of 5 feet in width and include a combination of trees, shrubs, and groundcover or grass. Plant material shall be selected from at least two of the different plant material groups (example: trees and shrubs, or lawn and shrubs, or lawn and trees and shrubs). The type of tree selected shall have a crown of less than 15 feet at maturity. Exceptions to this standard include building facades that abut outdoor storage areas, loading docks, and mechanical equipment areas.***

**Finding:** The canopy structure does not have walls or windows, and needs vehicle access on the east and west sides. The kiosk has 20% of its ground floor is made up of windows and has planting strips greater than 5 feet in width. The north and south sides will have landscape buffers nearby, but the proposal may require an exception to this standard. An exception to this standard can be granted as long as the proposal meets the conditional use permit criteria. The applicant has applied for a conditional use permit and addressed the conditional use permit criteria below

***(4) Building orientation. All buildings shall be oriented to a primary street as defined in division (A) or oriented to a plaza or open space within the development site that connects to the primary street. "Oriented to a plaza or open space" means that the building entrance faces the plaza, open space, shared parking area or is connected to the plaza by a direct and convenient pathway not exceeding 60 feet in length.***

**Finding:** The kiosk is oriented toward 99W, however it is not open to the public. The nature of the fueling facility makes it difficult to meet this requirement. If the proposal requires an exception to this standard, an exception to this standard can be granted as long as the proposal meets the conditional use permit criteria. The applicant has applied for a conditional use permit and addressed

the conditional use permit criteria below

**(5) On-site landscaping and screening.**

**(a) A continuous landscape strip, with a five foot minimum width, shall be located perpendicular to groups of 2 or more parking stalls. Within the landscape strip, at a minimum, one deciduous shade tree per seven parking spaces shall be planted to create a partial tree canopy over and around the parking area. The type of tree shall be chosen from the City of Newberg Preferred Street Tree List and have a minimum crown spread of 25 feet. This standard shall apply unless otherwise approved by the Director based on the following alternative standards:**

**1. No more than seven parking stalls shall be grouped together without a landscape island. The landscape island shall have a width and depth no less than 5 feet and contain no less than one deciduous shade tree.**

**or**

**2. Provision of tree planting landscape islands, each of which is at least 16 square feet in size, and spaced no more than 50 feet apart on average, with a maximum of 75 feet, within areas proposed for grouped parking. For every 7 planting landscape islands, 1 shall be no less than 500 square feet in size.**

**Finding:** The proposal will not create new parking areas. Most of the existing parking lot has mature landscaping. The new parking lot landscaping islands will be designed to match the existing landscaping. The western landscape buffer will have a few gaps filled in to complete a dense landscape buffer along that edge.

**(b) At a minimum 50 percent of the parking area shall drain to a storm water mitigation area. The mitigation area shall be designed using best management storm water practices including, but not limited to, bio-swailes, rain gardens, or similar design intended to reduce storm water flow and improve storm water quality.**

**Finding:** No new parking areas are being created, so this criterion does not directly apply. The fuel facility will actually remove approximately 60 parking spaces. There will be a slight increase in impervious surface from this project (approx. 900 square feet). The City Engineering Division has reviewed the application and determined that no stormwater detention is required in order to meet City standards. The stormwater drainage from the gas station location discharges to an existing vegetated bioswale that runs along the western edge of the parking lot. This qualifies as storm water mitigation. The applicant will add an oil/water separator to treat the stormwater collected under the canopy before it is discharged to the bioswale.

If this provisions is applied to the whole site, the proposal would require an exception to this mitigation standard, however, as there is not enough room on the site to make half of the entire existing Fred Meyer parking lot drain to a storm water mitigation area. An exception to this standard can be granted as long as the proposal meets the conditional use permit criteria. The applicant has applied for a conditional use permit and addressed the conditional use permit criteria below. Several people have commented that the applicant's stormwater proposal is substandard, does not meet City standards, and is not state of the art. This proposal has been reviewed by the City Engineering division; it is not substandard, and does meet City standards for stormwater. One public

comment mentioned a filtration system that would provide better stormwater treatment than the oil/water separator. While there may be a better system, it is not required by City stormwater standards and has not been required for any other project in Newberg. The proposed gas station with oil/water separator is, in fact, superior to other gas stations in Newberg because the drainage goes to a large vegetated bioswale before entering the public stormwater system.

*(c) A 20-foot wide landscaped buffer shall be provided between the development and any adjoining residential district. The buffer shall include a continuous 6-foot high sight-obscuring fence or wall, a continuous hedge and/or berm designed to achieve a height of 6-feet upon maturity, a row of trees not more than 35 feet on-center, and shrubs or living groundcover.*

**Finding:** The site has an existing landscape buffer along most of the southern edge of the site adjacent to the residential area. The buffer includes many mature trees. The western part of the southern border only has grass, however, and is adjacent to a multifamily residential site. The applicant should add trees to this southwest buffer similar to the existing trees to the east, spaced not more than 35 feet on-center. As conditioned, the proposal meets this criterion.

*(d) Outdoor storage areas, loading docks, and mechanical equipment areas shall be fenced with 75% opaque site obscuring fencing or screened with landscaping between the area and public streets.*

**Finding:** This requirement is not applicable to the fueling facility as it does not have outdoor storage areas, loading docks or mechanical equipment areas. The site is elevated above the closest streets and has landscape buffers, however, so much of the lower part of the facility will not be visible from adjoining public streets.

*(e) One square foot of interior open space or plaza space shall be required for every 5 square feet of gross floor area. The following features shall be included in the open space or plaza area:*

- 1. One linear foot of seating space shall be required for every 30 square feet of open space or plaza space.*
- 2. One tree shall be provided for every 800 square feet of plaza space or open space.*
- 3. Pedestrian scale lighting according to subsection §151.196(H)(7).*

**Finding:** The fueling facility has only one small cashier's kiosk (96 square feet). The applicant requests an exception to this requirement. An exception to this standard can be granted as long as the proposal meets the conditional use permit criteria. The applicant has applied for a conditional use permit and addressed the conditional use permit criteria below. There is existing pedestrian scale lighting on the western wall of the main Fred Meyer building, which would aid any pedestrians walking from the western parking lot to the main entrance.

*(6) Vehicle and pedestrian connectivity.*

- (a) Public streets may be required to be dedicated where needed to improve internal circulation, to connect to neighboring properties or streets, to break up large blocks, or to reduce travel around a site.*
- (b) At a minimum, 95% of the parking spaces shall be located within 75 feet of a private walkway or public sidewalk.*

**Finding:** The fueling facility will not create a need to dedicate internal streets and will not create any new parking spaces, so the proposal complies with this standard. The existing parking areas for the main building will come closer to meeting these standards when the new pedestrian walkway in the SE corner of the lot is constructed as part of this project.

*(7) Pedestrian-scale lighting. Pedestrian scale lighting shall be located along all internal walkways and provide a minimum illumination of 1 foot candle. Building entrances shall have a minimum illumination of 5 foot candles. Lighting shall be fully shielded so that no light is emitted at an angle above the horizontal plane as illustrated by the lighting plan. The type of features that should be considered, but are not limited to; street lamps, light fixtures attached to buildings, and light bollards. All pedestrian scale light fixtures shall not exceed a maximum height of 15 feet as measured from grade to the fixture lamp. The lens material for all pedestrian scale lighting shall be constructed of acrylic or similar shatter resistant material as determined by the Director. Glass lenses shall not be used for any pedestrian scale lighting.*

**Finding:** There is existing pedestrian scale lighting along the western wall of the main Fred Meyer building, so the proposal meets this criterion.

*(8) Parking. The number of parking stalls shall not exceed 125 percent of the minimum number of stalls required. Parking stalls constructed of grass blocks, grasscrete, pervious asphalt or concrete, or similar pervious material shall not be counted in this limit.*

**Finding:** No additional parking is being constructed as part of this project, so the proposal complies with this criterion. Approximately 60 parking spaces are being removed by this project, which brings the existing site closer to meeting this standard. The site is required to have at least 506 spaces, so 125% of the minimum would be 633 spaces. The site will have 666 spaces after the completion of this project.

*(9) Existing development. Any existing legal conforming site, through future development, exceeds the square footage threshold contained in § 151.196 (H) shall follow the standards contained in § 151.140 NON-CONFORMING USES AND BUILDINGS.*

**151.144 NON-CONFORMING BUILDINGS WITH LEGALLY CONFORMING USES.**  
*Unless completely or partially destroyed, pursuant to § [151.146](#), non-conforming buildings or structures with legal, conforming uses may be altered or modified subject to any of the following requirements. This shall be processed as a Type I application for single family homes and duplexes and as a Type II application for all commercial, industrial, and multi family uses.*

- (A) The addition or modification affects a part of the structure which will meet the current setback, height, yard or similar regulations and the addition or modification will not worsen the non-conforming status of the building.*
- (B) The addition or modification provides a logical expansion of the building and is within the existing building setback lines where:
  - (1) In the opinion of the Director, the expansion or modification will not adversely affect neighboring properties;*
  - (2) Building Code requirements can be met;*
  - (3) The expansion or modification proposed is similar to other non-conforming buildings or structures in the area; and**

- (4) *Reasonable provisions have been made to minimize the impact of the non-conforming status of the building or structure.*
- (C) *A building or parking area that is non-conforming to the standards of this code but otherwise conforms to the use provisions of the zoning district, may be expanded, provided that the portion of the building or parking area proposed for expansion complies with the provisions of this code.*

**Finding:** The existing building and site development is non-conforming because it does not meet some of the standards for large scale retail buildings under NDC 151.196, including (A) building orientation, (B) parking and service drives, (D) building mass, (G) windows, and (H) design of large scale buildings. Some public comments have stated that the existing Fred Meyer store is a non-conforming **use** and therefore cannot be expanded and should have to be brought up to current code. The City Council does not interpret the proposed use to be expansion of a non-conforming **use**. The Development Code distinguishes between non-conforming **uses** and non-conforming **buildings, structures, and parking areas** with legally conforming uses, and has different requirements for the two situations. The existing Fred Meyer store is an allowed use in the C-2 zone. The proposed gas station is an allowed use in the C-2 zone. The city recently changed the large-scale retail design standards, and the existing store does not meet many of these design standards. That makes the existing development a non-conforming **building, structure or parking area** with a **legally conforming use**. This is treated differently from a non-conforming use in the Development Code.

The application is to add additional structures and uses on the site. The City Council interprets the provisions of NDC 151.144 regulating non-conforming buildings or structures with legally conforming uses to apply to this application. Some public comments have argued that because the application does not physically enlarge the existing large retail building on the site, this section regulating modification of non-conforming buildings should not apply. The Council does not take such a strict view of this section. The language of this section clearly shows that it applies to buildings **and** structures, parking areas, yards, and other site elements, and is not just limited to the enlargements to the existing building. The application does affect compliance with some of the site design standards for the existing buildings, such as whether parking is in front of a building or whether a building is blocked by other buildings, thus the existing buildings are being “altered or modified.” The Council interprets “addition” to include addition of structures to the site, whether or not they are physically attached existing buildings. Thus, the application is an addition that may be allowed if it meets the criteria under NDC 151.144.

Under NDC 151.144, an addition or modification may be allowed under any of three criteria (A), (B), or (C). The City Council interprets this provision to mean that the application may be approved if any **one** the three criteria are met; all three need not be met. Under NDC 151.144 (A), an addition may be allowed provided that they do not worsen the non-conforming status of the existing building, and the addition otherwise meets standards. The application for the new gas station has addressed the new code requirements, and, under the process allowed in the code, applied for a conditional use permit because it has requested exceptions to some standards. The gas station will not make the existing site more non-conforming, however, and will make the site come closer to meeting the maximum parking standard, will remove parking between the building and the street, will help hide the blank western wall of the main building, and will create a better landscape buffer along the western and southern edges of the site. The proposal therefore meets the criterion 151.144(A) for additions or modifications of non-conforming buildings with legally conforming uses.

Additionally, the 96 feet kiosk and the canopy do not exceed the square footage threshold of 151.196(H).

### III. Conditional Use Permit Criteria That Apply - Newberg Development Code § 151.210.

**The Planning Commission may grant or deny the application, or may require such changes or impose such reasonable conditions as are in their judgment necessary to ensure conformity to the conditional use permit criteria. A conditional use permit may only be granted if the proposal conforms to the following:**

- A. *The location, size, design and operating characteristics of the proposed development are such that it can be made reasonably compatible with and have minimal impact on the livability or appropriate development of abutting properties and the surrounding neighborhood, with consideration to be given to harmony in scale, bulk, coverage and density; to the availability of public facilities and utilities; to the generation of traffic and the capacity of surrounding streets, and to any other relevant impact of the development.*

**Finding:** The proposed fuel facility is required to apply for a conditional use permit because it has requested exceptions to some of the standards for large-scale retail development. The fuel facility would not require a conditional use permit on any other site in the C-2 zoning district. The scale, bulk and coverage of the proposed facility are minor compared to the adjacent main Fred Meyer building. The location of the facility raised concerns that it might increase the level of ambient light that impacts the drive-in theater to the west. The development will remove two tall parking lot lights and shield two building lights. The canopy facility will only have recessed lights. , The project will improve the landscape buffer along the western edge of the site and add a sight obscuring fence. As conditioned, the design will effectively mitigate the impact of light from this development. The fuel facility will increase the amount of traffic on the western side of the Fred Meyer site, so the traffic controls and pedestrian walkways in that area will be revised to regulate traffic flow and improve pedestrian safety. A pedestrian walkway from the main building to the SE corner of the site will make the Fred Meyer site more compatible with nearby residential development. The applicant will pay a traffic impact fee towards future improvements at the Springbrook/99W intersection to mitigate the impacts of this development on public roads. As conditioned, the proposal will effectively mitigate the on-site and off-site traffic impacts from this development.

The facility will be open from 7 AM – 11 PM, which will match the hours the main store is open. One public comment was concerned that the fueling facility could be operated 24 hours a day, which would increase the noise from the site. The applicant has not applied for permission to do this, but one condition of approval will be that the operating hours are limited to from 7 am to 11 pm. The main building is located between the proposed gas station site and the existing residential area to the southeast, which will further reduce any potential noise impact on the residents. As conditioned, the proposal will effectively mitigate the impact of noise from this development.

One other public comment mentioned that they had problems with noise from the loading area behind the store, which took some time to get resolved. It should be noted that the Fred Meyer store had been in place for many years before the new housing was built behind the loading area, and that Fred Meyer has taken steps to change delivery hours to reduce noise late at night and early in the morning. Nevertheless, it would aid communication with neighbors if Fred Meyer appointed a contact person to address and resolve neighborhood issues, and posted that person's contact information on the community bulletin board in the store.

Some public comments questioned what would be done in the event of a spill. The applicant has stated that Kroger operates 1,490 fueling stations across the United States and has a standardized



safety and training program for fuel station employees. The plan includes detailed information on responding to spills and leaks. The response depends on the size of the spill, ranging from cleanup by onsite employees to complete emergency action with agencies including the Oregon Emergency Response System. Emergency contractors, including ODOT certified vactor trucks, are pre-arranged as part of the emergency response plan. Employees are also trained to inspect equipment and identify maintenance needs.

Emergency shut-off switches are installed both inside and outside the kiosk as dictated by the fire code. The underground storage tanks will be double-walled fiberglass with leak detection sensors. The tank and piping monitoring system operates at all times and will sound alarms if any part of the system fails. The equipment to be installed will meet all State and Federal environmental standards, including the latest vapor recovery standards for delivery vehicles. The facility will be staffed with full-time attendants and will have closed circuit cameras for additional security, fire extinguishers, emergency shut-off switches and an alarm system. The applicant will submit a spill containment plan for the fuel facility for review and approval before building permits would be issued. There will also be an emergency shut-off valve located immediately downstream of the oil/water separator for stormwater. The valve will be closed during the unlikely event of a spill and during required periodic maintenance.

As noted above, there are adequate public facilities and utilities available to serve the site.

The location, size, design and operating characteristics of the proposed development are therefore such that, as conditioned, it can be made reasonably compatible with and have minimal impact on the livability or appropriate development of abutting properties and the surrounding neighborhood.

***B. The location, design, and site planning of the proposed development will provide a convenient and functional living, working, shopping or civic environment, and will be as attractive as the nature of the use and its location and setting warrants.***

**Finding:** The fuel facility location on the Fred Meyer site will be convenient for many shoppers who already use the store. The location on the western side of the main building will minimize the impact to on-site circulation, as that is the least used part of the existing site. The traffic controls and pedestrian walkways immediately north of the fuel facility have been redesigned to make the site safer for pedestrians and better regulated for vehicles. The fuel facility will be reasonably attractive, and will have extensive nearby landscape buffers that soften the view of the facility from the street.

Fred Meyer facilities have experienced a utilization of their rewards customers at their gas facilities at a very high rate. Eighty nine percent of all fuel customers use rewards cards. Seventy percent of all gas buyers receive the highest discount. To receive the highest discount, you must have spent more than the monthly minimum. That is strong evidence that there will be utilization of shared trips. The full shopping experience provided by Fred Meyer with grocery and household goods, in conjunctions with this gas station, will allow a person to make one stop to cover all of their needs. This improvement will provide convenience to the shopping public.

The proposal therefore meets this criterion because the location, design and site planning will provide a convenient and functional shopping environment, and will be as attractive as the nature of the use and its location and setting warrants.

***C. The proposed development will be consistent with this code.***

**Finding:** The preceding design review findings reviewed the development code standards that apply to this project. As conditioned, the proposed development will be consistent with the development code.

#### **IV. CONCLUSION:**

Based on the above-mentioned findings, the application meets the required Conditional Use Permit/Design Review criteria within the Newberg Development Code, subject to completion of the attached conditions:

## CONDITIONS OF APPROVAL- FILE CUP-08-004/DR2-08-036

### A. THE FOLLOWING MUST BE COMPLETED BEFORE THE CITY WILL ISSUE A BUILDING PERMIT:

1. Permit Submittal: Submit a building permit application, two (2) complete working drawing sets of the proposed project, two (2) complete electrical plans, and two (2) copies of a revised site plan. Show all the features of the plan approved through design review, including the following:
  - Existing and finish grade elevations
  - Existing and proposed sewer, water, and storm sewer connections
  - Fire hydrant locations on and within 250 ft. of the site
  - Landscaping plan including existing and proposed landscaping and method of irrigation
  - Lighting plan
  - Plumbing details
  - Sign details
  - Site circulation, pedestrian circulation, and parking stall layout
  - Vision clearance areas
2. Conditions of Approval: Either write or otherwise permanently affix the conditions of approval contained within this report onto the first page of the plans submitted for building permit review.
3. Utility Plan: Revise the utility plan to show the private water line to the air/water station. All on-site utilities are to be private, constructed per the plumbing code. Provide an oil-water separator for the under canopy drainage area that is in use at all times. All utilities, including power, cable and telephone, are required to be placed underground.
4. Spill containment: Submit a spill containment plan for the fuel facility for review and approval as part of the building permit.
5. Fire hydrants: Show the location of all fire hydrants on and near the site, and show on the drawings that the water system has adequate fire flow. New fire hydrants may be necessary. If a fire hydrant is required then the hydrant and line to it will be public, and will need a public utility easement.
6. Signage: Submit sign details with the building permit which include:
  - Portland Rd existing freestanding sign – show modifications to sign face (must be less than 200 s.f. in total area)
  - Springbrook Rd new freestanding sign – show 15' setback from front property line and compliance with vision clearance setback from corner.
7. Disabled/ADA Requirements: Coordinate with the Building Division to comply with O.S.S.C. Chapter 11 requirements.
8. Garbage: Provide garbage containers near the fueling station pumps and empty to existing dumpster on site as necessary.

9. Neighborhood contact person: Fred Meyer shall appoint a contact person to address and resolve neighborhood problems such as noise issues, and post the person's name, phone number and responsibilities on the community bulletin board in the Newberg Fred Meyer store.
10. Landscape Plan: Submit a revised landscape plan, subject to review and approval by the City Planner, with the following additions or modifications:
  - Method of irrigation
  - Western landscape buffer: add evergreen trees where there are gaps without trees (at least two gaps noted). New trees must be large enough for the buffer to be effective when planted. Retain all existing shrubs and trees.
  - Southern landscape buffer: add trees to the western portion of the southern buffer up to the park to match the existing trees to the east, spaced not more than 35 feet on-center.
  - West 99W access drive: replacement plan for any trees removed by widening the drive.
  - Parking lot trees: survey the entire site and replace any damaged or missing parking lot trees (one tree noted in SE corner)
  - Add a minimum six-foot high fence sight obscuring fence west of the canopy at the edge of the paved area.
11. Lighting Plan:
  - Canopy lights must be recessed.
  - Fill in gaps in vegetation on western border noted above.
  - Add shields to the existing wall-mounted lights above the garden center.
  - Ensure that construction lights will not point west during times when movies will be shown at the drive-in theater (late March until November on Friday, Saturday and Sunday evenings at dusk).
12. Easements: If a new fire hydrant line is necessary then record a public utility easement over the hydrant and water line and provide a copy of the recorded instrument to the Planning & Building Department. The location and language for any easement must be reviewed and approved by the Planning & Building Director and Public Works Director prior to recordation.
13. Transportation improvements:
  - Post the loading area south of the store "No through traffic – delivery trucks only."
  - Remove any storage containers in parking areas. Storage containers may be kept only in the loading area on the south side of the building.
  - Applicant to pay a traffic impact fee of \$12,400.00 towards future improvements at the Springbrook/99W intersection based on this project's impact on the intersection.
  - Widen the radius of the west 99W entrance to better accommodate large vehicles, and widen the one-lane access driveway to provide separate left- and right-turn lanes at the intersection with the Fred Meyer access drive, as shown in Exhibit D. The two lane right-in only approach shall be constructed so that it is long enough to ensure that traffic going to the fueling station in the right lane is not blocked by traffic turning left to go to the store. , an all-way stop shall be added to the main aisle. . The radius of the right-in approach shall be constructed in such a way that it can accommodate large

vehicles without being damaged. Fred Meyer shall be required to obtain ODOT's approval for a design vehicle and approach design.

- ODOT will need to ensure that all work within ODOT right-of-way meets ODOT standards, and engineering plans will need to be reviewed and approved by ODOT. Prior to the issuance of a City building permit for construction, the applicant shall provide evidence that they have obtained any required permits from ODOT for all improvements required by ODOT. The ODOT and City-approved improvements must be completed before the City will approve occupancy of the gas station.

**B. THE FOLLOWING MUST BE ACCOMPLISHED PRIOR TO OCCUPANCY:**

1. On-site circulation:
  - Revise the private walkway and traffic controls north of the fueling facility as shown on the site plan.
  - Add a new private walkway on the southeast portion of the site as shown on the site plan.
  - Construct two concrete pedestrian crossing of contrasting color
  - Revise the traffic controls in front of the north entrance to the main store by adding stop signs, striping and textured concrete crossing areas.
2. Access improvements on 99W: The ODOT and City-approved improvements to the western access drive must be completed before the City will approve occupancy of the gas station.
3. Fire Department Requirements: This project is subject to compliance with all Fire Department standards relating to access and fire protection. The construction site cannot hinder fire access to the main building.
4. Design Review Conditions: Contact the Planning Division (503-537-1215) to verify that all design review conditions have been completed.
5. Site Inspection: Contact the Building Division (503-537-1240) for Building, Mechanical, and Plumbing final inspections. Contact the Fire Department (503-537-537-1260) for Fire Safety final inspections. Contact Yamhill County (503-538-7302) for electrical final inspections. Contact the Planning Division (503-537-1215) for site & landscaping final inspections.

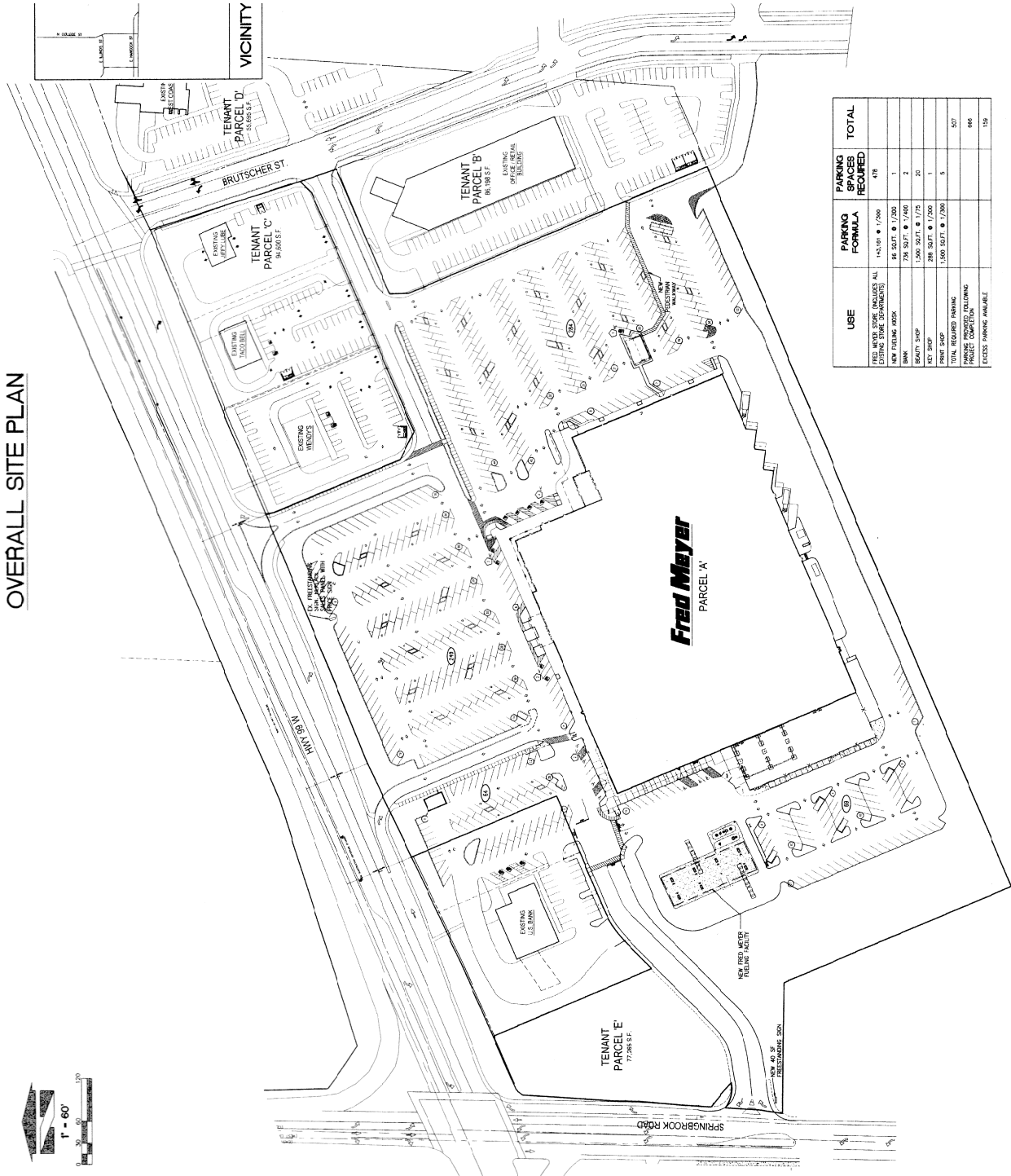
**C. DEVELOPMENT NOTES:**

1. Operating hours for the fueling facility are limited to from 7 am to 11 pm.
2. NW Natural commented that Fred Meyer will need to coordinate with NW Natural for the relocation of the existing gas line as noted on their plans.
3. The design review fee collected for this application was \$2,200.00. This fee was based on a total project cost of \$366,667.00. If the City determines that the actual project cost exceeds the original estimate, at time of construction of each of the units, there may be additional design review fees collected.

4. Systems development charges will be collected when building permits are issued. For questions regarding SDCs please refer to the City fee packet and contact the Engineering Division.
5. ODOT's access permit conditions:
  - If traffic backs up to the property line at any time, ODOT reserves the right to review approval of the right-in only approach.
  - If the crash history changes due to the weaving pattern between Springbrook and the right-in only approach, ODOT reserves the right to review approval of the right-in only approach.
  - If the eastbound traffic queue backing up from the signal at Brutscher begins to block the right-in right-out approach, ODOT reserves the right to review approval of the approach and to require changes.

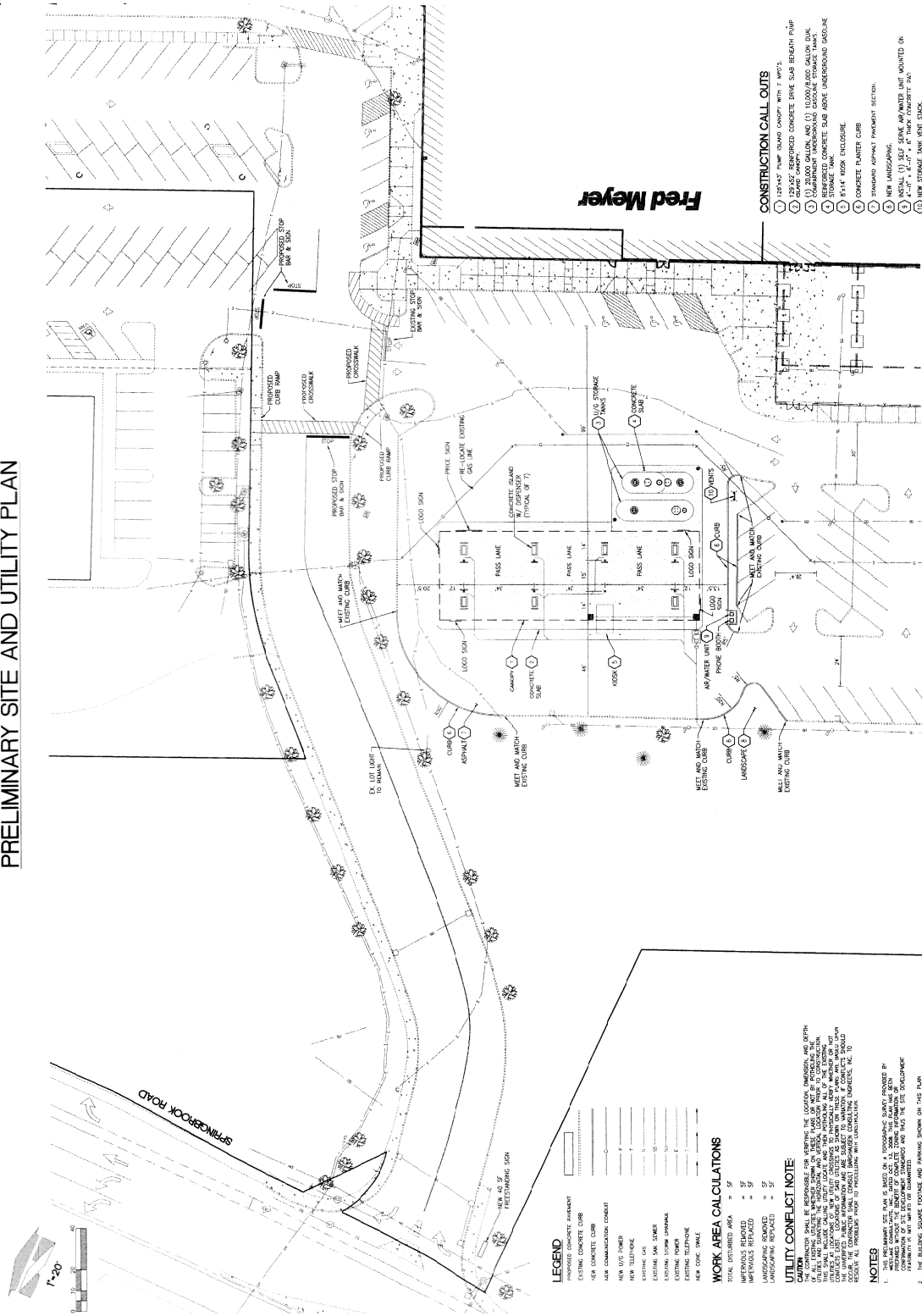
# EXHIBIT B: OVERALL SITE PLAN

## OVERALL SITE PLAN



# EXHIBIT C: SITE PLAN FOR FUEL FACILITY

## PRELIMINARY SITE AND UTILITY PLAN



### LEGEND

- EXISTING UTILITY (PLAN)
- NEW CONCRETE CURB
- NEW CONCRETE CURB
- NEW COMMUNICATION CONDUIT
- NEW 1/2" DRAIN
- NEW TELEPHONE
- EXISTING GAS
- EXISTING SAN SEWER
- EXISTING STORM SEWER
- EXISTING TELEPHONE
- NEW CONC. WALK

### WORK AREA CALCULATIONS

- LANDSCAPING REMOVED = SF
- INTERVALS RETAINED = SF
- LANDSCAPING RELOCATED = SF

### UTILITY CONFLICT NOTE

THE CONTRACTOR SHALL BE RESPONSIBLE FOR VERIFYING THE LOCATION, DEPTH, AND DIRECTION OF ALL UTILITIES AND CONDUITS PRIOR TO CONSTRUCTION. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE APPROPRIATE AGENCIES. THE CONTRACTOR SHALL BE RESPONSIBLE FOR PROTECTING ALL UTILITIES AND CONDUITS FROM DAMAGE DURING CONSTRUCTION. THE CONTRACTOR SHALL BE RESPONSIBLE FOR RESTORING ALL UTILITIES AND CONDUITS TO ORIGINAL OR BETTER CONDITION AFTER CONSTRUCTION IS COMPLETE.

### NOTES

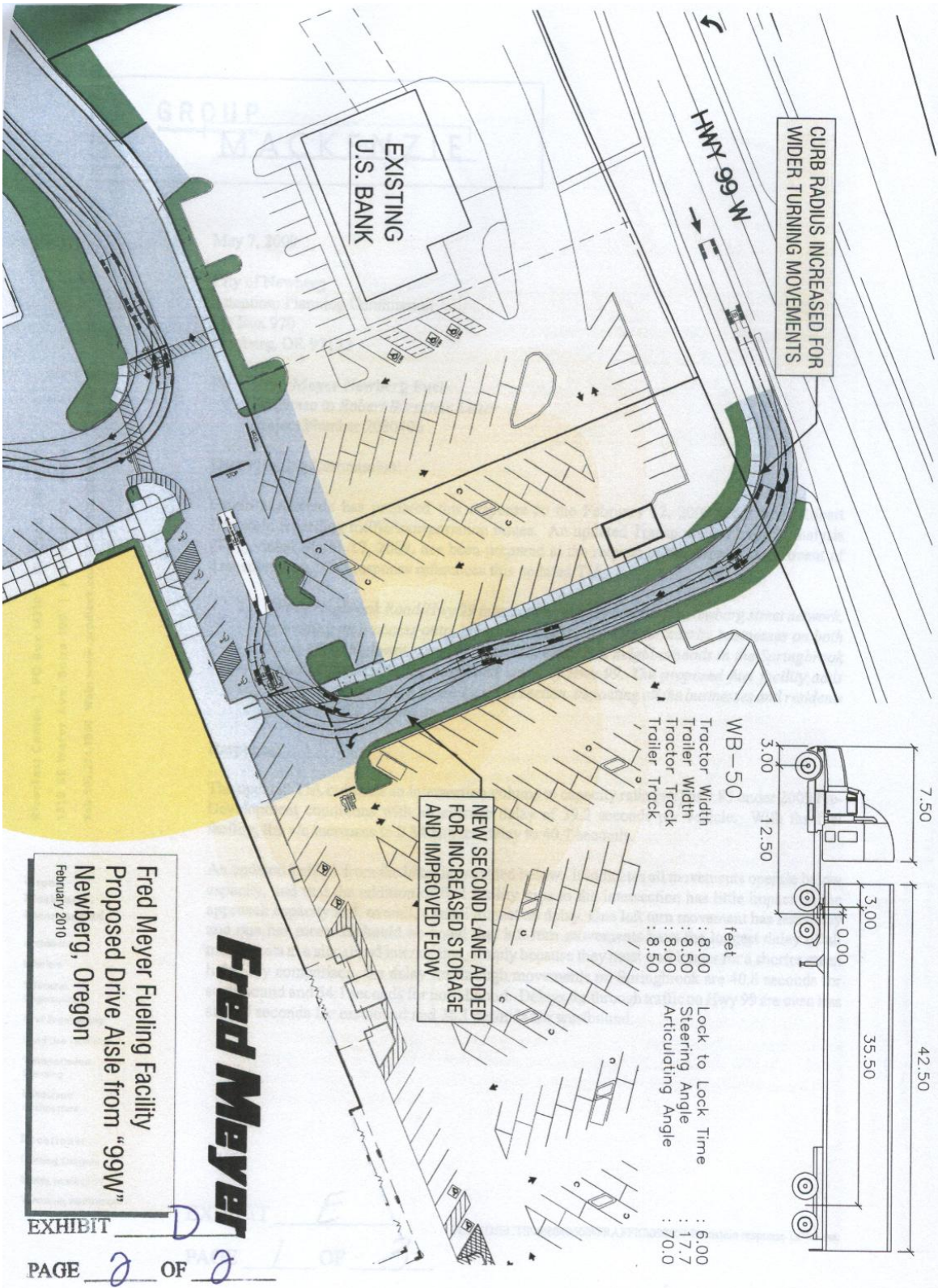
1. THIS PRELIMINARY SITE AND UTILITY PLAN IS FOR INFORMATIONAL PURPOSES ONLY AND IS NOT TO BE USED FOR CONSTRUCTION.
2. THE CONTRACTOR SHALL BE RESPONSIBLE FOR VERIFYING THE LOCATION, DEPTH, AND DIRECTION OF ALL UTILITIES AND CONDUITS PRIOR TO CONSTRUCTION.
3. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE APPROPRIATE AGENCIES.
4. THE CONTRACTOR SHALL BE RESPONSIBLE FOR PROTECTING ALL UTILITIES AND CONDUITS FROM DAMAGE DURING CONSTRUCTION.
5. THE CONTRACTOR SHALL BE RESPONSIBLE FOR RESTORING ALL UTILITIES AND CONDUITS TO ORIGINAL OR BETTER CONDITION AFTER CONSTRUCTION IS COMPLETE.

### CONSTRUCTION CALL OUTS

1. 12" x 12" PUMP ISLAND CONCRETE WITH 7" REINFORCING
2. 12" x 12" REINFORCED CONCRETE DRIVE CURB BENEATH PUMP
3. (1) 20,000 GALLON, AND (1) 10,000 GALLON GULCH
4. COMBINATION INTERLOCKING CONCRETE STORAGE TANKS
5. INTERLOCKING CONCRETE STORAGE TANKS
6. STORAGE TANK
7. 6" x 14" ROOF ENCLOSURE
8. CONCRETE PAVEMENT CURB
9. STANDARD ASPHALT PAVEMENT SECTION
10. NEW LANDSCAPING
11. INSTALL (1) SELF-SERVE IMPAINTER UNIT MOUNTED ON 4" x 8" x 8" x 1" 1/2" THICK CONCRETE SLAB
12. NEW STORAGE TANK WITH TANK



**EXHIBIT D: REVISED WEST 99W ACCESS**



**THIS PAGE INTENTIONALLY LEFT BLANK**

# REQUEST FOR COUNCIL ACTION

**DATE ACTION REQUESTED: September 20, 2010**

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

**SUBJECT:** Establishing the funding methodology for a Visitor Information Center

**Contact Person (Preparer) for this Motion:** Daniel Danicic City Manager

**Dept.:** Administration

**File No.:**  
*(if applicable)*

**RECOMMENDATION:**

1. Increase funding for a Center to \$35,000 (17% increase). The additional \$5,000 funding coming from the un-appropriated \$17,000 tourism fund.
2. Develop a contract and scope of work for Council approval.
  - a. The scope of work is to define the level of services that can be provided at a cost of \$35,000 per year.
  - b. Term of contract to be five years with an automatic CPI adjustment factor.
3. The Chamber and other interested parties are provided an opportunity to a submit requests for grant money to fund specific tourism related projects subject to funding availability.

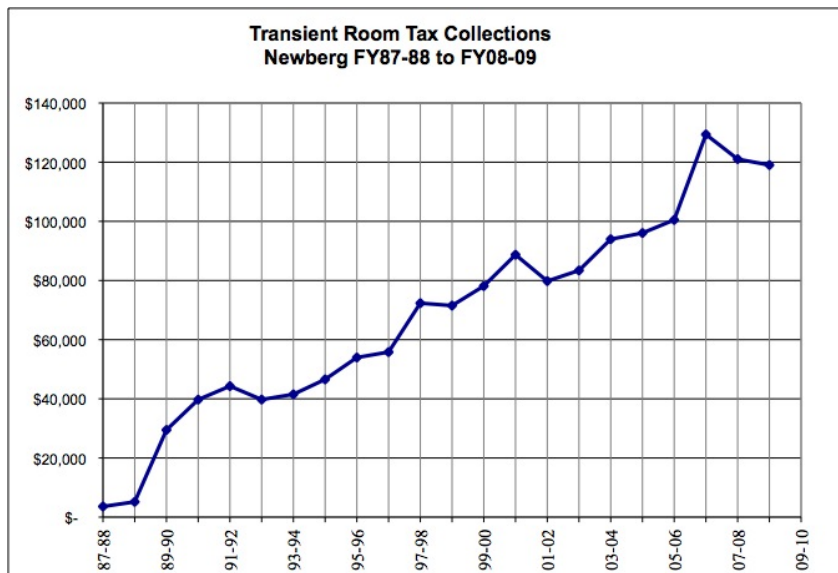
**EXECUTIVE SUMMARY:**

The Chehalem Valley Chamber of Commerce (Chamber) currently operates a Visitor Information Center (Center) on behalf of the City of Newberg. The Chamber has requested that the funding allocation for a Center be established as 25% percent of the collected transient room tax (TRT) revenue.

On September 15, 2008 the Council met with representatives from the Chamber to discuss their funding allocation request. Council directed staff to schedule a work session providing options and consider visitor center funding.

On March 1, 2010 the Council met in a work session with representatives from the Chamber to continue discussions. No decision was made.

The following graph shows that annual TRT revenue between FY 87/88 and FY 08/09. Revenue for FY 09/10 was \$224,656. The projected total revenue for FY 09/10 is \$225,000.



**FISCAL IMPACT:**

The adopted FY 10/11 budget allocates funding for a Center and tourism projects as follows:

Visitor Information Center  
\$30K (\$18K TRT + \$12K Business License Fee revenue)

Tourism Expenditures: 17.6% of projected TRT revenue of \$225K is \$39.6K.

- Visitor Information Center \$18K
- Old Fashioned Festival \$ 5K
- Un-appropriated \$17K

Addition funding may be allocated to a visitor information center from:

1. A portion of the un-appropriated \$17K
2. Increased allocation from the business license fee revenues through a reduction in expenditures in the Economic Development Fund
3. Increase the business license fee
4. Increase the TRT
5. The General Fund contingency of \$175,418

**STRATEGIC ASSESSMENT:**

By state law, approximately 17.6% of room tax revenues must be used for “tourism promotion or tourism related facilities.” Beyond the 17.6% contribution, the City may use the room tax for any general fund purpose as defined in Section 36.27 of the Municipal Code.

The increase in the TRT revenue has served to offset the decline in revenue from other sources in the General Fund. Adopting by ordinance a specific and changing funding level for a Center will come at the expense of other important general fund programs. The Council should carefully consider whether it wants to restrict the use of TRT revenues in this manner.

Maintaining the current funding methodology provides the Council with the greatest flexibility and control over how the revenues collected by the City are allocated.

Attachments:

1. September 15, 2008 Information Item presented to Council
2. September 15, 2008 Adopted meeting minutes
3. March 1, 2010 Council Work Session Packet

# *REQUEST FOR COUNCIL ACTION*

<b>DATE ACTION REQUESTED: 2008, September 15</b>				
<b>Order ___ No.</b>	<b>Ordinance ___ No.</b>	<b>Resolution ___ No.</b>	<b>Motion ___</b>	<b>Information <u>XX</u></b>
<b>SUBJECT:</b> Dedication of Transient Room Tax Revenue for Visitor Information Center			<b>Contact Person (Preparer) for this Motion:</b> Barton Brierley, AICP	
			<b>Dept.:</b> Planning and Building	
			<b>File No.:</b> <b>G-08-005</b> <i>(if applicable)</i>	

**BACKGROUND:**

1. **Chamber Request.** The Chehalem Valley Chamber of Commerce operates the Visitor Information Center. The Chamber is requesting that the percent of transient room tax (hotel/motel tax) dedicated to the center be fixed at its current percentage. A representative from the Chamber will be on hand at the September 15, 2008 Council meeting to discuss this proposal.

This item is intended to give the Council background information on this subject. If the Council desires, it can direct staff to return with an item for future Council action.

2. **Visitor Information Center History**

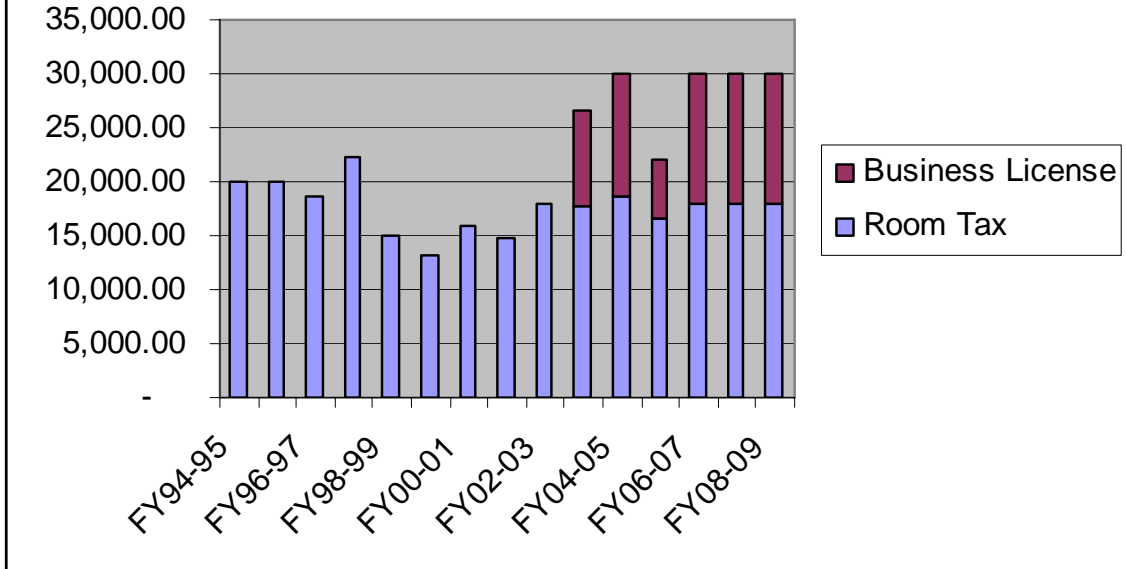
a. The Chehalem Valley Chamber of Commerce operates the Visitor Information Center to promote tourism and business in the area. The City of Newberg has supported the center since at least 1989. At one point, the City requested proposals from other entities to operate an information center, but ultimately chose the Chamber. The City and Chamber have entered into various formal agreements regarding operation of the Visitor Information Center over the years. The most recent agreement is dated July 1, 2003. At this point it appears that the City and Chamber are operating on an informal renewal of the 2003 agreement.

b. The City’s funding contribution to the Visitor Information Center has varied over the years. The initial source of funding was the transient room tax. The amount of this contribution has varied widely, from as little as 14% of the total taxes collected to as much as 43%. In the approved FY2008-09 budget, the City dedicates an estimated 15.6% of room tax revenues to the Visitor Information Center (\$18,000 out of \$115,000).

Beginning in 2003, the City instituted a business license. The City has used business license receipts also to support the Visitor Information Center.

c. In the last and current fiscal years, the City has contributed \$30,000 annually to the Visitor Information Center. \$18,000 of that is derived from the room tax; \$12,000 is derived from the business license.

### Visitor Information Center Payments from City of Newberg FY94-95 to FY08-09



### Newberg Room Tax Revenue and Visitor Information Center Payments FY94-95 to FY08-09

Fiscal Year	Total Room Tax Revenue	Room Tax to Visitor Center	% Room Tax to Visitor Center	Business License Rev. to Visitor Center	Total Revenues to Visitor Center as % of Room Tax Revenue
FY94-95	46,572	20,000	43%		43%
FY95-96	53,964	20,000	37%		37%
FY96-97	55,810	18,749	34%		34%
FY97-98	72,343	22,181	31%		31%
FY98-99	71,518	18,000	25%		25%
FY99-00	78,131	18,000	23%		23%
FY00-01	88,709	15,856	18%		18%
FY01-02	79,808	14,754	18%		18%
FY02-03	83,402	18,005	22%		22%
FY03-04	93,967	17,639	19%	9,000	28%
FY04-05	96,058	18,750	20%	11,250	31%
FY05-06	100,489	16,500	16%	5,500	22%
FY06-07	129,383	18,000	14%	12,000	23%
FY07-08	121,039	18,000	15%	12,000	25%
FY08-09	115,000	18,000	16%	12,000	26%

### 3. Transient Room Tax.

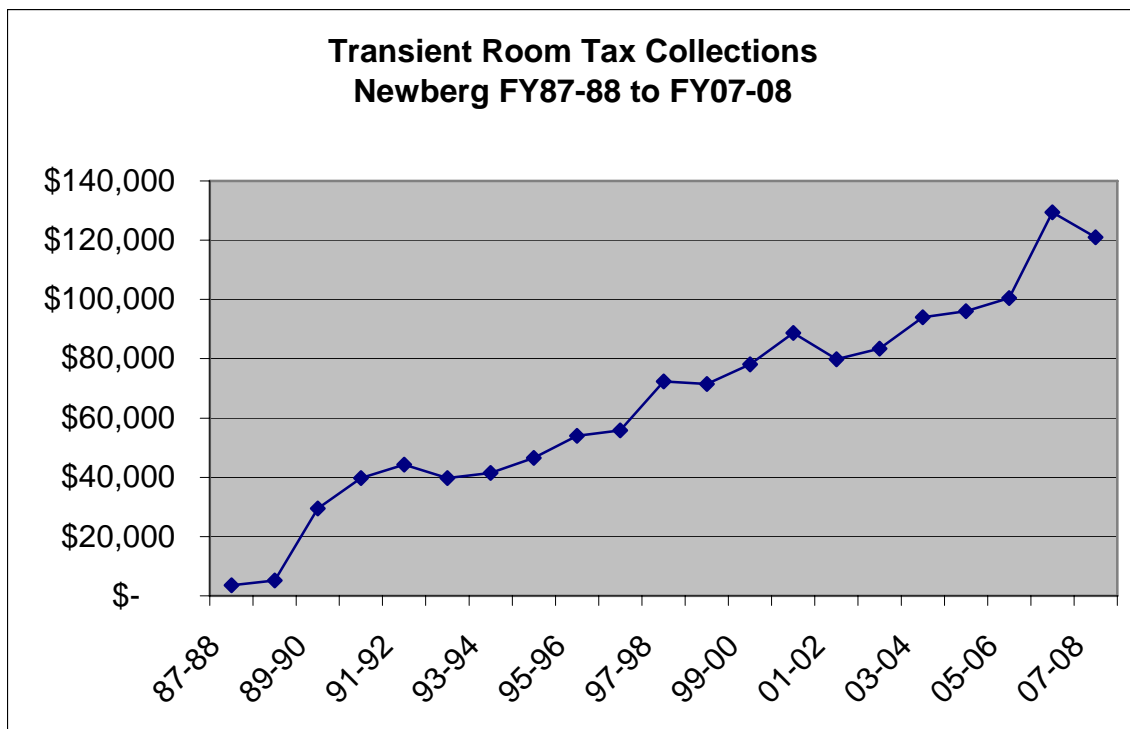
a. The City established a transient room tax in 1976. The rate is 6% of the room rate. The City receives 95% of the taxes collected; 5% is retained by the innkeeper to defray the costs of collection.

b. The Newberg Code states: “All [room tax] money collected pursuant to this subchapter shall be the general funds of the City of Newberg and may be used in any lawful manner that the city deems necessary and appropriate.”

c. State law governs the use of the room tax. ORS 320.350 provides that the City cannot reduce the percent of room tax revenues expended to fund tourism promotion or tourism-related facilities from the percent used in 2003. Accordingly, 17.6% of room tax revenues must be used to fund tourism promotion or facilities. If the City increases the room tax, then 70% of the new revenues must fund tourism promotion or facilities.

d. In 1996, the City adopted Ordinance 96-2433, which specified that 50% of room tax revenues be dedicated to fund a visitor center. In 1997, the City adopted Ordinance 97-2478, which eliminated the 50% requirement.

e. Historical Revenues for Transient Room Tax. The following chart shows the historical room tax revenues. The FY2008-09 budget projects \$115,000 of revenue from the room tax.



f. Projected Revenues for Transient Room Tax. With the construction of the Allison Inn, the transient room tax collection will increase substantially. Rough estimates are that the City could receive about \$200,000 to \$300,000 per year in additional room tax revenues when the hotel is up and running.

**FISCAL IMPACT:**

Beyond the 17.6% contribution, the City may use the room tax for any general fund purpose. The Council should consider whether it wants to further self-restrict the use of room tax revenues.

**STRATEGIC ASSESSMENT:**

By state law, approximately 17.6% of room tax revenues must be used for “tourism promotion or tourism related facilities.” Funding the Visitor Information Center fills this purpose. Other activities also could fill this purpose, including marketing the Old Fashioned Festival, Art Walk or other events, creating and posting welcome banners downtown, or developing facilities, possibly including restrooms, benches, or plazas, that have a substantial purpose of supporting tourist activities.

## Attachments:

1. Letter from John Bridges 7/1/2008 with  
Proposed Amendment to Newberg Code
2. Newberg Code 36.15-36.30
3. ORS 320.300-320.990



**BROWN, TARLOW, BRIDGES & PALMER, P.C.**

**Attorneys at Law**

ALLYN E. BROWN  
DONALD O. TARLOW  
JOHN BRIDGES  
STEPHEN C. PALMER  
TRUMAN A. STONE  
KAREN M. SMITH\*

515 EAST FIRST STREET  
NEWBERG, OREGON 97132  
PHONE: (503) 538-3138  
FAX: (503) 538-9812

*\*Also admitted in Washington and Idaho*

July 1, 2008



City of Newberg  
Attn: Dan Danicic  
414 E First St  
Newberg, OR 97132

Re: Vistor's Center Funding  
§ 36.27 Expenditure of Funds and Collection Fee


Dear Dan:

To follow up on our conversation regarding the hotel tax, we as a Chamber would like to propose the following code revision. At this point we are not filing the application formally with the City to do that, but instead are asking for your comment. The blank would be filled in with the percentage that would generate the \$30,000 paid to the Visitor's Center for the 2007-08 budget. I am not sure what the tax revenues were in this most recent year but I understand that in 2006-07 they were about \$108,000. If they hold to be about the same, then the percentage would be somewhere in the range of 26-27%.

Please let me know whether you would like to sit down and talk about this, or you want to provide comments in some other fashion.

Yours very truly,

BROWN, TARLOW, BRIDGES & PALMER, P.C.

  
John Bridges

JTB:cml

Enclosure

**§ 36.27 EXPENDITURE OF FUNDS AND COLLECTION FEE.**

(A) *Expenditure of funds.* \_\_\_\_\_% of the money collected pursuant to this subchapter shall fund the Visitors Center. All remaining money collected pursuant to this subchapter shall be the general funds of the City of Newberg and may be used in any lawful manner that the city deems necessary and appropriate.

(B) *Funding of specific services or programs.* The City Council shall approve by resolution specific expenditures for services or programs to be funded from the proceeds of the transient room tax. The resolution may authorize expenditures for services or programs for multiple years provided that the allocation for funding complies with the State of Oregon Budget Law.

(C) *Withholding five per cent of net tax due to cover expenses.* Every operator liable for collection and remittance of the tax imposed by this subchapter may withhold five per cent of the net tax due to cover expenses in its collection and remittance.

(Ord. 1835A, passed 12-6-76; Am. Ord. 96-2433, passed 3-12-96; Am. Ord. 97-2478, passed 6-2-97; Am. Ord. 98-2498, passed 6-1-98)

---

**CHAPTER 36:  
FINANCE AND REVENUE; TAXATION**

Section

General Provisions

[36.01](#) Property tax exemption

Transient Room Tax

[36.15](#) Definitions

[36.16](#) Levy

[36.17](#) Collection

[36.18](#) Operator's duties

[36.19](#) Exemptions

[36.20](#) Returns

[36.21](#) Penalties and interest

[36.22](#) Deficiencies, fraud, evasion, delay

[36.23](#) Redeterminations

[36.24](#) Security for collection

[36.25](#) Lien

[36.26](#) Refunds

[36.27](#) Expenditure of funds and collection fee

[36.28](#) Administration

[36.29](#) Appeal to Council

[36.30](#) Violations

Local Improvement Districts

[36.40](#) Title

[36.41](#) Definitions

[36.42](#) Plans and specifications

[36.43](#) Assessing

[36.44](#) Resolution

[36.45](#) Notices to property owners

[36.46](#) Public hearing and remonstrances

[36.47](#) Ordinance creating local improvement district

[36.48](#) Call for bids

[36.49](#) Assessment ordinance procedures

[36.50](#) Lien recording; payments over time or by cash

[36.51](#) Errors in assessment calculations

[36.52](#) Authority of city to make reassessment

[36.53](#) Consent or waiving requirement of notice

[36.54](#) Assessment of public property benefitted by improvements

[36.55](#) Abandonment of proceedings

[36.56](#) Curative provision

Advance Financing of Certain Public Improvements

[36.65](#) Definitions

[36.66](#) Receipt of applications

[36.67](#) Utility analysis

<a href="#">36.68</a>	Public hearing
<a href="#">36.69</a>	Notification
<a href="#">36.70</a>	Advance financing resolutions and agreements
<a href="#">36.71</a>	Advance finance reimbursements
<a href="#">36.72</a>	Disposition of advance financed reimbursements
<a href="#">36.73</a>	Recording
<a href="#">36.74</a>	Public improvements
<a href="#">36.75</a>	Multiple public improvements
<a href="#">36.76</a>	Advance financed reimbursements on public improvements funded by city
<a href="#">36.99</a>	Penalty

## GENERAL PROVISIONS

### 36.01 PROPERTY TAX EXEMPTION.

- (A) The provisions of O.R.S. [307.515](#) to [307.523](#) as now enacted are hereby adopted.
- (B) The following standards shall be used in considering an application for tax exemption:
- (1) The applicant shall furnish, for the city's approval, its methodology for verifying tenant income in order to assure that the property for which the exemption is granted is occupied solely by low income persons as defined in O.R.S. [307.515](#).
  - (2) The applicant shall agree to provide the city, on or before July 1 of each calendar year, for so long as the exemption is requested, a financial report that shall contain a pro forma income statement in order to demonstrate that the applicant expends no more than ten percent of its annual income from residential rentals for purposes other than the acquisition, maintenance or repair of residential property for low income persons or for the provision of on-sight child care services for the residents of the rental property.
  - (3) The applicant shall insure that enforcement mechanisms are in place and used to insure that housing receiving exemptions under O.R.S. Chapter [307](#) are maintained in decent, safe, and sanitary conditions by and for the occupants.
- (C) The city, after consultation with the County Assessor, shall establish an application fee in an amount sufficient to cover the cost to be incurred by the city and the County Assessor in administering O.R.S. [307.515](#) to [307.523](#). The application fee shall be paid to the city at the time the application for exemption is filed. If the application is approved, the city shall pay the application fee to the County Assessor for deposit in the county general fund, after first deducting that portion of the fee attributable to its own administrative costs in processing the application. If the application is denied, the city shall retain that portion of the application fee attributable to its own administrative costs and shall refund the balance to the applicant.
- (Ord. [95-2401](#), passed 3-6-95; Am. Ord. [95-2404](#), passed 5-15-95)

## TRANSIENT ROOM TAX

### 36.15 DEFINITIONS.

For the purpose of this subchapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

**COUNCIL.** The City Council of the City of Newberg, Oregon.

**HOTEL.** Any structure or portion of any structure which is occupied or intended or designed for transient occupancy for 30 days or less or dwelling, lodging, or sleeping purposes, and includes any hotel, inn, tourist home or house, motel, apartment house, public or private dormitory, fraternity, sorority, public or private club, space in a mobile home or trailer park, or similar structure or portion thereof so occupied, provided the occupancy is for less than a 30 day period.

**OCCUPANCY.** The use or possession, or the right to use or possession, for lodging or sleeping purposes, of any room in a hotel, or space in a mobile home or trailer park or portion thereof.

**OPERATOR.** The person who is proprietor of a hotel in any capacity and, where the operator performs his functions through a managing agent other than an employee, the managing agent who shall have the same duties and liabilities as his principal. Compliance with the provisions of this subchapter by either the principal or the managing agent shall be considered to be compliance by both.

**PERSON.** Any individual, firm partnership, joint venture, association, social club, fraternal organization, fraternity, sorority, public or private dormitory, joint stock company, corporation, estate,

trust, business trust, receiver, trustee, syndicate, or any other group or combination action as a unit.

RENT. The consideration charged, whether or not received by the operator, for the occupancy of space in a hotel whether or not valued in money, without any deduction.

RENT PACKAGE PLAN. The consideration charged for both food and rent where a single rate is made for the total or both. The amount applicable to rent for determination of the transient room tax under § [36.16](#) of this chapter shall be the same charge made for rent when not a part of a package plan.

TAX ADMINISTRATOR. The City Manager of the City of Newberg.

TRANSIENT. Any individual who exercises occupancy or is entitled to occupancy in a hotel, motel, or other establishment that is not said individual's legal residence.

(Ord. [1835A](#), passed 12-6-76; Am. Ord. [2262](#), passed 4-3-89; Am. Ord. [96-2433](#), passed 3-11-96)

### **36.16 LEVY.**

For the privilege of occupancy in any hotel each transient shall pay a tax of six percent of the rent collected by the operator for the occupancy. The tax shall constitute a debt owed by the transient to the city and be extinguished only by payment to the operator of the hotel at the time the rent is paid. The operator shall enter the tax on his records when the rent is collected. If the rent is paid in installments, a proportionate share of the tax shall be paid by the transient to the operator with each installment. If for any reason the tax due is not paid to the operator of the hotel, the tax administrator may require that the tax be paid directly to the city. In all cases the rent paid or charged for occupancy shall exclude amounts received for the sale of goods, service or commodities, other than the furnishing of rooms, accommodations and parking space in mobile home parks or trailer parks.

(Ord. [1835A](#), passed 12-6-76)

### **36.17 COLLECTION.**

(A) Every operator renting a room in this city, the occupancy of which is not exempted under the terms of § [36.19](#) of this chapter, shall collect a tax from the occupant of the room. The tax collected or accrued by the operator constitutes a debt owing by the operator to the city.

(B) In all cases of credit or deferred payment of rent, the payment of the tax to the operator may be deferred until the rent is paid, and the operator shall not be liable for the tax until the credit is paid or the deferred payment is made.

(C) The tax administrator shall enforce this subchapter and may adopt rules and regulations consistent with this subchapter and necessary to aid in the enforcement.

(Ord. [1835A](#), passed 12-6-76)

### **36.18 OPERATOR'S DUTIES.**

Each operator shall collect the tax imposed by § [36.16](#) of this chapter on a transient at the same time as he collects rent from the transient. The amount of the tax shall be separately stated upon the operator's records and on any receipt for the rent rendered by the operator to the transient. No operator shall advertise that the tax or any part of the tax will be assumed or absorbed by the operator, or that it will not be added to the rent, or that, when added, any part will be refunded.

(Ord. [1835A](#), passed 12-6-76) Penalty, see § [36.99](#)

### **36.19 EXEMPTIONS.**

No tax may be imposed upon:

(A) Any occupancy for more than 30 successive calendar days;

(B) Any person who pays for lodging on a monthly basis, irrespective of the number of days in the month;

(C) Any occupant whose rent is of a value less than \$10 per day;

(D) Any person who rents a private home, vacation cabin, or like facility from any owner who rents the facility incidentally to his own use thereof;

(E) Any exempt property owned and operated by George Fox University.

(Ord. [1835A](#), passed 12-6-76)

### **36.20 RETURNS.**

(A) The tax imposed by § [36.16](#) of this chapter shall be paid by the transient to the operator when the transient pays rent to the operator. All such taxes collected by any operator are due and payable to the tax administrator on the 15th date of the month for the preceding quarter and are

delinquent on the 1st day of the month in which they are due.

(B) On or before the 15th day of the month following each quarter of collection by an operator, he shall file a return for that quarter's tax collections with the tax administrator. The return shall be filed in such form as the tax administrator prescribes.

(C) A return shall show the amount of tax collected or otherwise due for the period for which the return is filed. The total rentals upon which the tax is collected or otherwise due, gross receipts of the operator for the period, and an explanation in detail of any discrepancy between such amounts, and the amount of rents exempt, if any.

(D) The person required to file the return shall deliver the return, together with the remittance of the amount of the tax due, with the tax administrator's office either by personal delivery or by mail. If the return is mailed, the postmark shall be considered the date of delivery.

(E) For good cause, the tax administrator may extend, not to exceed one month, the time for making any return or payment of tax. Any operator to whom an extension is granted shall pay interest at the rate of one per fraction of a month. If a return is not filed, and the tax and interest shall become a part of the tax for computation of penalties prescribed in § [36.21](#) of this chapter.

(F) The tax administrator, if he deems it necessary in order to insure payment or facilitate collection by the city of the amount of taxes in any individual case, may require returns and payment of the amount of taxes for other than monthly periods.

(Ord. [1835A](#), passed 12-6-76)

### **36.21 PENALTIES AND INTEREST.**

(A) Any operator who has not been granted an extension of time for remittance of tax due and who fails to remit any tax imposed by § [36.16](#) of this chapter prior to delinquency shall pay a penalty of 10% of the amount of the tax due in addition to the amount of the tax.

(B) Any operator who has not been granted an extension of time for remittance of tax due, and who fails to pay any delinquent remittance on or before a period of 30 days following the date on which the penalty of 15% of the amount of the tax due plus the amount of the tax and the 10% penalty first imposed.

(C) If the tax administrator determines that the nonpayment of any remittance due under § [36.16](#) of this chapter is due to fraud or intent to evade the provisions thereof, a penalty of 25% of the amount of the tax shall be added thereto in addition to the penalties stated in divisions (A) and (B) of this section.

(D) In addition to the penalties imposed, any operator who fails to remit any tax imposed by § [36.16](#) of this chapter shall pay interest at the rate of one half of one percent per month or fraction thereof, without proration for portions of a tax due, exclusive of penalties, from the date on which the remittance first becomes delinquent, until paid.

(E) Every penalty imposed and such interest as accrues under the provisions of this section shall be merged with, and become a part of the tax required to be paid.

(Ord. [1835A](#), passed 12-6-76)

### **36.22 DEFICIENCIES, FRAUD, EVASION, DELAY.**

(A) If the tax administrator determines that a tax return required by § [36.20](#) of this chapter is incorrect, he may compute and determine the amount required to be paid, upon the basis of the facts contained in the return or returns or upon the basis of any information within his possession. One or more deficiency determinations may be made on the amounts due for one or more periods, and the amount so determined shall be due and payable immediately upon service of notice as herein provided, after which the amount shall be delinquent. Penalties on deficiencies shall be applied as set forth in § [36.21](#) of this chapter.

(1) In making a deficiency determination the tax administrator may offset over payments, if any, which may have been previously made against penalties, and interest, on the underpayments. The interest on underpayments shall be computed in the manner set forth in § [36.21](#).

(2) The tax administrator shall give to the operator or occupant a written notice of his determination. The notice may be served personally or by mail; if by mail, the notice shall be addressed to the operator at his address as it appears in the records of the tax administrator. In the service by mail of any notice required by this section, the service shall be complete at the time of deposit in the United States Post Office.

(3) Except in the case of fraud or intent to evade this subchapter or rules and regulations pursuant to it, every deficiency determination shall be made and notice thereof mailed within three

years after the last day of the month following the close of the monthly period for which the deficiency is proposed to be determined or within three years after the return is filed, whichever period expires the later.

(4) Any deficiency determination shall become due and payable immediately upon receipt of notice by the operator and shall become final within ten days after the tax administrator gives notice thereof, but the operator may petition for redemption and refund if the petition is filed before the determination becomes final.

(B) If any operator fails or refuses to collect the tax or to make, within the time required by § 36.20 of this chapter, or makes a fraudulent return or otherwise willfully attempts to evade § 36.16 of this code, the tax administrator shall proceed in such manner as he deems best to obtain the facts and information on which to base estimate of the tax due. As soon as the tax administrator determines that tax due from any operator who has failed or refused to collect the same and to report and remit said tax, he shall proceed to determine and assess against the operator the tax, interest and penalties provided for by §§ 36.16 and 36.21 of this chapter. In case such a determination is made, the tax administrator shall give a notice, in the manner prescribed by this section of the amount so assessed. The determination and notice shall be made and mailed within three years after discovery by the tax administrator of any fraud, intent to evade, or failure or refusal to collect the tax, or failure to file a required return. Any deficiency determination shall become due and payable immediately upon receipt of the notice and shall become final within ten days after the tax administrator gives notice thereof. The operator may, however, petition for redemption and refund as provided in division (A) of this section.

(C) If the tax administrator believes that the collection of any tax or any amount of tax required to be collected or paid to the city by § 36.16 of this chapter is jeopardized by delay, he shall thereupon make a determination of the tax or amount of tax required to be collected, noting the fact upon the determination. The amount so determined as provided in this section shall be immediately due and payable and the operator shall immediately remit the determined amount to the tax administrator after service of notice thereof. The operator may petition, however, after payment is made, for redemption and refund of the determination, if the petition is filed within ten days from the date of service of notice by the tax administrator.

(Ord. 1835A, passed 12-6-76)

### **36.23 REDETERMINATIONS.**

(A) Any person against who a determination is made under § 36.22 of this chapter or any person directly interested in the determination may petition for a redetermination and redemption and refund, within the time required in § 36.22, and the determination shall become final at the expiration of the allowable time.

(B) If a petition for redetermination and refund is filed within the allowable time period, the tax administrator shall reconsider the determination, and, if the person has so requested in his petition, shall grant the person an oral hearing and shall give him ten days notice of the time and place of the hearing. The tax administrator may continue the hearing from time to time as necessary.

(C) The tax administrator may decrease or increase the amount of the determination as a result of the hearing, and if an increase is determined, the increase shall be payable immediately after the hearing.

(D) The order or decision of the tax administrator upon a petition for redetermination and redemption and refund shall become final ten days after service upon the petitioner of notice thereof, unless appeal of such order or decision is filed with the City Council within ten days after service of such notice.

(E) No petition for redetermination and redemption and refund or appeal therefrom shall be effective for any purpose unless the operator first complies with the payment provisions thereof.

(Ord. 1835A, passed 12-6-76)

### **36.24 SECURITY FOR COLLECTION.**

(A) The tax administrator, whenever he deems it necessary to insure compliance with §§ 36.15 and 36.23 of this chapter, may require any operator subject to the transient room tax to deposit with him such security in the form of cash, bond, or other assets as the tax administrator determines. The amount of the security shall be fixed by the tax administrator but shall not be greater than twice the operator's estimated average monthly liability for the period for which he files returns, determined in such manner as the tax administrator deems proper, or \$5,000, whichever amount is the lesser. The

amount of the security may be increased or decreased by the tax administrator subject to the limitations herein provided.

(B) At any time within three years after any tax or any amount of tax required to be collected becomes due and payable, or at any time within three years after any determination by the tax administrator under this subchapter becomes final, the tax administrator may bring an action in the courts of this state, or any other state, or of the United States, in the name of the city, to collect the amount delinquent, together with penalties and interest.

(Ord. [1835A](#), passed 12-6-76)

### **36.25 LIEN.**

(A) The tax imposed by § [36.16](#) of this chapter, together with the interest and penalties provided by § [36.21](#) and the filing fees paid to the County Clerk of Yamhill County, Oregon, and superior to all subsequent recorded liens of all tangible personal property used in the hotel of an operator within Newberg and may be foreclosed on and sold as necessary to discharge the lien, if the lien has been so recorded. Notice of lien may be issued by the tax administrator whenever the operator is in default in the payment of the tax, interest and penalty, and shall be recorded with the County Clerk of Yamhill County and a copy sent to the delinquent operator. The personal property subject to the lien and seized by any deputy of the tax administrator may be sold by the tax administrator at public auction after ten days notice thereof published in a newspaper in the city.

(B) Any such lien as shown on the records of the city shall, upon the payment of the taxes, penalty and interest for which the lien has been imposed, be released by the tax administrator when their full amount has been paid to the city. The operator or person making the payment shall receive a receipt therefor stating that the full amount of the taxes, penalties, and interest have been paid and that the lien is thereby released and the record of lien satisfied.

(Ord. [1835A](#), passed 12-6-76)

### **36.26 REFUNDS.**

Whenever the amount of any tax imposed under § [36.21](#) of this chapter has been paid more than once or has been erroneously or illegally collected or received by the tax administrator, it may be refunded, provided a verified claim in writing therefor, stating the specific reason upon which the claim is founded, is filed with the tax administrator within three years from the date of payment. The claim shall be made on forms provided by him. If he approves the claim, the excess amount collected or paid may be refunded or may be credited on any amounts then due and payable from the operator from whom it was collected or by whom paid, and the balance may be refunded to him or his administrators, executors or assignees. All refunds shall be charged to the transient room tax fund.

(Ord. [1835A](#), passed 12-6-76)

### **36.27 EXPENDITURE OF FUNDS AND COLLECTION FEE.**

(A) *Expenditure of funds.* All money collected pursuant to this subchapter shall be the general funds of the City of Newberg and may be used in any lawful manner that the city deems necessary and appropriate.

(B) *Funding of specific services or programs.* The City Council shall approve by resolution specific expenditures for services or programs to be funded from the proceeds of the transient room tax. The resolution may authorize expenditures for services or programs for multiple years provided that the allocation for funding complies with the State of Oregon Budget Law.

(C) *Withholding five per cent of net tax due to cover expenses.* Every operator liable for collection and remittance of the tax imposed by this subchapter may withhold five per cent of the net tax due to cover expenses in its collection and remittance.

(Ord. [1835A](#), passed 12-6-76; Am. Ord. [96-2433](#), passed 3-12-96; Am. Ord. [97-2478](#), passed 6-2-97; Am. Ord. [98-2498](#), passed 6-1-98)

### **36.28 ADMINISTRATION.**

(A) Every operator shall keep guest records of room rentals and accounting books and records of the rentals. All these records he shall retain for three years and six months after they come into being.

(B) The tax administrator or any person authorized in writing by him may examine during normal business hours the books, papers, and accounting records relating to room rentals of any operator liable for the tax, after notification to him and may investigate the business of the operator in order to verify the accuracy of any return made, or if no return is made by the operator, to ascertain and



determine the amount required to be paid by him.

(C) Neither the tax administrator nor any person having an administrative or clerical duty under this subchapter may make known in any manner whatever the business affairs, operators, or information obtained by an investigation of records and equipment of any person required to obtain a transient occupancy registration certificate, or pay a transient room tax, or any other person visited or examined in the discharge of official duty, or the amount or source of income, profits, losses, expenditures, or permit any statement or application, or copy of either, or any book containing any abstract or particulars thereof, to be seen or examined by any person. Nothing in this section shall prevent, however:

(1) The disclosure to, or the examination of records and equipment by another City of Newberg official, employee, or tax collecting agent for the sole purpose of administering or collecting the tax.

(2) The disclosure, after the filing of a written request to that effect, to the taxpayer himself or his receivers, trustees, executors, administrators, assignees, and guarantors, if directly interested, or information as to any such tax paid, and such tax provided the City Attorney approves each such disclosure. The tax administrator may refuse to make any such disclosure referred to in this paragraph when in his opinion the public interest would suffer thereby.

(3) The disclosure of the names and addresses of any persons to whom transient occupancy registration certificates have been issued.

(4) The disclosure of general statistics regarding taxes collected or business done in the city.

(Ord. [1835A](#), passed 12-6-76)

### **36.29 APPEAL TO COUNCIL.**

Any person aggrieved by any decision of the City Manager may appeal to the Council by filing a notice of appeal with the tax administrator within ten days of the serving or mailing of the notice of the decision given by the City Manager. The tax administrator shall transmit the notice together with the file of the appealed matter, to the Council, who shall fix a time and place for hearing the appeal. The Council shall give the appellant not less than ten days written notice of the time and place of hearing of the appeal.

(Ord. [1835A](#), passed 12-6-76)

### **36.30 VIOLATIONS.**

No operator or other person required to do so may fail or refuse to register or to furnish any return required to be made under § [36.20](#) or to furnish a supplemental return or other data required by the tax administrator. No person may render a false or fraudulent return under § [36.20](#). No person required to make, render, sign, or verify any report regarding the transient room tax may make any false or fraudulent report.

(Ord. [1835](#), passed 12-6-76) Penalty, see § [36.99](#)

## **LOCAL IMPROVEMENT DISTRICTS**

### **36.40 TITLE.**

This subchapter shall be known as the "Local Improvement District Ordinance."

(Ord. [96-2444](#), passed 6-3-96)

### **36.41 DEFINITIONS.**

For the purpose of this subchapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

**ACTUAL COST.** All direct or indirect costs incurred by the city in order to undertake and complete a capital construction project. ACTUAL COST includes, but is not limited to, the costs of labor, materials, supplies, equipment rental, property acquisition, permits, engineering, financing (bond issuance costs), reasonable program delinquencies, return on investment, required fees, insurance, administration, accounting, depreciation, amortization, operation, maintenance, repair or replacement and debt service, including debt service payments or payments into reserve accounts for debt service and payment of amounts necessary to meet debt service coverage requirements.

**ASSESSMENT FOR LOCAL IMPROVEMENT.** Any fee, charge, or assessment that does not exceed the actual cost of a local improvement incurred by the city.

**BONDED INDEBTEDNESS.** Any formally executed written agreement representing a promise by the city to pay to another specified sum of money, at a specified date(s) at least one year in the future.

**CAPITAL CONSTRUCTION.** The construction, modification, replacement, repair, remodeling or renovation of a structure, or addition to a structure, which is expected to have a useful life of more than one year, and includes, but is not limited to:

(1) Acquisition of land, or a legal interest in land, in conjunction with a capital construction of a structure.

(2) Acquisition, installation of machinery or equipment, furnishings or materials which will become an integral part of a structure.

(3) Activities related to the capital construction, such as planning design, acquisition of interim or permanent financing, research, land use and environmental impact studies, acquisition of permits or licenses or services connected with the construction.

(4) Acquisition of existing structures, or legal interests in structures, in conjunction with the capital construction.

**CAPITAL IMPROVEMENT.** Land, structures, facilities, as that term is defined in O.R.S. [288.805](#), machinery, equipment or furnishings having a useful life longer than one year.

**CITY ENGINEER.** Duly appointed official or if such official does not exist, a designated engineer or firm of engineers, charged with engineering responsibilities.

**ESTIMATED ASSESSMENT.**

(1) With respect to each property to be assessed in connection with a local improvement, the total assessment that, at the time of giving notice of the assessment and the right to object or remonstrate, the city estimates will be levied against the property following completion of the local improvement. The estimate shall be based on the estimated cost of the local improvement and the proposed formula for apportioning the actual cost to the property.

(2) Estimated assessment shall be determined by:

(a) Excluding the estimated financing costs associated with any bonds issued to accommodate the payment of the assessment in installments; and

(b) Including the estimated financing costs associated with interim financing of the local improvement.

**FINAL ASSESSMENT.** With respect to each property to be assessed in connection with a local improvement, the total assessment levied against the property following completion of the local improvement. The total assessment shall be based on the actual cost of the local improvement and the formula for apportioning the actual cost to the property.

**FINANCING.** All costs necessary or attributable to acquiring and preserving interim or permanent financing of a local improvement.

(1) The costs of financing may include the salaries, wages and benefits payable to employees to the extent the same are reasonably allocable to the work or services performed by the employees in connection with the financing of a local improvement or any part thereof. However, as a condition to including of any salaries, wages or benefits payable to employees of the city as financing costs of a local improvement or any part thereof, the city shall establish a record keeping system to track the actual work done or services performed by each employee on or in connection with such local improvement.

(2) Financing costs that are to be incurred after the levy of a final assessment may be included whether directly in the final assessment or in the interest rate charged on installment payments, based on the city's reasonable estimate of the financing costs if the city first documents the basis for the estimate and makes the documentation available to interested persons on request.

**LOCAL IMPROVEMENT.** A capital construction project, or part thereof, undertaken by the city pursuant to the procedure to be followed in making local assessments for the benefits from a local improvement upon the lots which have been benefitted by all or part of the improvement:

(1) Which provides a special benefit only to specific properties or rectifies a problem caused by specific properties; and

(2) The costs of which are assessed against those properties in a single assessment upon the completion of the project; and

(3) For which the payment of the assessment plus appropriate interest may be spread over a period of at least ten years by the property owner; and

(4) For which the total of all assessments for the local improvement shall not exceed the

actual cost incurred by the city in completing the project; and

(5) For which the status of a capital construction project as a local improvement is not affected by the accrual of a general benefit to property other than the property receiving the specific benefit.

LOT. Lot, block, or parcel of land.

MANAGER. The City Manager of the City of Newberg.

OWNER. The owner of the title to real property or the contract purchaser of real property of record as shown on the last available complete assessment roll in the office of the Yamhill County Assessor.

PROPERTY BENEFITTED. All property specially benefitted by the improvement, the relative extent of such benefit to be determined by any just and reasonable method of apportionment of the actual cost of the improvement between the properties determined to be specially benefitted.

(1) Real property may be described by giving the subdivision according to the United States survey when coincident with the boundaries thereof, or by lots, blocks and additional names, or by giving the boundaries thereof by metes and bounds, or by reference to the book and page of any public record of the county where the description may be found, or by designation of a tax lot number, or in any other manner as to cause the description to be capable of being made certain.

(2) If the owner of any land is unknown, the land may be assessed to "unknown owner(s)." If the property is correctly described, no final assessment shall be invalidated by a mistake in the name of the owner of the real property assessed or by the omissions of the name of the owner or the entry of the name other than that of the true owner. Where the name of the true owner, or the owner of record, of any parcel of real property is given, the final assessment shall not be held invalid on account of any error or irregularity in the description if the description would be sufficient in a deed of conveyance from the owner, or is such that, in a suit to enforce a contract to convey, employing such description, a court of equity would hold it to be good and sufficient.

(3) Any description of real property which conforms substantially to the requirements of this section shall be a sufficient description in all proceedings of assessment relating or leading to a final assessment for a local improvement foreclosure and sale of delinquent assessments, and in any other proceedings related to or connected with levying, collecting and enforcing final assessments for special benefits to the property.

REMONSTRANCE. A written objection to the formation of a local improvement district.

SINGLE ASSESSMENT. The complete assessment process, including pre-assessment, assessment or reassessment, for any authorized local improvement which provides the procedure to be followed in making local assessments for benefits from a local improvement upon lots which have been benefitted by all or part of the improvement.

SPECIAL BENEFIT ONLY TO SPECIFIC PROPERTIES. The same meaning as "special and peculiar benefit" as that term is used in Oregon Law (O.R.S. [223.389](#)).

STRUCTURE. Any temporary or permanent building or improvement to real property of any kind, which is constructed on or attached to real property, whether above, on or beneath the surface.

(Ord. [96-2444](#), passed 6-3-96)

### **36.42 PLANS AND SPECIFICATIONS.**

Whenever the Council shall determine to proceed to make a local improvement to be paid for in full or in part by the property benefitted, the Council shall, by motion, direct the City Engineer to have a report prepared containing the following information:

- (A) A description of the local improvement.
- (B) Preliminary plans and outline specifications for the local improvement.
- (C) A description of the boundaries of the local improvement.
- (D) A just and reasonable method of apportioning the actual cost of the local improvement to the properties benefitted.
- (E) A list of properties benefitted by the local improvement, including the name and address of each owner; the assessed value of each property, adjusted in accordance with Oregon law; and a statement of the amount of outstanding assessments against any property proposed to be assessed by the improvements.
- (F) The estimated cost of the improvement, including any legal, administrative and engineering costs attributable to the project.
- (G) The estimated share of the estimated cost of the local improvement to be assessed to each property.

(H) The estimated share of the estimated cost of the local improvement to be paid by the city, if any.

(Ord. [96-2444](#), passed 6-3-96)

### **36.43 ASSESSING.**

The Council shall do the following in assessing the cost of the improvement:

(A) Use a fair and reasonable method for determining the extent of the district boundaries.

(B) Use a fair and reasonable method for apportioning the actual cost or estimated cost of the local improvement among the benefitted properties.

(C) Consider payment by the city of all or part of the actual cost or estimated cost of the improvement when, in the opinion of the Council, on account of topographical, physical or other characteristics of the local improvement or expected unusual or excessive use by the general public, payment by the city would be appropriate or when the Council otherwise believes it would be just and reasonable for the city to pay all or part of the cost.

(D) Consider other available means of financing the improvement. In the event other means of finance are used, the Council may, subject to the constraints of the Oregon Constitution and Oregon Laws, in its discretion, levy assessments to cover any part of the actual cost of the local improvement not covered by the alternative means of finance. The use of any available alternative means of finance lies solely within the discretion of the Council.

(E) Not give credits for corner lots.

(F) Assess Unimproved property subject to a maximum depth of 200 feet.

(Ord. [96-2444](#), passed 6-3-96)

### **36.44 RESOLUTION.**

(A) After the Engineer's report has been filed with the City Manager, after the Council has examined the report and found the same to be satisfactory and having found the estimated costs and apportionment to be reasonable and just, and after having found the boundaries of the improvement district to be properly determined, the Council may, by resolution, propose to make the improvement, and to create a local improvement district.

(B) The resolution shall state:

(1) The boundaries of the local improvement district.

(2) The proposed method for apportioning the estimated cost of the local improvement among the benefitted properties.

(3) The portion of the estimated cost, if any, which the city will pay.

(4) That the portion of the estimated cost which is assessed to the properties benefitted shall be a charge and lien upon those properties.

(5) The time and place for a public hearing before the Council to hear objections and receive remonstrances.

(6) Directions to the City Engineer to provide a notice of public hearing to the owners of the properties benefitted which contains the following:

(a) A brief and general description of the proposed local improvement and a statement that a more detailed description is set forth in a report on file in the City Engineer's Office and City Manager's Office.

(b) That the Council proposes to create a local improvement district and will be holding a public hearing to hear objectives and receive remonstrances to the local improvement.

(c) The date, time and place of the public hearing.

(d) A description of the properties to be benefitted, the owners of the properties, the estimated cost of the improvement and the estimated assessment for each property benefitted.

(e) A statement that if at or before the public hearing, written remonstrances against the local improvement are filed with the City Engineer by the owners of at least 60% of the property to be assessed, action on the local improvement shall be suspended for at least six months.

(Ord. [96-2444](#), passed 6-3-96)

### **36.45 NOTICES TO PROPERTY OWNERS.**

(A) *Form of notice.* Any notice required hereunder shall be sent by registered or certified mail or by personal delivery to the owner of each property proposed to be assessed, and shall include the estimated assessment proposed for that property, the date by which time objections shall be filed with the City Engineer, and that such objection shall state the grounds for the objection.

(B) *Delivery of notice.* Whenever a notice is required to be sent to the owner of a lot affected by a proposed assessment, the notice shall be addressed to the owner or his agent. If the address of the owner or his agent is unknown to the city, the notice shall be addressed to the owner or his agent at the city where the property is located. Any mistake, error, omission, for failure with respect to such mailing shall not be jurisdictional or invalidate the assessment proceedings, but there shall be no foreclosure or legal action to collect until notice has been given by personal service upon the property owner, or if personal service cannot be had, then by publication once a week for two successive weeks in a newspaper of general circulation in the city.

(Ord. [96-2444](#), passed 6-3-96)

### **36.46 PUBLIC HEARING AND REMONSTRANCES.**

A public hearing before the Council shall be held at the scheduled date and time and the Council shall hear and consider objections and receive remonstrances to the local improvement. If those persons representing 60% or more of the proposed assessment within the district file with the City Engineer a written objection or remonstrance against the proposed improvement, the remonstrance shall be a bar to any further proceedings in the making of such improvement of a period of six months, except for a sidewalk or improvement unanimously declared by the Council to be needed at once because of an emergency.

(Ord. [96-2444](#), passed 6-3-96)

### **36.47 ORDINANCE CREATING LOCAL IMPROVEMENT DISTRICT.**

(A) *Public hearing.* After the public hearing, the Council may create a local improvement district by ordinance. The ordinance shall describe the improvement(s) to be made, the boundary of the district, the estimated assessments against the properties benefitted, and shall state that the assessment shall be charges and liens against the properties. The city may enforce collection of the assessments as provided in Oregon law.

(B) *Adoption process.* In creating the local improvement by ordinance, the Council shall consider the objections or remonstrances made and reasons stated for them. The Council may adopt, correct, modify or revise the proposed assessments or estimated assessments and shall determine the amount or estimated assessment to be charged against each lot within the district, according to the special and peculiar benefits accruing thereto from the improvement and shall by ordinance spread the assessments. The estimated assessment lien shall continue until the time the estimated assessment becomes a final assessment.

(C) *Plans.* The ordinance shall also direct the City Engineer to have detailed plans and specifications of the local improvement prepared and that, when appropriate, the city shall invite bids for construction of the local improvement.

(Ord. [96-2444](#), passed 6-3-96)

### **36.48 CALL FOR BIDS.**

(A) *Work to be done.* The construction work may be done in whole or in part by the city, by a contractor, or by any other governmental agency, or by any combination thereof.

(B) *Low bids.* If all or part of the improvement is to be constructed by a contractor, the city shall call for bids for making the local improvements and to award the bid to the lowest responsible bidder.

(C) *Separate bids.* In the event that more than one local improvement shall be advertised for bids at the same time, all local improvement districts shall be bid separately.

(D) *Aggregate bid.* The Council shall have the authority to accept the lowest responsible aggregate bid which is in the best interest of the city for all of the local improvement districts bid at the same time, and allocate the proper amount of the total cost to each district separately.

(E) *Council discretion.* The Council may reject any or all bids.

(F) *Rebidding.* If no bids are received, or if all bids are rejected, the Council may call for other bids, change the manner in which the local improvement shall be constructed, or abandon the local improvement.

(G) *Excessive bids.* If the lowest responsible bid exceeds the estimated cost of the local improvement, and if accepted, would cause any estimated assessment to increase by more than 20% and if the Council wants to proceed with the local improvement, before proceeding the Council shall revise the estimated assessments, hold another public hearing, after notice to the owners of the benefitted properties of the new estimated assessment, and shall proceed as if that was the original public hearing except that new bids need not be solicited.

(H) *Bond required.* The Council shall require bonding of all contractors for the faithful performance of the contract. All bidders shall be required to submit a certified check or bid bond in an amount equal to five percent of their bid, and the contractor to whom the award is made shall submit a performance bond in the amount of his bid at the time the contract is awarded. All bonds shall be with bonding companies doing business in Oregon and given under Oregon law. Bonds shall incorporate the term of the plans and specifications and must be approved by the City Attorney as to form.

(Ord. [96-2444](#), passed 6-3-96)

### **36.49 ASSESSMENT ORDINANCE PROCEDURES.**

(A) *Initial assessments.* If the Council determines that the local improvement district shall be created, the Council shall provide for the assessment or estimated assessment of the benefitted properties, and for the apportionment of the assessment or estimated assessment to the properties benefitted by ordinance by one of the following methods:

- (1) Actual cost of the local improvement; or
- (2) The estimated cost of the improvement.

(B) *Notice.* The City Engineer shall prepare the assessment or estimated assessment for the properties benefitted and file it with the appropriate city office. Notice of such assessment or estimated assessment shall be given to each owner of the properties benefitted. The notice shall state the amount of the assessment or estimated assessment proposed for that property and set forth the date, time and place for a public hearing before the Council for hearing objections to the proposed assessments.

(C) *Consideration of proposed assessment.* The Council shall consider objections to the proposed assessments and may correct, modify, or revise the proposed assessments. After determining that the assessments meet the requirements of this subchapter, the Council shall by ordinance, spread the assessments.

(D) *Actual cost.* In determining the assessment or estimated assessment for the local improvement the Council shall use the actual cost.

(E) *Lien.* The assessment ordinance shall provide that the assessments or estimated assessments against the benefitted properties shall be a lien against the assessed properties and that the city may enforce collection of such assessments as provided by Oregon law.

(F) *Estimated cost.* If the initial assessment has been made on the basis of estimated assessment, and upon the completion of work the actual cost is found to be greater or less than the estimated cost, the Council shall make an assessment for the actual cost. Proposed revised assessments shall be made; notice to the owners shall be sent; a public hearing for receiving and considering objections shall be held; determination of the assessment against each property benefitted shall be made as in the case of the initial assessment; and the revised assessments shall be spread by ordinance. In the event that an estimated assessment which was greater than a revised assessment has been paid, the payor or the payor's assigns or legal representative shall be refunded the difference.

(Ord. [96-2444](#), passed 6-3-96)

### **36.50 LIEN RECORDING; PAYMENTS OVER TIME OR BY CASH.**

(A) *Docket.* After the passage of the assessment ordinance, the City Manager shall direct to have entered in the docket of city liens a statement of the amount assessed upon each property benefitted, together with a description of the improvement, the name of the owner(s) and the date of the assessment ordinance. Upon entry in the lien docket, the amount entered shall become a lien and charge upon the respective lots, parcel of land or portions thereof, which have been assessed. All assessment liens of the city shall be superior and prior to all other liens or encumbrances on the property insofar as the laws of the State of Oregon permit.

(B) *Foreclosure.* After the expiration of 30 days from the date the assessment ordinance was adopted, the city may proceed to foreclose or enforce collection of the assessment liens in any manner provided for by the laws of the State of Oregon. The city may, at its option, enter a bid for any property being offered at a foreclosure sale, which bid shall be prior to all bids except those made by persons who would be entitled under the laws of the State of Oregon to redeem the property.

(C) *Final assessment.* After the final assessment has been adopted by the Council, the city shall publish the final assessments once in a newspaper of general circulation within the city and also

send a copy by certified mail or deliver it personally to the owners of the properties to be assessed within ten days after the adoption of the ordinance. The notice shall identify the local improvement for which the assessment is to be made, each lot to be assessed, and the final assessment for each lot. In addition, the notice shall state that the owner shall have the right to apply to the city for payment of the final assessment in installments as provided by this subchapter.

(D) *Time payments.* Within ten days after notice of final assessment is mailed, the owner of any property to be assessed, at any time, may file a written application in the Finance Department to pay:

(1) The whole of the final assessment in installments; or

(2) If part of the final or estimated assessment has been paid, the unpaid balance of the final assessment in installments. Failure to apply for installment payments within ten days will require full payment of the assessment within 30 days from the date of the entry of the lien in the city docket.

(E) *Filing deadline.* At the option of the city, an installment application may be filed not more than ten days after the notice of the final assessment is first published.

(F) *Waiver.* The installment application shall state that the applicant does thereby waive all irregularities or defects, jurisdictional or otherwise, in the proceedings, including the apportionment of the cost of the improvement.

(G) *Period of payments.* The application shall provide that the applicant agrees to pay the assessment in installments over a period of not less than ten years nor more than 30 years and according to such terms as the city may provide. The city may provide that the owner of the assessed property may elect to have the final assessment payable over a period of less than ten years and according to terms determined by the city.

(H) *Interest.* The application shall also provide that the applicant acknowledges and agrees to pay interest at the rate provided by the city. The interest shall be set at an interim rate which shall be applied to the unpaid balance until improvement bonds are sold to finance assessment bonds. Upon sale of bonds, the Finance Director shall adjust the interest rate to the rate received by the city on the bond issue (expressed as true interest cost). All subsequent payments will be made at the new adjusted rate.

(I) *Loan fees.* To recover the costs for administering the bond assessment program, applicants will be charged a loan origination fee and billing fee as set by resolution and reviewed periodically by the Finance Committee of the Council. Those who initially choose to pay the assessment in full will not be charged these fees.

(J) *Description of property.* The application shall also contain a description, by lots or blocks, or other convenient description, of the property of the application assessed for the improvement.

(K) *Payment dates.* The amount and due date of each installment shall be determined by the city and shall be set forth in the installment application. The first installment, plus accrued interest and fees, shall be due and payable on the date determined by the city and subsequent installments plus accrued interest and fees shall be due and payable on subsequent periodic dates as determined by the city.

(L) *Delinquent payments.* If the installment payment or the interest or any portion thereof are not paid within one year of their due date, then the city may pass a resolution:

(1) Giving the name of the owner in default;

(2) Stating the sum due, both principal and interest, and any unpaid late payment penalties or charges;

(3) Containing a description of the property subject to the assessment; and

(4) Declaring the whole sum, both principal and interest, immediately due and payable.

(M) *Collection.* The city may then immediately proceed to collect all unpaid amounts owing and enforce collection by any method authorized by law for the collection on delinquent municipal liens.

(Ord. [96-2444](#), passed 6-3-96)

### **36.51 ERRORS IN ASSESSMENT CALCULATIONS.**

Claimed errors in the calculation of final assessments shall be called to the attention of the Manager prior to any payments on the account. The Manager shall check the calculation and report the findings to the Council. If an error has been made, the Council shall amend the final assessment ordinance to correct the error. Upon the enactment of the amendment, the Manager shall make the necessary correction in the lien docket and shall send by registered or certified mail to the owner a corrected notice of the assessment.

(Ord. [96-2444](#), passed 6-3-96)

**36.52 AUTHORITY OF CITY TO MAKE REASSESSMENT.**

Whenever all or part of any assessment for a local improvement was or is declared void or set aside for any reason or its enforcement refused by any court by reason of jurisdictional or other defects in procedure, whether directly or by virtue of any court decision or when the Council is in doubt as to the validity of all or part of any such assessment by reason of such defects in procedure, the Council may by ordinance make a new assessment or reassessment upon the lots which have been benefitted by all or part of the improvement to the extent of their respective and proportionate shares of the full value of such benefit.

(Ord. [96-2444](#), passed 6-3-96)

**36.53 CONSENT OR WAIVING REQUIREMENT OF NOTICE.**

The provisions of § [36.44](#)(B)(6), insofar as it requires notice to the owners of the properties benefitted, shall not apply if the owners of all assessable property within the proposed local improvement district have consented in writing to the local improvement and have waived the requirement for notice in the initial public hearing.

(Ord. [96-2444](#), passed 6-3-96)

**36.54 ASSESSMENT OF PUBLIC PROPERTY BENEFITTED BY IMPROVEMENTS.**

(A) Whenever all or any part of the cost of a local improvement is to be assessed to the property benefitted, benefitted property owned by the city, county, school district, park district, state and any other political subdivision shall be assessed in the same manner as private property and the amounts of the assessment shall be paid by the city, school district, county, park district, or state, as the case may be.

(B) In the case of property owned by the state, the amount of the assessment shall be certified by the City Finance Director and filed with the Executive Department as a claim for reference to the Legislative Assembly in the manner provided by Oregon law unless funds for the payment of the assessment have been otherwise provided by law.

(Ord. [96-2444](#), passed 6-3-96)

**36.55 ABANDONMENT OF PROCEEDINGS.**

The Council shall have full authority to abandon and rescind proceedings for a local improvement at any time prior to the final consummation of the proceedings. If liens have been assessed upon any property, they shall be cancelled, and any payments received shall be refunded to the payor, his assigns or legal representatives.

(Ord. [96-2444](#), passed 6-3-96)

**36.56 CURATIVE PROVISION.**

No local improvement assessment shall be invalid by reason of a failure to give, in any report, on the proposed assessment ordinance, in the lien docket or elsewhere in the proceedings, the name of the owner of any lot or other parcel of land, or part thereof, or the name of any person having a lien upon or interest in such property, or by reason of any error, mistake, delay, omission, irregularity, or other act, jurisdictional or otherwise, in any of the proceedings hereinabove specified, unless it appears that the assessment as made, insofar as it affects the person complaining, is unfair and unjust, and the Council shall have power and authority to remedy and correct all such matters by suitable actions and proceedings.

(Ord. [96-2444](#), passed 6-3-96)

**ADVANCE FINANCING OF CERTAIN PUBLIC IMPROVEMENTS**

**36.65 DEFINITIONS.**

For the purpose of this subchapter and for the purposes of any advance financing agreement entered into pursuant hereto and for any actions taken as authorized pursuant to this subchapter or otherwise, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

**ADVANCE FINANCING.** A developer’s or the city’s payment for the installation of one or more public improvements installed pursuant to this subchapter which benefiting property owners may utilize upon reimbursing a proportional share of the cost of such improvement.

**ADVANCE FINANCE AGREEMENT.** An agreement between a developer and the city, as



authorized by the City Council, and executed by the City Manager, which agreement provides for the installation of and payment for advance financed public improvements and which agreement contains improvement guarantees, provisions for reimbursement by the intervening property owners who may eventually utilize such improvement, inspection guarantees, and the like, as determined in the best interest of the public by the City Council.

**ADVANCE FINANCING RESOLUTION.** A resolution passed by the City Council and executed by the City Manager designating a public improvement to be an advance finance public improvement and containing provisions for financial reimbursement by intervening property owners who eventually utilize the improvement and such other provisions as determined in the best interest of the public by the City Council.

**CITY.** The City of Newberg.

**CITY COUNCIL.** The City Council of Newberg.

**DEVELOPER.** The city, another municipal corporation, an individual, a partnership, a joint venture, a corporation, a subdivider, a partitioner of land or any other entity, without limitation, who will bear, under the terms of this subchapter, the expense of construction, purchase, installation or other creation of a public improvement.

**DEVELOPMENT.** That real property being developed by the developer and for which property the advance financing resolution is passed.

**INTERVENING PROPERTY.** That real property abutting and/or otherwise benefitting from an advance financed public improvement, but does not include the development.

**OWNER.** The fee holder of record of the legal title to the real property in question. Where such real property is being purchased under a recorded land sales contract, then such purchasers shall also be deemed owners.

**PUBLIC IMPROVEMENT.** The following:

- (1) The construction, reconstruction or upgrading of any water, sanitary, sewer or storm sewer system improvements;
- (2) The grading, graveling, paving or other surfacing of any street, or opening, laying out, widening, extending, altering, changing the grade for construction of any street;
- (3) The construction or reconstruction of curb, gutter or sidewalks;
- (4) The installation of traffic control devices.

(Ord. [95-2406](#), passed 5-1-95)

### **36.66 RECEIPT OF APPLICATIONS.**

The City Manager, or a designee, will receive application for advance financing from developers. The applications shall be accompanied by a fee set by resolution by the City Council. The fee shall not be less than \$500. The fee will be used to pay for the cost of an administrative analysis of the proposed advance financing project, for the cost of notifying the property owners, and for recording costs and the like. When the city is the developer, the City Council shall by motion direct the City Manager to submit the application without fee. The City Manager shall not accept applications that are submitted more than six months after the facility has been constructed and accepted by the City. For purposes of this section, acceptance of a facility does not include any maintenance bond period.

(Ord. [95-2406](#), passed 5-1-95; Am. Ord. [2001-2558](#), passed 12-3-01)

### **36.67 UTILITY ANALYSIS.**

Upon receipt of the advance financing application, the City Manager shall make an analysis of the advance financing proposal and shall prepare a report to be submitted to the City Council for review, discussion and public hearing. Such report shall include a map showing the location and front footage of the development and intervening property. The report shall also include the city's estimate of the total cost of the advance financed public improvement.

(Ord. [95-2406](#), passed 5-1-95)

### **36.68 PUBLIC HEARING.**

Within a reasonable time after the City Manger has completed the analysis, an informational public hearing shall be held in which all parties and the general public shall be given the opportunity to express their views and ask questions pertaining to the proposed advance financed public improvement. Since advance financed public improvements do not give rise to assessments, the public hearing is for information purposes only, and is not subject to mandatory termination due to remonstrances. The City Council has the sole discretion after the public hearing to decide whether or

not an advance financing resolution shall be passed.  
(Ord. [95-2406](#), passed 5-1-95)

### **36.69 NOTIFICATION.**

Not less than ten nor more than 30 days prior to any public hearing being held pursuant to this subchapter, the developer and all intervening property owners shall be notified of such hearing and the purpose thereof. Such notification shall be accomplished by mail, notice shall be made on the date that the letter of notification is posted. Failure of any owner to be so notified shall not invalidate or otherwise affect any advance financing resolution or the City Council's action to approve or not to approve the same.

(Ord. [95-2406](#), passed 5-1-95)

### **36.70 ADVANCE FINANCING RESOLUTIONS AND AGREEMENTS.**

After the public hearing, held pursuant to § [36.68](#), if the City Council desires to proceed with advance financed public improvements, it shall pass an advance financed resolution accordingly. The resolution shall designate the proposed improvement as an advance financed improvement and provide for the advance financed reimbursement by intervening property owners pursuant to this subchapter. When the developer is other than the city, the advance financing resolution shall instruct the City Manager to enter into an agreement between the developer and the city pertaining to the advance financed improvement, and may, in such agreement, require such guarantee or guarantees as the city deems best to protect the public and intervening property owners, and may make such other provisions as the City Council determines necessary and proper.

(Ord. [95-2406](#), passed 5-1-95)

### **36.71 ADVANCE FINANCE REIMBURSEMENTS.**

(A) *Advance financed reimbursement imposed.* An advance financed reimbursement is imposed on all intervening property owners at such time as the owners apply for connection to advance financed water, sanitary sewer and storm sewer improvements or connect to and use advance financed street, sidewalk or traffic control improvements.

(B) *Rates.* Intervening property owners:

(1) The intervening property owner shall pay advance financed reimbursement calculated as follows: The total actual cost of the advance financed public improvement, increased by nine percent annual simple interest, or such other percentage that the City Council may, from time to time, set by resolution, multiplied by a percentage of the unit of assessment being front frontage, area, or whatever other method is determined by the City Council to be the most equitable method of assessment for the intervening property owner. Future interest rate changes shall not apply ex post facto to previously executed reimbursement agreements.

(2) Advance financing reimbursements for oddshaped lots shall be individually established and consistent with the benefit received by the lot and the reimbursement required of other lots in the area. If inequities are created through the strict implementations of the above formulas, the City Council may modify its impact on a case by case basis.

(C) *Collection.* The advance financed reimbursement is immediately due and payable by intervening property owners upon their application for connection to an advance financed water, sanitary sewer or storm sewer system or their connection and use of advance financed street, sidewalk or traffic control improvements. If connection is made without the above mentioned permits, then the advance financed reimbursement is immediately due and payable upon the earliest date that any such permit was required, or in the case of advance finance and street, sidewalk or traffic control improvements, when connection and use is commenced. No permit for connection shall be issued until the advance financed reimbursement has been paid in full. Whenever the full and correct advance financed reimbursement has not been paid and collected for any reason, the City Manager shall report to the City Council the amount of the uncollected reimbursement, the description of the real property to which the reimbursement is attributable, the date upon which the reimbursement was due and the name or names of the intervening or future property owners. The City Council, by motion, shall then set a public hearing and shall direct the City Manager to give notice of that hearing to each of those intervening property owners, together with a copy of the City Manager's report concerning the unpaid reimbursement, either in person or by certified mail. Upon public hearing, the City Council may accept, reject or modify the City Manager's report; and if it finds that any reimbursement is unpaid and uncollected, the City Council, by motion, may direct the City Manager

to docket the unpaid and uncollected reimbursement in the city record of liens; and upon completion of the docketing, the city shall have a lien against the described land for reimbursements, interest and the city's actual cost of serving notice upon the intervening or future property owners. The lien shall be enforced in the manner provided by O.R.S. Chapter [223](#).

(D) *Interim connections*. Upon receiving a valid application for advanced financing of a facility, the city shall prohibit connections to that facility until the City Council takes final action on the application. As an alternative to prohibiting connections, the city may allow a connection provided the connection applicant deposits an estimated reimbursement, determined by the City Engineer, into a city trust account. The connection applicant shall also sign an agreement to pay the actual reimbursement, up to 150% of the estimate, when the Council determines the actual reimbursement amount.

(Ord. [95-2406](#), passed 5-1-95; Am. Ord. [2001-2558](#), passed 12-3-01)

### **36.72 DISPOSITION OF ADVANCE FINANCED REIMBURSEMENTS.**

(A) Developers who have an advance finance agreement with the city shall receive the advance financed reimbursements collected by the city pertaining to their advance financed public improvements. Such reimbursements shall be delivered to the developer for a period of ten years from and after the date the applicable advance financing agreement has been executed. Such payments will be made by the city within 90 days of receipt of the advance financed reimbursements. The city shall incur no liability for its failure to remit advance financed reimbursements pursuant to the requirements of this section.

(B) At the end of the ten-year period, the developer may request that the City Council authorize reimbursements for an additional period of up to ten years. The City Council shall approve such requests unless it finds it would be contrary to the public's interest to do so.

(Ord. [95-2406](#), passed 5-1-95; Am. Ord. [2001-2558](#), passed 12-3-01)

### **36.73 RECORDING.**

All advance financing resolutions shall be recorded by the city in the deed records of Yamhill County, Oregon. Such resolution shall identify the full legal description of the development, intervening properties and future properties. Failure to make such recording shall not affect the legality of an advance financing resolution or agreement.

(Ord. [95-2406](#), passed 5-1-95)

### **36.74 PUBLIC IMPROVEMENTS.**

Public improvements installed pursuant to advance financing agreement shall become and remain the sole property of the city pursuant to the advance financing agreement.

(Ord. [95-2406](#), passed 5-1-95)

### **36.75 MULTIPLE PUBLIC IMPROVEMENTS.**

More than one public improvement may be the subject of an advance financing agreement or resolution.

(Ord. [95-2406](#), passed 5-1-95)

### **36.76 ADVANCE FINANCED REIMBURSEMENTS ON PUBLIC IMPROVEMENTS FUNDED BY CITY.**

In the event the city is the developer for the construction at its own expense of public improvements for which advance financing reimbursements are permissible pursuant to this subchapter, the city may, pursuant to the direction of the City Council, authorize advance financing agreements which include terms at variance with terms otherwise required by this subchapter. The City Council may authorize lower interest rates, may permit installment payments, and may extend the time period during which advance financed reimbursements may be required.

(Ord. [95-2406](#), passed 5-1-95)

### **36.99 PENALTY.**

Any person willfully violating any provisions of §§ [36.15](#) - [36.30](#) of this chapter shall have committed a city Class 2 civil infraction and shall be processed in accordance with the procedure set forth in the "Uniform Civil Infraction Procedure Ordinance," Chapter [40](#) of this title.

(Ord. [1835A](#), passed 12-6-76; Am. Ord. [2163](#), passed 4-1-85)

**This page of the Newberg Municipal Code is current through Ordinance 2007-2672, passed June 4, 2007.**

Disclaimer: The City Recorder's Office has the official version of the Newberg Municipal Code. Users should contact the City Recorder's Office for ordinances passed subsequent to the ordinance cited above.

City Website: <http://ci.newberg.or.us/>

Code Publishing Company  
Voice: (206) 527-6831  
Fax: (206) 527-8411  
Email: [CPC@codepublishing.com](mailto:CPC@codepublishing.com)

MISCELLANEOUS TAXES

REVENUE AND TAXATION

AMUSEMENT DEVICE TAXES

- 320.005 Definitions for ORS 320.005 to 320.150
- 320.011 Amusement device excise tax; amount
- 320.012 Increase in tax when net receipts exceed specified amounts; rules
- 320.013 Additional tax for Oregon Youth Conservation Corps
- 320.016 When tax is due; replacing amusement devices
- 320.075 Joint and several liability for tax; late payment penalty
- 320.080 Procedure on failure to pay tax or penalty
- 320.100 Distribution of tax receipts
- 320.110 Rules
- 320.120 Employment of agents
- 320.130 Law enforcement officers to enforce tax and assist department
- 320.140 Tax does not legalize ownership, display or operation in violation of law
- 320.150 Oregon State Lottery assistance in tax collection responsibilities

LOCAL CONSTRUCTION TAXES

- 320.170 Construction taxes imposed by school district
- 320.173 Exemptions
- 320.176 Rates; limitations; adjustment by Department of Revenue
- 320.179 School district resolutions; requirements
- 320.183 Long-term facilities plan for capital improvements
- 320.186 Payment of obligations
- 320.189 Payment of taxes

TRANSIENT LODGING TAXES

(Definitions)

- 320.300 Definitions for ORS 320.300 to 320.350

320.302 Certain terms defined by rule

(State Transient Lodging Tax)

320.305 Rate of tax; provider reimbursement

320.308 Exemptions

320.310 Records and statements

320.315 Due date and form of returns; payment of tax

320.320 Refunds

320.325 Amounts held in trust; enforcement

320.330 Applicability of other provisions of law

320.335 Distribution of revenues

320.340 Exemption from public records law

(Local Transient Lodging Taxes)

320.345 Lodging provider collection reimbursement charges

320.347 Alternative remittance of receipts from tax on camping and recreational vehicle spaces

320.350 Tax moratorium; exceptions; uses of revenues

## PENALTIES

320.990 Penalties

## AMUSEMENT DEVICE TAXES

**320.005 Definitions for ORS 320.005 to 320.150.** As used in ORS 320.005 to 320.150, unless the context requires otherwise:

(1) “Amusement device” means a video lottery game terminal, including but not limited to any electronic, mechanical-electronic or nonmechanical device that:

- (a) Displays a ticket through the use of a video display screen;
- (b) Is available for consumer play upon the payment of consideration;
- (c) Determines winners through the element of chance; and
- (d) Displays possible prizes on the device.

(2) “Department” means the Department of Revenue.

(3) “Net receipts” has the meaning given the term “net receipts from video lottery games” under ORS 461.547.

(4) “Operate” means to make an amusement device available for use by the public for gain, benefit or advantage.

(5)(a) “Person” means every individual, partnership (limited or not), corporation (for-profit or not-for-profit), company, cooperative, joint stock company, joint venture, firm, business trust, association, organization, institution, club, society, receiver, assignee, trustee in bankruptcy, auctioneer, syndicate, trust, trustee, estate, personal representative or any group of individuals acting as a unit, whether mutual, cooperative, fraternal, nonprofit or otherwise.

(b) “Person” includes this or another state, a municipal corporation, quasi-municipal corporation or political subdivision of this or another state, and the agencies, departments and institutions of this or another state, irrespective of the nature of the activities engaged in or functions performed, but does not include the United States or a foreign government or any agency, department or instrumentality of the United States or of any foreign government.

(6) “Tax year” means a period of 12 months beginning July 1 and ending the following June 30. [1957 c.384 §2; 1975

c.651 §1; 1985 c.476 §1; 1991 c.459 §267; 1993 c.803 §1; 1999 c.501 §1; 2005 c.94 §91]

**320.010** [Amended by 1955 c.574 §1; 1957 c.384 §3; 1959 c.155 §1; 1967 c.344 §7; 1975 c.651 §2; 1981 c.677 §2; 1989 c.786 §1; repealed by 1991 c.459 §268 (320.011 enacted in lieu of 320.010)]

**320.011 Amusement device excise tax; amount.** (1) An excise tax is imposed upon every person for the privilege of operating an amusement device within this state. The tax shall be imposed as provided in subsection (2) of this section and ORS 320.012.

(2) The tax shall be \$125 for operating an amusement device during the tax year.

(3) If an amusement device is not in operation in each quarter of the tax year, the tax imposed under this section shall be prorated, based on the number of calendar quarters in which the amusement device was operating for one day or more.

(4) The tax imposed by this section is in addition to all other excises, taxes, fees or other charges and shall not be used to reduce amounts otherwise accruing to the State Lottery Fund under contracts or agreements with lottery operators or retailers or in any other manner. [1991 c.459 §269 (enacted in lieu of 320.010); 1993 c.803 §2; 1999 c.501 §2]

**320.012 Increase in tax when net receipts exceed specified amounts; rules.** (1) If at any point during the tax year, net receipts from one or more amusement devices operating at a single location exceed \$104,000, the tax imposed under ORS 320.011 shall be increased by an additional \$50 for each device at the location.

(2) If at any point during the tax year, net receipts from one or more amusement devices operating at a single location exceed \$260,000, the tax imposed under ORS 320.011 and subsection (1) of this section shall be increased by an additional \$75 for each device at the location.

(3) The department may adopt rules defining the term “location” for purposes of this section. [1993 c.803 §4; 1995 c.79 §173; 1995 c.255 §3; 1999 c.501 §3]

**320.013 Additional tax for Oregon Youth Conservation Corps.** (1) In addition to the excise tax imposed by ORS 320.011, an excise tax is imposed upon every person for the privilege of operating an amusement device within this state. The tax shall be \$10 for each amusement device operated during the tax year.

(2) All moneys received from the tax imposed under subsection (1) of this section, not including penalties, shall be paid by the Department of Revenue into the State Treasury quarterly and are continuously appropriated to pay the expenses of the state and local programs of the Oregon Youth Conservation Corps established under ORS 418.650 to 418.663. [1993 c.803 §4a; 1995 c.259 §4; 1999 c.501 §4]

**320.015** [1955 c.574 §3; repealed by 1957 c.384 §6]

**320.016 When tax is due; replacing amusement devices.** (1) If an amusement device was in operation before July 1 of the tax year and is to be operating on July 1 of the tax year, the excise tax imposed under ORS 320.011 and 320.013 shall be due on June 30 preceding the tax year.

(2) If an amusement device begins operating at a location on or after July 1 of the tax year, the excise tax imposed under ORS 320.011 and 320.013 shall be due on the day the amusement device begins operating.

(3) If additional taxes are due under ORS 320.012, the additional taxes shall be due on the 14th day after the close of the calendar quarter in which the net receipts from amusement devices operating at a location equal or exceed the level at which the additional taxes are due.

(4) If taxes imposed under ORS 320.011 or 320.013 have been paid for operating an amusement device that, during the tax year, is taken out of operation as the result of being replaced by another amusement device, the taxes that have been paid for the amusement device that has been taken out of operation shall be taken into account in determining any taxes due on the replacement amusement device.

(5) The Department of Revenue may not refund any amusement device tax to an amusement device taxpayer who, at the time of payment, was responsible for the payment of the tax and who subsequently is no longer the person responsible for the payment of the tax. [1999 c.501 §5]

**320.020** [Repealed by 1991 c.459 §272c]

**320.030** [Amended by 1975 c.651 §3; 1981 c.677 §3; 1985 c.476 §2; repealed by 1993 c.803 §16]

**320.031** [1995 c.255 §2; repealed by 1999 c.501 §12]

**320.040** [Amended by 1975 c.651 §4; 1989 c.786 §2; 1991 c.459 §270; 1993 c.803 §6; repealed by 1999 c.501 §12]

**320.050** [Amended by 1955 c.574 §4; 1957 c.384 §4; 1981 c.677 §4; 1991 c.459 §271; 1991 c.567 §5; 1993 c.18 §87; 1993 c.803 §7; repealed by 1999 c.501 §12]

**320.060** [Amended by 1955 c.574 §5; 1957 c.384 §5; 1959 c.155 §2; 1975 c.651 §5; 1981 c.677 §5; 1989 c.786 §4; 1991 c.459 §272; 1991 c.567 §6; 1993 c.803 §8; 1995 c.255 §5; repealed by 1999 c.501 §12]

**320.065** [1975 c.651 §8; 1993 c.803 §9; repealed by 1999 c.501 §12]

**320.070** [Amended by 1955 c.574 §6; 1959 c.155 §3; 1975 c.651 §6; 1981 c.677 §6; 1989 c.786 §5; 1991 c.459 §272a; 1991 c.567 §7; 1993 c.803 §10; repealed by 1999 c.501 §12]

**320.075 Joint and several liability for tax; late payment penalty.** (1) Each person responsible by law or contract for the operation of an amusement device in this state, together with any officer or partner thereof, shall be liable jointly and severally for the taxes imposed under ORS 320.005 to 320.150 and for any penalties arising under ORS 320.005 to 320.150.

(2) If an amusement device is operated in this state without a tax imposed by ORS 320.005 to 320.150 having been paid on or before 30 days after the date the tax is due, a penalty of \$200 shall be imposed.

(3) The penalty imposed in subsection (2) of this section shall be waived if the sole reason the tax was not paid is because of the failure of the Oregon State Lottery to act under the agreement described in ORS 320.150. [1999 c.501 §6; 2005 c.94 §92]

**320.080 Procedure on failure to pay tax or penalty.** (1) If any tax or penalty imposed by ORS 320.005 to 320.150 is not paid as required by ORS 320.005 to 320.150 within 30 days after the date that the written notice and demand for payment required under ORS 305.895 is mailed, the Department of Revenue shall issue a warrant directed to the sheriff of any county of the state commanding the sheriff to levy upon and sell the real and personal property of the person or persons named in the warrant and liable for the tax found within the county, for the payment of the amount thereof with the added penalty and the cost of executing the warrant, and to return the warrant to the department and pay to it the money collected by virtue thereof by a time to be therein specified not more than 30 days from the date of the warrant. A copy of the warrant shall be mailed or delivered to the taxpayer by the department at the taxpayer's last-known address.

(2) The sheriff shall, within five days after the receipt of the warrant, record with the clerk of the county a copy thereof. Thereupon the clerk shall enter in the County Clerk Lien Record the names of the persons mentioned in the warrant, and the amount of the tax and penalty for which the warrant is issued and the date when such copy is recorded. Thereupon the amount of the warrant so recorded shall become a lien upon the title to any interest in real property or personal property of the persons against whom it is issued in the same manner as a judgment that creates a judgment lien under ORS chapter 18. The sheriff shall thereupon proceed upon the same in all respects, with like effect and in the manner prescribed by law in respect to execution issued against property upon judgment of a court of record, and the sheriff is entitled to the same fees for services in executing the warrant to be collected in the same manner. If a warrant is returned not satisfied in full, the department shall have the same remedies to enforce the claim for taxes as if the people of the state had recovered judgment for the amount of the tax. [Amended by 1981 c.677 §7; 1983 c.696 §13; 1985 c.761 §16; 1989 c.625 §77; 2003 c.576 §202; 2005 c.94 §93]

**320.090** [Repealed by 1981 c.677 §8]

**320.100 Distribution of tax receipts.** (1) All moneys received from the taxes imposed under ORS 320.011 and 320.012, including penalties, shall be paid by the Department of Revenue in the following manner:

(a) Seventy-five percent (75%) of the moneys shall be credited, appropriated or remitted as follows:

(A) Forty-three and two-tenths percent (43.2%) thereof shall be credited to the General Fund to be available for payment of general governmental expenses.

(B) Nine and seven-tenths percent (9.7%) is continuously appropriated to pay the expenses of state and local programs of the Oregon Youth Conservation Corps established under ORS 418.650 to 418.663.

(C) Forty-seven and one-tenth percent (47.1%) thereof shall be remitted to the county treasurers of the several counties of the state. Each county shall receive such share of the moneys as its population, determined by the State Board of Higher Education, bears to the total population of the counties of the state, as determined by the census last preceding such apportionment.

(b) Twenty-five percent (25%) of the moneys shall be continuously appropriated to pay the expenses of the state and local programs of the Oregon Youth Conservation Corps established under ORS 418.650 to 418.663.



(2) All revenues received under this section by the treasurers of the several counties shall be placed in the general fund of each county to be expended by the county courts or the board of county commissioners of the several counties for general governmental expenses. [Amended by 1959 c.143 §1; 1963 c.644 §3; 1967 c.323 §1; 1969 c.230 §1; 1989 c.786 §3; 1991 c.459 §272e; 1993 c.803 §11; 1995 c.259 §3; 1999 c.501 §7]

**320.110 Rules.** The Department of Revenue may adopt rules necessary for the administration and enforcement of ORS 320.005 to 320.150. [Amended by 1991 c.459 §272b; 2005 c.94 §94]

**320.120 Employment of agents.** (1) The Department of Revenue may employ the agents necessary for the administration and enforcement of ORS 320.005 to 320.150. Agents of the department charged with the enforcement of ORS 320.005 to 320.150 have all the power and authority of police officers in the performance of such duties.

(2) The Oregon State Lottery and the agents and employees of the Oregon State Lottery may not be considered agents of the department charged with the enforcement of ORS 320.005 to 320.150. [Amended by 1999 c.501 §8; 2005 c.94 §95]

**320.130 Law enforcement officers to enforce tax and assist department.** The state police, sheriffs, constables, police and other law enforcement officers within the State of Oregon shall enforce all provisions of ORS 320.005 to 320.150 and shall assist the Department of Revenue. [Amended by 2005 c.94 §96]

**320.140 Tax does not legalize ownership, display or operation in violation of law.** Nothing in ORS 320.005 to 320.150 shall be construed as licensing, authorizing or legalizing the ownership, possession, display or operation, in violation of any law of this state, of any amusement device. [Amended by 1993 c.270 §64; 1993 c.803 §14; 2005 c.94 §97]

**320.150 Oregon State Lottery assistance in tax collection responsibilities.** The Department of Revenue and the Oregon State Lottery Commission shall enter into an agreement pursuant to which the Oregon State Lottery shall assist the department in the collection of excise taxes imposed under ORS 320.005 to 320.150 on amusement devices operated under the authority of the Oregon State Lottery Commission pursuant to ORS 461.215 and 461.217 and any other functions of the department under ORS 320.005 to 320.150 as may be provided under the agreement. The agreement is not intended to preclude performance by the department of collection functions as from time to time may be required, nor is the agreement intended to preclude the performance of functions by the Oregon State Lottery, under less formal arrangements made with the department, with respect to the tax imposed under ORS 320.005 to 320.150 if the functions are not specifically mentioned in the agreement. The collection of taxes under ORS 320.005 to 320.150 by the Oregon State Lottery does not render the Oregon State Lottery or the agents and employees of the Oregon State Lottery responsible for collection of the tax. [1993 c.803 §13; 1999 c.501 §9; 2005 c.94 §98]

## LOCAL CONSTRUCTION TAXES

**320.170 Construction taxes imposed by school district.** (1) Construction taxes may be imposed by a school district, as defined in ORS 330.005, in accordance with ORS 320.170 to 320.189.

(2) Notwithstanding subsection (1) of this section, construction taxes imposed by a school district may be collected by another local government, local service district or special government body pursuant to a written agreement with a school district. [2007 c.829 §2]

**Note:** 320.170 to 320.189 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapters 305 to 324 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

**Note:** Sections 1 and 9, chapter 829, Oregon Laws 2007, provide:

**Sec. 1.** (1) A local government or local service district, as defined in ORS 174.116, or a special government body, as defined in ORS 174.117, may not impose a tax on the privilege of constructing improvements to real property except as provided in sections 2 to 8 of this 2007 Act [320.170 to 320.189].

(2) Subsection (1) of this section does not apply to:

(a) A tax that is in effect as of May 1, 2007, or to the extension or continuation of such a tax, provided that the rate of tax does not increase from the rate in effect as of May 1, 2007;

(b) A tax on which a public hearing was held before May 1, 2007; or

(c) The amendment or increase of a tax adopted by a county for transportation purposes prior to May 1, 2007, provided that the proceeds of such a tax continue to be used for those purposes.

(3) For purposes of this section and sections 2 to 8 of this 2007 Act, construction taxes are limited to privilege taxes imposed under sections 2 to 8 of this 2007 Act and do not include any other financial obligations such as building permit fees, financial obligations that qualify as system development charges under ORS 223.297 to 223.314 or financial obligations imposed on the basis of factors such as income. [2007 c.829 §1]

**Sec. 9.** Section 1 of this 2007 Act is repealed on January 2, 2018. [2007 c.829 §9]

**320.173 Exemptions.** Construction taxes may not be imposed on the following:

(1) Private school improvements.

(2) Public improvements as defined in ORS 279A.010.

(3) Residential housing that is guaranteed to be affordable, under guidelines established by the United States Department of Housing and Urban Development, to households that earn no more than 80 percent of the median household income for the area in which the construction tax is imposed, for a period of at least 60 years following the date of construction of the residential housing.

(4) Public or private hospital improvements.

(5) Improvements to religious facilities primarily used for worship or education associated with worship.

(6) Agricultural buildings, as defined in ORS 455.315 (2)(a). [2007 c.829 §3]

**Note:** See notes under 320.170.

**320.176 Rates; limitations; adjustment by Department of Revenue.** (1) Construction taxes imposed under ORS 320.170 to 320.189 may be imposed only on improvements to real property that result in a new structure or additional square footage in an existing structure and may not exceed:

(a) \$1 per square foot on structures or portions of structures intended for residential use, including but not limited to single-unit or multiple-unit housing; and

(b) \$0.50 per square foot on structures or portions of structures intended for nonresidential use, not including multiple-unit housing of any kind.

(2) In addition to the limitations under subsection (1) of this section, a construction tax imposed on structures intended for nonresidential use may not exceed \$25,000 per building permit or \$25,000 per structure, whichever is less.

(3)(a) For years beginning on or after June 30, 2009, the limitations under subsections (1) and (2) of this section shall be adjusted for changes in construction costs by multiplying the limitations set forth in subsections (1) and (2) of this section by the ratio of the averaged monthly construction cost index for the 12-month period ending June 30 of the preceding calendar year over the averaged monthly construction cost index for the 12-month period ending June 30, 2008.

(b) The Department of Revenue shall determine the adjusted limitations under this section and shall report those limitations to entities imposing construction taxes. The department shall round the adjusted limitation under subsection (2) of this section to the nearest multiple of \$100.

(c) As used in this subsection, “construction cost index” means the Engineering News-Record Construction Cost Index, or a similar nationally recognized index of construction costs as identified by the department by rule. [2007 c.829 §4]

**Note:** See notes under 320.170.

**320.179 School district resolutions; requirements.** (1) A school district imposing a construction tax shall impose the tax by a resolution adopted by the district board of the school district. The resolution shall state the rates of tax, subject to ORS 320.176.

(2) Prior to adopting a resolution under subsection (1) of this section, a school district shall enter into an intergovernmental agreement with each local government, local service district or special government body collecting the tax that establishes:

(a) Collection duties and responsibilities;

(b) The specific school district accounts into which construction tax revenues are to be deposited and the frequency of such deposits; and

(c) The amount of the administrative fee that the entity collecting the tax may retain to recoup its expenses in collecting the tax, not to exceed one percent of tax revenues. [2007 c.829 §5]

**Note:** See notes under 320.170.

**320.183 Long-term facilities plan for capital improvements.** (1) After deducting the costs of administering a construction tax and payment of refunds of such taxes, a school district shall use net revenues only for capital

improvements.

(2) A construction tax may not be imposed under ORS 320.170 to 320.189 unless the school district imposing the tax develops a long-term facilities plan for making capital improvements. The plan shall be adopted by resolution of the district board of the school district.

(3) As used in this section, “capital improvements”:

(a) Means:

(A) The acquisition of land;

(B) The construction, reconstruction or improvement of school facilities;

(C) The acquisition or installation of equipment, furnishings or other tangible property;

(D) The expenditure of funds for architectural, engineering, legal or similar costs related to capital improvements and any other expenditures for assets that have a useful life of more than one year; or

(E) The payment of obligations and related costs of issuance that are issued to finance or refinance capital improvements.

(b) Does not include operating costs or costs of routine maintenance. [2007 c.829 §6]

**Note:** See notes under 320.170.

**320.186 Payment of obligations.** A school district may pledge construction taxes to the payment of obligations issued to finance or refinance capital improvements as defined in ORS 320.183. [2007 c.829 §7]

**Note:** See notes under 320.170.

**320.189 Payment of taxes.** Construction taxes shall be paid by the person undertaking the construction at the time that a permit authorizing the construction is issued. [2007 c.829 §8]

**Note:** See notes under 320.170.

## TRANSIENT LODGING TAXES

(Definitions)

**320.300 Definitions for ORS 320.300 to 320.350.** As used in ORS 320.300 to 320.350:

(1) “Collection reimbursement charge” means the amount a transient lodging provider may retain as reimbursement for the costs incurred by the provider in collecting and reporting a transient lodging tax and in maintaining transient lodging tax records.

(2) “Conference center” means a facility that:

(a) Is owned or partially owned by a unit of local government, a governmental agency or a nonprofit organization; and

(b) Meets the current membership criteria of the International Association of Conference Centers.

(3) “Convention center” means a new or improved facility that:

(a) Is capable of attracting and accommodating conventions and trade shows from international, national and regional markets requiring exhibition space, ballroom space, meeting rooms and any other associated space, including but not limited to banquet facilities, loading areas and lobby and registration areas;

(b) Has a total meeting room and ballroom space between one-third and one-half of the total size of the center’s exhibition space;

(c) Generates a majority of its business income from tourists;

(d) Has a room-block relationship with the local lodging industry; and

(e) Is owned by a unit of local government, a governmental agency or a nonprofit organization.

(4) “Local transient lodging tax” means a tax imposed by a unit of local government on the sale, service or furnishing of transient lodging.

(5) “State transient lodging tax” means the tax imposed under ORS 320.305.

(6) “Tourism” means economic activity resulting from tourists.

(7) “Tourism promotion” means any of the following activities:

(a) Advertising, publicizing or distributing information for the purpose of attracting and welcoming tourists;

(b) Conducting strategic planning and research necessary to stimulate future tourism development;

(c) Operating tourism promotion agencies; and

(d) Marketing special events and festivals designed to attract tourists.

(8) “Tourism promotion agency” includes:

(a) An incorporated nonprofit organization or governmental unit that is responsible for the tourism promotion of a destination on a year-round basis.

(b) A nonprofit entity that manages tourism-related economic development plans, programs and projects.

(c) A regional or statewide association that represents entities that rely on tourism-related business for more than 50 percent of their total income.

(9) “Tourism-related facility”:

(a) Means a conference center, convention center or visitor information center; and

(b) Means other improved real property that has a useful life of 10 or more years and has a substantial purpose of supporting tourism or accommodating tourist activities.

(10) “Tourist” means a person who, for business, pleasure, recreation or participation in events related to the arts, heritage or culture, travels from the community in which that person is a resident to a different community that is separate, distinct from and unrelated to the person’s community of residence, and that trip:

(a) Requires the person to travel more than 50 miles from the community of residence; or

(b) Includes an overnight stay.

(11) “Transient lodging” means:

(a) Hotel, motel and inn dwelling units that are used for temporary overnight human occupancy;

(b) Spaces used for parking recreational vehicles or erecting tents during periods of human occupancy; or

(c) Houses, cabins, condominiums, apartment units or other dwelling units, or portions of any of these dwelling units, that are used for temporary human occupancy.

(12) “Unit of local government” has the meaning given that term in ORS 190.003.

(13) “Visitor information center” means a building, or a portion of a building, the main purpose of which is to distribute or disseminate information to tourists. [Formerly 305.824; 2005 c.187 §1]

**Note:** 320.300 to 320.350 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapters 305 to 324 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

**320.302 Certain terms defined by rule.** The Department of Revenue may by rule define “dwelling unit,” “nonprofit facility,” “temporary human occupancy” and other terms for purposes of ORS 320.300 to 320.350. [2005 c.187 §5]

**Note:** See note under 320.300.

(State Transient Lodging Tax)

**320.305 Rate of tax; provider reimbursement.** (1) A tax of one percent is imposed on any consideration rendered for the sale, service or furnishing of transient lodging. The tax imposed by this subsection shall be in addition to and not in lieu of any local transient lodging tax. The tax shall be collected by the transient lodging provider.

(2) The transient lodging provider shall withhold five percent of the amount the provider collects under subsection (1) of this section for the purpose of reimbursing the provider for the cost of tax collection, record keeping and reporting. [2003 c.818 §2]

**Note:** See note under 320.300.

**320.308 Exemptions.** The following are exempt from the state transient lodging tax:

(1) A dwelling unit in a hospital, health care facility, long term care facility or any other residential facility that is licensed, registered or certified by the Department of Human Services;

(2) A dwelling unit in a facility providing treatment for drug or alcohol abuse or providing mental health treatment;

(3) A dwelling unit that is used by members of the general public for temporary human occupancy for fewer than 30 days per year;

(4) A dwelling unit, the consideration for which is funded through a contract with a government agency and the purpose of which is to provide emergency or temporary shelter;

(5) A dwelling unit at a nonprofit youth or church camp, nonprofit conference center or other nonprofit facility; or

(6) A dwelling unit that is leased or otherwise occupied by the same person for a consecutive period of 30 days or more during the year. The requirements of this subsection are satisfied even if the physical dwelling unit changes during the consecutive period, if:

(a) All dwelling units occupied are within the same facility; and

(b) The person paying consideration for the transient lodging is the same person throughout the consecutive period.

**Note:** See note under 320.300.

**Note:** 320.308 was added to and made a part of 320.300 to 320.350 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

**320.310 Records and statements.** Every transient lodging provider responsible for collecting the tax imposed by ORS 320.305 shall keep records, render statements and comply with rules adopted by the Department of Revenue with respect to the tax. The records and statements required by this section must be sufficient to show whether there is a tax liability under ORS 320.305. [2003 c.818 §3]

**Note:** See note under 320.300.

**320.315 Due date and form of returns; payment of tax.** (1) Every transient lodging provider is responsible for collecting the tax imposed under ORS 320.305 and shall file a return with the Department of Revenue, on or before the last day of the month following the end of each calendar quarter, reporting the amount of tax due during the quarter. The department shall prescribe the form of the return required by this section. The rules of the department shall require that returns be made under penalties for false swearing.

(2) When a return is required under subsection (1) of this section, the transient lodging provider required to make the return shall remit the tax due to the department at the time fixed for filing the return. [2003 c.818 §4]

**Note:** See note under 320.300.

**320.320 Refunds.** If the amount paid by the transient lodging provider to the Department of Revenue under ORS 320.315 exceeds the amount of tax payable, the department shall refund the amount of the excess with interest thereon at the rate established under ORS 305.220 for each month or fraction of a month from the date of payment of the excess until the date of the refund. A refund may not be made to a transient lodging provider who fails to claim the refund within two years after the due date for filing the return to which the claim for refund relates. [2003 c.818 §5]

**Note:** See note under 320.300.

**320.325 Amounts held in trust; enforcement.** (1) Every transient lodging provider required to collect the tax imposed by ORS 320.305 shall be deemed to hold the amount collected in trust for the State of Oregon and for payment to the Department of Revenue in the manner and at the time provided by ORS 320.315.

(2) At any time the transient lodging provider required to collect the tax fails to remit any amount deemed to be held in trust for the State of Oregon, the department may enforce collection by the issuance of a distraint warrant for the collection of the delinquent amount and all penalties, interest and collection charges accrued thereon. The warrant shall be issued, docketed and proceeded upon in the same manner and shall have the same force and effect as is prescribed with respect to warrants for the collection of delinquent income taxes. [2003 c.818 §6]

**Note:** See note under 320.300.

**320.330 Applicability of other provisions of law.** Unless the context requires otherwise, the provisions of ORS chapters 305, 314 and 316 as to the audit and examination of reports and returns, confidentiality of reports and returns, determination of deficiencies, assessments, claims for refunds, penalties, interest, jeopardy assessments, warrants, conferences and appeals to the Oregon Tax Court, and procedures relating thereto, apply to ORS 320.305 to 320.340, the same as if the tax were a tax imposed upon or measured by net income. All such provisions apply to the taxpayer liable for the tax and to the transient lodging provider required to collect the tax. As to any amount collected and required to be remitted to the Department of Revenue, the tax shall be considered a tax upon the transient lodging provider required to collect the tax and that provider shall be considered a taxpayer. [2003 c.818 §7]

**Note:** See note under 320.300.

**320.335 Distribution of revenues.** All moneys received by the Department of Revenue pursuant to ORS 320.305 to 320.340, and interest thereon, shall be paid to the State Treasurer to be held in a suspense account established under ORS 293.445. After the payment of refunds:

(1) Moneys necessary to reimburse the Department of Revenue for the actual costs incurred by the department in administering the state transient lodging tax, not to exceed two percent of state transient lodging tax collections, are continuously appropriated to the department; and

(2) The balance of the moneys received shall be transferred to the account of the Oregon Tourism Commission established under ORS 284.131. The moneys transferred under this subsection are continuously appropriated to the Oregon Tourism Commission for the purposes set forth in ORS 284.131. [2003 c.818 §8]

**Note:** See note under 320.300.

**320.340 Exemption from public records law.** (1) Public records of moneys received by the Department of Revenue pursuant to ORS 320.305 to 320.340 are exempt from disclosure under ORS 192.410 to 192.505. Nothing in this section shall limit the use that can be made of such information for regulatory purposes or its use and admissibility in any enforcement proceedings.

(2) If a conflict is found to exist between subsection (1) of this section and ORS 314.835, ORS 314.835 controls. [2003 c.818 §8a]

**Note:** See note under 320.300.

(Local Transient Lodging Taxes)

**320.345 Lodging provider collection reimbursement charges.** (1) On or after January 1, 2001, a unit of local government that imposed a local transient lodging tax on December 31, 2000, and allowed a transient lodging provider to retain a collection reimbursement charge on that tax, may not decrease the percentage of local transient lodging taxes that is used to fund collection reimbursement charges.

(2) A unit of local government that imposes a new local transient lodging tax on or after January 1, 2001, shall allow a transient lodging provider to retain a collection reimbursement charge of at least five percent of all collected local transient lodging tax revenues. The percentage of the collection reimbursement charge may be increased by the unit of local government.

(3) A unit of local government that increases a local transient lodging tax on or after January 1, 2001, shall allow a transient lodging provider to retain a collection reimbursement charge of at least five percent of all collected local transient lodging tax revenues. The collection reimbursement charge shall apply to all collected local transient lodging tax revenues, including revenues that would have been collected without the increase. The percentage of the collection reimbursement charge may be increased by the unit of local government.

(4) A unit of local government may not offset the loss of local transient lodging tax revenues caused by collection reimbursement charges required by this section by:

(a) Increasing the rate of the local transient lodging tax;

(b) Decreasing the percentage of total local transient lodging tax revenues used to fund tourism promotion or tourism-related facilities; or

(c) Increasing or imposing a new fee solely on transient lodging providers or tourism promotion agencies that are funded by the local transient lodging tax. [2003 c.818 §10]

**Note:** See note under 320.300.

**320.347 Alternative remittance of receipts from tax on camping and recreational vehicle spaces.** (1) Except as provided in this section, a unit of local government that imposes a tax on the rental of privately owned camping or recreational vehicle spaces shall, regardless of a schedule imposed by the unit of local government for remitting tax receipts, allow a transient lodging provider to hold the tax collected until the amount of money held by the provider equals or exceeds \$100.

(2) Once the amount held by a transient lodging provider equals or exceeds \$100, or by December 31 of each year if the \$100 threshold is not met, the provider shall remit the tax collected at the next following reporting period established by the unit of local government for payment of the tax.

(3) A unit of local government may not assess any penalty or interest against a transient lodging provider that withholds payments pursuant to this section. [2005 c.610 §4]

**Note:** See note under 320.300.

**320.350 Tax moratorium; exceptions; uses of revenues.** (1) A unit of local government that did not impose a local

transient lodging tax on July 1, 2003, may not impose a local transient lodging tax on or after July 2, 2003, unless the imposition of the local transient lodging tax was approved on or before July 1, 2003.

(2) A unit of local government that imposed a local transient lodging tax on July 1, 2003, may not increase the rate of the local transient lodging tax on or after July 2, 2003, to a rate that is greater than the rate in effect on July 1, 2003, unless the increase was approved on or before July 1, 2003.

(3) A unit of local government that imposed a local transient lodging tax on July 1, 2003, may not decrease the percentage of total local transient lodging tax revenues that are actually expended to fund tourism promotion or tourism-related facilities on or after July 2, 2003. A unit of local government that agreed, on or before July 1, 2003, to increase the percentage of total local transient lodging tax revenues that are to be expended to fund tourism promotion or tourism-related facilities, must increase the percentage as agreed.

(4) Notwithstanding subsections (1) and (2) of this section, a unit of local government that is financing debt with local transient lodging tax revenues on November 26, 2003, must continue to finance the debt until the retirement of the debt, including any refinancing of that debt. If the tax is not otherwise permitted under subsection (1) or (2) of this section, at the time of the debt retirement:

(a) The local transient lodging tax revenue that financed the debt shall be used as provided in subsection (5) of this section; or

(b) The unit of local government shall thereafter eliminate the new tax or increase in tax otherwise described in subsection (1) or (2) of this section.

(5) Subsections (1) and (2) of this section do not apply to a new or increased local transient lodging tax if all of the net revenue from the new or increased tax, following reductions attributed to collection reimbursement charges, is used consistently with subsection (6) of this section to:

(a) Fund tourism promotion or tourism-related facilities;

(b) Fund city or county services; or

(c) Finance or refinance the debt of tourism-related facilities and pay reasonable administrative costs incurred in financing or refinancing that debt, provided that:

(A) The net revenue may be used for administrative costs only if the unit of local government provides a collection reimbursement charge; and

(B) Upon retirement of the debt, the unit of local government reduces the tax by the amount by which the tax was increased to finance or refinance the debt.

(6) At least 70 percent of net revenue from a new or increased local transient lodging tax shall be used for the purposes described in subsection (5)(a) or (c) of this section. No more than 30 percent of net revenue from a new or increased local transient lodging tax may be used for the purpose described in subsection (5)(b) of this section. [2003 c.818 §11]

**Note:** See note under 320.300.

## PENALTIES

**320.990 Penalties.** Violation of any provision of ORS 320.005 to 320.150 by any person is punishable, upon conviction, by a fine of not more than \$500, or by imprisonment in the county jail for not more than six months, or by both. Justice courts have concurrent jurisdiction with the circuit courts of any prosecution provided for in this subsection. [Amended by 1955 c.574 §7; 1971 c.743 §356; 1999 c.501 §10; 2005 c.94 §99]

**CITY OF NEWBERG COUNCIL MINUTES  
SEPTEMBER 15, 2008  
7:00 P.M. MEETING  
PUBLIC SAFETY BUILDING TRAINING ROOM  
401 EAST THIRD STREET**

Work Session was held prior to this meeting. A Fire Department induction took place in Station 20. No decisions were made.

**I. CALL MEETING TO ORDER**

Mayor Bob Andrews called the meeting to order at 7:01 PM.

**II. ROLL CALL**

Members

Present: Mayor Bob Andrews                      Mike Boyes                      Roger Currier                      Bob Larson  
                    Bart Rierson                      Marc Shelton

Staff

Present: Barton Brierley, Planning and Building Director                      Daniel J. Danicic, City Manager  
                    Howard Hamilton, Public Works Director                      Elizabeth Comfort, Finance Director  
                    Tabrina McPherson, Department Support Manager                      Jennifer Nelson, Recording Secretary

Staff

Absent: Terrence Mahr, City Attorney (excused)

Others

Present: Joanne Wiitala, Stuart D. Brown, Sheryl Kelsh, John Bridges

**III. PLEDGE OF ALLEGIANCE**

The Pledge of Allegiance was performed.

**IV. CITY MANAGER’S REPORT**

Mr. Daniel J. Danicic, City Manager, spoke about the urban waterfront revitalization conference he attended last week and arranging a future workshop to share information with the Council. He noted that state representatives and senators will be meeting with the communities they represent on October 14<sup>th</sup> from 5:00 to 7:00 PM to focus on legislative issues statewide. At the October 6<sup>th</sup> City Council work session there will be a discussion on the utilities’ franchise and Senator Larry George has also asked for time to speak to the Council as well; work session will convene at 5:15 PM to cover both items. He spoke of his presentation to Friendsview manor and the Public Works BBQ on Wednesday September 17<sup>th</sup> and officially announced Mr. Howard Hamilton as the new Public Works Director.

**V. PUBLIC COMMENTS**

Ms. Joanne Wiitala, representing the Newberg Animal Shelter Friends, announced they would be selling pavers at Fred Meyer this Saturday from 10:00 AM to 6:00 PM to be placed at the entrance of the new animal shelter when it is built. She also spoke of information provided on the NASF website and a new



monthly giving program offering automatic withdrawals. The building fund is at \$372,000 and the Swing Dinner and Auction will be Saturday, September 27<sup>th</sup> from 5:00 to 9:00 PM.

## VI. CONSENT CALENDAR

1. Consider a motion approving **Resolution No. 2008-2805** creating a class exemption from competitive bidding requirements for certain public improvement contracts in proximity to private development.
2. Consider a motion approving City Council Minutes for August 18, 2008.

**MOTION: Larson/Rierson** to approve the Consent Calendar including **Resolution No. 2008-2805** and the City Council Minutes for August 18, 2008 as amended. (6 Yes/0 No/1 Vacant) Motion carried.

## VII. PUBLIC HEARING

1. Consider a motion approving **Order No. 2008-0016** creating for a zone change from (R-2) to (C-2) and a comprehensive plan change from Medium Density Residential (MDR) to Commercial (COM); and design review approval for office use at 613 N. Elliott Road.

TIME – 7:10 PM

Mayor Andrews called for any biases, conflicts of interest, ex parte contact, conflicts of jurisdiction, or abstentions. None were stated.

Mr. Danicic made the required legal statements regarding quasi-judicial hearing procedures.

**MOTION: Rierson/Larson** to accept the written testimony submitted by Mr. Curtis D. Walker. (6 Yes/0 No/1 Vacant) Motion carried.

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

Mr. Stuart D. Brown, Property Owner and Applicant, responded to some questions concerning the vacant lots.

Mayor Andrews asked for clarifications from staff as to the Planning Commission's (PC) recommendation for the permitted uses verses the staff's recommendations. Staff replied and noted accepting their recommendation would replace exhibit G with attachment 6.

Councilor Roger Currier expressed concerns for school students using the sidewalks and the impact of the retail section for this area and questioned if the applicant owned the adjacent properties.

Councilor Mike Boyes was also concerned about possible driveways on the adjacent properties. Staff addressed both stating the applicant did own the adjacent properties and although they could not see any reason for more driveways, the applicant could have more if he wanted to.

Councilor Bart Rierson questioned which units shared the same driveways. Staff noted which units 625,615, and 629 were currently sharing a driveway, but this does not come into play for the requested zone change.

Mayor Andrews asked if the request for the new office building was just for a reconfiguration of an existing building and not a new structure. Staff stated this was the case. He asked for further explanation of the requirement for commercial buildings within a residential neighborhood to blend in with the surroundings and he wondered if there should be a higher level of review for offices permitted in C-2 zoning than administrative.

Councilor Bob Larson asked if there were plans for a residential area above the office. Staff stated there were not plans for this.

Councilor Boyes asked about frontage improvements and staff said they anticipate the frontage will be improved when the office is put in.

Mayor Andrews opened public testimony.

Mr. Brown addressed some previous questions brought up by the Councilors and the eventual goal to connect all sidewalks from the high school to 99W. He stated the upstairs area above the offices would not be large enough to be used as residential space. He spoke of his intent to maintain the residential character of the neighboring parcels and addressed the ingress and egress issues surrounding an extra driveway on parcel 609. He stated the minimum requirement for parking spaces was being met. He spoke of his intentions for the area as a visual buffer between the residential and commercial areas and his commitment to providing affordable housing to the area but the inability to make this particular property function efficiently at a higher density.

Councilor Currier was still concerned with the lack of staging area at the traffic light with what he felt was an abundance of parking spaces.

Mr. Brown stated that subject was not addressed by the current request and he could not build any more on the undeveloped areas without approval from the Planning Commission.

Mayor Andrews asked the applicant what was being done to prevent overflow parking from the apartment across the street.

Mr. Brown stated they have had requests to park unused cars.

Councilor Larson asked how far the frontage improvements would go.

Mr. Brown stated they would be just in front of the property for now but he said he would like to see a Local Improvement District (LID) established at some point to create an uninterrupted pathway from the high school to 99W.

Mayor Andrews closed public testimony. No opponents appeared.

Mr. Brown waived his right to submit further written testimony after the record has been closed.

**MOTION: Currier/Rierson** to approve **Order No. 2008-0016** creating for a zone change from (R-2) to (C-2) and a comprehensive plan change from Medium Density Residential (MDR) to Commercial (COM); and design review approval for office use at 613 N. Elliott Road with additional staff recommendation to replace exhibit G with attachment 6 from the meeting packet.

Mayor Andrews stated he preferred the recommendations made by the Planning Commission. Both recommendations were compared again and discussed.

Councilor Rierson stated he supported the staff recommendations.

**VOTE:** To approve **Order No. 2008-0016** as amended (6 Yes/0 No/1 Vacant) Motion carried.

2. Consider a motion approving **Ordinance No. 2008-2699** approving the preliminary assessments for the Alice Way Local Improvement District (LID).

TIME – 8:16 PM

Mayor Andrews called for any biases, conflicts of interest, ex parte contact, conflicts of jurisdiction, or abstentions. None were stated.

**MOTION: Larson/Shelton** to accept the written testimony submitted by Mr. Jay Beaman. (6 Yes/0 No/1 Vacant) Motion carried.

Mr. Howard Hamilton, Public Works Director, presented the staff report and recommended adopting the ordinance (see official meeting packet for full report).

Dan Danicic commented the water line currently ends at the Hazelden Springbrook property. Hazelden would be required to loop the waterline during the next phase of their development. If Hazelden has not looped the water line by the time that the sewer portion of the LID is started, then the water line looping will be done at that time and the total cost of the water line looping will be borne by Hazelden.

Mayor Andrews opened and closed public testimony.

**MOTION: Rierson/Currier** to approve **Ordinance No. 2008-2699** approving the preliminary assessments for the Alice Way Local Improvement District (LID), read by title only. (6 Yes/0 No/1 Vacant) Motion carried.

3. Consider a motion approving **Resolution No. 2008-2802** acknowledging the fulfillment of the City of Newberg's obligation to hold a public hearing as part of the Community Development Block Grant project closeout process.

TIME – 8:25 PM

Mayor Andrews called for any biases, conflicts of interest, ex parte contact, conflicts of jurisdiction, or abstentions. None were stated.

Mr. Brierley presented the staff report and recommended approval (see official meeting packet for full report).

Councilor Rierson asked if the City waived some of the System Development Charges (SDCs) for this project and expressed his disappointment that they did not.

Mayor Andrews opened and closed public testimony.

Councilor Boyes commended the beautiful building but wished something different had been done with the fence.

Councilor Currier questioned the cost efficiency of the project.

**MOTION:** Larson/Currier to approve **Resolution No. 2008-2802** acknowledging the fulfillment of the City of Newberg's obligation to hold a public hearing as part of the Community Development Block Grant project closeout process. (6 Yes/0 No/1 Vacant) Motion carried.

## **VIII. CONTINUED BUSINESS**

None.

## **IX. NEW BUSINESS**

### 1. Chehalem Valley Chamber of Commerce and Visitors Center's Budget Report

Ms. Cheryl Kelsh, Executive Director of the Chehalem Valley Chamber of Commerce, presented the 2008-09 budget and offered results from the 2007-08 fiscal year. She mentioned overhead costs increasing on the proposed budget because of the desire to purchase space on 99W. There was also an additional increase in the cost for utilities and postage.

Mayor Andrews mentioned he would like to receive the budget prior to the meeting so there is more time to review it beforehand.

Ms. Kelsh discussed the tourist related flyers currently being distributed and brought a copy to show the Council.

Mayor Andrews suggested creating something similar to highlight area artists like they have done with the wineries.

### 2. Dedication of Transient Room Tax Revenue Discussion

Mr. John Bridges, President of the Chehalem Valley Chamber of Commerce, requested Council to initiate a public hearing to discuss directly connecting the transient room tax revenue to fund the Visitor's Center by a set percentage within the budget. He stated this would give the Visitor's Center stability in funding and is directly related to their efforts to promote tourism.

Councilor Boyes agreed this was a great idea and spoke of his belief the growing tourism in the area was something to be encouraged. He felt they would be successful in using these funds to market the area well.

Councilor Rierson also felt it was appropriate to tie the general fund money received through the room tax to fund the Visitor's Center.

Councilor Larson stated he would like to see the City do more than what they are currently doing with the \$18,000 they give from the room tax. He would like to increase the portion from 15.6% to 20% of the room tax plus 12% of the business licenses.

Councilor Currier stated he was not opposed to the request but would like to dedicate the excess funds towards additional police officers instead of putting the burden on the general fund.

Mayor Andrews asked for clarification from the Finance Director regarding the totals being received from business licenses currently (\$40K estimated).

Ms. Elizabeth Comfort, Finance Director, discussed the \$12K historically devoted to the Visitor's Center and the \$13K that goes into staff costs with the business licenses; including maintenance of software, postage, and staff operation. She also stated a portion goes into the economic development fund for new businesses in Newberg.

Discussion followed concerning the potential increase in the room tax and possible uses for that additional money including development and additional officers.

Mr. Bridges clarified he was asking all the funding, the \$30K currently received, be directly tied to the room tax. He said they are not seeking an increase, just securing a funding source.

Discussion followed about the current law regarding this tax being used for tourism and whether the percentage used for this will be able to be lowered at a future date. Broader policy implications would need to be reviewed by the city attorney and the Council debriefed.

Councilor Boyes stated he was against using the money from the business licenses since he felt this money should be doing something further for the businesses like safety classes. He felt the room tax money should assist with marketing Newberg and providing public safety.

Mr. Bridges stated the business license money is a done issue and it is a revenue source for economic development. It can be used to provide a downtown manager to get the right mix of businesses together to be compatible.

Councilor Larson suggested taking the funds from the room tax and leaving the business license money alone.

Councilor Currier suggested having a work session where staff would provide a list of options and recommendations before a public hearing is held.

Further details regarding the legislation of the room tax were discussed and staff was directed to examine the contribution of the Visitor's Center verses the potential for tourism in the area, as well as the request submitted by Mr. Bridges.

**X. COUNCIL BUSINESS**

TIME – 9:35 PM

Councilor Rierson spoke of the previous budget meetings and the need to follow through with the outreach to the public regarding the public safety fee for the additional three officers.

Mr. Danicic suggested making that a part of another community telephone survey which is to occur in February. Other possible survey options were discussed that could be conducted sooner as well as the cost impacts.

Councilor Currier felt it would be easier to drop a card in with the utility bill including the option to make a one time payment of \$36 rather than \$3 each billing statement. He also asked about a taco stand behind Izzy's Pizza. Staff stated action was being taken and there will be a follow-up.

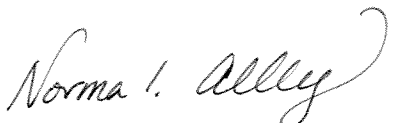
**XI. EXECUTIVE SESSION**

None.


**XII. ADJOURNMENT**

**MOTION:** Larson/Boyes to adjourn at 9:47 PM (6 Yes/0 No/1 Vacant) Motion carried.

**ADOPTED** by the Newberg City Council this 20<sup>th</sup> day of October, 2008.

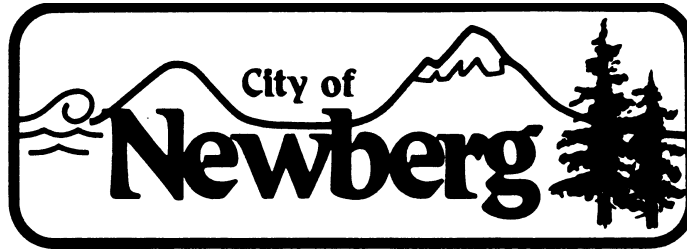
  
\_\_\_\_\_  
Norma I. Alley, City Recorder

**ATTEST** by the Mayor this 23<sup>rd</sup> day of October, 2008.

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

City Manager  
(503) 537-1207

City Attorney  
(503) 537-1206



414 East First St.  
PO Box 970  
Newberg, OR 97132

**CITY OF NEWBERG  
CITY COUNCIL WORK SESSION  
MARCH 1, 2010  
6:00 P.M.  
NEWBERG PUBLIC SAFETY BUILDING  
401 EAST THIRD STREET**

THE CITY COUNCIL OF THE CITY OF NEWBERG WILL HOLD A WORK SESSION TO REVIEW THE COUNCIL AGENDA ITEMS AND TO HEAR REPORTS FROM BOARDS, COMMISSIONS, AND COMMITTEES. NO ACTION WILL BE TAKEN ON THE AGENDA ITEMS.

DISCUSSION ON VISITOR CENTER CONTRACT.

DATED THIS 18TH DAY OF MARCH, 2010.

DANIEL DANICIC  
CITY MANAGER

**ACCOMMODATION OF PHYSICAL IMPAIRMENTS:**

*In order to accommodate persons with physical impairments, please notify the City Recorder's Office of any special physical accommodations you may need as far in advance of the meeting soon as possible and no later than 48 hours prior to the meeting. To request these arrangements, please contact the city recorder, at (503) 537-1283. For TTY service please call (503) 554-7793.*

● City Manager's Office: e-mail: [dan.danicic@newbergoregon.gov](mailto:dan.danicic@newbergoregon.gov) Fax: 537-5013 ●  
Admin: 537-1261 ● Building: 537-1240 ● Public Works: 537-1273 ● Finance: 538-9421 ● Fire: 537-1230  
Library: 538-7323 ● Municipal Court: 537-1203 ● Police: 538-8321 ● Maintenance: 537-1234 ● Utilities: 537-1205  
Municipal Court Fax: 538-5393 ● Public Works Fax: 537-1277 ● Library Fax: 538-9720

**THIS PAGE INTENTIONALLY LEFT BLANK**



**Date: February 18, 2010**

**To:** Mayor Andrews and Newberg City Council

**From:** Daniel Danicic, City Manager

**Re:** Visitor Center Funding

**Purpose:**

The City of Newberg's Visitor's Center operated and managed by the Chehalem Valley Chamber of Commerce. Funding for the Center is provided by the City through a combination of Transient Room Tax (TRT) and business license revenue. The Chamber desires an increased and stable source of funding by establishing through Ordinance a specific dedicate percentage of TRT revenue to be allocated to the Visitor Center. Representatives from the Chamber will be on hand to discuss this proposal.

**Visitor Information Center History:**

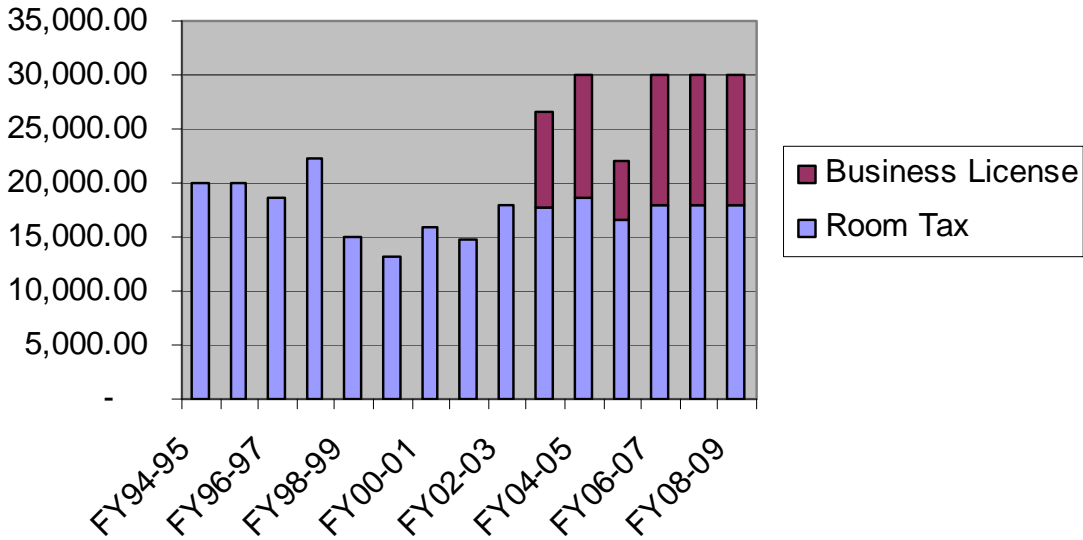
The Chehalem Valley Chamber of Commerce operates the Visitor Information Center to promote tourism and business in the area. The City of Newberg has supported the center since at least 1989. At one point, the City requested proposals from other entities to operate an information center, but ultimately chose the Chamber. The City and Chamber have entered into various formal agreements regarding operation of the Visitor Information Center over the years. The most recent agreement is dated July 1, 2003. At this time the City and Chamber are operating on an informal renewal of the 2003 agreement.

The City's funding contribution to the Visitor Information Center has varied over the years. The initial source of funding was the transient room tax. The amount of this contribution has varied widely, from as little as 14% of the total taxes collected to as much as 43%. Overall the annual payment for services has remained relatively stable. It is the continued growth in the TRT revenue that drives the changing percentage ratio of revenue to funding. In the approved FY2009-10 budget, the City dedicates an estimated 13.8% of room tax revenues to the Visitor Information Center (\$18,000 out of \$250,000).

Beginning in 2003, the City instituted a business license. The City has used business license receipts also to support the Visitor Information Center. In the approved FY2009-10 budget, the City dedicates an estimated 30% of room tax revenues to the Visitor Information Center (\$12,000 out of \$40,000).

In the last three and current fiscal years, the City has contributed \$30,000 annually to the Visitor Information Center. \$18,000 of that is derived from the room tax; \$12,000 is derived from the business license.

### Visitor Information Center Payments from City of Newberg FY94-95 to FY08-09



### Newberg Room Tax Revenue and Visitor Information Center Payments FY94-95 to FY08-09

Fiscal Year	Total Room Tax Revenue	Room Tax to Visitor Center	% Room Tax to Visitor Center	Business License Rev. to Visitor Center	Total Revenues to Visitor Center as % of Room Tax Revenue
FY94-95	46,572	20,000	43%		43%
FY95-96	53,964	20,000	37%		37%
FY96-97	55,810	18,749	34%		34%
FY97-98	72,343	22,181	31%		31%
FY98-99	71,518	18,000	25%		25%
FY99-00	78,131	18,000	23%		23%
FY00-01	88,709	15,856	18%		18%
FY01-02	79,808	14,754	18%		18%
FY02-03	83,402	18,005	22%		22%
FY03-04	93,967	17,639	19%	9,000	28%
FY04-05	96,058	18,750	20%	11,250	31%
FY05-06	100,489	16,500	16%	5,500	22%
FY06-07	129,383	18,000	14%	12,000	23%
FY07-08	121,039	18,000	15%	12,000	25%
FY08-09	115,000	18,000	16%	12,000	26%

**Transient Room Tax:**

The City established a transient room tax in 1976. The rate is 6% of the room rate. The City receives 95% of the taxes collected; 5% is retained by the innkeeper to defray the costs of collection.

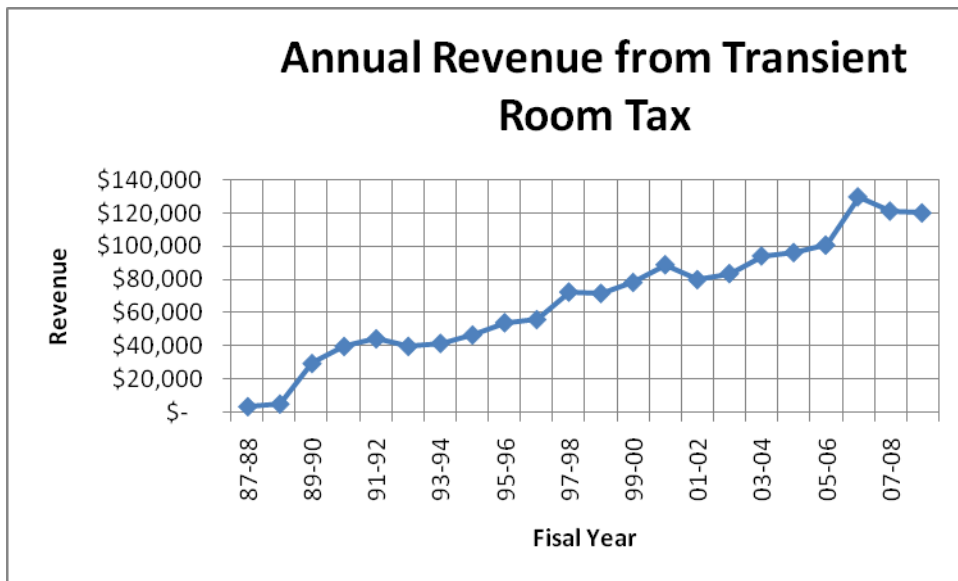
The Newberg Code states: “All [room tax] money collected pursuant to this subchapter shall be the general funds of the City of Newberg and may be used in any lawful manner that the city deems necessary and appropriate.”

State law governs the use of the room tax. ORS 320.350 provides that the City cannot reduce the percent of room tax revenues expended to fund tourism promotion or tourism-related facilities from the percent used in 2003. Accordingly, 17.6% of room tax revenues must be used to fund tourism promotion or facilities. If the City increases the room tax, then 70% of the new revenues must fund tourism promotion or facilities.

In 1996, the City adopted Ordinance 96-2433, which specified that 50% of room tax revenues be dedicated to fund a visitor center. In 1997, the City adopted Ordinance 97-2478, which eliminated the 50% requirement.

**Historical Revenues for Transient Room Tax:**

The following chart shows the historical room tax revenues. The FY2009-10 budget projects \$250,000 of revenue from the room tax with the significant increase due to the Allison Inn. To date, there has been only one full quarter of revenue reported that includes the Allison Inn. It is still too early to determine whether or not the Allison will meet the project TRT revenue for FY09-10.



**STRATEGIC ASSESSMENT:**

By state law, approximately 17.6% of room tax revenues must be used for “tourism promotion or tourism related facilities.” The following table reports the amount of funds that should be allocated to tourism since 2003:

Fiscal Year	TRT Collected	17.6% of TRT
02-03	\$ 83,402	\$ 14,679
03-04	\$ 93,967	\$ 16,538
04-05	\$ 96,058	\$ 16,906
05-06	\$ 100,489	\$ 17,686
06-07	\$ 129,383	\$ 22,771
07-08	\$ 120,876	\$ 21,274
08-09	\$ 119,791	\$ 21,083
09-10 Projected	\$ 250,000	\$ 44,000

Funding the Visitor Information Center is a qualified use of TRT revenue. Other activities also could fill this purpose, including marketing the Old Fashioned Festival, Art Walk or other events, creating and posting welcome banners downtown, or developing facilities, possibly including restrooms, benches, or plazas, that have a substantial purpose of supporting tourist activities.

The City and the Chamber have been operating without a formal contract since 2003. To protect the City and the Chamber a contract must be executed to clearly delineate the Chamber’s role and the City’s expectations for the operation of the visitor’s center.

The level of funding for the visitor’s center has remained unchanged for the last three years. To maintain at least current level of services, consideration for inflationary cost increases should be considered.

The Chamber has proposed to have the level of funding specifically allocated by Ordinance as a set percentage of the TRT revenue collected. This assures the Visitor Center budget will increase as the economy and revenues increase. This provides the Chamber with a level of assurance that their funding levels will increase over time. To the City, it limits the Council’s options on how to allocate the TRT revenue.

**Questions:**

In considering the Chamber's request the Council may wish to think about the following questions:

1. Does the City want to continue to fund a Visitor's Center?
2. Does the Council desire to continue to contract with the Chamber to operate and manage the Center?
3. Does the current \$30,000 annual expenditure fund the Center at a level of service satisfactory to the Council?
4. Should revenue allocated to the Center be established by Ordinance or remain at the discretion of the Council and Budget Committee?

**Recommendation:**

1. Develop a contract and scope of work for Council approval by June 30, 2010.
  - a. The scope of work is to define the level of services that can be provided at a cost of \$30,000 per year.
2. Term of contract to be five years with an automatic CPI adjustment factor.
3. Each year when establishing the budget:
  - a. Council to determine the amount of TRT revenue to be allocated for tourism activities, 17.6% minimum.
  - b. The Chamber and other interested parties are provided an opportunity to a submit request for grant application to fund specific tourism related projects subject to funding availability.

**Attachment**

Visitor Information Center Data  
Submitted By  
Chehalem Valley Chamber of Commerce  
February 18, 2010

# Chehalem Valley Chamber of Commerce

## 2009/2010 Visitor Information

### *Service Record and Monthly Report*

Comparison (Prior Year)

	Phone	Phone	Visitor	Visitor	Web Visits	Web Visits
	2009-2010	2008-2009	2009-2010	2008-2009	2009-2010	2008-2009
<b>July</b>	802	701	1288	1355	4362	4459
<b>Aug</b>	823	857	1445	1322	4349	3731
<b>Sept</b>	715	667	1799	1272	4299	3065
<b>Oct</b>	440	529	930	700	5242	4138
<b>Nov</b>	443	402	412	372	3918	3937
<b>Dec</b>	198	229	201	266	3447	3327
<b>Jan</b>	367	219	244	232	4048	3650
<b>Feb</b>		237		233		3686
<b>March</b>		339		366		3868
<b>April</b>		399		290		3382
<b>May</b>		402		550		2813
<b>June</b>		568		709		4169
<b>Total:</b>		5549		7667		44225

## 2009 - 2010 Visitor Center Budget

Chehalem Valley Chamber of Commerce

### Income

		09-10		
		BUDGET TOTALS	08-09 BUDGET	08-09 ACTUAL
<b>City of Newberg</b>		\$30,000	\$30,000	\$30,000
<b>Chehalem Valley Chamber of Commerce Contribution</b>		\$55,971	\$43,450	\$55,971
	<b>TOTAL</b>	<b>\$85,971</b>	<b>\$73,450</b>	<b>\$85,971</b>

### Expenses

<b>Personnel</b>		<b>\$44,975</b>	\$41,925	\$44,975
<ul style="list-style-type: none"> <li>Executive Director</li> <li>Communications Coordinator</li> <li>Visitors Center Coordinator</li> <li>Visitors Center - Seasonal Help</li> <li>Bookkeeper (P/T)</li> <li>Benefits - Health Insurance &amp; Retirement</li> <li>Taxes</li> </ul>				
<b>Marketing Expense</b>		<b>\$9,246</b>	\$8,525	\$9,246
<ul style="list-style-type: none"> <li>Newberg Graphic Tourism</li> <li>Yamhill Valley Visitors Guide - Yamhill Valley Branding &amp; Marketing Project</li> <li>Sheridan Sun Tourism Magazine</li> <li>Governors Conference on Tourism - OACVB Conference</li> <li>Visitors Center Brochure - Reprints &amp; Tourism Inserts</li> <li>Website</li> <li>Yamhill Valley Visitors Association</li> </ul>				
<b>Overhead</b>		<b>\$31,750</b>	\$23,000	\$31,750
<ul style="list-style-type: none"> <li>Calculated on 1/3 of overhead in Chamber Budget applicable to tourism</li> <li>Includes: Dues/Subscriptions, Admin. Insurance, Internet/Web, Miscellaneous, Supplies, Postage, Leases, Rent, Capital Improvements, Repair/Maintenance, Telephone, Utilities</li> <li>Yamhill Valley Visitors Association dues, Professional Fees</li> <li>Portland Oregon Visitors Association dues</li> </ul>				
	<b>TOTAL</b>	<b>\$85,971</b>	<b>\$73,450</b>	<b>\$85,971</b>



	<b>Q1 &amp; Q2</b>	<b>YTD 09-10</b>	<b>Budget</b>
<b>REVENUE:</b>			
City of Newberg	\$7,500.00	\$15,000.00	\$30,000.00
Newberg Chamber contribution	\$35,760.00	\$28,260.00	\$55,971.00
<b>TOTAL REVENUES:</b>	<b>\$43,260.00</b>	<b>\$43,260.00</b>	<b>\$85,971.00</b>
<b>EXPENSES:</b>			
Personnel	\$21,057.00	\$21,057.00	\$44,975.00
Marketing	\$8,991.00	\$8,991.00	\$9,246.00
Overhead/Utilities, etc.	\$13,212.00	\$13,212.00	\$31,750.00
<b>TOTAL EXPENSES:</b>	<b>\$43,260.00</b>	<b>\$43,260.00</b>	<b>\$85,971.00</b>

Fiscal Year	Total Room Tax Revenue	Room Tax to Visitors Center	% Room Tax to Visitor Center	Business License Rev. to Visitors Center	Total Revenues to Visitors Center as % of Room Tax Revenue	Total Visitors Center Budget	% Visitor Center City Pays	% Visitor Center Budget Chamber Pays
FY94-95	\$46,572	\$20,000	43%		43%			
FY95-96	\$53,964	\$20,000	37%		37%			
FY96-97	\$55,810	\$18,749	34%		34%			
FY97-98	\$72,343	\$22,181	31%		31%			
FY98-99	\$71,518	\$18,000	25%		25%			
FY99-00	\$78,131	\$18,000	23%		23%			
FY00-01	\$88,709	\$15,856	18%		18%			
FY01-02	\$79,808	\$14,754	18%		18%			
FY02-03	\$83,402	\$18,005	22%		22%			
FY03-04	\$93,967	\$17,639	19%	\$9,000	28%	\$48,448	55%	45%
FY04-05	\$96,058	\$18,750	20%	\$11,250	31%	\$46,903	64%	36%
FY05-06	\$100,489	\$16,500	16%	\$5,500	22%	\$52,031	42%	58%
FY06-07	\$129,383	\$18,000	14%	\$12,000	23%	\$67,291	45%	55%
FY07-08	\$121,039	\$18,000	15%	\$12,000	25%	\$68,506	44%	56%
FY08-09	\$115,000	\$18,000	16%	\$12,000	26%	\$85,971	35%	65%