

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
TUESDAY, JULY 6, 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)

VII. CONSENT CALENDAR

1. Consider a motion approving **Resolution No. 2010-2910** authorizing the acceptance of the canvass of votes for the May 18, 2010, Primary Election. (Pgs. 3-10)
2. Consider a motion approving **Resolution No. 2010-2911** approving the annual evaluation of the City Attorney. (Pgs. 11-22)
3. Consider a motion approving **Resolution No. 2010-2912** approving the revised City Attorney position description. (Pgs. 23-28)
4. Consider a motion approving a **Proclamation** declaring July 22-25, 2010 as Old Fashioned Festival Week. (Pgs. 29-30)
5. Consider a motion approve a **Sound Permit** for Parr Lumber Company and FFA Calf Roping, Horse Riding, Barbecue and Band event on July 10, 2010. partial proceeds from the event will be donated to the "Ronald McDonald House". (Pgs. 31-34)

VIII. NEW BUSINESS

1. Consider a motion approving **Resolution No. 2010-2905** adopting the revised Public Works Department Fee Schedule. (Pgs. 35-40)
2. Consider a motion adopting **Resolution No. 2010-2909** accepting the recommendation of the Electronic Sign Ad Hoc Committee and initiating a development code amendment regarding potential changes to the City's sign ordinance. (Pgs. 41-60)

*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.

3. Consider a motion establishing the funding methodology for a Visitor Information Center.(Pg. 61-116)

X. COUNCIL BUSINESS

XI. ADJOURNMENT

INDEX OF ORDERS, ORDINANCES AND/OR RESOLUTIONS:

RESOLUTIONS:

Resolution No. 2010-2905 adopting the revised Public Works Department Fee Schedule.

Resolution No. 2010-2909 accepting the recommendation of the Electronic Sign Ad Hoc Committee and initiating a development code amendment regarding potential changes to the City's sign ordinance.

Resolution No. 2010-2910 authorizing the acceptance of the canvass of votes for the May 18, 2010, Primary Election.

Resolution No. 2010-2911 approving the annual evaluation of the City Attorney.

Resolution No. 2010-2912 approving the revised City Attorney position description.

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: July 6, 2010

Ordinance _____ Resolution XX Motion ___ Information
No. No. 2010-2910

Date Submitted: June 23, 2010

SUBJECT: Canvass of Votes for the May 18, 2010, Primary Election.

Contact Person (Preparer) for this
Resolution: Dawn Wilson

Dept.: Legal
File Nos.: 30020-02305

RECOMMENDATION:

Adopt **Resolution No. 2010-2910** authorizing the acceptance of the canvass of votes for the May 18, 2010, Primary Election.

BACKGROUND:

1. At the May 18, 2010, Primary Election, the City had placed on the ballot before the voters of the City the following item:

MEASURE

Annexation:

- 1409 South Sandoz Road – 19.68 acres – (Measure No. 36-141)

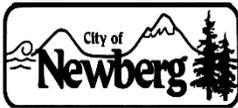
PASSED

2. On June 23, 2010, the City received from Rebekah Stern Doll, County Clerk of Yamhill County, a Certificate certifying the true, actual, and final results (Canvass Report) of the May 18, 2010, Primary Election.
3. In accordance with the City Code and State law, the City should accept the results as presented by the County Clerk.

FISCAL IMPACT: The annexation will add new property to the City's tax rolls.

STRATEGIC ASSESSMENT:

There were no election violations. All deadlines and requirements were met in a timely manner by the City's elections officer (Dawn Wilson). The annexation passed and property was added for heavy and light industrial development. The property met the land use criteria for annexation.



RESOLUTION No. 2010-2910

A RESOLUTION ADOPTING THE CANVASS OF VOTES (CANVASS REPORT) FOR THE MAY 18, 2010, PRIMARY ELECTION AS PROVIDED BY YAMHILL COUNTY CLERK REBEKAH STERN DOLL FOR THE FOLLOWING: ONE MEASURE (ANNEXATION) – MEASURE 36-141 KNOWN AS “SANDOZ ROAD”

RECITALS:

1. At the May 18, 2010, Primary Election, the City had placed on the ballot before the voters of the City the following item.

MEASURE

Annexation:

- 1409 South Sandoz Road – 19.68 acres – (Measure No. 36-141)
2. On June 23, 2010, the City received from Rebekah Stern Doll, County Clerk of Yamhill County, a Certificate certifying the true, actual, and final results (Canvass Report) of the May 18, 2010, Primary Election.
 3. In accordance with the City Code and State law, the City should accept the results as presented by the county clerk.

THE CITY OF NEWBERG RESOLVES AS FOLLOWS:

1. The City accepts the Canvass Report of the Yamhill County Clerk Certifying the true, actual, and final results (canvass of votes) for the May 18, 2010, Primary. A copy of the Certificate of Posting and Canvass Report showing the final results are attached as Exhibit “A” and incorporated herein.
2. Based upon these results, the City declares the following persons elected to City Council Offices and the following measure to have passed.

MEASURE

Annexation:

- 1409 South Sandoz Road – 19.68 acres – (Measure No. 36-141)

PASSED

3. The unofficial Yamhill County election results were obtained from the Internet and posted

on May 19, 2010. A Certificate of Posting is hereby attached as Exhibit “B” and incorporated herein.

➤ **EFFECTIVE DATE** of this resolution is the day after the adoption date, which is: July 7, 2010.

ADOPTED by the City Council of the City of Newberg, Oregon, this 6th day of July, 2010.

Daniel Danicic, City Recorder

ATTEST by the Mayor this 8th day of July, 2010.

Bob Andrews, Mayor

QUASI-JUDICIAL HISTORY

Annexations:

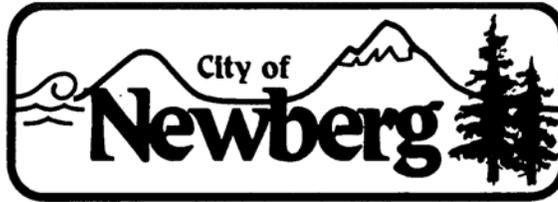
1409 South Sandoz Road – 19.68 acres – (Measure No. 36-141)

By and through the Planning Commission at 11/12/09 meeting.

By and through the City Council at 12/21/10 meeting.

City Attorney
(503) 537-1206

City Manager
(503) 537-1207



414 East First Street
PO Box 970
Newberg, OR 97132
503-537-1206

CERTIFICATE OF POSTING

OFFICIAL Election Results (Canvass Report) For the May 18, 2010, Primary Election

SEE ATTACHED FOR RESULTS
on
Newberg Items

I, Dawn Wilson, Senior Paralegal & Elections Officer, City of Newberg City Attorney's Office, hereby acknowledge that I posted the Official Election Results on the held on May 18, 2010, at the following locations on June 23, 2010:

Newberg City Hall, 414 East First Street, Newberg, Oregon
Newberg Public Safety Building, 401 East Third, Newberg, Oregon
Newberg Fire Department, 414 East Second Street, Newberg, Oregon
Newberg Public Library, 503 East Hancock Street, Newberg, Oregon

DATED this 23rd day of June, 2010.

A handwritten signature in black ink, appearing to read "Dawn Wilson", is written over a horizontal line.

Dawn Wilson, Senior Paralegal & Elections Officer

● CITY ATTORNEY'S OFFICE: nlegal@newbergoregon.gov - Fax: 503-537-5013 ●
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

Canvass Report — Total Voters — Official
Yamhill County, Oregon — Primary Election — May 18, 2010

06/02/2010 03:38 PM
Precincts Reporting 19 of 19 = 100.00%

Page 491 of 492

Number of Voters : 23,334 of 49,289 = 47.34%

MEASURE 36-141 - Non-Partisan						
Precinct	Early Ballots Cast	Election Ballots Cast	Total Ballots Cast	Registered Voters	Percent Turnout	Totals
02	0	1783	1783	3612	48.38%	1656
03	0	1733	1733	4067	42.61%	1630
04	0	899	899	2391	37.60%	838
	0	4415	4415	10070		4724

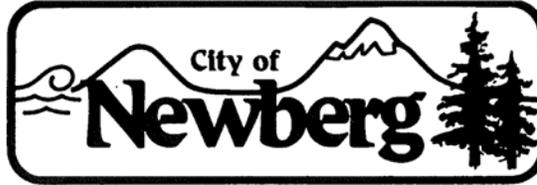
RECEIVED
JUN 23 2010
CITY OF NEWBERG, OR
OFFICE OF CITY ELECTIONS OFFICER



I CERTIFY THAT THE VOTES RECORDED ON THIS ABSTRACT CORRECTLY SUMMARIZE THE FULLY OFFICIAL BALLOTS CAST AT THE ELECTION INDICATED.
[Signature]
SIGNATURE OF COUNTY CLERK
June 2, 2010
DATE OF ABSTRACT

City Attorney
(503) 537-1206

City Manager
(503) 537-1207



414 East First Street
PO Box 970
Newberg, OR 97132
503-537-1206

PLEASE POST:

- ___ Newberg Fire Station (Attn: Jill)
- ___ Newberg Public Library (Attn: Lori Biever-Lauder)
- ___ Newberg City Hall (Attn: Tami)
- ___ Newberg Public Safety Building (Attn: Mary/Karan)

CERTIFICATE OF POSTING

UNOFFICIAL
YAMHILL COUNTY ELECTION RESULTS
AS OF MAY 19, 2010

CITY OF NEWBERG ELECTION RESULTS
Primary Election: May 18, 2010

I, Dawn Wilson, Senior Paralegal & Elections Officer, City of Newberg Legal Department, hereby acknowledge that I posted the Unofficial Election Results on the held on May 18, 2010, at the following locations on May 19, 2010:

Newberg City Hall, 414 East First Street, Newberg, Oregon
Newberg Public Safety Building, 401 East Third, Newberg, Oregon
Newberg Fire Department, 414 East Second Street, Newberg, Oregon
Newberg Public Library, 503 East Hancock Street, Newberg, Oregon

DATED this 19th day of May, 2010.

Dawn Wilson, Senior Paralegal & Elections Officer

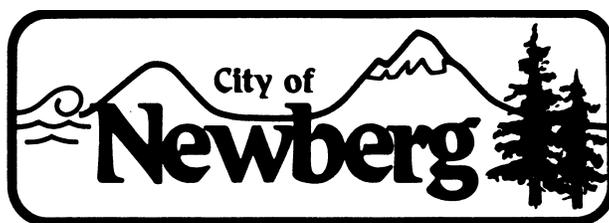
O:\Legal\Recorder\Election\2010\May 18 - Measure\Cert of Posting-Unofficial Results.doc

● CITY ATTORNEY'S OFFICE: nlegal@ci.newberg.or.us - Fax: 503-537-5013 ●
Admin: 537-1261 ● Building: 537-1240 ● Public Works: 537-1273 ● Finance: 538-9421 ● Fire: 537-1230
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Municipal Court Fax: 538-5393 ● Public Works Fax: 537-1277 ● Library Fax: 538-9720

"Working Together For A Better Community. Serious About Service"

City Attorney
(503) 537-1206

City Manager
(503) 537-1207



414 East First Street
PO Box 970
Newberg, OR 97132
503-537-1206

PROCLAMATION
by
Mayor Bob Andrews

CITY OF NEWBERG ELECTION RESULTS
Primary Election: May 18, 2010

WHEREAS, a Primary Election for the State of Oregon was held May 18, 2010, in which the three City Council member positions and four measures (annexations) were presented to the voters.

WHEREAS, on June 23, 2010, the City received from Rebekah Stern Doll, County Clerk of Yamhill County, a Cumulative Report certifying the true, actual, and final results (canvass of votes) in the May 18, 2010, Primary Election; a copy of which is attached to this Proclamation;

NOW, THEREFORE, I, BOB ANDREWS, Mayor of the City of Newberg, do hereby proclaim the results of the May 18, 2010, Primary Election, as Certified to the City by Rebekah Stern Doll, County Clerk of Yamhill County. A certified true copy of the results (canvass of votes) for the May 18, 2010, Primary Election is attached as Exhibit "A."

DATED this 8th day of July, 2010.

Bob Andrews, Mayor

● **CITY ATTORNEY'S OFFICE:** <mailto:nlegal@newbergoregon.gov> - Fax: 503-537-5013 ●
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

"Working Together For A Better Community-Serious About Service"

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REQUEST FOR COUNCIL ACTION

DATE ACTION REQUESTED: July 6, 2010

Order ___ Ordinance ___ Resolution XX Motion ___ Information ___
No. No. No. 2010-2911

SUBJECT: Resolution Approving the Annual
Evaluation of the City Attorney

Contact Person (Preparer) for this
Resolution: **Bob Andrews, Mayor**

Dept.: Administration

File No.:
(if applicable)

RECOMMENDATION:

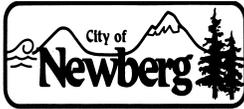
Adopt **Resolution No. 2010-2911** approving the annual evaluation of the City Attorney.

EXECUTIVE SUMMARY:

The City Council performed an annual evaluation of the City Attorney at the June 21, 2010, meeting. That evaluation was held during executive session in which no decisions were made. This resolution is to solidify that evaluation and to provide a formal guidance of his performance. City Council concurred with an amendment to the City Attorney's Employment Agreement to increase the amount of city-paid term life insurance.

FISCAL IMPACT: \$352.00 annually.

STRATEGIC ASSESSMENT: The evaluation of the City Attorney is necessary in order to maintain communication between the City Council and the City Attorney concerning the performance of the City Attorney in accomplishing his assigned duties and responsibilities.



RESOLUTION No. 2010-2911

A RESOLUTION APPROVING THE 2009-10 ANNUAL EVALUATION OF THE CITY ATTORNEY

RECITALS:

1. In accordance with the Newberg City Charter, the City Attorney is the Chief Legal Officer of the City of Newberg, which reports directly to the Mayor and City Council and is supervised by the governing body.
2. The City has a contract with the City Attorney. Pursuant to that contract, the City Council evaluates the City Attorney in Executive Session.
3. The Open Meetings Law of the State of Oregon allows the evaluation of the job performance of the Chief Legal Officer to be conducted in Executive Session by the City Council and pursuant to such Standards, Criteria, and Policy Directives adopted by Resolution No. 1999-2192 on July 19, 1999.
4. The Mayor, City Councilors, and the City Attorney met in Executive Session on June 21, 2010, to discuss the City Attorney's annual evaluation, his position description and his Employment Agreement.
5. As directed by the City Council, the Mayor and City Attorney discussed amending the City Attorney's Employment Agreement, section 5 to increase the amount of the City Attorney's city -paid term life insurance from "two (2)" to "three (3)."
6. The Mayor has submitted the written evaluation which will be placed in the City Attorney's personnel file after being adopted by the Council.

THE CITY OF NEWBERG RESOLVES AS FOLLOWS:

1. The written evaluation of the City Attorney, which is attached as Exhibit "A" and by this reference incorporated, is hereby adopted.
2. The City Attorney shall be given a copy of the evaluation to sign and may make any written comments after which the written evaluation shall be placed in the City Attorney's personnel file.
3. The amended Employment Agreement between the City of Newberg and Terry Mahr, City Attorney, which is attached as Exhibit "B" by Reference Incorporated, is hereby adopted.

➤ **EFFECTIVE DATE** of this resolution is the day after the adoption date, which is: July 7, 2010.

ADOPTED by the City Council of the City of Newberg, Oregon, this 6th day of July, 2010.

_____, City Recorder

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

Bob Andrews, Mayor

LEGISLATIVE HISTORY

By and through City Council at 6 / 21 /2010 meeting. Or, None.
(date) (check if applicable)

(committee name)

**City Attorney (Terry Mahr)
Annual Written Evaluation – 2009-10
By Newberg City Council**

The Newberg City Council has received a written report from the City Attorney concerning his performance during his evaluation period. The respective Mayor and Councilors have met with the City Attorney in executive session on June 21, 2010 to discuss their evaluation of his performance through March 2010.

The City Council has evaluated the performance of Terry Mahr as the City Attorney of the City of Newberg. As part of that evaluation Council reviewed the report given them by the City Attorney indicating the accomplishments of the City Attorney and his self-evaluation during the evaluation period.

The Council has discussed all areas of evaluated performance including those recommended for improvement. The Councilors concurred with the City Attorney that there needs to be greater attention to project management to ensure timeliness in activities. In summary, the Council indicated that the City Attorney has been doing an excellent job, with two Councilors indicating that the City Attorney's performance was outstanding and exceeding expectations.

DATED this ____ day of July, 2010

Bob Andrews, Mayor

EMPLOYMENT AGREEMENT

CITY OF NEWBERG

and

TERRENCE D. MAHR

Effective January 1, 2005

*(with amendments that are effective December 31, 2008 and with amendments
that are effective July 7, 2010)*

AMENDED December 23, 2008,
to Comply with Federal Law (Internal Revenue Code Section 409A) Changes
Amendments are italicized & effective December 31, 2008
AMENDED July 6, 2010
To increase the amount of term life insurance the City will pay for effective
July 7, 2010

EMPLOYMENT AGREEMENT

between
CITY OF NEWBERG
and
TERRENCE D. MAHR
CITY ATTORNEY

As amended by the City Council on December 15, 2008, THIS AMENDED AGREEMENT is made and entered into this 23rd day of December, 2008, and as amended by the City Council on July 6, 2010 THIS FURTHER AMENDED AGREEMENT is entered into this 7th day of July by and between the City of Newberg, Oregon, a Municipal Corporation, hereinafter referred to as "City," and Terrence D. Mahr, hereinafter referred to as "City Attorney," both of whom understand as follows:

RECITALS

This Agreement will supersede and replace all prior Employment Agreements between the parties. This Agreement will constitute the entire agreement between the parties.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the parties hereto agree as follows:

1. DUTIES.

A. The City hereby agrees to employ Terrence D. Mahr as the City Attorney of the City to perform the functions and duties specified in said City Charter and to perform such other legally permissible and proper duties and functions as the City Council shall from time to time assign.

B. The City Attorney shall devote full time to the performance of his duties and shall not perform any additional legal services, nor shall City Attorney represent any other client, whether for remuneration or pro bono, without the approval of the City Council, as provided herein. In the event the City Attorney desires to teach, consult or provide legal services to another party or person, he shall first provide written notice of such intent to the Mayor and each member of the City Council. If after ten (10) days from sending notice, the Mayor or any

member of the City Council does not inform the City Attorney of an objection, the City Attorney may perform the requested teaching, consulting or outside legal services. In the event the Mayor or any member of the City Council, within ten (10) days of sending notice, informs the City Attorney of an objection, the City Attorney shall not perform the requested teaching, consulting, or outside legal services, without first obtaining formal approval by a majority of the City Council. In no event shall the City Attorney perform teaching, consulting or outside legal services that would create a conflict with his position of City Attorney or conflict with the best interest of the City. Any objection by the Mayor or a member of the City Council shall be based upon the best interests of the City. In performing any teaching, consulting or outside legal services, the City Attorney may use accrued administrative and vacation leave.

2. TERM.

A. Nothing in this Agreement shall prevent, limit, or otherwise interfere with the right of the Mayor, with the consent of the City Council, in accordance with the City Charter, from terminating the services of the City Attorney, and otherwise dismissing him from employment, at any time, without the showing of any cause, subject only to the provisions set forth in Section 12, Severance Pay, except that Section 12, Severance Pay, shall not be applicable to a termination and dismissal occasioned for the reasons set forth in Section 3, below.

B. This Agreement is for an indefinite period, commencing on the date entered into as above-stated and continuing until such time that either party may terminate this agreement in accordance with the terms of the agreement.

3. CAUSE FOR TERMINATION. In the event the City Attorney is terminated during the term of this Agreement either for his indictment for an illegal act or for the loss of his Oregon State Bar License, the City shall have no obligation to pay the aggregate severance sum designated in the Section 12 entitled "Severance Pay." In the event the City Attorney is not convicted of said crime for which he was indicted, he shall receive the severance pay in accordance with Section 12.

4. RESIGNATION. In the event the City Attorney wishes to voluntarily resign his position during the term of this Agreement, he shall be required to give the City two (2) months' written notice of such intention. The City Attorney will cooperate in every way with the smooth and normal transfer to the newly appointed attorney. Further, the City Attorney will be available for consultation concerning ongoing legal matters and will not in any way jeopardize the legal position of the City. Consultation or further legal services furnished by said City Attorney after term of employment has ended, due to resignation, shall be done on a fee basis which is mutually agreeable to the City and City Attorney. A voluntary resignation does not invoke Section 12, Severance Pay.

5. COMPENSATION. The City agrees to pay the City Attorney the following as compensation for the above-mentioned services as City Attorney:

A. Base Salary: An annual base salary of \$104,148 commencing January 1, 2005, and payable in installments at the place and time as other City employees are paid.

B. Fringe benefits equal to that of other employees employed in administrative capacities with the City, except as follows:

(1) The City shall pay the amount of premium due for term life insurance in the amount of ~~two (2)~~ **three (3)** times the City Attorney's annual base salary, including all increases and base salaries of the life of this agreement. The City Attorney shall name the beneficiary of the life insurance policy.

(2) The City Attorney is placed in the General Employee Retirement Plan. He will be placed in the plan as a five-year employee, which means that he will be vested in the plan and shall have a credit for contribution in accordance with other general employees as of July 1, 1988. Such account shall be established on his behalf and calculated annually and treated as any other employee with five years' service except that he will only have credit for contributions in accordance with other general employees as of July 1, 1988. Further, effective July 1, 1992, the City Attorney is placed in the Police/Fire Employee Retirement Plan of the City and receives all benefits of the Plan as an employee classified in said Police/Fire Employee Plan. This placement effective July 1, 1992, is in lieu of the placement in the General Employee Retirement Plan which placement is effective for the period prior to the July 1, 1992, date.

(3) The City agrees that commencing January 1, 2005, it will make all the appropriate contributions on City Attorney's behalf, for both the City and City Attorney (employee), into the City's retirement system in which the City Attorney is a member.

C. The City hereby agrees to pay the expenses of the City Attorney's necessary travel and living expenses to represent the City at the annual League of Oregon Cities' Conference, the Oregon State Bar Convention, and conferences or meetings of state committees or commissions upon which the City Attorney serves as a member, said membership on said state commissions or committees being subject to the approval of the City Council, and for such other official meetings or travel as are reasonably necessary for the professional advancement of the City Attorney as approved by the City Council.

D. City shall provide travel insurance for City Attorney while employee is traveling on City business, with City Attorney to name the beneficiary thereof. Should City Attorney die while on travel for City, City shall cover the full cost of retrieving and transporting City Attorney's remains back to the custody of City Attorney's family.

E. The City agrees that it will provide the City Attorney with an additional life insurance program at an annual premium not to exceed \$5,000 per year.

6. SICK LEAVE AND VACATION.

A. Sick Leave. The City Attorney shall be credited annually with ten (10) days of sick leave. Unused sick leave shall accumulate on an unlimited basis. Sick leave may be used for illness or injury, parental leave, medical appointments or for the care of an immediate family member. "Immediate family" is defined as current spouse, children, step-children, mother, father, mother-in-law, father-in-law, sister, brother, and grandparents living with the employee.

B. Vacation. The City Attorney shall accumulate paid vacation time at the rate of 144 hours per year, accumulated on a pro-rata, monthly basis. Vacation time shall be scheduled by the City Attorney with the approval of the Mayor, with approval of the City Council. No more than 288 hours of vacation time may be accumulated at any time; accruals in excess of 288 hours shall be forfeited without remuneration.

C. Previous Vacation Accrual. Pursuant to previous employment contracts between the City and the City Attorney, the City Attorney accrued and accumulated 1,178 hours of unused vacation time. As a result of the prospectively agreed upon provisions of subsection 6, B, above, further accumulations of unused vacation time will not occur. The City and the City Attorney agree to use their best efforts to settle this previously accumulated total of vacation hours in a manner that is fair and reasonable. The City and City Attorney shall use their best efforts to see that this is accomplished in a reasonable time.

7. ADMINISTRATIVE/LEAVE. The City Attorney shall be credited with fifteen (15) days of administrative leave at the beginning of each fiscal year. Such leave is non-accumulative from one fiscal year to the next. Should City Attorney leave the employ of the City for any reason, then any remaining administrative leave shall be forfeited without remuneration of any kind.

8. ATTENDANCE AT NATIONAL CONFERENCES. The City Attorney is allowed to attend national conferences as the budget of the City allows.

9. ACTING CITY MANAGER. The City Attorney may be designated as Manager Pro Tem in the absence from the City or the temporary disability of the City Manager or whenever the office becomes vacant in accordance with the City Charter as maybe provided by Council resolution.

10. EVALUATION. The City Council shall evaluate the work performance of the City Attorney annually in or around the month of December, but no later than December 31st of each

year. The City Council shall communicate its evaluation to the City Attorney in Executive Session. The failure of the City Council to conduct an annual evaluation shall not operate as a defense to any action by the City with respect to this Agreement or the employment of the City Attorney. Consideration shall be given on an annual basis to adjust compensation at or about the time of the evaluation.

11. OREGON STATE BAR LICENSE. The City Attorney shall maintain throughout the life of this Agreement, a valid Oregon State Bar license as required by the State of Oregon in order to practice law and appear before the courts of this State. The City shall pay the City Attorney's annual Bar dues.

12. SEVERANCE PAY. In the event of any involuntary termination of the City Attorney during the term of this Agreement, he shall be entitled to severance pay in the manner as follows:

A. City shall provide a minimum severance payment equal to six (6) months salary at the current rate of pay. This severance shall be paid in equal monthly payments unless otherwise agreed to by City and City Attorney.

B. City Attorney shall also be compensated for all accrued vacation time and paid holidays.

C. For a period of six (6) months following termination, Employer shall pay to Employee an amount equal to the cost to continue the following benefits:

1) Health insurance for City Attorney and all dependents as provided to other City employees.

2) Long-term disability for City Attorney as provided for other employees. Life insurance for City Attorney as provided as provided in paragraph 5 (B)(1).

3) All contributions that would have been made on City Attorney's behalf for both City and City Attorney to the retirement system as provided in this agreement.

D. City's obligation to pay the severance established in this section shall terminate at such time as City Attorney finds employment within the six (6) month time period and such or similar benefits are offered by the City Attorney's new employer.

E. Termination by the City, as used in this paragraph, means the City Attorney's discharge or dismissal by the Mayor with consent of the City Council or the City Attorney's resignation following a salary reduction greater in percentage than an across-the-board reduction for all employees or failure to receive a salary increase equal to the increase received by all employees (commonly known as cost of living increase), or the City Attorney's resignation following a formal request to him by the City Council that he resign. This provision does not apply to a voluntary resignation by City Attorney.

F. Notwithstanding the above provisions, in the event the City eliminates the position of City Attorney, either for budgetary reasons or because of a policy determination, the City agrees to provide City Attorney with six (6) months notice of the position's elimination and of the City Attorney's layoff. Upon the City Attorney's layoff, the City Attorney will receive a lump sum payment equal to six (6) months aggregate salary and benefits.

G. Despite any contrary provision of Section 3, Cause for Termination, this Section 12, or any other part of this Agreement, all severance pay under this Section 12 shall be paid only on or after the date the City Attorney has a separation from service with the employer within the meaning of Treasury Regulation Section 1.409A-1(h), using none of the options in Treasury Regulation Section 1.409A-1(h), and no later than the last day of the City Attorney's second taxable year following the City Attorney's taxable year in which the separation from service occurs.

13. PROFESSIONAL LIABILITY. The City agrees that it shall defend, hold harmless, and indemnify the City Attorney from all demands, claims, suits, actions, errors, or other omissions in legal proceedings brought against the City Attorney in his individual capacity or in his official capacity, or in his official capacity as agent or employee of the City, provided the incident arose while the City Attorney was acting within the scope of his employment. If in the good faith opinion of the City Attorney, a conflict exists as regards to the defense of any such claim between the legal position of the City and the City Attorney, the City Attorney may engage counsel, in which event, the City shall indemnify the City Attorney for the cost of legal counsel.

14. APPLICABLE LAW. This Agreement is construed under the laws of the State of Oregon and the Charter of the City of Newberg.

15. ATTORNEY'S FEES. In the event of any suit or action herein, the prevailing party in such suit or action shall be entitled to reasonable attorney's fees to be fixed by the trial court, and if an appeal is taken from the decision of the trial court, such further sum as may be fixed by the appellate court as reasonable attorney's fees in the appellate court, together with prevailing party costs and disbursements incurred therein.

16. OTHER TERMS AND CONDITIONS OF EMPLOYMENT. The City shall, by amendments to this Agreement, fix such other terms and conditions of employment, from time to time, as it may determine, relating to the performance by the City Attorney with the Agreement of said City Attorney, provided such terms and conditions are not inconsistent or in conflict with the provisions of this Agreement.

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REQUEST FOR COUNCIL ACTION

DATE ACTION REQUESTED: July 6, 2010

Order ____ Ordinance ___ Resolution XX Motion ____ Information ____
No. No. No. 2010-2912

**SUBJECT: Adoption of the revised City Attorney
Position Description**

Contact Person (Preparer) for this
Ordinance: Mayor Andrews

Dept.: Administration

File No.:

(if applicable)

RECOMMENDATION:

Adopt **Resolution No. 2010-2912** approving the revised City Attorney position description

EXECUTIVE SUMMARY:

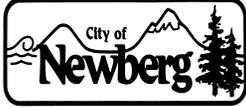
Since the last position description for the City Attorney was last reviewed in 1994, the Mayor and Council President felt it prudent to review and modify as appropriate the description as a part of the City Attorney's 2010 performance review.

The revised position description is intended to better define the role and requirements of the City Attorney. It will also serve as guidance for the development of a new performance review criteria which focuses on the critical elements of the position.

FISCAL IMPACT: None

STRATEGIC ASSESSMENT:

Position descriptions are necessary documents which affect employees' positions in a multitude of areas, including: assignment of duties, classification of the position, identification of training and development needs, recruitment and examination development, organization and planning of the work unit, and the establishment of performance evaluation goals and standards.



RESOLUTION No. 2010-2912

A RESOLUTION TO ADOPT THE REVISED CITY ATTORNEY POSITION DESCRIPTION

RECITALS:

1. The City has a position titled City Attorney.
2. The position description for the City Attorney was last reviewed in 1994.
3. The position description was reviewed to accurately reflect the duties, responsibilities and activities of the position.
4. The City Council reviewed this position description as part of the 2009-10 performance review of the City Attorney on June 21, 2010.

THE CITY OF NEWBERG RESOLVES AS FOLLOWS:

The position description of City Attorney is hereby adopted by the City Council. Said description is attached to this resolution as Exhibit "A" and by this reference incorporated

➤ **EFFECTIVE DATE** of this resolution is the day after the adoption date, which is: July 7, 2010.

ADOPTED by the City Council of the City of Newberg, Oregon, this 67th day of July, 2010.

_____, City Recorder

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

Bob Andrews, Mayor

LEGISLATIVE HISTORY

By and through City Council at 6/ 21 /2010 meeting. Or, None.
(committee name) (date) (check if applicable)

**CITY OF NEWBERG
Position Description**

TITLE: City Attorney

SALARY RANGE: TBD

DEPARTMENT: Legal

LOCATION: City Hall

CHARTER LEVEL:

- **Position:** The Charter designates the city attorney position.
- **Personnel:** Legal department staff are supervised on a day-to-day basis and reviewed by the city attorney. The city attorney works under the guidance of the City Council and is subject to its direction.
- **Budget:** The city attorney is responsible for preparing and administering the budget for the legal department.

DIVISION: Office of City Attorney

DATE: July 6, 2010

GENERAL PURPOSE:

Performs high-level administrative, technical, and professional work in administering city elections, drafting legal documents, preparing court briefs, prosecuting crimes, responding to and conducting civil lawsuits, advising city elected officials and staff as to legal rights, limitations, and obligations; and other legal practices applicable to state, local and federal law.

The city attorney is an appointive officer of the city as provided for in Chapter VIII, Section 35 of the Charter. This excerpt follows:

Section 35. City Attorney.

The office of city attorney is established as the chief legal officer of the city government. A majority of the council must appoint and may remove the attorney. The attorney must appoint and supervise, and may remove any city attorney's office employees.

SUPERVISION RECEIVED:

The city attorney works under the broad policy guidance of the City Council, and is subject to its direction.

SUPERVISION EXERCISED:

The city attorney shall exercise supervision over all legal department employees either directly or through subordinate supervisors.

REQUIRED KNOWLEDGE, SKILLS, AND ABILITIES

- Extensive knowledge of state statutes relating to municipal affairs, and laws relating to the purchase of goods and services, contracting, labor, employment, land use, environment, and traffic.
- Working knowledge of modern policies and practices of municipal law and public administration.
- Knowledge of state laws and local ordinances, resolutions, and orders; ensures that they are faithfully performed.
- Skill in preparing briefs and enforcing all provisions of the city's franchises, leases, contracts, and other legal documents.
- Ability to prepare and analyze comprehensive legal reports; ability to carry-out assigned projects to their completion; ability to effectively communicate verbally and in writing; ability to establish and maintain effective working relationships with employees, city officials, the court system, and the public; ability to efficiently and effectively administer a municipal legal department.
- Demonstrate effective personal traits such as initiative, creativity, judgment, fairness, and impartiality; demonstrates respect for individuals and city's franchises, leases, and contracts.
- Ability to foster a work environment that supports and encourages the investigation and implementation of innovative applications.

MINIMUM QUALIFICATIONS FOR EDUCATION, EXPERIENCE, AND LICENSURE

Graduation from an accredited law school with a Juris Doctor degree in law, three (3) years of experience as a practicing attorney, a license to practice law in the state, member in good standing of the state Bar Association, and a valid state driver's license.

TYPICAL EXAMPLES OF WORK:

The city attorney may perform a combination of some or all of the following duties that are a representative sample of the level of work appropriate to this position. However, these examples do not include all duties that an employee may be expected to perform, as directed by the City Council. The following examples do not constitute an employment agreement between the employer and the employee and is subject to change by the employer as the needs of employer and requirements of the job change consistent with contract of employment.

1. Management:
 - a. Responsible for the management and supervision of the legal department to achieve goals within available resources by appropriately delegating duties.
 - b. Oversees the administration of workloads and staff assignments by studying, standardizing, and determining work roles, responsibilities, and procedures to improve efficiency and effectiveness of operations; preparing work schedules to expedite workflow.
 - c. Appoints and removes all department staff.
 - d. Assures the training, motivation, and evaluation of legal department staff and directs changes as needed.
2. Planning Goals:
 - a. Provides leadership and direction in the development of short and long-range plans with the legal staff and City Council.

Exhibit A

- b. Administers plans, reviews progress, and directs changes as needed, based on new developments in technology, legislation, practices, and regulations.
 - c. Investigates, integrates, and implements technology where administratively and fiscally feasible.
 - d. Gathers, interprets, and prepares data for studies, reports, and policy recommendations.
 - e. Coordinates department activities with other departments and agencies as needed.
3. Communications:
 - a. Provides written and oral professional legal advice to the City Council, city manager, and department heads in a timely, clear, thorough, and concise manner.
 - b. Communicates official plans, policies, and procedures to legal department staff and to the public.
 - c. Presents information to councils, boards, commissions, civic groups, and to the general public.
 - d. Issues clearly written and concise oral instructions to assign duties and examine work for exactness, neatness, and conformance to policies and procedures.
 - e. Maintains harmony among legal department staff and works to resolve grievances, including giving and accepting direction and instructions in a positive manner.
 4. Fiscal Agent:
 - a. Assures that assigned areas of responsibility are performed within budget and demonstrates effective and efficient use of budgeted funds, personnel, materials, facilities, and time pursuant to ORS Chapters 291-297.
 - b. Performs cost control activities and monitors revenues and expenditures in all departments, to assure sound fiscal control and to encourage innovative practices.
 - c. Prepares an annual legal department budget and administers the adopted budget.
 5. Community Relations:
 - a. Performs and assists legal department staff in performing duties to adjust errors and to address complaints.
 - b. Projects a positive public image and is courteous to the public at all times.
 - c. Maintain effective relations with media representatives.
 - d. Promotes cooperation among the City Council, staff, and citizens in developing policies and to build a sense of community.
 6. Intergovernmental/Interagency Relations:
 - a. Maintains effective communication with local, regional, state, and federal government agencies.
 - b. Provides legal advise to city staff pursuing financial resources (grants) from other agencies.
 - c. Contributes to good government through participation in local, regional, state, and professional committees and organizations.
 - d. Confers with colleagues with specialty areas of law to establish and verify basis for legal proceedings; and serves as a liaison between outside legal counsel and city officials on specialized legal issues.
 7. Consultative Legal Services:
 - a. Advises the City Council of legal conditions with current and future trends; issues legal opinions.
 - b. Advise city officials of changes to state or federal laws affecting city operations.
 - c. Interprets laws, rulings, and regulations for city officials and staff.
 - d. Recommends for adoption by the City Council such measures deemed necessary and expedient.
 8. Legal Preparation:

- a. Drafts ordinances, resolutions, contracts, agreements, deeds, leases, and franchises; reviews documents prepared by other departments, agencies, and parties.
- b. Approves ordinances, resolutions, and contracts as to legal form; provides legal advice as to substance.
- c. Gathers evidence in civil, criminal, and other cases to formulate defense or to initiate legal action; conducts research; interviews clients and witnesses, and handles other details in preparation for trial; prepares legal briefs, arguments and testimony; develops strategy in preparation for presentation in cases; files briefs in the appropriate court.
- d. Represents the city in court and before quasi-judicial or administrative agencies of government.

WORK CONDITIONS:

The work environment characteristics described here are representative of those an employee encounters while performing the essential functions of this job. Reasonable accommodations may be made to enable individual's with disabilities to perform the essential functions.

- 1. Must be bondable.
- 2. Ability to deal with distraught or difficult individuals.
- 3. Ability to attend monthly staff meetings and activities outside of normal working hours.
- 4. Ability and willingness to travel as needed and perform the duties and responsibilities.
- 5. Serves as city manager pro tem in the absence of the city manager from the city.

REQUIRED TOOLS AND EQUIPMENT USED:

Skilled in operating personal computer, including word processing, database, and spreadsheet management, motor vehicle; ten-key calculator; phone; copy, scanner, and fax machine.

PHYSICAL DEMANDS:

While performing the duties of this job, the employee is frequently required to talk or hear; sit; use hands to handle, feel or operate objects, tools, or controls; and reach with hands and arms; stand or walk for considerable distances or time. Must occasionally lift and move up to 25 pounds. Specific vision abilities include close vision, distance vision, peripheral vision, depth perception, and the ability to adjust focus.

SELECTION GUIDELINES:

The selection process includes a formal application; rating of education, experience, and certification; oral interview; and reference and background checks.

Approval by Motion on month/date, year

By: _____
Mayor

Signature Attest that Motion was duly passed accepting position description
Effective Date: month/date, year

REQUEST FOR COUNCIL ACTION

DATE ACTION REQUESTED: July 6, 2010

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

SUBJECT: Approve a Proclamation declaring July 22-25, 2010, as Old Fashioned Festival Week.

Contact Person (Preparer) for this Motion: **Becky Green, Human Resources Manager/OFF Court Chaperone**

Dept.: **Administration**

File No.:
(if applicable)

RECOMMENDATION:

Adopt Request to approve a proclamation declaring July 22-25, 2010 as Old Fashioned Festival Week.

EXECUTIVE SUMMARY:

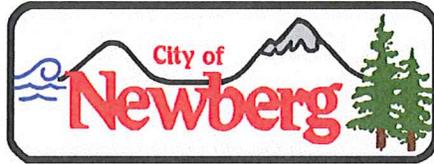
Every year the Old Fashioned Festival is put on in the City of Newberg the last full weekend in July, this year the festival will be held July 22-25, 2010.

FISCAL IMPACT:

None

STRATEGIC ASSESSMENT:

Approving this proclamation supports the Council's goal of enhancing Newberg's community and being actively involved in community events.



PROCLAMATION

*A PROCLAMATION FROM THE CITY OF NEWBERG
DECLARING JULY 22-25, 2010 AS
OLD FASHIONED FESTIVAL WEEK IN THE CITY OF NEWBERG.*

WHEREAS, the City of Newberg is a community that hosts many gatherings, numerous celebrations, and a variety of entertainment venues where old friends can get together and you can meet new ones; and

WHEREAS, each year the City of Newberg and community participate by celebrating community spirit, at the end of July; and

WHEREAS, the City of Newberg is a participant in many ways and welcomes the community each year to join them in the Old Fashioned Festival activities, and enjoy the camaraderie and sense of community built by a festival of this extent; and

WHEREAS, the many Old Fashioned Festival events that take place during the week, bring the community together for fun and entertainment. This is the Thirtieth (30) Anniversary Year of the festival and is a special time for everyone involved in this important community event. The theme for this year is, "Where Friends Meet..."

NOW, THEREFORE, LET IT BE PROCLAIMED by the Mayor and City Council of the City of Newberg, that July 22-25, 2010 is hereby designated:

***OLD FASHIONED FESTIVAL WEEK
IN THE CITY OF NEWBERG***

DATED this 6th day of July, 2010.

Bob Andrews, Mayor

REQUEST FOR COUNCIL ACTION

DATE ACTION REQUESTED: 2010, July 06

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

SUBJECT: Approve a sound permit for Parr Lumber Company and Future Farmers of America Calf Roping, Horse Riding, Barbecue and Band event on July 10, 2010.

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

Dept.: Police

File No.:
(if applicable)

RECOMMENDATION:

Adopt Request to approve a sound permit for Parr Lumber Company and FFA Calf Roping, Horse Riding, Barbecue and Band event on July 10, 2010. Partial proceeds from the event will be donated to the "Ronald McDonald House."

BACKGROUND:

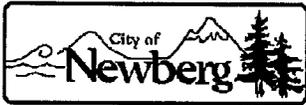
1. This event is scheduled for Saturday July 10, 2010 from 08:00 am to 04:00 pm at the Newberg Parr Lumber Company and its vacant lot located at 200 North Elliott Road, Newberg, Oregon. This event will include amplified band music and amplified commentary about the calf roping and horse riding competitions.
2. The City Manager is authorized to approve sound permits for events where the sound will be kept at 200 feet or less (Title IX: General Regulations, Chapter 95.39 (B) (2) and (3), Nuisances, permitted exceptions of the Newberg City Code. However, because sound from this event will travel more than 200 feet, we are seeking approval from the City Council.
3. Newberg Parr Lumber Company representative, Lead Sales Person Shawn Watson has submitted a written request in conjunction with the Location Manager Glenn Aust for the Permit as evidenced by their signatures on the Sound Application Permit.
4. No alcoholic beverages will be served at this event and no fee will be charged for admittance to the event. Donations will be requested for food and raffle tickets will be sold. These proceeds will be donated to the "Ronald McDonald House."
5. The Newberg Friends Church has met all the requirements for a sound permit. Seeing no reason to deny, the Newberg-Dundee Police Department recommends approval of the permit.

FISCAL IMPACT: None.

STRATEGIC ASSESSMENT: None.

RECEIVED

JUN 09 2010



Newberg-Dundee Police Department
401 E. 3rd Street
Newberg, Oregon 97132
(503) 537-1280

DANCE PERMIT APPLICATION
SOUND PERMIT APPLICATION
(Allow a minimum of 10 working days to process)

Fee: \$10.00 per dance

APPLICANT: Shawn Watson DRIVERS LICENSE # 7974547 DATE: 6-9-10

ADDRESS (street, city, zip code): 20858 SW Skiver St Beaverton OR 97007

TELEPHONE: HOME 971-409-4425 BUSINESS: 503-554-7277

EVENT SPONSOR: Parr Lumber Company

ADDRESS (street, city, zip code): 200 N Elliott Rd Newberg OR 97132

EVENT LOCATION: 200 N Elliott Rd Newberg OR 97132

DATE OF EVENT: 07/10/2010 DANCE: TIME: _____ to _____ SOUND: TIME: 8:00 to 4:00

TYPE OR NATURE OF EVENT (please choose one of the following):

- Public Commercial or noncommercial even with audible sound OVER 200 ft. **(requires City Council approval allow 30 working day minimum to process)**
- Noncommercial event with audible sound of 200 ft. or less
- Public
- Private/Invitational

NUMBER OF PEOPLE EXPECTED: 400

(All events are subject to Newberg Police Department Reserve personnel or other private security personnel)

WILL A FEE BE CHARGED FOR ADMITTANCE TO THE EVENT? Yes No

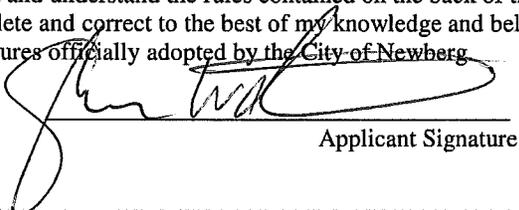
WILL ALCOHOLIC BEVERAGES BE PRESENT ON THE PREMISES? Yes No

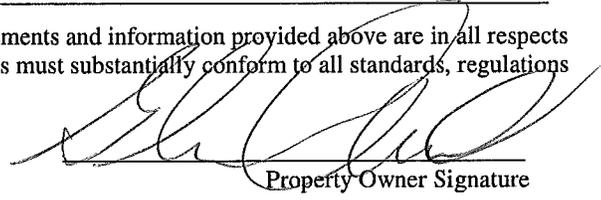
TYPE AND AMOUNT OF SECURITY PROVIDED FOR THE EVENT: Parking Attendants

DESCRIBE PROVISIONS FOR THE CONTROL AND DISPENSING OF ALCOHOLIC BEVERAGES

(Will a licensed OLCC server be on site or will alcohol be dispensed without consumption controls and oversight?)

I have read and understand the rules contained on the back of this form. The statements and information provided above are in all respects true, complete and correct to the best of my knowledge and belief. Tentative plans must substantially conform to all standards, regulations and procedures officially adopted by the City of Newberg


Applicant Signature


Property Owner Signature

FOR CITY OF NEWBERG USE ONLY (comments & conditions)

Police Services Request attached Liquor Application attached Insurance Certificate attached OLCC Permit attached
Police OK - Book - NOPS Date: 06/10/10

City Manager approved denied Signature _____ Date: _____

City Council approved denied Mayor's Signature _____ Date: _____

REQUIREMENTS FOR PUBLIC AND INVITATIONAL DANCES Pursuant to City of Newberg Code 93

- A license is required of any person or organization conducting or sponsoring any public or invitational dance in any building other than a private dwelling house.
- Minors under the age of 15 years, unaccompanied by a parent or legal guardian, are prohibited from attending any dance in a public dance hall within the City of Newberg.
- All dances shall be closed no later than 1:00 a.m., however, amplified sound must end at 10:00 p.m.
- The use of amplified sound requires an additional sound permit from the City of Newberg.
- All events having more than 100 persons must have a minimum of two Newberg-Dundee Police Reserve Officers or other security approved by the Chief of Police.

ADDITIONAL REQUIREMENTS FOR DANCES WHERE ALCOHOLIC BEVERAGES WILL BE SERVED

- Pursuant to City of Newberg Code 93, a certificate of liability insurance in the amount of \$300,000 or greater is required for any event where alcoholic beverages are served.
- A State of Oregon Liquor License Application must be attached to this form (if required).
- All events where alcoholic beverages are served must have a minimum of two Newberg Police Reserve Officers. (Final number of Officers required will be determined by Newberg Police Department based on information provided in the application).
- Permits will be approved subject to a local records check, criminal history check, type of event and number of persons expected.

Note: Permits are subject to revocation for violation of applicable City Ordinances and/or State Laws.

REQUEST FOR COUNCIL ACTION

DATE ACTION REQUESTED: July 6, 2010

Order ____ **Ordinance** ____ **Resolution** XX **Motion** ____ **Information** ____
No. **No.** **No. 2010-2905**

SUBJECT: Adopt the revised Public Works Department Fee Schedule.

Contact Person (Preparer) for this Resolution: Dain Eichel, PW Operations Superintendent

Dept.: Public Works Department

File No.:
(if applicable)

RECOMMENDATION:

Adopt **Resolution No. 2010-2905** adopting the revised Public Works Department Fee Schedule.

EXECUTIVE SUMMARY:

On August 15, 2005, City Council approved Resolution No. 2005-2592 adopting the Public Works Department Fee Schedule in an effort to maintain a schedule of fees appropriate to the Public Works Department. Some of those fees were revised during the adoption of Resolution No. 2008-2771 in March 2008. The revisions to consider for this latest update are as follows:

Newgrow Compost: Newgrow Compost has become a consistently popular soil amendment product retailed by the City of Newberg. With a small effort to market, Newgrow routinely sells as rapidly as it is produced. Newgrow is promoted each spring to garden clubs, nurseries, at the Camellia Festival and on Public Works Day.

Newgrow is the lowest priced bulk compost product available in the Portland Metro area and the Willamette Valley. It is extremely popular amongst residential gardeners. Citizens appreciate having a local product that is affordable and the City benefits by reusing a treatment process product. If the City did not have the Newgrow composting process it would have a biosolids disposal and/or land application program increasing budget expenditures with no cost offset.

After analysis of Newgrow production costs and review of the comparable vendors for compost products it is readily apparent that the sale price of Newgrow Compost can be raised. The cost of producing one cubic yard of compost is \$29.27. The intent of a pricing increase is to help defray some of the continually increasing costs to run this process.

It is recommended that the price of Newgrow compost be raised from \$10.00 to \$14.00 per cubic yard effective July 12, 2010. To price the compost higher could negatively impact the citizens of Newberg who are good customers that have over the years supported their wastewater treatment system. They are responding to the current economic downturn with community gardens, produce gardens and water wise landscaping which benefit from this soil amending product. Newgrow will still be offered at the lowest price for a bulk compost product in the area.

The nearest bulk compost retailer is Valley Landscape Center in Tualatin; they resell Newgrow at \$30.00 per cubic yard. Prices for compost products range from \$18.00 to \$35.00 per cubic yard (see Table 1).

Sawdust Sales: With the recent installation of the Onix Self-Fueling Dehydration system for sawdust drying at the Wastewater Treatment Plant there has been an increase in compost quality, process efficiency and permit compliance rate along with reduced staff involvement and an overall reduction in expenses as projected. The eight cubic yard (cyd) per hour design capacity of this project allows for population growth over the next twenty years which is the projected life of the equipment. At this time there is excess throughput capacity available in the dehydrator.

Bulk sawdust is purchased by the City at a price considerably less than what the public would pay due to the City buying in large quantity on a routine basis. The City currently purchases bulk wet sawdust at \$9.47 per cubic yard, delivered, from Lane Forest Products in Eugene. After all processing costs are factored in; the dried sawdust cost to the City is \$13.60/cyd.

The City has received inquiries regarding the availability of dried sawdust for sale. The City now has the capability of selling dried sawdust to the public in addition to Newgrow Compost.

Six sawdust/wood chip retailers were surveyed for bulk wood product availability and price. The current market rate ranges from \$25.00 to \$42.00/cyd (see Table 2). The closest bulk sawdust retailer is Greenlands in McMinnville at 15.1 miles away selling wet sawdust at \$30.00/cyd. The nearest bulk dry sawdust retailer is Lane Forest Products in Eugene at 96.6 miles away selling dry sawdust at \$41.00/cyd.

By setting a price at \$30.00/cyd the City can offer a bulk dry product not otherwise available within a reasonable driving distance and at a price that does not undercut any other sawdust retailers in this area.

Factoring in the depreciating out of the Onix Self-Fueling Dehydration System against compensation from modest dry sawdust sales, the project could be paid for before the end of its projected operating life.

FISCAL IMPACT: Recover costs for Onix Self-Fueling Dehydration System and for providing public services.

STRATEGIC ASSESSMENT: Establish fees to reimburse the City for Capital Improvement, labor and materials costs for providing public services.

Table 1

Compost	Miles from WWTP	Product	Price	Quantity
Supplier	One Way			
City of Newberg	0.0	Newgrow	\$14.00	Cubic Yard
Valley Landscape Ctr, Tualatin	12.3	Newgrow	\$30.00	Cubic Yard
Greenlands, McMinnville	13.9	Garden Compost	\$27.00	Cubic Yard
		Portland Mulch	\$20.00	Cubic Yard
Grimm's Fuel, Lake Oswego	15.1	Garden Compost	\$20.00	Cubic Yard
		Mushroom Mulch	\$30.00	Cubic Yard
Williams Fuel, Gaston	17.9	Dairy Compost	\$35.00	Cubic Yard
		Mushroom Compost	\$30.00	Cubic Yard
Beaver Bark, Scappoose	41.8	Garden Mulch	\$25.00	Cubic Yard
		Manure Compost	\$35.00	Cubic Yard
Lane Forest Products, Eugene	96.6	Garden Compost	\$20.00	Cubic Yard
		Chicken Compost	\$18.00	Cubic Yard

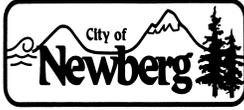
Table 2

Sawdust	Miles from WWTP	Product	Price	Quantity
Supplier	One Way			
City of Newberg	0.0	Dry Sawdust	\$30.00	Cubic Yard
Valley Landscape Ctr, Tualatin	12.3	Wet Cedar Chips	\$34.00	Cubic Yard
Greenlands, McMinnville	13.9	Wet Cedar Chips	\$35.00	Cubic Yard
Grimm's Fuel, Lake Oswego	15.1	Wet Sawdust	\$30.00	Cubic Yard
		Wet Cedar Chips	\$42.00	Cubic Yard
Williams Fuel, Gaston	17.9	Wet Fir Sawdust	\$26.00	Cubic Yard
		Wet Fir Shavings	\$26.00	Cubic Yard
		Wet Cedar Chips	\$40.00	Cubic Yard
Beaver Bark, Scappoose	41.8	Wet Sawdust	\$25.00	Cubic Yard
Lane Forest Products, Eugene	96.6	Dry Bedding Sawdust	\$41.00	Cubic Yard

Wet Fir Shavings

\$41.00

Cubic Yard



RESOLUTION No. 2010-2905

A RESOLUTION ADOPTING THE REVISED PUBLIC WORKS FEE SCHEDULE

RECITALS:

1. On August 15, 2005, City Council approved Resolution No. 2005-2592 adopting the Public Works Department Fee Schedule. Some of those fees were revised with Resolution No. 2008-2771.
2. The fee schedule is now being revised to include an increase in the sale price of Newgrow Compost.
3. The revised fee schedule also includes the addition of sawdust sales to offset the cost of the new Onix Self-Fueling Dehydration System.

THE CITY OF NEWBERG RESOLVES AS FOLLOWS:

1. The revised Public Works Department Fee Schedule is adopted and shown in Exhibit "A", which is attached. Exhibit "A" is hereby adopted and by this reference incorporated.
2. The City Manager is authorized to revise the Fee Schedule to reflect changes in the Consumer Price Index (CPI).

➤ **EFFECTIVE DATE** of this resolution is the day after the adoption date, which is: July 7, 2010.

ADOPTED by the City Council of the City of Newberg, Oregon, this 6th day of July 2010.

Daniel Danicic, City Recorder

ATTEST by the Mayor this 8th day of July 2010.

Bob Andrews, Mayor

LEGISLATIVE HISTORY

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

EXHIBIT "A"
TO RESOLUTION NO. 2010-2905

**PUBLIC WORKS DEPARTMENT
FEE SCHEDULE**

Approved July 6, 2010

Permits

Site Development Permit 5% of public improvement cost
(2% shall be paid at time of plan submittal)

Right-of-Way Permit\$10.00 non-commercial
\$100.00 base fee for utility/commercial

Other

Fire Flow Modeling Fee \$564

Storm Sewer Modeling Fee \$564

Newgrow Compost \$14.00 per cu.yd.

*Sawdust \$30.00 per cu.yd.

Septic Drop-off (permitted septic companies only) \$.13 per gallon

**FOR ALL PUBLIC RECORDS RESEARCH FEES SEE SCHEDULE APPROVED BY CITY
COUNCIL ON MARCH 4, 2008 WITH RESOLUTION NO. 2008-2771**

*new addition to this fee schedule

REQUEST FOR COUNCIL ACTION

DATE ACTION REQUESTED: July 6, 2010

Order ____ No.	Ordinance ____ No.	Resolution <u>XX</u> No. 2010-2909	Motion ____	Information ____
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SUBJECT: Resolution accepting the recommendation of the Electronic Sign Ad Hoc Committee and initiating a development code amendment regarding potential changes to the City's sign ordinance.

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

Dept.: **Planning & Building**

File No.: **DCA-09-002**
(if applicable)

RECOMMENDATION:

Adopt **Resolution No. 2010-2909**, accepting the recommendation of the Electronic Sign Ad Hoc Committee and initiating a development code amendment regarding potential changes to the City's sign ordinance.

EXECUTIVE SUMMARY: The City Council adopted Resolution 2009-2840 on May 4, 2009, which authorized the Mayor to establish an ad-hoc committee to identify and recommend appropriate changes to the animated sign code to balance community and business needs. The resolution also established a pilot program, which allowed owners of electronic signs who became members of the program to experiment with animated messages. The Mayor appointed nine community members to the Electronic Sign Ad Hoc Committee, representing a wide range of interests, and the Council consented to the appointments on August 3, 2009. The committee was charged with conducting a thorough evaluation of potential code amendments and their impacts on the local economy, information dissemination, community aesthetics, and safety. The committee was also charged to meet with members of the pilot program to discuss the results of the program. The committee held ten meetings, beginning on September 3, 2009 and concluding on June 3, 2010. The committee's final recommendation is that electronic signs provide a valuable means of communication for the community and for businesses, and that the sign code could allow more flexibility to use electronic signs, depending on the zone and the sign size, while protecting the livability of residents. The recommendation includes: 1) amended development code language; and 2) actions that City Council could take, such as considering creating a low-interest loan fund for sign upgrade projects, and encouraging a community-based group to create an annual award for signs that show public service messages.

FISCAL IMPACT: The estimated cost of processing the amendment, noticing, and holding hearings is approximately \$3,000, largely in staff time. There would be no additional fiscal impact expected from the development code amendment or from encouraging a community group to create awards. There could be a fiscal impact from creating a low-interest loan fund for sign upgrades, depending on how this fund was created.

STRATEGIC ASSESSMENT: The Electronic Sign Ad Hoc Committee has completed their review of the issues and developed a recommended code amendment. If the Council initiates a Development Code amendment then the Committee's recommended changes can begin the formal public hearing process at the Planning Commission. The Planning Commission will hold a public hearing, make a recommendation on the proposed changes, and send that recommendation to the City Council for consideration at a public hearing.

Attachments:

Resolution 2010-2909

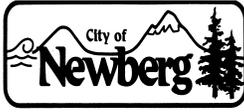
Final recommendation of the Electronic Sign Ad Hoc Committee, 6/3/10.

Minutes from 6/3/10 meeting of the Electronic Sign Ad Hoc Committee.

8/3/2009 appointment of Electronic Sign Ad Hoc Committee members.

Charge to the Electronic Sign Ad Hoc Committee

Resolution 2009-2840



RESOLUTION No. 2010-2909

A RESOLUTION ACCEPTING THE RECOMMENDATION OF THE ELECTRONIC SIGN AD HOC COMMITTEE AND INITIATING A DEVELOPMENT CODE AMENDMENT REGARDING POTENTIAL CHANGES TO THE NEWBERG SIGN ORDINANCE.

RECITALS:

1. The City Council adopted Resolution 2009-2840 on May 4, 2009, which authorized the Mayor to establish an ad-hoc committee to identify and recommend appropriate changes to the animated sign code to balance community and business needs.
2. The Mayor appointed nine community members to the Electronic Sign Ad Hoc Committee, representing a wide range of interests, and the Council consented to the appointments on August 3, 2009. The committee was charged with conducting a thorough evaluation of potential code amendments and their impacts on the local economy, information dissemination, community aesthetics, and safety. The committee held ten meetings, beginning on September 3, 2009 and concluding on June 3, 2010.
3. The Electronic Sign Ad Hoc Committee's final recommendation is that electronic signs provide a valuable means of communication for the community and for businesses, and that the sign code could allow more flexibility to use electronic signs, depending on the zone and the sign size, while protecting the livability of residents. The recommendation includes: 1) amended development code language; and 2) actions that City Council could take, such as considering creating a low-interest loan fund for sign upgrade projects, and encouraging a community-based group to create an annual award for signs that show public service messages.

THE CITY OF NEWBERG RESOLVES AS FOLLOWS:

1. The Council hereby initiates a development code amendment to consider the changes to the Development Code recommended by the Electronic Sign Ad Hoc Committee.
2. The Planning Commission shall hold a public hearing on the proposed changes and forward a recommendation to the City Council for consideration. The City Attorney shall review the recommendation for legal sufficiency, as stated in Resolution 2009-2840.

3. By so doing, the Council does not commit to any particular action on the amendments. It wishes to consider the issue through a public hearing process.

➤ **EFFECTIVE DATE** of this resolution is the day after the adoption date, which is: July 7, 2010.

ADOPTED by the City Council of the City of Newberg, Oregon, this 6th day of July, 2010.

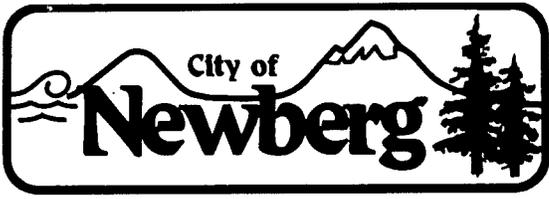
Norma I. Alley, City Recorder

ATTEST by the Mayor this 8th day of July, 2010.

Bob Andrews, Mayor

LEGISLATIVE HISTORY

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



Planning and Building Department

P.O. Box 970 • 414 E First Street • Newberg, Oregon 97132
503-537-1240 • Fax 503-537-1272 • www.ci.newberg.or.us

June 3, 2010

FINAL RECOMMENDATION:

The Electronic Sign Ad Hoc Committee believes that electronic signs provide a valuable means of communication for the community to give and receive information about business products, events, and current conditions. The committee believes that the City could allow more flexibility to use electronic signs, depending on the zone and the sign size, while protecting the livability of residents. The committee recommends that the City Council initiate a development code amendment to allow more flexibility to use electronic signs in most zoning districts. The committee also recommends that the prohibition on animated signs in the C-3 downtown district be revisited in the future as part of the downtown coalition process. The committee further recommends that the City consider other options, such as annual sign awards or low-interest loans for sign upgrades, to encourage better signs in Newberg.

I. RECOMMENDED DEVELOPMENT CODE AMENDMENT

A. Add the text and table below:

§ 151.597.5 ELECTRONIC MESSAGE CENTERS

Electronic message center (EMC) signs are permitted subject to the limitations below.

(see table on next page)

Table 1: Electronic Message Center Standards by Display Method, Size, Zoning, and Review Process

Zoning	Size of EMC [1]	Display Method				
		Static Message	Alternating Message	Animated Message	Extended Video Message	Flashing or rapid scrolling
Portland Road Commercial and Industrial (C-2, M-1, M-2, M-3, M-4); other zones not listed	Up to 30 sq. ft.	Allowed	Allowed	Allowed	Allowed	Prohibited
	> 30 sq. ft. up to 50 sq. ft.	Allowed	Allowed	Allowed[2] or Site element review	Site element review	Prohibited
	> 50 sq. ft. up to 100 sq. ft.	Allowed	Allowed	Site element review	Prohibited	Prohibited
Downtown (C-3) Zone	Up to 30 sq. ft.	Allowed	Prohibited	Prohibited	Prohibited	Prohibited
	> 30 sq. ft. up to 100 sq. ft.	Allowed	Prohibited	Prohibited	Prohibited	Prohibited
Institutional (I), Neighborhood Commercial (C-1), and Residential-Professional (R-P)	Up to 30 sq. ft.	Allowed	Allowed	Allowed	Prohibited	Prohibited
	> 30 sq. ft. up to 50 sq. ft.	Allowed	Allowed	Allowed[2] or Site element review	Prohibited	Prohibited
	> 50 sq. ft. up to 100 sq. ft.	Allowed	Site element review	Site element review	Prohibited	Prohibited
All Residential Zones (Including R-1, R-2, & R-3) [3]	Up to 30 sq. ft.	Allowed	Allowed	Allowed	Prohibited	Prohibited
	> 30 sq. ft. up to 50 sq. ft.	Allowed[2]	Allowed[2]	Allowed[2]	Prohibited	Prohibited

[1] Maximum size of EMC is limited by the maximum size of sign allowed in that zone. Therefore, EMCs of the size shown may or may not be allowed.

[2] Allowed if setback from front property line is greater than 30 feet.

[3] Must be turned off between the hours of 11 p.m. and 6 a.m.

Review process:

The table above lists the zones where EMCs are allowed, based on the display method, size, and review process. EMCs that are allowed in the zone will use the standard Type I administrative review process. EMCs that require Site element review will use the process described below.

1. Site element review process: A Type I process with a decision by the Planning Director.
 - a. Criteria: The review body must find that the sign will be compatible with surrounding uses, based on all of the following factors:
 - i. Proposed sign operation complies with code.
 - ii. Setback: At least 15 feet from front property line
 - iii. Hours of operation: May be required to be turned off between the hours of 11 p.m. and 6 a.m. if sign is abutting and visible from a residential district.
 - iv. Site landscaping is maintained and is up to code. If the site is nonconforming and cannot be brought up to code then efforts have been made to bring the site as close to code as practical.
 - v. Freestanding signs include 3 of the following design elements:
 - a. Includes prominent brickwork, masonry, naturally-finished wood, or naturally-finished metal in frame or supports.
 - b. Includes neon type tube lighting.
 - c. Uses 2 support poles or a full-width support structure.
 - d. Outline or top of the frame is predominantly non-rectangular or curved.
 - e. Includes landscaping around the base equal in area to the size of the sign.
 - f. More than 40% of sign is EMC.
 - g. Height is 20% lower than required.
 - h. Setback is 20% greater than required.
 - i. Sign will be used by 2 or more businesses on site.
 - b. Appeals: All appeals of the site element review process shall be heard by the Planning Commission.

Size incentive:

If any freestanding EMC sign includes 4 of the design elements in 1.a.(v) above then the allowable sign area is increased by 10%. If any freestanding EMC sign includes 5 or more of the design elements in 1.a.(v) above then the allowable sign area is increased by 20%.

Electronic Scoreboards: Electronic scoreboards with electronic message centers in stadiums or at sports fields are not considered signs or limited in size or display method if they are oriented inward to the playing field.

Sign maintenance: All electronic message centers shall be kept in a good state of repair. Any burned out lights or LEDs shall be replaced as soon as possible.

Brightness: Each electronic message center shall be equipped with dimming technology that automatically varies the brightness of the electronic message display according to ambient light conditions. This standard shall only apply to signs approved after _____ (*insert date code revision adopted*).

B. Add the following to the existing Definitions section:

§ 151.003 DEFINITIONS

ELECTRONIC MESSAGE CENTER (EMC). A sign that is capable of displaying words, symbols, figures or images that can be electronically or mechanically changed by remote or automatic means.

ELECTRONIC MESSAGE CENTER DISPLAY METHODS:

1. **Static message.** The display on the entire electronic message center stays constant for a period of at least ten minutes, and does not appear to change, move, scroll, vary color, or vary light intensity.

2. **Alternating message.** The display on the entire electronic message center is held constant for a period of at least 5 (five) seconds, and does not appear to change, move, scroll, vary color, or vary light intensity during that period, and where the image transitions to another image instantly or in a transition of less than ½ second.
3. **Animated message.** The display on all or part of the electronic message center changes or appears to move, scroll, vary color, or vary light intensity. *Animated message* excludes static messages, alternating messages, extended video messages and flashing or rapid scrolling.
4. **Extended video message.** A display on an electronic message center that contains images that vary in a continuous, non repeating fashion, similar to television viewing. It includes messages or patterns of images that repeat in segments over ten seconds in duration. It excludes images that serve as a background display, where a foreground display comprising at least 50 percent of the EMC surface is held constant for continuous one second intervals. It also excludes flashing or rapid scrolling displays.
5. **Flashing or rapid scrolling.** *Flashing* means a display that includes a pattern of sudden alteration (less than ½ second) between an illuminated EMC face and a face without illumination, or an EMC face where the copy color and the background color alternate or reverse color schemes rapidly (in less than ½ second). *Rapid scrolling* means any letter or character in a message moves or appears to move across an EMC face faster than 10 feet in two seconds. *Flashing or rapid scrolling* excludes a transition of less than ½ second between messages on an alternating message display. Flashing or rapid scrolling is prohibited.
6. **Strobe lights.** *Strobe lights* are high intensity flashing lights that may impair vision. Strobe lights are prohibited on signs.

C. Make the changes below in the existing code sections (deletions are ~~struck through~~, additions are underlined.)

151.593 GENERAL REQUIREMENTS; ALL SIGNS.

(C) ~~No animated sign shall exceed ten square feet in area.~~ In the C-3 Zone, animated signs are prohibited.

151.594 MAJOR FREESTANDING SIGNS.

(B) Size.

(1) Residential Zones: No major freestanding sign shall be larger than 0.2 square foot per foot of street frontage, up to a maximum of ~~30~~ 50 square feet. At least six square feet of signage will be allowed. Major freestanding signs are not allowed on lots containing only one single family dwelling or duplex.

151.596 MAJOR ATTACHED.

(B) Size:

(1) R-1, R-2, and R-3 Zones: The total of all major attached signs on any building frontage shall not exceed 0.2 square foot for each foot of building frontage. At least six square feet of signage will be allowed up to a maximum of ~~30~~ 50 square feet. Major attached signs are not allowed on lots containing only one single family dwelling or duplex.

151.599 TEMPORARY SIGNS FOR EVENTS.

In addition to the portable signs otherwise permitted in this code, a lot may contain temporary signs in excess of the number and size allowed by § 151.598 above, during events as listed below:

(A) Grand opening event: A grand opening is an event of up to 30 days duration within 30 days of issuance of a certificate of occupancy for a new or remodeled structure, or within 30 days of change of business or ownership. No lot may have more than one grand opening event per calendar year. The applicant shall notify the city in writing of the beginning and ending dates prior to the grand opening event. If there are no freestanding signs on a frontage after the grand opening event, one of the temporary signs may remain on the property for the 60 days

immediately after the end of the grand opening event. A temporary electronic message center may be used during a grand opening event.

(B) Election event: An election event begins 90 days prior to and end 14 days after any public election. During this event a lot may contain up to two additional temporary signs not to exceed 12 square feet total area for both signs. These signs shall not be located in the public right-of-way.

(C) Other events: A lot may have two other events per calendar year. The events may not be more than eight consecutive days duration, nor less than 30 days apart. A temporary electronic message center may be used during the event.

(D) Flag displays: One flag display is permitted on each street frontage. An unlimited number of displays is permitted on any legal holiday or Newberg City Council designated festival.

II. RECOMMENDED NON-CODE OPTIONS

Non-code options

The Electronic Sign Ad Hoc Committee also believes that there are other actions that can be taken outside of the sign code to improve signs in Newberg. The committee recommends that the City Council encourage a community-based group to create an annual award for signs that show public service messages. The committee also recommends that the City Council consider creating a low-interest loan fund for sign upgrade projects in Newberg.

that normally scoreboards would be set back fairly far from the road. Dennis Lewis said that the backside of scoreboards could be used as a sign or billboard, advertising local upcoming events. Steve said if the backside were facing the street, it would need to meet the general regulations for signs. Stephen McKinney said when considering these scoreboards and/or billboards that the committee needs to consider all of the potential users of the fields. He suggested as a community field, the users such as Chehalem Park and Recreation District, George Fox, Newberg High School, etc. might all benefit from the advertising of their upcoming events.

Steve Olson then posed the question of the impact to nearby residential homes if the scoreboard was located close to a neighborhood. This could be addressed by increasing the setback or limiting the size when operating as a sign. Fred Gregory summarized his understanding that no scoreboards would be facing residents any less than the length of a football/soccer field. He reiterated that only a few houses would be behind some of the scoreboard signs, which would negate the reason to have the backside billboard. The necessity for setbacks would apply to some of the potential scoreboard sites. Stephen McKinney said the necessity for a scoreboard being "on" 24-hours would be limited as the costs for electricity would be prohibitive and with no public at the facility during non-use hours, it would not be logical to run the sign. Fred Gregory agreed it would be illogical to run a sign during non-use of athletic field hours.

Barton Brierley asked if the committee would agree to Option C if it included a 100-foot setback limitation. Dennis Lewis agreed that Option C is fine, with the understanding that the backside of the scoreboard would not need additional regulations as all other sign regulations would apply at that point. Barton Brierley asked for confirmation again, whether the committee was comfortable with Option C as written. They agreed they were in favor of Option C, as written.

3:32 pm

Steve moved the committee to review the site element review process as it is depicted on the top of page nine of the meeting packet. Dennis Lewis asked how the signs would be restricted if an apartment complex were built nearby. Would residential buildings affect the use of commercial electronic signage during the off business hours if the committee agrees to these restrictions? Steve Olson mentioned that apartments in a commercial zone would not trigger any restrictions, as they would not be in a purely residential zone. Loni Parrish proposed that a change of wording to the restriction hours might resolve the problem. Michael Sherwood asked what purpose is served by a sign being on day and night if no one is around. Dennis Lewis said his sign stays on all the time and it is his cheapest advertising, so he sees value in leaving it on. Barton Brierley responded that wording could be changed to read that it is visible from "abutting residential district" rather than merely "a residential district". Steve Olson said many of the zoning restrictions are already defined on the chart on page eight of the meeting handout.

The committee discussed item 1.a. ii and the potential that signs may shine on bedroom windows in residential districts. Dennis Lewis suggested combining items ii. and iv. to reach a good definition. Michael Sherwood said that much of the current verbiage allows legal review to interpret a problem where one may not be prevalent.

Steve Olson summarized the committee's standpoint after conversation that item ii should be eliminated and add the words "visible and abutting residence" to item number iv. Michael Sherwood asked Steve Olson if he had reviewed McMinnville's sign codes. Steve Olson responded that McMinnville deals with sign illumination issues by virtue of the sign's size. Barton Brierley suggested changing the

wording on number iv to include "may be determined by the Planning Director" to allow some flexibility on this issue instead of being overly rigid.

4:05

Steve Olson asked the committee to review the bottom of the site elements items 1.a.i. and 1.b. Dennis Lewis suggested that the restriction be noted as "2" or more businesses on site and Nick Tri agreed. Stephen McKinney agreed that "2 or more" businesses would be good. Loni Parrish asked why two or more businesses could not fit. Dennis Lewis explained that this would encourage businesses to coordinate on signs.

Steve Olson summarized the committee's discussion to say remove item 1.a.vi.f. Dennis Lewis suggested that this item be left in but changed to read "more than 40% of the sign is EMC". Barton asked for the committee's thoughts on this proposed change. The group discussed the change and agreed to it.

The committee moved to the topic of size incentives for signage. Steve asked the committee if they generally liked that wording. Conversations ensued and the committee agreed to item 2 as written. They did agree that Size Incentive as a topic should be emphasized more in the review process.

Steve said that all highlighted items in the packet have been discussed at this meeting. Dennis Lewis asked to review Electronic Message Centers on vehicles and trailers as it was presented on page 7 of 13 in the meeting packet. Steve Olson explained that about three meetings ago, the committee discussed the topic of messages displayed on vehicles. Fred Gregory asked to add taxis to the restricted vehicles. Dennis Lewis asked how this would be enforced if someone from out of town came into town with an electronic message on their vehicle. The question was posed if this restriction is necessary or would it be covered under Newberg's nuisance ordinances. Barton confirmed it could be dealt with as a nuisance and the committee agreed to omit the ban on vehicle signs.

Steve referred to page 11 of the meeting packet to review the temporary signs for events. Stephen McKinney said that quite a bit of time is spent on code enforcement of sandwich board signs. Dennis Lewis suggested as a future idea, that the City loan out these signs as a way to regulate them.

Steve Olson asked if the committee wanted to review the changes before sending the recommendation to Council. The committee wanted to review the changes first, but agreed to do that by email. Barton Brierley asked for and heard committee consensus that they are satisfied with the proposal as is with noted changes as were discussed today.

Stephen McKinney hopes that what is sent to City Council shows coordination between the work this committee has done over the months and what the Downtown Coalition will do regarding signage. Several members of this ad hoc committee mentioned they are also on the Downtown Coalition which should help with this transition.

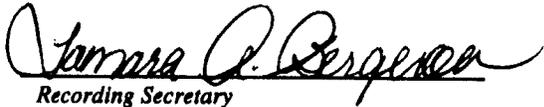
Dennis Lewis asked about signage for institutions such as the Chehalem Cultural Center. He knows that there is a problem when institutions are not able to communicate with the community. Steve Olson said ODOT restricts the off-premise signs along the highway, thus preventing new billboards but also limiting the cultural center. Dennis Lewis concluded that the Downtown Coalition could address the civic corridor signs, if needed.

Barton Brierley thanked each committee member for their time and energy on this committee throughout the past few months. Steve Olson confirmed he would send out the updated Recommended Development Code Amendment with regard to signage for this committee's review and vote. Those present agreed that they did not need to meet again as it would slow this proposal being presented to City Council.

- V. **OTHER BUSINESS:** No other business was brought forward.
- VI. **NEXT STEP – Present recommendation to City Council – July 6, 2010 (tentative)**
- VII. **ADJOURN:** Meeting adjourned at 5 p.m.

Approved by the Electronic Sign Ad Hoc Committee on this 11th day of June, 2010.

AYES: 5 NO: 0 ABSENT: 4 ABSTAIN: 0
(C. Stewart, L. Parrish, K. Horn, J. Wart)


Recording Secretary


Electronic Sign Ad Hoc Committee Chair

REQUEST FOR COUNCIL ACTION

DATE ACTION REQUESTED: August 3, 2009

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

SUBJECT: Appointment of members to the Electronic Sign Ad Hoc Committee.

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

Dept.: Planning & Building
File No.: DCA-09-002

RECOMMENDATION:

Council consent to the appointment, by the Mayor, of the Electronic Sign Ad Hoc Committee.

EXECUTIVE SUMMARY:

Several owners of existing electronic signs in Newberg requested that the City consider potential changes to its regulations on animated signs. The Council wished to evaluate potential changes through a public process, including a pilot program for experimenting with existing signs and a committee to explore the potential changes to regulations.

On May 4, 2009, the City Council passed Resolution 2009-2840, which: (1) initiated an evaluation of potential amendments to the Newberg Development Code regarding animated signs; (2) established a voluntary pilot program for owners of existing animated signs; and (3), established an ad hoc committee to identify and recommend appropriate changes to the animated sign code. The resolution authorized the Mayor to appoint members to the Committee, with the consent of the City Council. The following are the Mayor's appointees to the Committee:

- Nick Tri Newberg Planning Commissioner
- Stephen McKinney Newberg City Councilor
- Claudia Stewart Newberg Public Schools
- Fred Gregory George Fox University
- Michael Sherwood Chamber Board
- Kristen Horn Downtown Association
- Dennis Lewis Business Owner
- Loni Parish Member-at-large
- Julie Want Member-at-large

The Mayor has appointed Nick Tri as Chair of the Committee. A Vice Chair will be elected by the committee at a later date.

FISCAL IMPACT: None.

STRATEGIC ASSESSMENT: The appointed members to the Ad Hoc Committee on Electronic Signage represent a wide range of community members and interests, and should be able to effectively explore options for electronic signs and recommend any appropriate changes to the sign code.

AD HOC COMMITTEE ON ELECTRONIC SIGNAGE

Charge to the Ad Hoc Committee.....

In follow up to the adoption of City Council Resolution No. 2009-2840, an advisory ad hoc committee on Electronic Signage is established "...to identify and recommend appropriate changes to the animated sign code to balance community and business needs." This ad hoc committee is to report its findings and recommendations to the City Council who in turn will forward the report, with comments, to the Planning Commission.

The ad hoc committee is to examine the impacts on local economy, impacts on community aesthetics and safety, and value for information dissemination. The ad hoc committees review and evaluation of potential amendments, appropriate to Newberg, pertaining to electronic/animated signs should include:

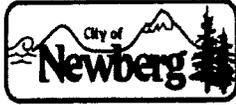
- Identify the use and desired results of signage.
- Identify types and modes of signage.
- Modifying the definition of animated/electronic signs
- Modifying time limits for changing displays.
- Establishing size limits.
- Establishing expectation for public service messages.
- Identify owner/use responsibility.
- Establishing enforcement mechanisms.
- Need for specified periodic review of City Code provisions.
- Establishing process and procedures for upgrades based on new generation(s) of signage.
- Other changes as may be identified and recommended.
- Recommendations(s) for no changes.
- Draft an Action Plan for the implementation of Committee's recommendations.

Additionally, the ad hoc committee, in concert with the City Manager, is to review the results of the Pilot Program established by Resolution 2009-2840.

The Ad Hoc Committee on Electronic Signage will consist of nine members, one member to be a City Councilor, one member to be a Planning Commission member, and the remaining members will represent business, education and an the community at large. The members will be appointed by the Mayor with the consent of the Council. The Mayor will appoint a chair, with the ad hoc committee electing a vice chair.

The ad hoc committee will serve until it completes its recommendations. It is anticipated that this the committee will serve approximately one year. The committee will establish a meeting schedule as need to accomplish its task(s). Usually, the committee would be at least once a month or more often as necessary.

The City staff will provide a secretary to the committee and such other staff or consultation as may as may be appropriated. The meetings of the committee are governed by the Public Meeting Law and the secretary will keep a record of the committee proceedings.



RESOLUTION No. 2009-2840

**A RESOLUTION INITIATING AN EVALUATION OF THE CITY'S
SIGN ORDINANCE REGARDING ANIMATED SIGNS, AND
ESTABLISHING A PILOT PROGRAM TO EVALUATE THE EFFECT
OF POTENTIAL CHANGES**

RECITALS:

1. Several owners of existing electronic readerboard signs have requested that the City evaluate potential changes to its regulations on animated signs.
2. The Council wishes to evaluate these changes through an open and public process.
3. In order to effectively analyze potential changes, the Council wishes to establish a pilot program to obtain information on the effects of different limits.

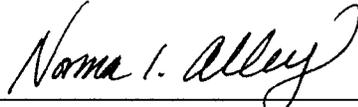
THE CITY OF NEWBERG RESOLVES AS FOLLOWS:

1. The Council hereby initiates an evaluation of potential amendments to the Newberg Code of Ordinances regarding animated signs. Potential amendments to be considered may include, but not limited to:
 - a. Modifying the definition of animated signs and time limits for changing of displays.
 - b. Establishing size limits for electronic message boards.
 - c. Establishing expectations for public service messages.
 - d. Establishing enforcement mechanisms.
 - e. Other changes as may recommend, or a recommendation of no change.
2. The Mayor shall establish an ad-hoc committee to identify and recommend appropriate changes to the animated sign code to balance community and business needs. The ad-hoc committee shall report to the Council. The Council shall then forward the report to the Planning Commission.
3. The Planning Commission shall hold hearings to consider the ad-hoc committee report and forward a recommendation to the City Council for consideration. The City Attorney shall review the recommendation for legal sufficiency.
4. The Council hereby establishes a voluntary pilot program for evaluation of potential amendments as follows:
 - a. The pilot program shall be for a period of time not to exceed eighteen months, commencing on May 5, 2009.
 - b. Owners of existing electronic readerboard signs may request to be included in the pilot program.

- c. During the pilot program, the City Manager shall request that those included in the program use their signs under various methods such as: static display, message change in different frequencies, and rolling display.
 - d. Those participating in the pilot program shall:
 - i. Be authorized to use an existing electronic readerboard sign in excess of current limits to the extent requested by the City Manager.
 - ii. Document changes in sales, attendance, positive and negative comments, or other effects of the advertising during the pilot program.
 - e. During the pilot program, the City Manager shall seek and document public comments on effects of signs participating in the pilot program.
5. By so doing, the Council does not commit to any particular action on the amendments. It only wishes to consider the issue after a full analysis and public hearing process.

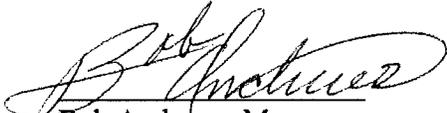
➤ **EFFECTIVE DATE** of this resolution is the day after the adoption date, which is: May 5, 2009.

ADOPTED by the City Council of the City of Newberg, Oregon, this 4th day of May, 2009.



 Norma I. Alley, City Recorder

ATTEST by the Mayor this 7th day of May, 2009.



 Bob Andrews, Mayor

LEGISLATIVE HISTORY

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

June 18, 2010



Ms. Norma Alley
City Recorder
City of Newberg
PO Box 970
Newberg, OR 97132

Dear Ms. Alley:

Please accept the enclosed letter as official public comment on the topic of electronic sign regulation by the City of Newberg. I respectfully request that it be entered into the official record each time the Newberg City Council considers this topic at a public hearing. The letter has been sent via email to Mayor Andrews and each of the Councilors.

Regards,



Patricia King
Executive Director

June 18, 2010



Honorable Mayor Bob Andrews and the Newberg Council Members
City of Newberg
PO Box 970
Newberg, OR 97132

Dear Mayor Andrews and Councilors:

On behalf of the Northwest Sign Council, I wish to commend the City of Newberg for the pro-active approach the city has taken to address the electronic signage needs for Newberg's business community. The Electric Sign Ad-Hoc Committee should be applauded for its diligence in preparing and presenting the code recommendations.

The Northwest Sign Council (NWSC) is the trade association representing the on-premise sign industry in the Pacific Northwest and, therefore, an important stakeholder with respect to sign regulation. We routinely work with and assist local officials with issues concerning sign regulations and procedures, bringing expertise relating to technology, regulatory options and procedures to the table.

The recommendations that the committee will present to the City Council on July 6 appear to be fair and equitable, and we believe these recommendations will assist in sustaining and supporting the Newberg business community by ensuring safe and effective sign regulations.

On behalf of the Northwest Sign Council, please accept this letter of support for the recommendations presented by the Electric Sign Ad-Hoc Committee. Thank you for your consideration of the committee's recommendations.

Sincerely,



Patricia King
Executive Director

/pk

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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

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

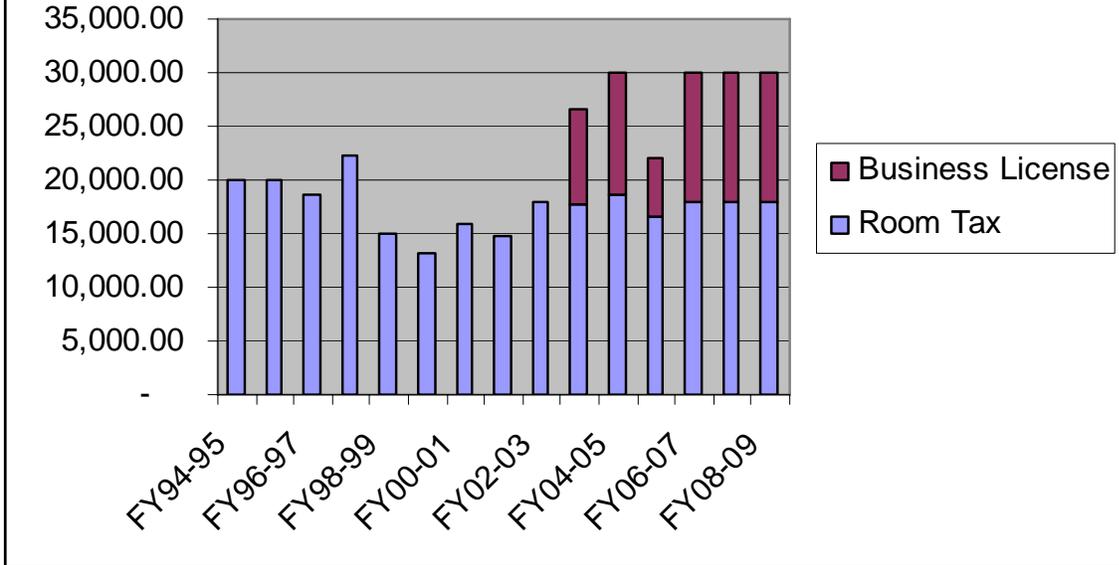
a. The Chehalem Valley Chamber of Commerce operates the Visitor Information Center to promote tourism and business in the area. The City of Newberg has supported the center since at least 1989. At one point, the City requested proposals from other entities to operate an information center, but ultimately 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.

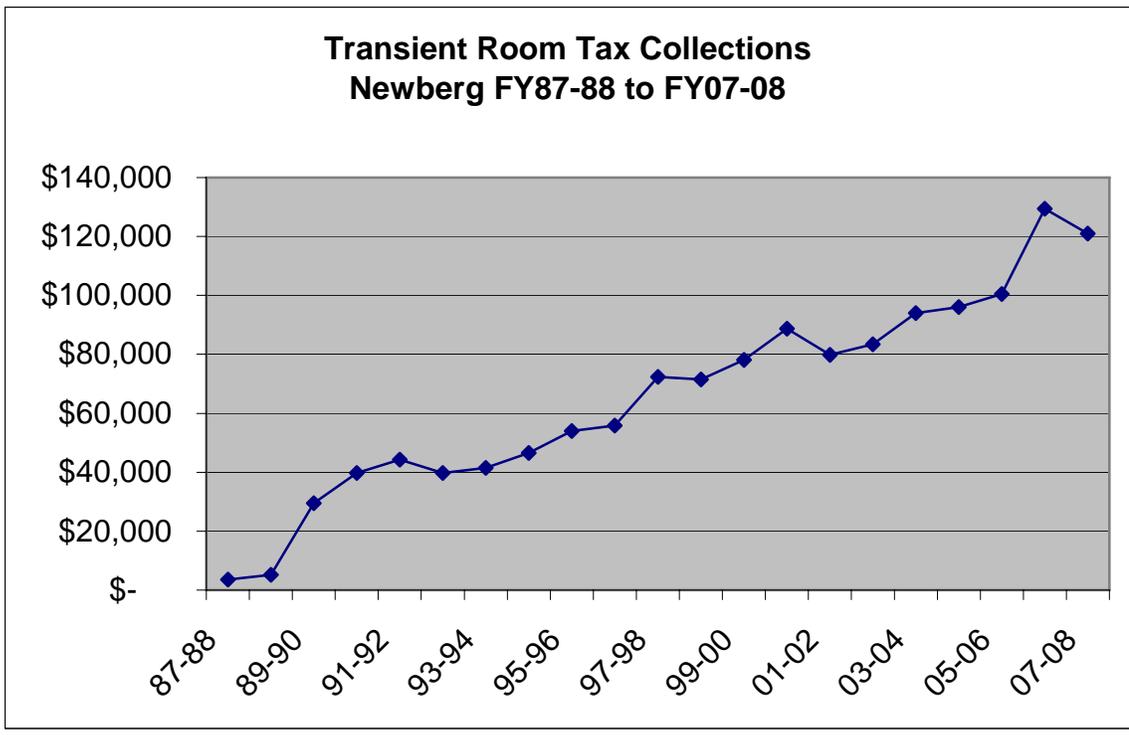
a. The City established a transient room tax in 1976. The rate is 6% of the room rate. The City receives 95% of the taxes collected; 5% is retained by the innkeeper to defray the costs of collection.

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

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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/cml
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

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Transient Room Tax

[36.15](#) Definitions

[36.16](#) Levy

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[36.18](#) Operator's duties

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

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36.75	Multiple public improvements
36.76	Advance financed reimbursements on public improvements funded by city
36.99	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.

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2007 EDITION

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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 14th from 5:00 to 7:00 PM to focus on legislative issues statewide. At the October 6th 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 17th 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 27th 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.

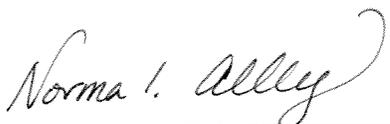
XI. EXECUTIVE SESSION

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 20th day of October, 2008.



Norma I. Alley, City Recorder

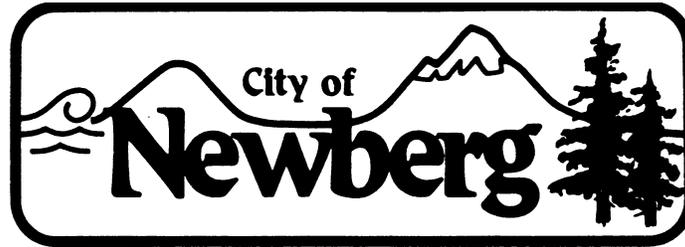
ATTEST by the Mayor this 23rd day of October, 2008.



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 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

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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:

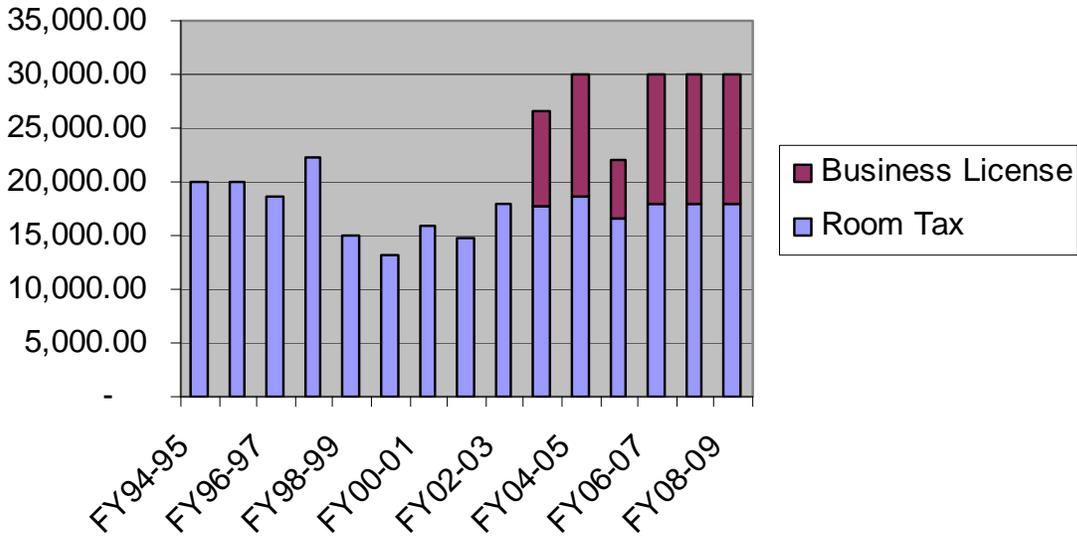
The Chehalem Valley Chamber of Commerce operates the Visitor Information Center to promote tourism and business in the area. The City of Newberg has supported the center since at least 1989. At one point, the City requested proposals from other entities to operate an information center, but ultimately 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.

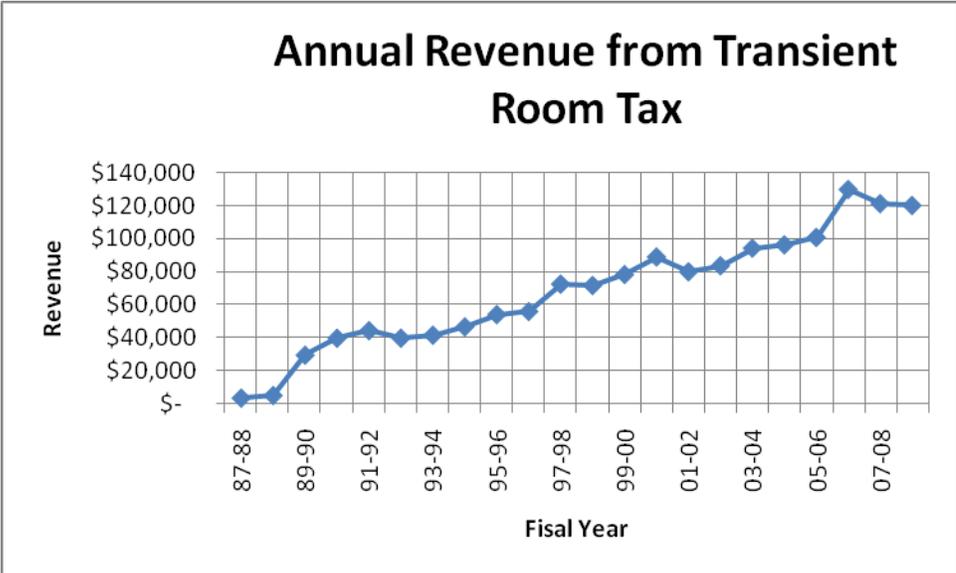
The Newberg Code states: “All [room tax] money collected pursuant to this subchapter shall be the general funds of the City of Newberg and may be used in any lawful manner that the city deems necessary and appropriate.”

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
July	802	701	1288	1355	4362	4459
Aug	823	857	1445	1322	4349	3731
Sept	715	667	1799	1272	4299	3065
Oct	440	529	930	700	5242	4138
Nov	443	402	412	372	3918	3937
Dec	198	229	201	266	3447	3327
Jan	367	219	244	232	4048	3650
Feb		237		233		3686
March		339		366		3868
April		399		290		3382
May		402		550		2813
June		568		709		4169
Total:		5549		7667		44225

2009 - 2010 Visitor Center Budget

Chehalem Valley Chamber of Commerce

Income

		09-10		
		BUDGET TOTALS	08-09 BUDGET	08-09 ACTUAL
City of Newberg		\$30,000	\$30,000	\$30,000
Chehalem Valley Chamber of Commerce Contribution		\$55,971	\$43,450	\$55,971
	TOTAL	\$85,971	\$73,450	\$85,971

Expenses

Personnel		\$44,975	\$41,925	\$44,975
<ul style="list-style-type: none"> Executive Director Communications Coordinator Visitors Center Coordinator Visitors Center - Seasonal Help Bookkeeper (P/T) Benefits - Health Insurance & Retirement Taxes 				
Marketing Expense		\$9,246	\$8,525	\$9,246
<ul style="list-style-type: none"> Newberg Graphic Tourism Yamhill Valley Visitors Guide - Yamhill Valley Branding & Marketing Project Sheridan Sun Tourism Magazine Governors Conference on Tourism - OACVB Conference Visitors Center Brochure - Reprints & Tourism Inserts Website Yamhill Valley Visitors Association 				
Overhead		\$31,750	\$23,000	\$31,750
<ul style="list-style-type: none"> Calculated on 1/3 of overhead in Chamber Budget applicable to tourism Includes: Dues/Subscriptions, Admin. Insurance, Internet/Web, Miscellaneous, Supplies, Postage, Leases, Rent, Capital Improvements, Repair/Maintenance, Telephone, Utilities Yamhill Valley Visitors Association dues, Professional Fees Portland Oregon Visitors Association dues 				
	TOTAL	\$85,971	\$73,450	\$85,971

	Q1 & Q2	YTD 09-10	Budget
REVENUE:			
City of Newberg	\$7,500.00	\$15,000.00	\$30,000.00
Newberg Chamber contribution	\$35,760.00	\$28,260.00	\$55,971.00
TOTAL REVENUES:	\$43,260.00	\$43,260.00	\$85,971.00
EXPENSES:			
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
TOTAL EXPENSES:	\$43,260.00	\$43,260.00	\$85,971.00

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%			
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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%